EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

Chamber judgments concerning
Hungary, Italy, Poland, Romania and Turkey

The European Court of Human Rights has today notified in writing the following 33 Chamber judgments, none of which are final.[1]

Repetitive cases[2] and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release.

Violation of Article 6 § 1 (length)
Violation of Article 2 § 2 of Protocol No. 4

Bessenyei v. Hungary (application no. 37509/06)
The applicant, Károly Bessenyei, is a Hungarian national who was born in 1956 and lives in Kál (Hungary).

In June 2001 Mr Bessenyei was charged with forgery. He was ultimately acquitted in September 2005. Between June 2001 and July 2003 pending his trial he was prevented from travelling abroad on account of the serious nature of the charges against him. The case concerned his complaint about the excessive length of the criminal proceedings against him and the ban on his travelling abroad. He relied on Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights and Article 2 of Protocol No. 4 (freedom of movement) to the Convention.

The European Court of Human Rights held unanimously that there had been a violation of Article 6 § 1 on account of the proceedings against the applicant having lasted five years. The Court also noted that the ban on the applicant travelling had lasted more than two years and had not been periodically reassessed: it had been an automatic, blanket measure of indefinite duration and had only ended due to a change in legislation. The ban had not therefore been justified or proportionate in the individual circumstances of the applicant's case and the Court held that there had been a violation of Article 2 § 2 of Protocol No. 4. Mr Bessenyei was awarded 4,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in English.)

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[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

[2] In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

Two violations of Article 8

Clemeno and Others v. Italy (no. 19537/03)
The 12 applicants are Italian nationals. The first two applicants, Raffaella Clemeno and Salvatore Lucanto, who were born in 1961, are the parents of the third and fourth applicants: Francesco, who was born in 1983, and Y, who was born in 1988. The other eight applicants are members of the same family. They live in Milan (Italy).

In March 1995, following accusations of sexual abuse and rape made by Mr Lucanto's niece, then a minor, he and five other members of his family were committed for trial. In November 1995, as the complainant, X, had said she feared her cousin Y had also been subjected to sexual abuse and rape by the same persons, the Milan Children's Court ordered that Y be taken into the care of the social services and placed in a children's home. The court also decided to break off her contacts with her parents and her brother. In April 1997, with a view to securing a stable family environment for her and basing its decision partly on an expert's report and partly on the parents' conduct, the court decided to put Y up for adoption. In the face of the parents' objections and even though Mr Lucanto had been acquitted in June 2001, the decision to put Y up for adoption became final in November 2002. The applicants relied in particular on Article 8 (right to respect for private and family life).

The Court declared the application admissible as regards the first four applicants and inadmissible as regards the other eight.

The Court considered that the use of the urgent procedure in order to take Y away from her family was a measure which the Italian authorities were perfectly entitled to take in cases of sexual abuse. This was incontestably an odious type of offence which did great damage to the victims. The criminal background could reasonably have led the authorities to believe that keeping Y in her home might cause her harm. Consequently, the Court considered that taking Y into care and removing her from her family could be regarded as proportionate measures "necessary in a democratic society" for the protection of her health and her rights, and held that there had been no violation of Article 8 in that respect.

The Court noted that the Italian civil courts had put Y up for adoption while the criminal proceedings against her father were still pending. After his acquittal, when ruling on the family's objections to the decision to put Y up for adoption, they had given judgment against the parents. The Court considered that the reasons given by the domestic courts for the decision to put Y up for adoption were insufficient in relation to the child's interest, which required that a decision resulting in a breaking of family links should be ordered only in quite exceptional circumstances, and that everything should be done to maintain personal relations and, where appropriate, at the right time, to "reconstitute" the family. In the present case no programme to draw Y and her natural family back together had been set up, even though the mother had not faced any criminal charges. The Court emphasised that after being taken into care Y had never been able to meet any member of her natural family and that the breaking of every link with them had been total and final. The Italian authorities had not tried to take any steps calculated to maintain links between Y and her family, particularly her mother and her brother, or help the family overcome any difficulties in their relations with Y and reconstitute the family.

Consequently, the Court held unanimously that there had been a violation of Article 8 as regards the lack of contact between Y and her natural family while she was in care and the

decision to put her up for adoption. By five votes to two it awarded EUR 20,000 to each of the applicants for non-pecuniary damage. (The judgment is available only in French.)

Just satisfaction

Guiso-Gallisay v. Italy (no. 58858/00)
The applicants are three Italian nationals, Stefano Guiso-Gallisay, Gian Francesco Guiso-Gallisay and Antonella Guiso-Gallisay.

In a judgment delivered on 8 December 2005 the Court held that the interference with the applicants' right to the peaceful enjoyment of their possessions through the indirect expropriation of their land was incompatible with the principle of legality and that there had accordingly been a violation of Article 1 of Protocol No. 1 (protection of property). It also held that the question of the application of Article 41 (just satisfaction) was not ready for decision.

In the judgment delivered today the Court varied its case-law on application of Article 41 in the case of indirect expropriation. The method used hitherto was to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of not deriving earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the State plus the value of the land in today's prices. However, the Court considered that this method of compensation was not justified and could lead to unequal treatment between applicants, depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. In order to assess the loss sustained by the applicants, it therefore decided that the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned should be taken into consideration. The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount. In the present case, the sum to be awarded for pecuniary damage amounted to EUR 1,803,374 for the three applicants jointly. The Court also awarded them EUR 45,000 for non-pecuniary damage and EUR 30,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 5 § 3

Guziuk v. Poland (no. 39469/02)
The applicant, Stanislaw Guziuk, is a Polish national who was born in 1956 and is currently detained in Goleniów Prison (Poland).

In January 1998 Mr Guziuk was arrested on suspicion of robbery, assault and intimidating a witness. He was convicted and sentenced to a 12 year prison sentence in December 2002. The case concerned his complaint about the excessive length of his detention during his trial. He relied, in particular, on Article 5 § 3 (right to liberty and security).

The Court held unanimously that there had been a violation of Article 5 § 3 on account of the excessive length of the Mr Gusiuk's detention which had lasted almost five years, and awarded him EUR 1,500 in respect of non-pecuniary damage. (The judgment is available only in English.)

No violation of Article 5 § 3

Kuśnierczak v. Poland (no. 19961/05)
The applicant, Wadim Kuśnierczak, is a Polish national who was born in 1982 and lives in Szczecin (Poland).

In October 2003 Mr Kuśnierczak was arrested and placed in pre-trial detention on suspicion of attempted murder and aggravated assault. He was released in May 2006 and ultimately sentenced to four years' imprisonment in January 2007. Relying on Article 5 § 3 (right to liberty and security), he complained of the excessive length of his pre-trial detention.

The Court considered that the total length of the applicant's pre-trial detention was approximately one year and seven months and that this period could not be regarded as excessive. It accordingly held unanimously that there had been no violation of Article 5 § 3. (The judgment is available only in French.)

Just satisfaction

Skibińscy v. Poland (no. 52589/99)
The applicants, Urszula Skibińscy and Henryk Skibińscy, are Polish nationals who live in Częstochowa where they owned a number of plots of land.

In a judgment of 14 November 2006 the Court held that there had been a violation of Article 1 of Protocol No. 1 concerning the applicants' land, which had been designated for expropriation at some undetermined point in the future. As a result, they had been refused final construction permits for the last 20 years and under domestic legislation had not been entitled to any compensation. The Court held that the question of the application of Article 41 (just satisfaction) was not ready for decision.

In its judgment today, the Court awarded the applicants EUR 15,000 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

Violation of Article 8

Ali Güzel v. Turkey (no. 43955/02)
The applicant, Ali Güzel, is a Turkish national who was born in 1976 and lives in İzmir (Turkey). At the relevant time he was a prisoner in the Izmir F-type prison.

Mr Güzel complained that the prison administration was refusing to deliver his correspondence with another prisoner. He relied on Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy).

The Court observed that it had already found that Articles 144 and 147 of Regulation no. 647 on the management of penitentiary institutions and the enforcement of sentences did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion regarding the monitoring of prisoners' correspondence. It had also noted that their application in practice did not appear to make up for that shortcoming. The Court therefore took the view that the interference with the applicant's right to respect for his correspondence had not been "in accordance with the law" and accordingly held unanimously that there had been a violation of Article 8. It further ruled that it was not necessary to examine separately the applicant's complaint under Article 13. Lastly, it held that the finding of a violation provided in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant

and awarded him EUR 500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 3 (treatment and investigation)

Çağlayan v. Turkey (no. 30461/02)
The applicant, Erol Çağlayan, is a Turkish national who was born in 1961 and lives in Muğla (Turkey).

On 29 October 1997 Mr Çağlayan was arrested on charges of insulting a police officer. He allegedly resisted arrest. According to the applicant, during his police custody he was beaten, slapped and threatened with death. The same day he was examined by doctors at Muğla Hospital and again on 11 November; both medical reports indicated that he had been injured by a blunt object. Following the applicant's complaints to the prosecution authorities, an investigation was launched and six police officers had charges brought against them. Ultimately, however, the criminal proceedings against the officers were suspended under Law No. 4616 which allowed for certain criminal cases to be suspended then discontinued if no offence of the same or a more serious kind was committed within a five-year period.

The case concerned the applicant's complaint that he was ill-treated during his police custody and that the ensuing criminal proceedings against the police officers were not thorough or effective. He relied on Article 3 (prohibition of inhuman or degrading treatment and lack of effective investigation).

The Court noted that there had been no evidence in the case file to show that the applicant had been injured before his detention. Given the Government's allegation that the applicant had resisted arrest, it was also regrettable that he not been examined by a doctor following his arrest and indeed that there was no report describing the reasons for or conditions of that arrest. Bearing in mind the Turkish authorities' obligation to account for injuries caused to persons within their custody, and in the absence of any convincing explanation concerning the injuries noted in the two Muğla Hospital medical reports, the Court considered that the Government had failed to provide a plausible explanation as to how the applicant's injuries had occurred. It therefore concluded that those injuries had been the result of treatment for which the Turkish Government was responsible, in violation of Article 3.

The Court recalled its previous findings in cases against Turkey where it had found that entrusting an investigation into allegations against the security forces to bodies attached to the Governor's Office, the executive linked to the very security forces under investigation, had to call into question the independence and impartiality of those bodies. Moreover, due to the application of Law No. 4616, the authorities had failed to pursue the criminal proceedings against the police officers concerned, showing that the Turkish criminal-law system, as applied in the applicant's case, had proven to be far from rigorous and had had no dissuasive effect. The Court therefore held that there had been a further violation of Article 3 in that the proceedings against the police officers were not thorough or effective.

The Court awarded the applicant EUR 5,000 in respect of non-pecuniary damage and EUR 1,700 for costs and expenses. (The judgment is available only in English.)

Violation of Article 6 § 1 (length)

Fedai Şahin v. Turkey (no. 21773/02)

The applicant, Fedai Şahin, is a Turkish national who was born in 1968 and lives in Kocaeli (Turkey).

In November 1992 Mr Şahin was taken into custody in the course of a police operation against an illegal organisation. In May 2008 he was convicted of having been involved in armed attacks, several killings and robberies and sentenced to life imprisonment. The proceedings against him are currently still pending on appeal.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicant complained of the excessive length of the criminal proceedings against him.

The Court held unanimously that there had been a violation of Article 6 § 1 on account of the proceedings against the applicant having already lasted almost 16 years. Mr Şahin was awarded EUR 13,000 in respect of non-pecuniary damage. (The judgment is available only in English.)

(Concerning three of the applicants) Violation of Article 3 (treatment)
(Concerning all four applicants) Violation of Article 3 (investigation)

Gülbahar and Others v. Turkey (no. 5264/03)
The applicants are four Turkish nationals: Süleyman Gülbahar who lives in Antakya (Turkey) and was born in 1973; Ömer Berber who lives in Adana (Turkey) and was born in 1975; and, Nuri Akalın and İdris Yiğit who were in Kandıra Prison at the time of making their applications and were born in 1977 and 1975, respectively.

On 19 December 2000 a security operation was carried out at a number of prisons in Turkey; many detainees were killed and hundreds were injured. Subsequently it was decided to transfer detainees to other prisons. The case concerned the applicants' complaints that they were ill-treated during their transfer to Kandıra Prison and that the authorities failed to adequately investigate their allegations. They relied on Article 3 (prohibition of torture and inhuman or degrading treatment and lack of effective investigation).

Mr Gülbahar alleged that on arrival at Kandıra he was punched, stripped naked by soldiers and subjected to an internal body search. Mr Akalın, Mr Berber and Mr Yiğit all alleged that they were beaten in the transport van and then, upon arrival at Kandira, were stripped, punched and kicked. Mr Akalın also claimed that he was beaten on the soles of his feet and raped with a stick. All the applicants were examined by doctors on the same or following day of their transfer: all the medical reports except for the one concerning Mr Gülbahar observed that the applicants had sustained injuries.

Following complaints lodged by the applicants, the prosecution authorities decided in the course of 2001 not to investigate their allegations of ill-treatment and not to prosecute any members of the security forces due to lack of evidence.

As concerned Mr Gülbahar the Court observed that the medical report lacked detail. The Court therefore found that that report could not be relied on as evidence and, in the absence of any other proof in support of his allegations, concluded that there had been no violation of Article 3.

However, as concerned the remaining three applicants, the Court considered that the injuries detailed in their medical reports had been caused while they were in the custody of agents of the State and that the Government had given no plausible explanation for those injuries. Furthermore, the mental and physical health of those applicants, already in a vulnerable state at the time of their transfer due to the security operation, had to have been exacerbated by their ill-treatment. The Court therefore held that there had been a violation of Article 3 in respect of the ill-treatment of those three applicants.

It appeared that no investigation at all had been carried out at national level into any of the applicants' allegations. The Court therefore held that there had been a violation of Article 3 in that respect with regard to all four applicants.

In respect of non-pecuniary damage, the Court awarded EUR 4,000 to Süleyman Gülbahar and EUR 10,000, each, to Nuri Akalın, Ömer Berber and İdris Yiğit. For costs and expenses, the Court further awarded EUR 4,000, jointly, to all four applicants. (The judgment is available only in English.)

Violation of Article 8

Güzel Erdagöz v. Turkey (no. 37483/02)
The applicant, Güzel Erdagöz, is a Turkish national who was born in 1930 and lives in Kars (Turkey).

In September 2001 Ms Erdagöz brought an action for rectification of the spelling of her forename, asserting that she was called "Gözel", not "Güzel", and that her friends and family had always called her that. The courts refused her application on the ground that the spelling which the applicant wished to use was based on the regional pronunciation of the word chosen as the name and did not appear in the dictionary of the Turkish language.

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicant complained of the refusal of her application, submitting that, as her forename of Kurdish origin had been "Turkicised", she had been the victim of discriminatory treatment based on language and her membership of the Kurdish national minority.

The Court considered that the refusal of the applicant's request by the Turkish courts, which was not based on any clearly established legislation or any sufficient and relevant reasoning, could not be regarded as "necessary in a democratic society". It held unanimously that there had been a violation of Article 8 and that it was not necessary to examine separately the complaint under Article 14. It awarded the applicant EUR 2,000 for non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 10

İsak Tepe v. Turkey (no. 17129/02)
The applicant, İsak Tepe, is a Turkish national who was born in 1943 and lives in Istanbul.

The case concerned criminal proceedings against the applicant on a charge of making separatist propaganda, on account of a speech he made in January 1999 as a member of the People's Democracy Party (*Halkın Demokrasi Partisi* - HADEP). In his speech, on the Kurdish question, the applicant referred to "the heroes in the mountains" and "the liberation of a nation". In April 2001 the Istanbul National Security Court, applying an amnesty law,

suspended the applicant's trial and placed him on probation for five years. The applicant relied in particular on Article 10 (freedom of expression).

The Court noted that the speech contained an ambiguity which could have suggested he was referring to an armed struggle. However, having examined the whole text, it considered that the speech, delivered by the applicant as a politician, did not incite recourse to violence, armed resistance, or insurrection, which was the essential point to be taken into consideration. In the present case the speech was not such as to encourage violence by inspiring a deep and irrational hatred of specific persons. The Court observed that prosecuting the applicant did not correspond to any pressing social need and that it was accordingly not necessary in a democratic society. It held unanimously that there had been a violation of Article 10 and awarded Mr Tepe EUR 1,000 for non-pecuniary damage and EUR 1,500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 6 § 1 (length)

İsmail Kaya v. Turkey (no. 22929/04)
The applicant, İsmail Kaya, is Turkish national who was born in 1956 and lives in Istanbul.

Mr Kaya was committed for trial on a charge of forgery in July 1993, being suspected of issuing false diplomas for pupils while he was the headmaster of a senior high school. A second prosecution for forgery was brought against him and the two cases were joined in June 1996. In November 2002 he was found guilty and sentenced to two years and 11 months' imprisonment. An appeal by the applicant on points of law was dismissed in December 2003.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicant complained about the excessive length of the criminal proceedings against him.

The Court noted that the length of the proceedings – approximately ten years and five months – had been excessive and failed to satisfy the "reasonable time" requirement. It accordingly held unanimously that there had been a violation of Article 6 § 1 and awarded the applicant EUR 6,000 for non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 10

Kanat and Bozan v. Turkey (no. 13799/04)
The applicants, Kadriye Kanat and Gülşen Bozan, are Turkish nationals who were born in 1978 and 1974 respectively and live in Istanbul.

At the relevant time the applicants were, respectively, the editor and owner of the monthly magazine *Özgür Kadının Sesi* (Voice of the Free Woman). In April 2001, on the occasion of International Women's Day, the magazine published a statement by Abdullah Öcalan, the leader of an illegal armed organisation, the PKK (Workers' Party of Kurdistan). In his statement Öcalan gave an account of women's place in society since neolithic times and then went on to comment on their situation in modern societies and the importance of education with a view to improving their status. The applicants were prosecuted for publishing a statement by one of the leaders of an illegal organisation, fined and temporarily banned from publishing their magazine. Relying on Article 10 (freedom of expression), the applicants complained about those convictions.

The Court considered that the grounds given by the Turkish courts could not in themselves be considered sufficient to justify the interference with the applicants' right to freedom of expression. It observed that the fact that a member of a proscribed organisation had given an interview or made statements did not in itself justify an interference with a newspaper's right to freedom of expression. The terms used in the statement did not incite recourse to violence, armed resistance or insurrection, and did not constitute hate speech, which in the Court's opinion was the essential point to be taken into consideration. It found that the applicants' convictions had been disproportionate to the aims pursued and therefore not "necessary in a democratic society". It held unanimously that there had been a violation of Article 10 and awarded the applicants EUR 2,500 jointly for non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 5 § 3
Violation of Article 6 § 1 (length)

Sadıkoğulları and Erdem v. Turkey (nos. 4220/02 and 8793/02)
The applicants, Ramadan Sadıkoğulları and Rauf Erdem, are Turkish nationals who were born in 1965 and 1968 respectively and live in Istanbul.

They were arrested and placed in pre-trial detention in May 1992 on suspicion of belonging to an illegal organisation, *Direniş Hareketi* (resistance movement) and taking part in a number of offences including an armed robbery. They were ultimately sentenced, in March 2002, to 29 years and two months' imprisonment. An appeal by the applicants on points of law was dismissed in November 2002.

Relying on Articles 5 § 3 (right to liberty and security) and 6 § 1 (right to a fair trial within a reasonable time), they complained that the length of their pre-trial detention and the proceedings against them had been excessive.

The Court held unanimously that there had been a violation of Article 5 § 3 on account of the length of the applicants' pre-trial detention – nearly five years and 11 months. It also held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length of the proceedings, which had lasted nearly ten years and six months. It awarded the applicants EUR 6,000 each for non-pecuniary damage and EUR 2,000 jointly for costs and expenses. (The judgment is available only in French.)

Violation of Article 10
Violation of Article 6 § 1 (fairness)

Salihoğlu v. Turkey (no. 1606/03)
The applicant, Sevim Salihoğlu, is a Turkish national who was born in 1960 and lives in Muş (Turkey).

At the relevant time Ms Salihoğlu was president of the Muş Human Rights Association. During a search of the association's premises a copy of the weekly newspaper *Yedinci Gündem* and a copy of its supplement were seized. The applicant was prosecuted for possession of publications banned by court orders; the relevant decisions were two seizure orders made by the Istanbul National Security Court on 16 and 29 September 2001, after publication of the material concerned. In April 2002 she was ordered to pay a fine, based on Article 526 of the former Criminal Code, which punished failure to comply with an order issued by a competent authority.

Relying on Article 10 (freedom of expression), the applicant complained that her conviction had infringed her right to the freedom to receive information and ideas. She also complained, under Article 6 (right to a fair trial), that the proceedings against her had not been fair. Lastly, she relied on Article 7 (no penalty without law).

The Court noted that the court orders pursuant to which the publications had been prohibited had not been issued in proceedings against the applicant and that there was absolutely no proof that she had ever been aware of them. Failure to comply with a court order could not be punishable if it had not been brought to the defendant's attention. The applicant could not have foreseen with a reasonable degree of certainty that possession of the offending publications might leave her liable to criminal penalties under Article 526 of the former Criminal Code. Consequently, the requirement of foreseeability had not been met and the interference had not been prescribed by law, contrary to Article 10. The Court further held that it was not necessary to examine separately the complaint under Article 7.

Lastly, the Court observed that it had repeatedly found that an applicant who had not had a hearing before the national courts had not had a fair trial. It accordingly held that there had been a violation of Article 6 § 1. It awarded Mrs Salihoğlu EUR 1,000 for non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 10

Saygılı and Falakaoğlu v. Turkey (no. 39457/03)
The applicants, Fevzi Saygılı and Bülent Falakaoğlu, are Turkish nationals who were born in 1966 and 1974 respectively and live in Istanbul. They are the owner and editor of *Yeni Evrensel*, a newspaper published in Istanbul.

In February and March 2001 the applicants published an article on the issue of forced disappearances in south-east Turkey. In that article, Mr Büyükşahin, a politician, criticised the State for not doing enough to find those responsible for the disappearances. He also accused Colonel L.E. of threatening a HADEP (the People's Democracy Party) member and implied that the Colonel had possibly been involved in the disappearance of two other HADEP members. The State Security Court considered that the article in question had been written with the aim of presenting Colonel L.E. as a target for terrorist organisations. Holding the applicants responsible for publishing those articles, they were sentenced to heavy fines and a temporary closure order of three days was imposed on the newspaper.

Relying in particular on Article 10 (freedom of expression), the applicants complained about their conviction, sentencing to a fine and temporary closure of their newspaper.

The Court noted in particular that, despite particularly libellous passages, the article read as a whole could not be construed as having incited violence against a public official or as having exposed the Colonel to a significant risk of violence. The Court therefore found that the interference with the applicants' freedom of expression had not been based on sufficient reasons to show that it "had been necessary in a democratic society". The Court therefore held unanimously that there had been a violation of Article 10 on account of the applicants' conviction and sentence. It further held that there was no need to examine separately the applicants' remaining complaint under Article 10 concerning the temporary closure of the newspaper. The Court awarded EUR 664 to Mr Saygılı and EUR 332 to Mr Falakaoğlu in respect of pecuniary damage, and EUR 3,000, jointly, in respect of non-pecuniary damage. (The judgment is available only in English.)

Violation of Article 10

Unay v. Turkey (no. 5290/02)
The applicant, Mehmet Zeynettin Unay, is Turkish national who was born in 1956 and lives in Izmir (Turkey).

Mr Unay was prosecuted for making propaganda against the integrity of the State on account of a speech he had given in August 1998, as the Deputy Secretary General of the People's Democracy Party (*Halkın Demokrasi Partisi* - HADEP) on the occasion of a party conference held just before a general election. In his speech he defended his party's policies, deplored the continuation of armed conflict in south-eastern Turkey and criticised government policy on the Kurdish question. In March 2001 the Izmir National Security Court, applying an amnesty law, suspended the applicant's trial and placed him on probation for five years.

Relying on Articles 10 (freedom of expression) and 14 (prohibition of discrimination), the applicant complained of an infringement of his right to freedom of expression.

The Court observed that it was true that certain particularly harsh passages in the speech painted a negative picture of Turkish State policy on the Kurdish question, and thus gave the applicant's words a hostile connotation. However, the applicant had been speaking as a politician, had not incited recourse to violence, armed resistance or insurrection, and his words did not constitute hate speech. In the Court's opinion that was the essential point to be taken into consideration. Consequently, the Court held that the interference with the applicant's freedom of expression had not been "necessary in a democratic society", contrary to Article 10. It further held that it was not necessary to examine separately the complaint under Article 14 and awarded Mr Unay EUR 1,500 for non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 3 (treatment)

Uyan v. Turkey (No. 2) (no. 15750/02)
The applicant, Sait Oral Uyan, is a Turkish national who was born in 1965. At the relevant time he was imprisoned in Bursa, serving a life sentence for membership of an extreme-left terrorist organisation.

As Mr Uyan had a severe cervical discopathy, causing him severe pain in his neck and right arm, he asked to be transferred to Bayrampaşa remand prison in Istanbul so that he could receive the necessary treatment. However, the prison administration decided to transfer him to Kartal prison, also in Istanbul. On 5 June 2000, while he was being transferred in a secure prison van, in the charge of six gendarmes, the applicant realised that the vehicle was not heading for Bayrampaşa and threatened to go on hunger strike if he was not immediately taken back to Bursa. His protests made no difference. On arrival, the gendarmes controlling entry to Kartal prison tried to carry out the formalities concerning the applicant's admission, which would have meant strip-searching him and taking his fingerprints. It appears that the applicant resisted, in the first place by refusing to get out of the van. On 6 June 2000 the applicant was examined by the Kartal prison doctor, who noted that he had a laceration over his left cheekbone. On 13 June the applicant was taken back to Bursa prison, where he underwent a medical examination the following day. The results showed, in particular, a greenish bruise on the left eyebrow, an injury to the left cheekbone and a grazed right wrist. The applicant lodged a criminal complaint, alleging that he had been subjected to ill-treatment both while being transferred in the prison van and on arrival at Kartal prison. The

proceedings against the gendarmes on guard duty at the prison entrance ended with a decision by the Pendik Administrative Committee, which ruled that as there was no tangible evidence to corroborate the applicant's complaints the gendarmes accused had no case to answer. The proceedings against the gendarmes travelling in the prison van led to a trial which ended with their acquittal.

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), the applicant complained that he had been subjected to ill-treatment when being transferred to Kartal prison.

The Court considered that the brutality inflicted on the applicant, despite his known poor health, could not correspond to a proportionate use of force made absolutely necessary to calm him and prevent him from being violent to himself or others. It therefore constituted inhuman and degrading treatment, contrary to Article 3. The Court considered that it was not necessary to examine separately the other complaints under Articles 3 and 13 of the Convention. It awarded Mr Uyan EUR 5,000 for non-pecuniary damage. (The judgment is available only in French.)

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Violation of Article 1 of Protocol No. 1

Chiorean v. Romania (no. 20535/03)
Dragomir v. Romania (no. 31181/03)
The Court found the above violation in both these cases concerning actions for recovery of possession of property.

Violation of Article 1 of Protocol No. 1

Senaş Servis Endüstrisi A.Ş. v. Turkey (no. 19520/02)
In this case the Court found the above violation on account of delay in the payment of additional compensation for expropriation.

Length-of-proceedings cases

In the following cases, the applicants complained in particular about the excessive length of (non-criminal) proceedings.

Violation of Article 6 § 1 (length)

Lajos Németh v. Hungary (no. 3840/05)
Mészáros v. Hungary (no. 21317/05)
Helwig v. Poland (no. 33550/02)
Łakomiak v. Poland (no. 28140/05)
Lidia Nowak v. Poland (no. 38426/03)
Ratyńska v. Poland (no. 12253/03)
Mahmut and Zülfü v. Turkey (nos. 19895/03 and 21302/03)

Violation of Article 6 § 1 (length)
No violation of Article 13

Faella v. Italy (no. 32752/02)

Giovanni Iannotta v. Italy (no. 32768/02)

Violation of Article 6 § 1 (length)
Violation of Article 13

Ayıc v. Turkey (no. 10467/02)

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These summaries by the Registry do not bind the Court. The full texts of the Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*