Main Pending cases against France

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
53640/00	BAUCHER v. France	24/07/2007	24/10/2007	1020	2
56802/00	BAUMET v. France	24/07/2007	24/10/2007	1020	2
70456/01	SAYOUD v. France	26/07/2007	26/10/2007	1020	2
1914/02	DUPUIS ET AUTRES v. France	07/06/2007	12/11/2007	1020	2
35787/03	WALCHLI v. France	26/07/2007	26/10/2007	1020	2
7091/04	PIERI v. France	26/07/2007	26/10/2007	1020	2
23241/04	ARMA v. France	08/03/2007	09/07/2007	1020, 1028	3.A, 4.1
70204/01	FREROT v. France	12/06/2007	12/09/2007	1020, 1028	3.A, 4.2
11950/02	TEDESCO v. France	10/05/2007	10/08/2007	1020	3.A, 4.1
38208/03	SERIS v. France	10/05/2007	10/08/2007	1020	3.A, 5.3A
12106/03	SCM SCANNER DE L'OUEST LYONNAIS and others v. France	21/06/2007	21/09/2007	1020, 1035	3.A, 4.2
31501/03	AUBERT ET 8 AUTRES v. France	09/01/2007	23/05/2007	1020, 1035	3.A, 4.2
25389/05	GEBREMEDHIN v. France [GABERAMADHIEN]	26/04/2007	26/07/2007	1020	3.A, 4.2
50278/99	AOULMI v. France	17/01/2006	17/04/2006	1020	3.Aint, 5.3B
49451/99	BLONDET v. France	05/10/2004	05/01/2005	1020	3.Aint
40403/02	PESSINO v. France	10/10/2006	12/02/2007	1020	3.Aint, 5.3A
58148/00	PLON (SOCIETE) v. France	18/05/2004	18/08/2004	1020	3.Aint
33834/03	RIVIERE v. France	11/07/2006	11/10/2006	1020	3.Aint
71665/01	AUGUSTO v. France	11/01/2007	11/04/2007	1020	3.Aint, 4.1
60796/00	CABOURDIN v. France	11/04/2006	11/07/2006	1020, 1035	3.Aint, 4.2
62236/00	GUILLOURY v. France	22/06/2006	22/09/2006	1020	3.Aint
57752/00	MATHERON v. France	29/03/2005	29/06/2005	1020	3.Aint, 5.3A
62740/00	MATHEUS v. France	31/03/2005	01/07/2005	1020, 1028	3.B, 4.2
73947/01	ZERVUDACKI v. France	27/07/2006	27/10/2006	1020	3.B
49580/99	SANTONI v. France	29/07/2003, 01/06/2004	01/09/2004	1020	3.B, 5.3B
73316/01	SILIADIN v. France	26/07/2005	26/10/2005	1020	3.B, 5.3A
54968/00	PATUREL v. France	22/12/2005	22/03/2006	1020, 1028	3.B, 4.2
6253/03	VINCENT v. France	24/10/2006	26/03/2007	1020, 1028	3.B, 4.2
44568/98	R.L. and M.-J.D. v. France	19/05/2004	10/11/2004	1020	3.B, 5.3B
21324/02	PLASSE-BAUER v. France	28/02/2006	28/05/2006	1020	3.B, 4.2
65399/01	CLINIQUE DES ACACIAS v. France	13/10/2005	13/01/2006	1020	3.B, 4.2
57516/00	SOCIETE DE GESTION DU PORT DE CAMPOLORO v. France	26/09/2006	26/12/2006	1020	3.B, 5.3A
63879/00	BEN NACEUR v. France	03/10/2006	03/01/2007	1020, 1028	3.B, 4.2

76093/01	BARBIER v. France	17/01/2006	17/04/2006	1020	3.B, 5.3A
39001/97	MAAT v. France	27/04/2004	27/07/2004	1020	3.B, 4.2
75699/01	VATURI v. France	13/04/2006	13/07/2006	1020	3.B, 5.3B
17902/02	ZENTAR v. France	13/04/2006	13/07/2006	1020	3.B, 5.3B
67881/01	GRUAIS & BOUSQUET v. France	10/01/2006	10/04/2006	1020	3.B, 5.3A
1513/03	DRAON v. France	06/10/2005, 07/06/2006	07/06/2006	1020	3.B
5356/04	MAZELIE v. France	27/06/2006	23/10/2006	1020	3.B, 4.2
20127/03	ARNOLIN and others v. France	09/01/2007	09/04/2007	1020, 1035	3.B, 4.2
59450/00	RAMIREZ SANCHEZ v. France	04/07/2006	04/07/2006	1020, 1028	3.B, 4.2
39922/03	TAIS v. France	01/06/2006	01/09/2006	1020, 1028	3.B, 4.1, 4.2
59842/00	VETTER v. France	31/05/2005	31/08/2005	1020, 1028	3.B, 4.2
46096/99	MOCIE v. France	08/04/2003	08/07/2003	1020	4.2
65411/01	SACILOR-LORMINES v. France	09/11/2006	09/02/2007	1020	4.2
16846/02	LABERGERE v. France	26/09/2006	26/12/2006	1020	4.2
27678/02	Gerard BERNARD v. France	26/09/2006	26/12/2006	1020	5.3A
17070/05	FARHI v. France	16/01/2007	23/05/2007	1020	5.3A
77773/01	FLANDIN v. France	28/11/2006	28/02/2007	1020	5.3A
66053/01	SIMON v. France	08/06/2004	08/09/2004	1020	5.3B
53929/00	RICHARD-DUBARRY v. France	01/06/2004	01/09/2004	1028	4.2
36436/97	PIRON v. France	14/11/2000	14/02/2001	1028	4.2
7508/02	L.L. v. France	10/10/2006	12/02/2007	1028	4.2
71611/01	WISSE v. France	20/12/2005	20/03/2006	1028	4.2
58675/00	MARTINIE v. France	12/04/2006	12/04/2006	1028	4.2
954/05	CHIESI SA v. France	16/01/2007	16/04/2007	1035	4.2

Cases against France the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution

Application Number	English Case Title	Date of Judgment	Date of Final Judgment	Meeting Number	Meeting Section
36378/97	BERTUZZI v. France	13/02/2003	21/05/2003	1020	6.2
45840/99	BAYLE v. France	25/09/2003	25/12/2003	1020	6.2
33592/96	BAUMANN v. France	22/05/2001	22/08/2001	1020	6.2
42407/98	C.R. v. France	23/09/2003	23/12/2003	1020	6.2
41476/98	LAINE v. France	17/01/2002	17/04/2002	1020	6.2
42405/98	C.D. v. France	07/01/2003	21/05/2003	1020	6.2
40096/98	VERSINI v. France	10/07/2001	10/10/2001	1020	6.2
33424/96	NOUHAUD and others v. France	09/07/2002	09/10/2002	1020	6.2
51434/99	GRANATA v. France (no. 2)	15/07/2003	15/10/2003	1020	6.2
11760/02	RAFFI v. France	28/03/2006	13/09/2006	1020	6.2
48215/99	LUTZ v. France	26/03/2002	26/06/2002	1020	6.2
25803/94	SELMOUNI v. France	28/07/1999	28/07/1999	1020	6.2
46621/99	MUTIMURA v. France	08/06/2004	08/09/2004	1020	6.2
53584/99	VERHAEGHE v. France	27/05/2003	27/08/2003	1020	6.2

56243/00	CHAINEUX v. France	14/10/2003	14/01/2004	1020	6.2
50632/99	COSTE v. France	22/07/2003	22/10/2003	1020	6.2
44070/98	BELJANSKI v. France	07/02/2002	07/05/2002	1020	6.2
49857/99	OTTOMANI v. France	15/10/2002	15/01/2003	1020	6.2
33951/96	CALOC v. France	20/07/2000	20/07/2000	1020	6.2
59335/00	MAKHFI v. France	19/10/2004	19/01/2005	1020	6.2
56651/00	DESTREHEM v. France	18/05/2004	18/08/2004	1020	6.2
51279/99	COLOMBANI and Others v. France	25/06/2002	25/09/2002	1020	6.2
34000/96	DU ROY and MALAURIE v. France	03/10/2000	03/01/2001	1020	6.2
39288/98	ASSOCIATION EKIN v. France	17/07/2001	17/10/2001	1020	6.2
67263/01	MOUISEL v. France	14/11/2002	21/05/2003	1020	6.2
25971/94	SOC. DI FRANCO GIANOTTI v. France	03/05/1999	03/08/1999	1020	6.2
29507/95	SLIMANE-KAID v. France (no.1)	25/01/2000	23/05/2000	1020	6.2
24846/94	ZIELINSKI ET PRADAL v. France	28/10/1999	28/10/1999	1020	6.2
32911/96	MEFTAH & Others v. France	26/07/2002	26/07/2002	1020	6.2
35683/97	VAUDELLE v. France	30/01/2001	05/09/2001	1020	6.2
44069/98	G.B. v. France	02/10/2001	02/01/2002	1020	6.2
59480/00	HARIZI v. France	29/03/2005	29/06/2005	1020	6.2
71846/01	RACHDAD v. France	13/11/2003	13/02/2004	1020	6.2
36515/97	FRETTE v. France	26/02/2002	26/05/2002	1020	6.2
48943/99	SLIMANE-KAID v. France (no. 2)	27/11/2003	27/02/2004	1020	6.2
25444/94	PELISSIER ET SASSI v. France	25/03/1999	25/03/1999	1020	6.2
46044/99	LALLEMENT v. France	11/04/2002, 12/06/2003	12/09/2003	1020	6.2
11810/03	MAURICE v. France	06/10/2005, 07/06/2006	07/06/2006	1020	6.2
40892/98	KOUA POIRREZ v. France	30/09/2003	30/12/2003	1020	6.2
64927/01	PALAU-MARTINEZ v. France	16/12/2003	16/03/2004	1020	6.2
47160/99	EZZOUHDI v. France	13/02/2001	13/05/2001	1020	6.2
25017/94	MEHEMI v. France	26/09/1997	26/09/1997	1020	6.2
31677/96	WATSON v. France	16/06/1999	16/09/1999	1020	6.2
23618/94	LAMBERT v. France	24/08/1998	24/08/1998	1020	6.2

Main pending cases against France

1007 (October 2007) section 2
23241/04 Arma, judgment of 08/03/2007, final on 09/07/2007
This case concerns a violation of the applicant's right of access to a court in 2003 (violation of Article 6§1). The applicant was manager and owner of a commercial company which was placed in judicial liquidation by a first-instance commercial tribunal. Accordingly the applicant lost the right to act in the name of the company. Under the law applicable at the material time (reformed in 2005), she was not entitled to lodge an appeal in her own right against the liquidation. She nonetheless attempted to do so, but in vain. In fact she might have applied for the designation of an ad hoc nominee to appeal on her behalf, but the European Court expressed doubts as to whether this would actually have been possible given the time-limit of 10 days provided by law.
In the European Court's view, had the applicant been able to appeal against the liquidation and adduce evidence to the effect that she was in a position to pay the company's debts, this would have been in the interest both of the company and of the applicant herself, in view of the grave accusations against her personally.
Individual measures: Regarding alleged pecuniary damage, the Court said that it was not in a position to speculate as to what the result of the proceedings would have been in the absence of the violation of Article 6§1 of the Convention. It awarded just satisfaction in respect of non-pecuniary damage
• *Information would appear necessary on measures taken or envisaged in favour of the applicant.*
General measures: Law No. 2005-845 of 26 July 2005 abrogated the legislative provision (former Article L 622-9 of the Commercial Code) which prevented the manager of a commercial company in a situation similar to the applicant, to lodge appeals, and replaced it by a new provision making this possible (Article L 641-9 of the Commercial Code: the debtor may act and exercise the rights and actions for which the liquidator or administrator is not competent, if one has been appointed). In its judgment, the Court noted (§34) that this legislative work clearly demonstrated Parliament's wish to put an end to the practical difficulties encountered by company officials in appealing on behalf of indebted companies by granting former managers the right appeal against bankruptcy judgments, thus strengthening the “rights of defence”. This reform restores a balance in favour of indebted companies and their managers by putting an end to a restriction detrimental to their right of access to a court.
• *Assessment*: *No other measure seems necessary.*

1013 (December 2007) section 2
70204/01 Frerot, judgment of 12/06/2007, final on 12/09/2007
The case concerns degrading treatment of the applicant, who is a former member of *Action directe*, a left-wing armed faction, and is serving a life-sentence, when he was detained in Fresnes prison between September 1994 and December 1996 (violation of Article 3).
During this period, the applicant was obliged to submit several times to total body searches without any convincing security requirement either to keep order or prevent offences.
The case also concerns a violation of the applicant's right to respect of his correspondence, due the refusal by the governor of Fleury-Mérogis prison to forward a letter of the applicant's to a detainee in another prison as it was, in his view, not in accordance with the definition of the notion of correspondence (violation of Article 8).
The case further relates to the absence of a remedy whereby the applicant might complain of this latter violation (violation of Article 13).
Lastly, it concerns the excessive length of certain proceedings before the administrative courts (violation of Article 6§1).
Individual measures: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. The administrative proceedings are closed. The applicant is no longer detained at Fresnes, but at Lannemezan.
• *Assessment: no further measure seems necessary*.
General measures:
1) Violation of Article 3: The European Court acknowledged that physical searches and even total body searches may sometimes be needed to ensure security in prison, to maintain order or to prevent the commission of crimes, and that the search methods laid down in a circular of 14/03/1986 are, generally speaking, neither inhuman nor degrading.
The Court noted nonetheless that the applicant had only been subjected to total searches during his period at Fresnes, where policy is based on the presumption that any prisoner returning from the visiting suite is potentially hiding objects or substances in the most intimate parts of his body. This

being the case, the Court understood that detainees subject to such a regime, like the applicant, might feel they were victims of arbitrary measures, not least as the regime was laid down by a circular giving the governor wide discretion.
• *Information is awaited on measures taken or envisaged to avoid repetition of the violation found. In any event, it seems necessary to distribute the European court's judgment within Fresnes prison.*

2) Violation of Article 8: The European Court found that the interference with the applicant's right was not based on any provision of the Code of Criminal Procedure, nor was there any legislative or regulatory text or case-law containing a definition of the notion of correspondence. The interference with the applicant's correspondence was therefore not provided by law. In addition, the Court noted that the definition of the notion of correspondence in the circular of 29/12/1986 is incompatible with Article 8 of the Convention in that it is based on the content of the "correspondence".
• *Information is awaited on measures taken or envisaged to avoid repetition of the violation found, particularly alignment of the notion of correspondence with Article 8 of the Convention.*

3) Violation of Article 13: The European Court noted that the *Conseil d'Etat* had declared inadmissible the applicant's request to set aside the refusal by the Governor of Fresnes to forward his letter to another prisoner on the sole ground that it had been an internal measure and therefore not subject to appeal on the ground of exceeding of powers. The Court noted that the government had not contended that the applicant had any other remedy at his disposal and thus concluded that the applicant had been deprived of a remedy to deal with his complaint concerning the violation of his right to respect for his correspondence.
• *Information is awaited on measures taken or envisaged to avoid repetition of the violation found. In any case, the dissemination of the European Court's judgment seems necessary.*

4) Violation of Article 6§1: See measures taken in the Raffi case (Section 6.1).

1013 (December 2007) section 4.1
11950/02 Tedesco, judgment of 10/05/2007, final on 10/08/2007
This case concerns an infringement of the right to a fair hearing (violation of Article 6§1) on account of the presence of both the Rapporteur and the Government Commissioner at the deliberations of the Regional Audit Commission of Alsace, which ruled on the Alsace Regional Council's accounts for the financial 1980s years 1987 to 1991. At the end of these proceedings, the company RMR - represented by the applicant - which in the late 1980s was involved in the "Rhénania 2000" project, was ordered to pay a deficit assessed at 944 280 FF (143 954,56 euros) and a fine of 20 000 FF (3048,95 euros).
The European Court held that the nature and the scope of the tasks of the Rapporteur - who largely responsible for referring the case to the Regional Audit Commission and took part in drawing up the complaints against the applicant - might give rise to objectively justified doubts on the applicant's part concerning the Rapporteur's impartiality during the deliberations. Moreover the Court, on the basis of its case-law in the Kress case, held that the presence of the Government Commissioner in the deliberations of the Regional Audit Commission was not compatible with Article 6§1 of the Convention.
Individual measures: The European Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained.
As regards the damage sustained on account of the fine imposed and to the payment of the deficit, the European Court considered it could not speculate as to the outcome of the proceedings had there not been a breach of the Convention.
• *Information is awaited on measures possibly envisaged regarding to the violation found, in order to ensure restitutio in integrum.*
General measures: Law No. 2001-1248 of 21/12/2001 on Regional Audit Commissions and Audit Courts, and Decree No. 2002-1201 of 27/09/2002 provide that "when considering fines for *ultra vires* acts, the court deliberates in the absence of the Rapporteur". The same Decree moreover provides that "the Government Commissioner may attend sittings of chambers and sections and make verbal observations. He may not take part in the deliberations".
• *Assessment: No further measure seems necessary.*

1007 (October 2007) section 2
***38208/03+ Seris, judgment of 10/05/2007, final on 10/08/2007**
This case concerns the unfairness of certain criminal proceedings brought against the applicant's neighbours and to which he was civil party (violation of Article 6§1).

The European Court's finding of a violation was based on shortcomings in the designation of a court-appointed lawyer (late appointment, failure to inform the interested persons, lawyer's name not recorded in the case-file) with two consequences:
- the applicant found himself obliged to appeal unassisted against the examining magistrate's decision to drop the investigation and through ignorance failed to fulfil certain formal requirements resulting in the appeal's being declared inadmissible;
- at an earlier stage, he had not been in a position to challenge the only document upon which the decision to drop the investigation had been based.
Individual measures: In the absence of any causal link with the violation, the European Court rejected the applicant's complaint that he had suffered pecuniary damage "in view of the time spent repairing judicial errors". It did however award just satisfaction in respect of the non-pecuniary damage suffered by the applicant.
The applicant does not seem to be suffering serious negative consequences of the violation.
• *Assessment: In these circumstances, no measure would appear necessary, apart from the payment of the just satisfaction.*
General measures: If the applicant had had the assistance of court-appointed counsel in the normal way, the violation could have been avoided. According it is not the law which is called into question but the way it was applied. A Decree of 19/12/1991 provides that the Head of the Bar Association appoints counsel to assist legal aid clients, and informs the designated counsel and the secretariat of the legal aid office, who immediately informs the client and invites him to contact the lawyer. The name of the lawyer is also mentioned in the case file.
• *Publication of the European Court's judgment, as well as its dissemination to the authorities concerned, in particular the Bar Association and the criminal courts, including the investigating magistrates, would be appropriate.*

1013 (December 2007) section 2
12106/03 SCM Scanner de l'Ouest Lyonnais and others, judgment of 21/06/2007, final on 21/09/2007
The case concerns a violation of the right to a fair trial (violation of Article 6§1) due to the adoption of legislation intended to resolve pending disputes, and its application in proceedings between the applicant company and the Ministry of Social Affairs and Integration concerning the reduction of the rate of public contribution to the cost of scanning. During the pre-trial phase, which was obligatory in the case at issue, an Act on social security funding (Law No. 97-1164 of 19/12/1997) entered into force, with the effect of prejudging the outcome of the proceedings.
The European court noted in particular that the public authorities could still have achieved their aim - and at the same time ensured respect for the equality of arms in pending cases - if such pending proceedings had been excluded from the field of application of the new law.
Individual measures: The European Court observed that the only possible basis for granting just satisfaction in this case was the fact that the applicant party had not benefited from the guarantees of Article 6§1. The Court recalled in this context that it could not speculate on what the outcome might otherwise have been, *a fortiori* as the applicants had obtained no domestic decision in their favour. Added to that, there had been non-pecuniary damage such that the mere finding of a violation could not remedy. In a spirit of fairness therefore, it granted a sum to all the applicants jointly, in respect of all heads of prejudice.
• *Assessment: no further measure seems necessary.*
General measures: It will be necessary to publish the European Court's judgments and to ensure its dissemination to the *Conseil consitutionnel*, the Lyon Appeal Court and the *Cour de cassation.*
• *Bilateral contacts are under way to determine what other general measures might be taken*.

1013 (December 2007) section 4.2
20127/03+ Arnolin and others and 24 other cases, judgment of 09/01/2007, final on 09/04/2007
31501/03+ Aubert and others and 8 other cases, judgment of 9/01/2007, final on 9//04/2007
These cases concern violations of the applicants' right to a fair trial (violation of Article 6§1 in the case of Arnolin and others) and, in the case of Aubert and others, a violation of the applicants' right to the

peaceful enjoyment of their possessions (violation of Article 1 of Protocol No. 1) on account of the enactment and the application of a law aiming at solving proceedings that were pending. The applicants, all care staff, brought action before the French labour courts against their employers, specialised institutions run by associations under the aegis of the state, regarding the rate of pay for night duty. While most of their cases were still pending, Law No. 2000-37 of 19/01/2000 entered into force. It was applicable to the pending cases and overruled the Court of Cassation's case-law which was more favourable to them.
Individual measures: The Court awarded the applicants just satisfaction in respect of pecuniary and non-pecuniary damage (1 508 000 euros in total in the case of Arnolin and others, 961 000 euros in the case of Aubert and others). The applicants do not seem to suffer any consequences of the violation not covered by the just satisfaction awarded.
• *Assessment: no further measure thus seems necessary.*
General measures:
• *Information provided by the French authorities in the framework of the examination of the Cabourdin group:* The French authorities, and in particular the Ministry of Economy and Finance, are holding exchanges of views on the use of laws designed to legalise existing practices (*lois de validation*) and on measures necessary to avoid new violations (letter of 25/06/2007)
• *Information is awaited on the results of these exchanges of views and on the measures envisaged to avoid further violations.*

1007 (October 2007) section 2
***25389/05 Gebremedhin (Gaberamadhien), judgment of 26/04/2007, final on 26/07/2007**
The case concerns the absence of an effective remedy whereby the applicant, an Eritrean journalist who had sought asylum in France at Paris-Charles de Gaulle Airport, might challenge the decision not to admit him to French territory so that he might defend his complaint concerning the risk of ill-treatment under Article 3 if he were to be repatriated (violation of Article 13, in conjunction with Article 3).
The European Court said that, given the importance it attached to Article 3 of the Convention and the irreversible nature of the harm that might occur if the risk of torture or ill-treatment materialised (which is obviously also the case where a state decides to send a foreigner back to a country where there are serious reasons to believe that he would be at such a risk), it was a requirement of Article 13 that the persons concerned should have access to a remedy with automatic suspensive effect.
Individual measures: After the applicant had lodged his application in this case, the European Court indicated to the French government, on 15/07/2005, pursuant to Rule 39 (interim measures) of the Rules of Court, that it was desirable not to remove him to Eritrea prior to the forthcoming meeting of the appropriate Chamber. On 20/07/2005 the French authorities granted him leave to enter France and then issued him with a temporary residence permit. On 7/11/2005 the applicant was granted refugee status. The Court noted that Article 33 of the Geneva Convention of 28/07/1951 on the status of refugees now stands in the way of his deportation to his country of origin and accordingly concluded, in its admissibility decision of 10/10/2006 (§36) that the applicant had lost the quality of victim of the alleged violation of Article 3.
Furthermore, the Court held that, in the circumstances of the case, the non-pecuniary damage suffered by the applicant is sufficiently compensated by the finding of a violation of Article 13.
• *Assessment*: *In these circumstances, the judgment would not appear to call for individual measures, other than payment of the just satisfaction.*
General measures:
• *Origin of the violation:*
Under French law, to lodge an application for asylum, foreign nationals must be present on French territory. Consequently, they cannot submit an application on arrival at the border unless they have previously been granted leave to enter. If they do not have the necessary documents for that purpose, they have to apply for leave to enter the country on grounds of asylum. They are then held in a "waiting area" for the time needed to examine whether or not their planned asylum application was "manifestly ill-founded"; if the authorities (Ministry of the Interior) deem the application to be "manifestly ill-founded", they reject the request for leave to enter the country, and the individual concerned is automatically liable to be removed.
The individuals concerned by this procedure, known as "application for asylum at the frontier", may appeal against the ministerial decision refusing them leave to enter, but may also apply to the urgent applications judge. While this procedure appears on the face of it to offer solid guarantees, it does not have an automatic suspensive effect, with the result that the person concerned can, quite lawfully, be

deported before the urgent applications judge had given a decision. Hence there is no remedy "with an automatic suspensive effect", required by the Convention as interpreted by the Court.
• *Measures under adoption following the judgment:*
On 4/07/2007, the government presented a draft law on "the control of immigration, integration and asylum"; the legislative process is under way and the government gave the bill urgent status on 11/09/2007. Certain provisions of the draft aim at "applying the recent jurisprudence of the European Court of Human Rights with regard to the remedy against refusal to grant asylum at the frontier". A first version of the draft law was adopted by the *Assemblée nationale* (lower Chamber of the Parliament) on 19/09/2007.
It provides as follows (extracts): "foreigner who have been refused access to French territory in order to request asylum have 24 hours from the notification of this decision to request its annulment in a reasoned application to the Administrative Tribunal". It further provides that "decisions refusing access to the territory to request asylum may not be executed before the expiry of a period of 24 hours following notification or, if the President of the Administrative Tribunal has been seised, before he or another magistrate appointed in this respect has delivered judgment". Following the adoption of the text by the *Assemblée Nationale*, the text was transmitted to the *Sénat* (upper Chamber of the Parliament).
• *Questions:*
- Bilateral contacts are underway in order to assess the general measures the adoption of which is ongoing, as well as the necessity of adopting possible further measures.
*- ANAFE ("*association nationale d'assistance aux frontières pour les étrangers"*, a non-governmental organisation which had already intervened as a third party in the proceedings before the Court) sent to the Secretariat certain comments on the draft law. They have been transmitted to the French delegation and will be brought to the attention of the Committee of Ministers, together with possible observations of the delegation, in conformity with Rule 9.2.*

1013 (December 2007) section 5.3
50278/99 Aoulmi, judgment of 17/01/2006, final on 17/04/2006
This case concerns a hindrance of the effective exercise of the applicant's right of individual petition (violation of Article 34). In 1999, seised of a request concerning alleged violations of Articles 3 and 8 if the applicant were deported to Algeria, the Court indicated interim measures to the respondent state under Rule 39, to the effect that it would be desirable to refrain from deporting the applicant until the competent Chamber had given its decision. The respondent state did not comply with these measures. Thus, the European Court held that the applicant's removal to Algeria had hampered the examination of his complaints and had ultimately prevented the Court from affording him the necessary protection from any potential violations of the Convention. However, the Court said that there had been no violation of Articles 3 and 8.
Individual measures: The European Court has awarded just satisfaction in respect of the non-pecuniary damage sustained.
General measures: The Secretariat wrote to the French authorities, inviting them to submit an action plan with a view to the execution of this judgment and in particular to make sure that in the future, measures indicated under Rule 39 be followed.
In a letter dated 20/09/2006 the French delegation stated that since the European Court's judgment in Mamatkulov and Askarov against Turkey, the French government had been fully aware of the importance the Court attaches to compliance with the interim measures which it indicates. The delegation specified that the facts of the Aoulmi case took place before the adoption of this judgment, with its important impact on the case-law. However since the Mamatkulov judgment the French government had complied with every request by the Court to suspend the enforcement of measures taken against applicants (cf. the cases of Gebremedhin, Application No. 2589/05; Sultani, Application No. 45223/05; Baraka, Application No. 15843/06; Aboubakar, Application No.27045).
The delegation also reported that the European Court's judgment in Aoulmi would shortly be published on the intranet site of the Ministry of the Interior, and that a commentary on the judgments in Mamatkulov and Askarov and Aoulmi prepared by the Directorate of Public Freedoms and Legal Affairs would be published in the next edition of the Ministry's legal information bulletin.
• *Confirmation of these publications is awaited.*
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

992 (April 2007) section 5.3

49451/99 Blondet, judgment of 05/10/2004, final on 05/01/2005
This case concerns the excessive length of the applicant's detention on remand (from 1996 to 2001, i.e. more than 5 years and 1 month) (violation of Article 5 § 3). In this respect, the European Court found that, although the grounds for the applicant's detention had been relevant and sufficient at the beginning of the investigation, they had become less so with the passage of time. The Court found that the origin of the violation resided mainly in the investigation, which the judicial authorities had not conducted as rapidly as they should have.
The case also concerns the opening by the prison authorities of the applicant's letters. The Court found that the opening of two of its own letters to the applicant had been in breach with national law and constituted a violation of the applicant's right for respect of his correspondence (violation of Article 8).
Individual measures: The applicant is no longer detained on remand, having been sentences to 15 years' imprisonment by the Drôme Assize Court. No appeal has been lodged.
General measures:
1) Excessive length of detention on remand: First, it is recalled that legislative measures have been examined in the context of the Muller case (final Resolution ResDH(2003)50), in particular those limiting the conditions and the length of detention on remand, the exceptional character of which has been reaffirmed (Law No. 2000-516 of 15/06/2000 “reinforcing the protection of the presumption of innocence and the rights of victims”).
Given that the Court stressed the slowness of the investigatory stage of the proceedings, this case also presents similarities to that of Etcheveste and Bidart (judgment of 21/03/2002) and other similar cases, in which the Committee has been informed of legislative measures adopted by the respondent state to reduce the length of criminal proceedings, in particular of the investigatory stage (*inter alia*, as from the entry into force of Law No. 2000-516 of 15/06/2000, judicial inquiries are subject to a proceedings schedule and new rights have been granted to parties to avoid extension of proceedings).
2) Violation of the right to respect of correspondence: The Code of Criminal Procedure in force then as now (see judgment) provides that detainees may correspond, in sealed envelopes with the Registry of the European Court of Human Rights amongst others. This means that such correspondence is beyond all supervision. Furthermore, on the basis of the relevant article of the Code of Criminal Procedure (Article D 262), a circular of the Ministry of Justice dated 20/06/1994, for the attention of the prison authorities, gave a detailed list of the administrative or judicial authorities with which the detainees may correspond without supervision. These authorities include the President of the European Court of Human Rights, which effectively means all the members of the Court and its registry.
To ensure that the European Court's judgment will be taken into account in practice in the future, and in view of the direct effect given by the French authorities (in particular the judiciary) to the Convention and the Court's case-law, this judgment has been brought to their attention. It has been sent out to the court of appeal competent in this case (Grenoble Court of Appeal), to the Directorate of Prison Administration and to the Bureau of Legal Assistance and Prison Law. Furthermore, all the magistrates have access to this judgment, which has been published on the intranet site of the Ministry of Justice, together with an explanatory note.

1007 (October 2007) section 5.3
40403/02 Pessino, judgment of 10/10/2006, final on 12/02/2007
The case concerns a breach of the principle of “no punishment without law” (violation of Article 7). The applicant, a property developer, was fined for having continued building work despite the suspension of the building permit he had been granted. The verdict was given following a change in the case-law of the *Cour de cassation* such that he could not have known at the material time that his action might result in a criminal sanction.
Individual measures: The European Court found that the respondent state should pay the applicant the amount of the fine imposed on him and that the finding of the violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained.
• *Assessment: no further measure thus seems necessary.*
General measures: Given the circumstances of the case, publication of the European Court's judgment and dissemination to the courts concerned seem necessary and sufficient.

992 (April 2007) section 5.3
58148/00 Société Plon, judgment of 18/05/2004, final on 18/08/2004
The case concerns the prohibition, in January 1996, of the distribution of *Le Grand Secret*, a book co-written by a journalist and President Mitterrand's personal physician, and published 9 days after the

President's death. The book revealed that President Mitterrand was suffering from cancer, diagnosed as early as 1981, a few months after his first election as President of the French Republic.
Following an application by the President's widow and children, the civil court prohibited the book's distribution, first on a temporary basis following the application for an injunction, and then permanently. Having noted that the two prohibitions were provided by law and pursued legitimate aims within the meaning of Article 10, the European Court found that the injunction granted following the initial application as a temporary protective measure could be considered as necessary in a democratic society for the protection of the rights of President Mitterrand and his heirs and successors. It found, however, that the general and permanent ban of distribution pronounced by the trial and appeal courts no longer met a “pressing social need” and was therefore disproportionate in relation to the aim pursued (violation of Article 10).
Individual measures: The book *Le Grand Secret* was published, in February 2005, by another publisher.
General measures: The judgment has been sent out to the competent courts so that they may take it into account in the future. It is recalled in this context that French courts apply directly the Convention and the case-law of the European Court.
The judgment has also been sent out to the Directorate for Criminal Affairs and Pardons of the Ministry of Justice, and published on the intranet site of the Ministry of Justice. Finally, commentaries on this judgment have been published in several law journals.

1007 (October 2007) section 4.1
33834/03 Riviere, arrêt du 11/07/2006, définitif le 11/10/2006
This case concerns inhuman and degrading treatment inflicted on the applicant, who was detained under conditions which were not appropriate to a person with a mental disorder (violation of Article 3).
The European Court acknowledged that in the circumstances the prison authorities had not remained passive but had made efforts to alleviate the applicant's mental disorder from a medical point of view, but nevertheless found that his medical supervision was not appropriate.
The European Court referred *inter alia* to a number of provisions in national law concerning the hospitalisation of prisoners with mental disorder, and to Committee of Ministers' Recommendation No. R (98) 7 on the ethical and organisational aspects of health care in prison (the importance of which the Court underlined). The Recommendation states that prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility adequately equipped and possessing appropriately trained staff. The Court also held that Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital so that he may receive a particular kind of medical treatment, but that under this provision the state must ensure that people are detained in conditions compatible with respect for their human dignity and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, the provision of the requisite medical assistance.
Individual measures:
1) Place of detention: Following the European Court's judgment, the French authorities considered transferring the applicant to Château-Thierry prison, which specialises in the care of psychopathic detainees. This transfer did not take place because the applicant refused it, a fact which he indicated himself to the Secretariat as early as October 2006. Thus the applicant is still in Riom prison, as he was when the European Court delivered its judgment. In Riom he benefits from professional training and also has contacts with a friend who visits him regularly. This would no longer be possible were he transferred. The Director of Riom Prison stated on 6/04/2007 that the applicant still does not wish to be transferred to another prison, which the applicant confirmed in a letter the same day. According to the last information received from the French authorities, the applicant had an appointment with the enforcement judge on 21/06/2007, with a view to his conditional release, which the applicant is actively preparing. The French authorities will provide information on the outcome of this meeting as soon as possible.
2) Applicant's health care: The French authorities indicated in December 2006 that the applicant meets a psychiatric nurse each week as well as the prison psychiatrist on request or if the nurse considers it necessary. In his letter of 6/04/2007 the Prison Director said that for the time being the applicant is well and that he “regularly” meets a psychiatrist. The psychiatrist also wrote on 29/03/2007 confirming that he sees the applicant “regularly” in consultation and that his present state of health is compatible with his continuing his detention at Riom.
• *Further information is awaited on the progress of his application for conditional release. At this stage, in view of the conclusions of the Court, details would also appear useful on the frequency at which the applicant meets a psychiatrist (according to the information provided, these meetings are “regular”).*

If the applicant were not to be released however, information would also be necessary on the steps which would be taken, if his state of health deteriorated once more.

General measures:

1) Origin of the violation: The Secretariat notes that several sources (both public bodies and NGOs, etc.) have drawn attention to structural difficulties concerning the psychiatric care of detainees. For example, in a report drawn up in 2001, the General Inspectorate of Judicial Services (Ministry of Justice) and the General Inspectorate of Social Affairs (Ministry of Employment and Solidarity) considered that care structures within prisons were not capable of fulfilling their purpose and that the conditions for resorting to psychiatric hospitals were to be criticised. In April 2005 the Health Ministry observed in its plan for psychiatry and mental health for 2005-2008 that there was an overall mismatch between the demand and the effective supply regarding the psychiatric care of detainees. Likewise, in its report on prison conditions in France in 2005, the International Prison Observatory considered for its part that psychiatric care structures were unsuitable and deficient and could only deal with difficulty with mental illness in prisons.

2) Measures adopted*:* As a preliminary remark, the Secretariat notes that since Decree No. 86-602 of 14/03/1986, hospitals are responsible for detainees' mental health; Law No. 94-929 of 27/10/1994 harmonised hospitals' responsibilities in the area of penal health by also making them responsible for prisoners' bodily health (see the government's reply to the CPT's report on its visit to France, 11 to 17/06/2003, document CPT/Inf(2004)7).

The French authorities provided the following information, concerning the measures taken in order to improve the psychiatric care to detainees. Law No. 2002-1138 of 9/09/2002 lays down a new regime for the in-patient treatment of all prisoners with psychiatric disorders, irrespective of the illness and the duration of their committal, where there is a medical decision that the detainee needs full-time care. Special secure units called “UHSA” (*unités hospitalières spécialement aménagées)* are being set up within, and under the clinical responsibility of ordinary hospitals. The security aspect for the secure units is the responsibility of the prison authorities. Seventeen secure units, representing 705 places, will be created, in two phases. The first phase, which provides for 9 secure units (440 places) will begin in 2008, the remainder being scheduled for 2010-2011. The project has received the agreement of the professional bodies and trade unions representing both professional groups involved, i.e. medical and prison staff, who were consulted respectively in May and June 2006. Ministerial approval was given in autumn 2006 to the list of hospitals in which it is proposed to create secure units (which may be obtained from the Secretariat). The technical and functional requirements have been sent to the regional hospital authorities, which issued invitations to tender as from October 2006, for the first nine units. A budget of 12,6 million euros has been earmarked in 2007 to finance the preliminary studies of conception and programming.

Finally, the French authorities indicated that they had sent the European Court's judgment to the departments concerned in the Ministry of Justice, and that it would shortly be posted on the intranet site of the Ministry of Justice, together with a commentary.

• *The Secretariat is assessing this information.*

1013 (December 2007) section 4.1

71665/01 Augusto, judgment of 11/01/2007, final on 11/04/2007

The case concerns a violation of the applicant's right to a fair trial (violation of Article 6 § 1) on account of the failure to communicate to her the report by the doctor appointed by the CNITAAT (national tribunal for incapacity and insurance for industrial accidents) in proceedings to obtain in 1996 a retirement pension on the basis of her incapacity to work.

Individual measures: As regards pecuniary damage, the Court declined to speculate as to the outcome of the proceedings had they been conducted in conformity with the Convention. The Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Assessment: Bilateral contacts are underway to assess whether individual measures are necessary in this case.*

General measures: Subsequent to the facts of this case, Law No 2002-73 of 17/01/2002 and a Decree of 3/06/2003 changed proceedings before the CNITAAT. Now, the president in charge of the case may appoint one or several medical expert and copies of their reports must be sent to the parties (see in particular § 30 of the judgment).

1013 (December 2007) section 4.2

60796/00 Cabourdin, judgment of 11/04/2006, final on 11/07/2006
16043/03 Achache, judgment of 03/10/2006, final on 03/01/2007
67847/01 Lecarpentier and other, judgment of 14/02/2006, final on 14/05/2006

72038/01 Saint-Adam and Millot, judgments of 02/05/2006, final on 02/08/2006 and of 26/04/2007, final on 26/07/2007 (Article 41)
66018/01 Vezon, judgment of 18/04/2006, final on 13/09/2006

These cases concern the retroactive application of new legislation during pending judicial proceedings. Each of the applicants, having contracted bank loans between 1987 and 1989 and finding themselves subsequently in financial difficulty, sought annulment of their loan agreements on the ground that a formal requirement (inclusion of an amortisation schedule in the initial loan proposal) had not been respected by their respective banks. The annulment sought would have led to the reimbursement of sums already paid in execution of the contract. The applicants' claims were rejected because of the courts' retroactive application of Law No. 96-314 which provides that, except for decisions which have already become final, loan proposals made before 31/12/1994 without amortisation schedules are valid, provided that certain other conditions are respected.
In the cases of Cabourdin, Saint-Adam and Millot and Vezon, the European Court found that the proceedings had been unfair, because Law No. 96-314, which provides for final and retroactive settlement of disputes between private individuals before the national courts, had not been justified by compelling grounds of the general interest (violations of Article 6§1). In the Lecarpentier and Achache cases, the European Court found that the law had placed an "abnormal and excessive burden" on the applicants and had interfered disproportionately with their right to the peaceful enjoyment of their possessions (violation of Article 1 of Protocol No. 1).

Individual measures:

1) In the Cabourdin, Lecarpentier, Vezon and Achache cases: The European Court held that it could not speculate as to whether the outcome of the proceedings would have been different had the violation of the Convention not taken place. However, it also said, in the Cabourdin and Vezon cases, that it did not consider it unreasonable to think that the applicant had suffered a genuine opportunity loss and, in the case of Lecarpentier and Achache that the applicants has suffered a breach of their right to the peaceful enjoyment of their property. In these circumstances and deciding on the applicants' requests for both non-pecuniary and pecuniary damages, the Court granted them just satisfaction in respect of all heads of damage taken together.

2) In the Saint-Adam and Millot case: The European Court found that the question of the application of Article 41 is not ready for decision (pecuniary damage) and reserved it. The Court delivered its judgment under Article 41 on 26/04/2007. The Court said that the respondent state was to pay the applicants 60 000 euros in respect of pecuniary damage, plus any amount that could be chargeable in respect of taxes.

General measures:

• *Information provided by the French authorities*: The European Court's judgment in the Vezon case has been sent to the Principal Public Prosecutor of the *Cour de cassation* as well as to the Principal Public Prosecutor of the Court of Appeal *(letter of 4/01/2007).* The French authorities, and in particular the Ministry of Economy and Finance, are holding exchanges of views on the use of laws designed to legalise existing practices (*lois de validation*) and on measures necessary to avoid new violations (letter of 25/06/2007).
• *Information is awaited on the results of these exchanges of views and on the measures envisaged to avoid further violations.*

982 (December 2006) section 2

62236/00 Guilloury, judgment of 22/06/2006, final on 22/09/2006

The case concerns a breach of the applicant's right to a fair trial in that, having been convicted for aggravated sexual assault, he could not examine or have examined the witnesses for the prosecution and defence (violation of Article 6 §§ 1 et 3 d).

Individual measures: By virtue of Articles L 626-1 ff of the Code of Criminal Procedure, the applicant may apply for reconsideration of the criminal verdict at issue.

General measures: Subsequent to the facts in this case, the *Cour de cassation*, in a judgment of principle dated 12/01/1989, held that, in application of Article 6§3(d) of the Convention, “appeal judges, when legally required to do so, are obliged to ensure an adversarial hearing of prosecution witnesses who have not been confronted with the accused at any stage of proceedings, unless this is impossible, in which case they must determine the reasons for such impossibility”. Furthermore, the article of the Code of Criminal procedure at the origin of the violation in this case was amended by Law No. 2000-516 of 15/06/2000. Henceforth, “Witnesses called by the accused shall be heard in conformity with the rules provided in Article 435-437. The prosecution may object to such witnesses'

testifying if they have already been heard by the court. It is for the court to determine such issues before considering the merits".
• *Assessment*: In the light of the above, no further general measure seems necessary.

1013 (December 2007) section 5.3
57752/00 Matheron, judgment of 29/03/2005, final on 29/06/2005
This case concerns the fact that, in proceedings against him for narcotics offences, the applicant could not contest the inclusion of certain transcribed telephone conversations in his case-file. These transcripts were obtained through telephone tapping, the lawfulness of which he could not contest as it was conducted in the context of other proceedings to which he was not party (violation of Article 8). The European Court took no position on the question as to whether or not this interference was "in accordance with the law", but nonetheless noted that a situation in which people are subjected to tapping for the purposes of proceedings to which they are not party would not seem to be covered by law inasmuch as the law makes no distinction as to the proceedings for which tapping is authorised. On the other hand the European Court found that the applicant had not had the benefit of "effective supervision" of the interference, nor had he been effectively protected by the law on account of the case-law of the *Cour de cassation* as applied in this case. Following the proceedings at issue, the applicant was sentenced to 15 years' imprisonment.
Individual measures: On the basis of Article L626-1 of the Code of Criminal Procedure, the applicant had the possibility to ask for his case to be re-examined. He does not appear to have used it.
• *Assessment: No individual measure other than the re-examination of the case seems necessary and therefore the examination of individual measures may be considered complete.*
General measures:
• *Information is awaited regarding a possible change in the case-law of the Cour de cassation, or any other measure which might be envisaged, such as a circular to the authorities and judges competent for telephone tapping and to judges competent to determine the lawfulness of such surveillance, setting out the modalities of control of telephone tapping.*
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

1013 (December 2007) section 4.2
62740/00 Matheus, judgment of 31/03/2005, final on 01/07/2005
This case concerns the fact that the applicant, following a judicial decision in his favour delivered in 1988, could not obtain police assistance to evict the unlawful occupiers of a plot of land he owned in Guadeloupe and which he finally sold in 2004, having lost all hope of recovering possession. The European Court found that the excessively sustained failure to execute the judicial decision in the absence of any exceptional circumstance to justify it, and the resultant uncertainty for the applicant as to the fate of his property, undermined his right to effective judicial protection (violation of Article 6§1). The Court also considered that the refusal in this case to provide police assistance in the absence of any public-interest justification had resulted in a form of private expropriation from which the unlawful occupant had benefited (violation of Article 1 of Protocol No. 1).
Individual measures: It is recalled first that the land at issue is no longer the applicant's property and secondly that the applicant received various sums to compensate both for the loss of its use and also for the serious offence (*faute lourde*) committed by the state in refusing to take part in the execution of the judicial decision at issue. What is more, the European Court granted the applicant just satisfaction in respect of the non-pecuniary damage he suffered.
• *Assessment*: *No further individual measure seems necessary.*
General measures: The European Court held, in particular, that the refusal to grant police assistance originated in "an omission by the bailiffs (*huissiers*) and the Prefect rather than a deliberate refusal, in the particular local circumstances, to assist with eviction proceedings for the last 16 years" (§68). The national courts held that such refusal was illegal in the present case (see the case-law of the *Conseil d'Etat* mentioned in the European Court's judgment: if refusal by the police to execute a judicial decision is not justified on serious grounds of law and order - as in this case - it is illegal, and the state is liable for a serious offence (*faute lourde*)).
Hence, the violation does not appear to have its origin in the law itself but in its implementation by the relevant authorities.
• *In this context, information has been requested on measures taken or envisaged to avoid new, similar violations. In any event, publication of the European Court's judgment and dissemination to all authorities concerned (in particular prefects) would seem appropriate.*

• *Information provided by the French authorities (letter of 6/07/2007)*: *The Ministry of the Interior was to be requested to confirm that the Matheus judgment had been sent out to the authorities concerned.*

997 (June 2007) section 4.2

73947/01 Zervudacki, judgment of 27/07/2006, final on 27/10/2006

The case concerns a violation of the right to freedom and security of the applicant who was unlawfully detained for 13½ hours between the expiry of her police detention before being brought before an examining magistrate (violation of Article 5§1).

The case also concerns the fact that the applicant was unable to complain before a court in order to receive a determination as to the lawfulness of the detention (violation of Article 5§4).

Individual measures: The detention criticised in the European court's judgment is over; the Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained.

• *Assessment: No further individual measure thus seems necessary.*

General measures: Since the facts at the origin of this case, Law No. 2004-204 was adopted on 9/03/2004 to adapt the functioning of justice to developments in crime. This law introduces deadlines and conditions for the detention of persons after the expiry of their police detention orders and before being heard by the prosecutor or investigating magistrate.

However, it is not clearly apparent that persons thus detained may bring the matter promptly before a judge for determination of the lawfulness of their detention.

By letter of 25/04/2007, the French delegation sent the Secretariat a copy of a directive sent by the Minister of Justice to prosecutors general and first Presidents of appeal courts regarding the consequences to be drawn from the European Court's judgment in Zervudacki. This directive recalls the need to impose the strictest possible limits on the length of detention of this kind ("*mises à disposition"*) and underlines that requirements of Article 5§4 can only be satisfied by bringing detainees before an investigating magistrate or a court. The directive specifies that if the period of waiting lasts several hours - in particular because of numerous referrals to the investigative magistrate - individuals concerned should have the possibility to eat, to have a rest and if necessary to see a doctor. Moreover, the directive underlines that the case-law of the *Cour de cassation* has changed in that the *Cour de cassation* now exercises effective supervision of the lawfulness of detention, even of those subject to mere referral: in a judgment given after the Zervudacki case, the criminal chamber of the *Cour de cassation* quashed a judgment on the ground that the *chambre d'accusation* had given no explanation of the reasons why an individual's referral before the investigative magistrate had been delayed for more than 24 hours after the end of his/her police detention" (Cass. crim. 16/09/2003)

• *Assessment: In view of this information, no further measure seems necessary.*

1013 (December 2007) section 5.3

49580/99 Santoni, judgment of 29/07/2003, final on 29/10/2003, revised on 01/06/2004, final on 01/09/2004

The case concerns the excessive length of proceedings before the social security courts concerning an industrial accident (violation of Article 6§1). The proceedings began on 15/02/1988 and ended on 11/12/1998 (10 years, 9 months and 25 days).

The European Court noted in its judgment that the National Industrial Accidents Commission was responsible for several periods of inactivity.

Individual measures: None (proceedings are closed).

General measures:

• *Confirmation is awaited that the requirements of the Convention as they flow from the Court's judgment in this case have been appropriately brought to the attention of the authorities responsible for industrial accidents, in particular the National Industrial Accidents Board*.

• *Information has been provided on the publication / dissemination of this judgment. Furthermore, general information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

976 (October 2006) section 4.2

73316/01 Siliadin, judgment of 26/07/2005, final on 26/10/2005
This case concerns the lack of specific and effective protection by French criminal law of the applicant against the "servitude" in which the applicant has been held (violation of Article 4). The applicant is a Togolese national who was a minor and in an illegal situation at the relevant time; for several years from 1994 onwards, she worked as an unpaid servant for a couple who made her work seven days a week and had confiscated her passport. The European Court held that Article 4 of the Convention gives rise to positive obligations on states, consisting in the adoption and effective implementation of criminal-law provisions making the practices set out in this Article a punishable offence. In the present case, the Court found that the respondent state had not complied with these positive obligations. In fact, the European Court noted that slavery and servitude were not as such classified as criminal offences in French criminal law, and that the persons who held the applicant in servitude had not been convicted under criminal law, although they were prosecuted under Articles 225-13 and 225-14 of the Criminal Code, as worded at the time.
Individual measures: Under civil law, the national Courts granted the applicant the sums due to her in respect of unpaid wages plus an indemnity, and also 15 245 euros in compensation for the "important psychological trauma" she had suffered. Under criminal law, the decision acquitting the persons who had held the applicant in "servitude" has the status of *res judicata*. The applicant made no other request.
General measures: The European Court noted that the legislation had been changed after the facts of this case. In a law of 18:04/2003, the following provisions were enacted:
(1) Articles 225-13 and 225-14 of the Criminal Code were amended subsequently to the facts. The relevant offences are now defined as "obtaining the performance of unpaid services or services against which a payment is made which clearly bears no relation to the importance of the work performed…" (Art. 225-13) and"subjecting a person, whose vulnerability or dependence is obvious or known to the offender, to working or living conditions incompatible with human dignity…" (Art. 225-14). To establish these offences, it is necessary only to prove that the vulnerability or dependence are known. This replaces the criterion applicable at the material time, according to which it was necessary to prove that there had been an "abuse" of the vulnerability or dependence. In other words, a conviction is possible if the vulnerability of dependence could not be ignored by the person who committed the facts, which is easier to prove.
In the French authorities' opinion, these provisions, interpreted by the courts in the light of the Convention and of the present judgment, will make it possible in the future to convict those committing acts similar to those at issue in the present case.
Furthermore, the authorities stress that the sentences have been made heavier in the new law:
(2) Such offences were originally punishable by 2 years' imprisonment and a fine of 500 000 French francs (76 225 euros). Since the 2003 law, they are punishable by 5 years' imprisonment and a fine of 150 000 euros.
(3) A new aggravating circumstance was created. Before the 2003 law, there was only one aggravating circumstance: the multiplicity of victims. The law of 2003 added the minority of the victim and, of course, the combinations of these circumstances.
In view of this situation, further information would be useful on the measures taken to make known the requirements of the Convention as they arise from this judgment, in particular on the publication of this judgment and its dissemination to the relevant authorities (in particular public prosecutors).

1013 (December 2007) section 4.2
54968/00 Paturel, judgment of 22/12/2005, final on 22/03/2006
71343/01 Brasilier, judgment of 11/04/2006, final on 11/07/2006
64016/00 Giniewski, judgment of 31/01/2006, final on 01/05/2006
12697/03 Mamère, judgment of 07/11/2006, final on 07/02/2007
These cases concern breaches of the freedom of expression of the applicants in relation with defamation proceedings carried against them, between 1994 and 2002, under Articles 29, 31 and 32 of Law of 29/07/ 1881 on the freedom of the press (violations of Article 10).
In the **Paturel case**, the applicant was criminally convicted on the basis of certain extracts of a book he had published in 1996, denouncing the alleged excesses of an anti-sect movement. The European Court held in particular that the French courts exceeded their margin of appreciation by requiring the applicant to prove the truth of the impugned extracts (which in fact constituted value judgments, relying on a sufficient factual basis) whilst at the same time systematically rejecting the numerous documents he provided to this end and constantly insisting on his alleged partiality and personal animosity, deduced mainly from the fact that he belonged to an association alleged by the civil party to be a sect.

In the **Brasilier case**, the applicant was acquitted by the criminal courts but was found liable in tort, for failing to adduce evidence for his allegations, expressed on banners and in leaflets, against a political opponent.
The European Court found in particular that the value judgments expressed by the applicant were sufficiently grounded in fact, but also that they concerned a politician, as such, and were uttered by an electoral opponent.
In the **Giniewski case**, the applicant was also acquitted by the criminal courts but held liable by the civil courts for having published an article concerning a Catholic doctrine and its possible ties with the Holocaust. The European Court considered in particular that this was not a text attacking religious convictions as such but rather presented the applicant's reflections as a journalist and a historian. The article had not been "gratuitously offensive" or insulting, the applicant had not sought to incite disrespect or hatred, and did not cast doubt in any way on clearly established historical facts.
In the **Mamère case**, the applicant, a politician (a member of the ecologist party "*Les Verts*"), was convicted for statements made during a television broadcast concerning a civil servant, then director of a public body responsible among other things for monitoring radioactivity levels in France following the Chernobyl nuclear accident. The European Court stated that anyone prosecuted for comments on a matter of general concern should be able to absolve themselves of liability by establishing that they had acted in good faith and, in the case of factual allegations, by proving that they were true. In the applicant's case the comments in question had been value judgments as well as factual allegations. Accordingly, the applicant should have been offered both of these possibilities, but he was not. The Court was not convinced by the national court's reasoning concerning the applicant's lack of good faith, seeing that it had been based entirely on the immoderate nature of his comments. But as regards the factual allegations, since the acts criticised by the applicant had occurred more than ten years before, Article 35 of the 1881 Act absolved him from the obligation to prove the truth of his comments.
Individual measures:
1) Paturel and Mamère cases: the applicants were ordered to pay fines and damages. In the Paturel case, the just satisfaction awarded by the European Court not least covers the fine imposed on the applicant in the proceedings at issue. In the Mamère case, the applicant did not apply for just satisfaction before the European Court.
During the year following the judgment of the European Court of Human Rights (Article L 626-3 of the code of criminal proceedings), the applicants could ask for the decision at issue to be re-examined. The French authorities indicated that on 11/12/2006, Mr. Paturel had not lodged such a request (but there remained time for him to do so).
• *Information is awaited on whether the applicants' convictions appear in their criminal record and whether there are other negative consequences of the violation.*
2) Brasilier and Giniewski cases: Neither applicant presented any claim in respect of possible damages before the European Court.
• *No measure appears to be necessary, given that the applicants were ordered to pay nominal damages of one French franc to the civil party.*
General measures:
1) In all these cases (except point 2 below) the Court criticised the reasons on the basis of which the national courts convicted the applicants for defamation (i.e. the application they made of the relevant provisions).
• *Information is awaited as to the measures taken or envisaged to avoid new, similar violations. In any case, the publication and the dissemination of the judgments of the European Court to the authorities concerned appear to be necessary.*
2) Impossibility of proving the* exceptio veritatis *for facts which occurred more than ten years before (Mamère case): this resulted from the wording of the law (see above), according to which "it is always possible to prove the truth of defamatory facts, except (…) b) when the imputation concerns facts which occurred more than ten years before" (unofficial translation).
• *Information is awaited as to the measures taken or envisaged to ensure that, in similar cases, it is possible to prove the truth of the facts even if the facts referred to occurred more than ten years before (see in particular §24 of the Mamère judgment).*

1013 (December 2007) section 4.2
6253/03 Vincent, judgment of 24/10/2006, final on 26/03/2007
The case concerns degrading treatment suffered by the applicant, a paraplegic, when he was detained from 17/02 to 11/06/2003 in Fresnes prison, where he could not move around or, in particular, leave his cell by himself (violation of Article 3).

Individual measures: The European Court awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. The applicant is now detained in another prison and the complaints he lodged before the European Court regarding his conditions of detention in this prison were rejected as manifestly ill-founded.
• *Assessment: no individual measure therefore seems necessary.*
General measures:
Information is awaited on the possibility of carrying out alterations in Fresnes prison so that prisoners with disabilities may move around and in particular leave their cells independently.

1013 (December 2007) section 5.3
44568/98 R.L. and M.-J.D., judgment of 19/05/2004, final on 10/11/2004
This case concerns ill-treatment inflicted on the applicants in 1993 in the course of an intervention by the police at their restaurant following a neighbourhood dispute, culminating in the arrest of the first applicant (violation of Article 3). It also concerns the unlawfulness of that arrest given the nature of the accusations which could be made against the applicant (violation of Article 5§1c), the unlawfulness of detaining him in a psychiatric clinic for more than six hours on account of the absence of a doctor empowered to order his release (violation of Article 5§1e) and the lack of reparation for the prejudice suffered as a result of being detained (violation of Article 5§5).
Individual measures: The European Court awarded just satisfaction in respect of the physical and mental hardship suffered by each of the applicants.
General measures:
- First, it is recalled that in the context of the Selmouni case (in section 6.2, following the measures adopted), the French delegation informed the Committee that a National Commission on Security Ethics (*Commission nationale de déontologie de la sécurité*) was created, with the task of "making sure that the deontology is respected by those working in the security field", including police officers (see www.cnds.fr <http://www.cnds.fr>).
- The R.L. and M.-J.D. judgment will form part of the information given to the police in the framework of their human rights instruction and, as with all case-law of the European Court, will be studied and commented with regard to its practical consequences. Furthermore, this judgment and its consequences were presented during meetings with officials from the Central Directorate for Public Security. Finally, the National Commission on Security Ethics (see above) has been informed of the judgment.
- Drawing more specifically the consequences of the violation of Article 5§1e), found on account of the applicants' prolonged detention in a police psychiatric clinic, the French authorities took measures which entered into force on 12/01/2005. According to the new system, a doctor of the psychiatric clinic empowered to authorise release may be reached by telephone at any moment by his / her colleague on duty at the clinic. According to the diagnosis made by the latter, this doctor may authorise immediate release if justified by the state of health of the person concerned.
• *Confirmation is needed that the requirements of this judgment have been brought to the attention of doctors empowered to order the immediate release of persons kept in psychiatric clinics, whose state of health no longer justifies it*.
As the competent national courts neither recognised nor remedied the violations at issue, confirmation is also awaited that this judgment of the European Court has been brought to their attention, as well as to that of public prosecutors.
• *Information has been provided on the publication / dissemination of this judgment. Furthermore, general information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

1013 (December 2007) section 4.2
21324/02 Plasse-Bauer, judgment of 28/02/2006, final on 28/05/2006
This case concerns the failure to enforce a court decision awarding the applicant visitation rights in respect of her daughter and laying down the conditions for the exercise of this right (violation of Article 6§1). An appeal court judgment of 1997 required the presence at visits of a third party designated by an association. In point of fact, the association concerned found it materially impossible to fulfil its mission, and accordingly the judgment was not enforced.
The European Court held that the national authorities had not made all sufficient efforts which could reasonably be expected to uphold the terms and conditions of the visiting rights. In particular, they should have checked beforehand whether the association was in a position to carry out the public

authorities' mandate to ensure the conditions for the exercise of visiting rights as laid down in the appeal court judgment, so that it could be enforced.
Individual measures: The applicant's daughter came of age in 2004. The European Court awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicant.
• *Assessment: in view of these circumstances, no individual measure seems necessary.*
General measures:
• *Information has been requested as to measures taken or envisaged to ensure that, in the future, the terms and conditions of visiting rights laid down in court decisions are respected. In any event, it appears necessary to publish this judgment and send it out to the competent authorities, so that they may draw all the consequences.*
• Information has been provided by the French delegation, which is being assessed.

987 (February 2007) section 4.2
65399/01+ Clinique des Acacias and others, judgment of 13/10/2005, final on 13/01/2006
This case concerns the failure to respect the right of the applicants (clinics) to an adversarial trial in that their appeals were dismissed in 2000 on a ground considered to be mandatory by the *Cour de cassation*, which had not informed the parties beforehand of its intention to do so (violation of Article 6§1).
The European Court held that the applicants had accordingly been caught off their guard and could not reply before the *Cour de cassation* reached its decision, being thus deprived of a fair trial with regard to their claims relating to the reimbursement of certain sums by health insurance offices.
Individual measures: The applicants' claims concerned several hundred thousand euros. In view of the violation found, the European Court held that it could not speculate as to the outcome of the proceedings if Article 6§1 had not been breached.
• *Information is awaited on measures taken or envisaged to erase the consequences of the violation for the applicants*.
General measures:
• *Information is awaited on measures taken or envisaged to avoid new, similar violations. In any event, the publication / dissemination of the European Court's judgment to the* Cour de cassation *appears necessary, so that it takes it into account in the future.*

1007 (October 2007) section 5.3
57516/00 Société de Gestion du Port de Campoloro et société fermière de Campoloro, judgment of 26/09/2006, final on 06/12/2006
The case concerns a violation of the applicant companies' right to a court due to the failure to enforce certain 1992 judgments awarding them compensation following the annulment by a municipal council of contracts they had concluded with another local authority (violation of Article 6§1).
The case also concerns a violation of the applicant companies' right to the peaceful enjoyment of their property (violation of Article 1 of Protocol No. 1). The European Court considered that as a result of the impossibility of obtaining enforcement of these judgments - for which no justification has been put forward -the applicant companies suffered and continue to suffer specific and unjustified charges
Individual measures: The Court, considering that the payment by the state of the sums due pursuant to the domestic court judgments would place the applicant parties as far as possible in the situation which would have obtained had the violations not taken place, required the state to ensure payment, with interest, within three months of the promulgation of the judgment.
• *Assessment: No further measure, other than payment of these sums, would appear necessary.*
General measures:
• *Information is awaited concerning the dissemination of the judgment of the European Court to all local authorities and administrative and judicial authorities involved in the case.*
• *Assessment: Given the singular nature of this case, it would not seem necessary to adopt further general measures.*

1007 (October 2007) section 4.2
63879/00 Ben Naceur, judgment of 03/10/2006, final on 03/01/2007
The case concerns an infringement of the principle of equality of arms (violation of Article 6§1). On 22/02/1999 Lyons Criminal Court sentenced the applicant to 7 years' imprisonment and imposed a permanent exclusion order on him. Neither the applicant nor the public prosecutor appealed against the judgment within the ten days permitted under Article 498 of the Code of Criminal Procedure.

However, at the request of the prosecutor, the principal public prosecutor lodged an appeal on 16/03/1999 under Article 505 of the Code of Criminal Procedure, which allows the principal public prosecutor 2 months from the date of delivery of the criminal court judgment in which to lodge an appeal. The Lyons Court of Appeal upheld the exclusion order in respect of the applicant and increased his prison sentence to 12 years. The applicant appealed unsuccessfully on points of law. The European Court held that, in the specific circumstances of the case, the junction of two elements put the applicant in a situation of clear disadvantage in comparison with the public prosecution, thus breaching the equality of arms, namely:
- first, the fact that a longer time is allowed to the public prosecution - which has distinct and conflicting interests to those of the applicant;
- second, the fact that it was not possible, according to the domestic legislation, for the applicant to lodge a cross-appeal. Indeed, although the fact that, notwithstanding this circumstance, the applicant has had the possibility to contest again his guilt before the Court of appeal, in fact the possibility for him to be acquitted or to have his sentence reduced was largely theoretical and illusory in the specific circumstances of the case (indeed his sentence was noticeably increased). Particularly, the mere fact that the applicant made no appeal in the ten days period appeared as a signal that he was of the opinion that he had few chances to have his conviction changed in his favour before the Court of appeal.

Individual measures; the applicant can ask for a re-examination of his case under articles L 626-1 ss. of the code of criminal procedure. The non-pecuniary damage suffered has been compensated by the just satisfaction granted by the European Court; but the applicant did not prove any pecuniary damage.

• *Assessment: no further measures appear necessary.*

General measures:

• *Information is awaited on the measures taken or envisaged to avoid new, similar violations.*

1013 (December 2007) section 5.3

76093/01 Barbier, judgment of 17/01/2006, final on 17/04/2006

This case concerns the unfairness of certain criminal proceedings against the applicant, who was deprived of his right of access to a court (violation of Article 6§1) as a result of two specific circumstances: first, as a result of certain failures on the part of the administration at Reims Prison where the applicant was detained, his appeal against his conviction was declared inadmissible, the prison service having failed to transmit his notice of appeal in due time to the prison's registry. Secondly, there had been no adversarial proceedings at the hearing before the Court of Cassation at which the applicant's appeal was declared inadmissible, although this would have been necessary: according to the Code of Criminal Procedure, the applicant may only be heard on the designation of the Court of appeal, not on the admissibility of the appeal.

Individual measures: The applicant may apply for the re-opening of his appeal under Articles L 626-1 ff of the Code of Criminal Procedure. The European Court has awarded just satisfaction in respect of the non-pecuniary damage sustained.

General measures:

1) Violation of Article 6§1 because of the failures on the part of the prison service: The European Court, noting that in this case the procedure for lodging appeals relied merely on a practice, referred in particular to certain material problems: the absence at the prison in question of rules concerning such procedures, and times at which the registry is manned (§§ 28-30 of the judgment).

• *Information provided by the French authorities (letter of 21/12/2006)*: Since the material time, several measures have been taken to set out appeal procedure in prisons in detail: an instruction of 20/12/2005 draws prison staff's attention to the need to transmit detainees' appeals as rapidly as possible. An audit of rules of procedure in prison is under way with a view to drafting model rules. In 2003-2004, the National Prison Administration college (*école nationale de l'administration pénitentiaire*) initiated a programme of initial and further training, for administrative and security staff in prisons.

• *Assessment: in view of this information, no further measure seems necessary.*

2) Violation of Article 6§1 due to the lack of adversarial proceedings: The Court noted in particular (§ 31) that "the applicant, in his capacity as appellant against a conviction handed down by an assize court, had only been able to submit observations on the choice of assize court of appeal (Article 380-14 of the Code of criminal proceedings) and not on the admissibility of the appeal (Article 380-15 of the Code of criminal proceedings)".

• *Confirmation is awaited that the European Court's judgment has been sent to the Cour de cassation.*

• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

1013 (December 2007) section 4.2

39001/97 Maat, judgment of 27/04/2004, final on 27/07/2004

This case concerns the unfairness of certain criminal proceedings against the applicant. First, it concerns a disproportionate restriction of his right of access to a court in that he was obliged to comply with an arrest warrant in order to apply to set aside an appeal judgment given in absentia in 1997 confirming his sentence to 18 months' imprisonment and a million-French-franc fine as well as compensation to the civil plaintiffs (violation of Article 6§1).

Secondly, it concerns the failure to respect of the applicant's right of defence, in that the appeal court prohibited him from being represented on the ground of his failure to appear in court (violation of Article 6§3c).

Individual measures: No request has so far been made regarding individual measures. According to the latest information at the Secretariat's disposal, the applicant's lawyer has been unable to contact him.

General measures:

1) Violation of Article 6§1: The European Court noted that, according to the present case-law of the *Cour de cassation*, a motion to have a judgment set aside is the only form of appeal in respect of which the failure to comply with an arrest warrant constitutes an obstacle to admissibility. The condition no longer applies to ordinary appeals (Zutter case-law of the *Cour de cassation*, judgment of 24/11/1999) or to appeals on points of law (Rebboah case-law of the *Cour de cassation*, judgment of 30/06/1999). At the 948th meeting (December 2005) the French delegation stated orally that, given the direct effect granted to the Convention by the *Cour de cassation* and the developments in its case-law described above in similar cases further similar violations should not occur.

• *Further information has thus been requested, in particular on the publication / dissemination of the judgment to the relevant authorities. In this context, it can be noted that general information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

2) Violation of Article 6§3c.: This case presents similarities to that of Poitrimol (Section 6.2), in which the examination of general measures has been closed in view of the evolution of the case-law before the national courts. The Court itself stressed the contribution of the Dentico judgment, delivered by the Plenary Assembly (*Assemblée plénière*) of the *Cour de cassation* on 02/03/2001 (i.e. after the present application to the European Court). According to this judgment, "the right to a fair trial and the right of every defendant to be assisted by counsel mean that a court may not try a defendant who fails to appear in court and who is not excused without hearing counsel if present at the hearing to defend him".

• *Assessment: No further measure is awaited.*

1013 (December 2007) section 5.3

75699/01 Vaturi, judgment of 13/04/2006, final on 13/07/2006

17902/02 Zentar, judgment of 13/04/2006, final on 13/07/2006

These cases concern the unfairness of certain criminal proceedings against the applicants. They were definitively convicted (in 2000 and 2001 respectively) without having been able to examine witnesses or have them examined (violations of Articles 6§§1 and 3d).

The European Court considered, in the Vaturi case, that whilst the testimony of the witnesses concerned was not the sole basis of the applicant's conviction, it might under the circumstances have contributed to the balance and equality between prosecution and defence which must prevail throughout proceedings, if he had been allowed to examine them.

On the other hand, in the Zentar case, the Court considered that witness testimony had played a decisive role in the judges' assessment of the merits and furthermore that, even supposing that the guilty verdict against the applicant had not been based to a decisive extent on that testimony, it was an inescapable fact that the French authorities had taken no steps to track down the two witnesses concerned.

Individual measures: The applicants may apply for re-examination of the final judgements at issue under Articles L 626-1 ff of the Code of Criminal Procedure. The European Court has granted them just satisfaction in respect of the non-pecuniary damage sustained.

• *Assessment: no further individual measure appears necessary.*

General measures: These cases present similarities with that of Rachdad (judgment of 13/11/2003, in Section 6.1 at the 940th meeting, October 2005) and Mayali (judgment of 14/06/2005, Final Resolution CM/ResDH(2007)46). The European Court's judgment in the Rachdad case was published and sent out to all courts which might find themselves with a similar case, and this measure was considered sufficient in view of the direct effect given by French courts to the Convention as interpreted by the European Court and the fact that the violation was not due to the provisions of the law but rather to their misapplication by the courts. The European Court's judgment in the Mayali was also disseminated to all competent courts.
Nonetheless, each case being specific, it seems necessary to publish and/or send out the European Court's judgments in Vaturi and Zentar.
• *Information is awaited on measures taken or envisaged to publish these judgments and/or send them out to the relevant authorities.*
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

1013 (December 2007) section 5.3
67881/01 Gruais and Bousquet, judgment of 10/01/2006, final on 10/04/2006
This case concerns the unfairness of certain criminal proceedings (violation of Article 6§1). The *Cour de cassation* held in 2000 that the applicants' appeals on points of law were inadmissible because they had been lodged after the time-limit. It had based its decision on the date of service as endorsed on the judgment and not the date on which the notice had actually been posted, as recorded by the postmark. The date endorsed on the judgment by the registry had not corresponded to the actual date of dispatch and this had had the effect of reducing the period of time that the applicants should have been given to lodge their appeal. Since it was a particularly short period (five clear days, or six days at most), its reduction by a half in this case had resulted in a particularly restrictive limitation of the actual time-limit for appeal.
Individual measures: The proceedings at issue were brought to contest the lawfulness of criminal actions against the applicants. In this context, it may be noted that before the European Court the applicants asked for compensation for the loss of the possibility of winning their appeal, but the Court held that it could not speculate as to the outcome of the proceedings had the violation not taken place and thus granted just satisfaction solely in respect of non-pecuniary damage (and costs and expenses).
• *Assessment: as the applicants are entitled to apply for a review of the criminal judgment under Articles L 626-1 ff of the Code of Criminal Procedure, no further measure seems necessary.*
General measures: The Court noted the government's statement that the circumstances of the case (discrepancy between the date endorsed on the judgment and the actual date of dispatch) were "extremely rare" (§29). Thus the violation appears to be the consequence of a material error. In this context, it appears relevant that the judgment should be distributed within the *Cour de cassation*.
• *Information is awaited in this respect.*
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

982 (December 2006) section 4.2
1513/03 Draon, judgment of 06/10/2005 and of 21/06/2006 - Friendly settlement - Grand Chamber
11810/03 Maurice, judgment of 06/10/2005 and of 21/06/2006 - Friendly settlement - Grand Chamber
These cases concern a breach of the applicants' right to the peaceful enjoyment of their possessions (violations of Article 1 of Protocol No.1). The applicants are the parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal examinations. In 1998 and 2000, they brought proceedings against the hospital authorities concerned. However, the Law of 4/03/2002 which was applicable immediately - came into force while their actions were pending. Thus they only obtained judgment against the hospital authorities for non-pecuniary damage and disruption to their lives, and not for the special burdens arising from their children's disability, as they could legitimately have expected in view of the case-law that existed before the entry into force of the new law.
The European Court held that this law, although "in the public interest", had purely and simply abolished, with retrospective effect, one of the essential heads of damage, relating to very large sums

of money, which constituted an existing “asset” which the applicants had previously possessed. Furthermore, the Court held that the amount of compensation payable to the applicants under the legislative provisions in force when it delivered its judgments (legislation on the national solidarity towards disabled persons, completed by a law of 11/02/2005, the effects of which remained uncertain) was considerably less and clearly inadequate compared to the sum payable under the previous liability rules; this is confirmed, in particular, by the domestic decisions delivered so far in the applicants' cases, which are not final. The European Court concluded that such a radical interference with the applicants' rights had upset the fair balance to be maintained between the demands of the general interest on one hand and the protection of the applicants' right to peaceful enjoyment of their possessions on the other.

Individual measures: The European Court delivered its judgments on the just satisfaction on 21/06/2006, in view of the friendly settlements concluded between the applicants and the respondent state, which undertook to pay more than 2 million euros each to Mr. and Mrs Draon and to Mr. and Mrs Maurice in respect of the damage they sustained on account of the error of the hospital concerned and of the retroactive character of Article 1 of the law of 04/03/2002.

General measures: Invited to provide an action plan, the French authorities indicated that in their opinion no legislative change was necessary. The only question raised is that of the interpretation of the applicability of the law in terms of time. The supreme courts complied with the interpretation indicated by the European Court: on 24/01/2006, the *Cour de cassation,* in a judgment in a similar case, held that the retroactive application of the Law of 4/03/2002 was incompatible with the Convention. On 24/02/2006, the *Conseil d'Etat* delivered a judgment with the same conclusion (CE 24/2/2006 M. et Mme Levenez).

• *In view of the specific circumstance that the problem only concerns a limited number of persons and is restricted to a certain period of time (proceedings which were ongoing on 04/03/2002), and in view of the new national case-law mentioned above, it may be concluded that the similar judicial proceedings still pending will be ended by judgments meeting the requirements of the Convention, as they arise from the present judgments even though the impugned law remains unchanged*.

1013 (December 2007) section 4.1

5356/04 Mazelié, judgment of 27/06/2006, final on 23/10/2006

The case concerns a violation of the applicant's right to the peaceful enjoyment of his possessions (violation of Article 1 Protocol No 1). The applicant, who was held to be the owner of ramparts adjacent to his property, although in actual fact they belonged to the state, was declared responsible for the restoration of these ramparts. This gave rise to a long dispute which affected the market value of the applicant's own property and his ability to make use of it.

Individual measures: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Bilateral contacts are under way to assess the need for other possible individual measures (a letter was sent to the French authorities on 13/06/2007).*

General measures: The violation originates in the apparent difficulty of determining the ownership of the property at issue, even though the question seems to be in no doubt (see the Court's development on this issue in §29 of the judgment and in particular its finding that it was particularly difficult to understand why the state had failed to jump to that conclusion when served with notice in 1973 in proceedings to determine the ownership of the ramparts at issue).

• *Information provided by the French authorities (letters of 25/04/2007 and 26/06/2007)*: The European Court's judgment has been sent out to the authorities concerned, in particular the local authorities, and has been posted on the intranet site of the Ministry of Interior. Furthermore, the Ministry of Economy indicated that the general inventory of state property contained no historical information on property but was updated every year. This explained how the property adjacent to the applicant's land could have “disappeared” from this inventory, which changes every year.

• *Information is awaited on administrative measures envisaged to avoid repetition of this kind of error, which can be at the origin, as in the present case, of long disputes.*

1007 (October 2007) section 4.2

59450/00 Ramirez Sanchez, judgment of 04/07/2006 - Grand Chamber

This case concerns the lack of a remedy in domestic law whereby the applicant might challenge decisions prolonging his solitary confinement (violation of Article 13). The applicant was imprisoned in 1994 and sentenced to life imprisonment in 1997. From 1994 until 2002 he was kept in solitary confinement. At the material time, decisions to place detainees in solitary confinement or to extend that confinement were considered to be “internal measures”, of which no judicial review was possible.

Individual measures: The violation found relates to a period which ended in 2002. The applicant has not been held in solitary confinement since January 2006 (§76 of the judgment). Furthermore, it should also be noted, besides the absence of violation of Article 3, that the applicant made no claim before the European Court for compensation of any damage sustained.
• *Assessment: in these circumstances, no individual measure appears necessary.*
General measures: In a judgment of 30/07/2003, the *Conseil d'Etat* changed its case-law to admit that judicial review of solitary confinement decisions should be available before administrative courts. Henceforth a judge may, if appropriate, quash such decisions "given the importance of the effects they have on conditions of detention".
This case-law change has now been confirmed by two Decrees on solitary confinement dated 31/03/2006, which change the legal status from "internal measures" (without possibility of judicial review) to "individual administrative decisions" (see Code of Criminal Procedure, *Partie Réglementaire - Décrets en Conseil d'Etat,* Chapter II), i.e. "unilateral acts of the administration". As of right, it is possible to challenge the legality of these acts before the Administrative Courts (Conseil d'Etat, judgment of 17/02/1950, Dame Lamotte). Administrative courts are competent to rule on the external (form) and internal (law) legality of the act and are entitled to annul it. It is recalled that French Administrative Magistrates directly apply the Convention as interpreted by the European Court (see below, publication and dissemination of the judgment).
It is worth noting that the Decrees of March 2006 also provide further guarantees for detainees during proceedings concerning placement in solitary confinement: adversarial argument before the decision is taken, the possibility for the detainee to have free legal assistance; the obligation to give adequate reasons for the decision, etc.
Prison staff have been informed in detail of the new regulations through a ministerial circular of 24/05/2006 and via training.
The European Court's judgment has been sent out to the relevant courts and authorities and will be published with comments on the Internet site of the Ministry of Justice.
• *Assessment: these measures clearly go in the direction indicated in the Court's judgment. Clarification would nonetheless be useful on how detainees are informed of their right to appeal against solitary confinement decisions (information provided by the government), as would further details on the exact scope of the judgment's publication / dissemination.*

1013 (December 2007) section 4.2
39922/03 Taïs, judgment of 01/06/2006, final on 01/09/2006
This case concerns the death of the applicants' son in 1993, while he was detained in a police cell in which he had been placed overnight to sober up.
The European Court found that the government had not been able to provide a plausible explanation for the discrepancy, or even contradiction, between the medical report drawn up when discharging the applicants' son from hospital and the autopsy report, and regarding the cause of the injuries found on his body, given in particular that the injuries could in any event only have occurred during his detention (§ 95); furthermore, the inertia of the police officers confronted with physical and mental distress of the applicant's son, and the lack of effective police and medical supervision, had constituted a violation of France's obligation to protect the lives of persons in custody (violations of the substantive aspect of Article 2).
The European Court also found that the French authorities had not conducted an effective - or, *a fortiori* a quick - investigation into the circumstances surrounding the death of the applicants' son (procedural violation of Article 2). To reach this conclusion, apart the length of the proceedings which had failed to establish the actual cause of death, the European Court took the following elements into account: no detailed evidence had been taken from the girlfriend of the deceased even though she had been at the police station on the night of the incident ; the fact that the investigating judge had refused to allow a reconstruction of the events ; the making of a post-mortem psychological inquiry, the usefulness of which in establishing the truth was doubtful but which had provided the judicial authorities with a means of minimising or excluding the police officers' responsibility for their son's death.
Individual measures:
• *Information provided by the French authorities:* with regard to a possible reopening of the investigation in this case, the delegation notes that in this case, unlike other judgments, the Court indicated no specific requirements relating to the execution. Furthermore, the delegation underlines that to reopen the investigation would contravene the *res judicata* status of a final judicial decision (the investigation at issue ended with a decision by the investigating magistrate that it was not necessary to continue with it; this decision was confirmed on 19/06/2003 by the special chamber of the Bordeaux

Court of Appeal competent for questions concerning investigations (*chambre d'accusation*) and the judgment became final). Finally, the delegation adds that reopening of the proceedings also would not be allowed by Art. 626-1 ff., Code of Criminal Procedure as according to these provisions, reopening is possible only for convictions but not where charges have been dropped.
• *Information provided by the applicant*: the applicant indicates that he had asked for the investigation to be re-opened on the basis of Article 188 ff., Code of Criminal Procedure (reopening of an investigation on the basis of new charges) but his application was rejected by the Public Prosecutor's Office on 12/01/2007.
• *The examination of this information is underway.*
General measures:
1) Violation of Article 2 (substantive aspect):
• *Information provided by the French authorities:* The judgment has been sent out to the police, and will be commented upon during police officers' training, in order to draw the consequences of this judgment in their work and to avoid new, similar violations.
More generally speaking, the French government has maintained important efforts for several years, taking into account the CPT's recommendations, to improve conditions of detention on remand. For example, a Circular was issued on 11/3/2003 sets out measures to "modernise professional practice and the means devoted to detention on remand (…) in order to guarantee respect for the dignity of detainees".
Concerning the absence of a plausible explanation for the origin of the wounds, see below (procedural aspect).
• *The examination of these measures is under way.*
2) Violation of Article 2 (procedural aspect):
• *Information provided by the French authorities:* the judgment of the European Court was sent to the First President of the Court of Cassation and to the Public Prosecutor before the same Court, as well as to the Public Prosecutor before the Court of Appeal of Bordeaux, which was concerned in this case. The French delegation also stated that the judgment would be published and commented on the Intranet site of the Ministry of Justice.
• *The examination of these measures is under way.*

1013 (December 2007) section 4.2
59842/00 Vetter, judgment of 31/05/2005, final on 31/08/2005
This case concerns an interference in the applicant's right to respect for his private life. The applicant was suspected of intentional murder and the police, acting on the instructions of the examining magistrate, had bugged the apartment of a third person regularly visited by the applicant.
The European Court found in particular that as French law with regard to the planting of listening devices did not set out clearly enough the extent of the authorities' discretion or how this discretion should be exercised, the audio surveillance at issue was not "in accordance with the law" (violation of Article 8).
The case also concerns the unfairness of the proceedings before the criminal chamber of the *Cour de cassation*, due to the failure to communicate the report of the reporting judge to the applicant or to his lawyer, whereas this report had been submitted to the advocate-general (violation of Article 6§1).
The proceedings resulted in 2000 in a final judgment sentencing the applicant to 20 years' imprisonment.
Individual measures: The applicant may apply for the re-opening of his appeal on the basis of Articles L 626-1 ff of the Code of Criminal Procedure.
• *Information has been awaited since December 2005 concerning the fate of the recordings*.
General measures:
1) Violation of Article 8: On 19/12/2005, the Secretariat wrote to the French authorities drawing their attention to the conclusions of the European Court in this judgment (*inter alia* § 26) and inviting them to draw up a plan of action for its execution. Since this letter was sent, the Committee of Ministers has examined the case of Wisse against France (Application No. 71611/01, Section 4.2) in which judgment the Court mentions the Vetter judgment and the entry into force, subsequent to that judgment, of Law No. 2004-204 of 9/04/2004, the intention of which is to adapt the justice system to certain developments in crime. This Act contains provisions concerning the use of sound recordings in proceedings to establish facts relating to organised crime (Article 706-9 of the Coe of Criminal Procedure).
• *Information is requested as to whether and to what extent Law (No. 2004-204 of 9/04/2004) may applied to facts similar to those of the Vetter case. If it cannot apply, information would be required as*

to the measures the French authorities envisage to avoid the repetition of the violation found in this case.

2) Violation of Article 6: This case presents similarities to those of Reinhardt and Slimane-Kaïd (22921/93, Resolution DH(98)306) and Slimane-Kaïd No. 2 (29507/95, in Section 6.2 following measures taken by the respondent state).

1013 (December 2007) section 4.2

46096/99 Mocie, judgment of 08/04/03, final on 08/07/03
76977/01 Desserprit, judgment of 28/11/2006, final on 28/02/2007

This case concerns the excessive length of two sets of proceedings concerning civil rights and obligations before military pensions tribunals of incapacity (violations of Article 6§1). In the Mocie case, the first set of proceedings began in 1988 and was still pending when the European Court delivered its judgment (14 years and 10 months); the second began in 1990 and ended in 1998 (almost 8 years).

The European Court underlined that in view of the applicant's lack of means and the deterioration of his health, his claims for benefits were vital to him and the authorities should have been particularly diligent in dealing with them.

In the Desserprit case, the proceedings began in 1988 and ended in 2004 (more than 15 years).

Individual measures: concerning the progress of the first set of proceedings in the Mocie case: on 28/02/2006, the *Cour régionale des pensions* of Poitiers (appeal court) accepted the applicant's requests. In July 2007, the Secretariat has been informed that the applicant has appealed on points of law to the *Conseil d'Etat.*

• *Information is awaited on the progress of this set of proceedings and, if they are still pending, on their acceleration, in the light of the particular diligence required.*

No measure is required for the other proceedings concerned, as they are closed.

General measures: The proceedings before military pensions tribunals are particular and take place partly before civil courts, and partly before administrative courts. Thus, reference should be made: to the measures taken to avoid excessive length of civil proceedings (see the case of C.R. in Section 6.1 for the 940th meeting - October 2005) and to the measures taken to avoid excessive length of administrative proceedings, including before the *Conseil d'Etat* (see the Raffi case, in Section 6.1). It should be added that, since Law No. 2002-73 of 17/01/2002 (*"Loi de modernisation sociale"*), the appeals on points of law against decisions delivered by the *Cours régionales des pensions* (appeal courts) are made before the *Conseil d'Etat*, the *Commission spéciale de cassation des pensions* (Special Pensions Appeals Commission) having been suppressed (compare with Final Resolution ResDH(98)361 in the Sass case).

• *Information has been provided by the French delegation on the dissemination of both judgments. Furthermore, general information relating to the mechanism of publication and dissemination of the judgments of the European Court of Human Rights was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

997 (June 2007) section 4.2

65411/01 Sacilor-Lormines, judgment of 09/11/2006, final on 09/02/2007

The case concerns an infringement of the right to a fair trial before the *Conseil d'Etat* on account of the presence on the bench which delivered judgment, in May 2000, in a dispute between the applicant company and the Ministry of the Economy, of a member of the *Conseil d'Etat* who was subsequently appointed as Secretary General of the same Ministry (violation of Article 6§1). The European Court considered that this person could not appear neutral with regard to the applicant party as at the material time discussions concerning his future appointment were already under way.

The case also concerns a violation of the right to a fair trial on account of the Government Commissioner's participation in the deliberations of the trial bench before the *Conseil d'Etat* (violation of Article 6§1). Lastly the case concerns the excessive length of civil proceedings before the *Conseil d'Etat* (violation of Article 6§1).

Individual measures: The Court awarded the applicant company just satisfaction in respect of non-pecuniary damage on account of the excessive length of civil procedure. The Court held that it could not find any connection between the violations found and the pecuniary damage claimed. Lastly, the Court the Court considered the finding of the violation as a sufficient redress in respect of non-pecuniary damage.

• *Information is awaited on individual measures envisaged.*

General measures:

***1) Independence and impartiality of the* Conseil d'Etat**

• *Information is awaited concerning the necessary publication of the European Court's judgment and its communication to the* Conseil d'Etat. *Information is also awaited on possible further measures.*

***2) The Government Commissioner's participation in the deliberations of the* Conseil d'Etat**: Measures have been adopted, see CM/ResDH(2007)44 in the Kress case.

3) Excessive length of civil proceedings before administrative courts: General measures have been adopted see the Raffi case (982nd meeting, December 2006, section 2)

1013 (December 2007) section 4.2

16846/02 Labergere, judgment of 26/09/2006, final on 26/12/2006

The case concerns a violation of the applicant's right of access to a court (Article 6§1). In 2001, the applicant's appeal against an Assize Court judgment convicting him and sentencing him to 18 years' imprisonment was declared inadmissible by the *Cour de cassation* on the ground that it had been lodged after the expiry of the deadline (10 days from the delivery of the judgment, for the accused, see Article 380-1 ff. of the Code of criminal procedure).

But in the particular circumstances of the case and given the importance of the appeal for the applicant, the decision of the Court of cassation was excessively rigorous. In reaching this conclusion, the European Court took into account in particular the fact that for seven out of the 10 days during which the applicant might have appealed, he had been held in a psychiatric hospital, and that doubts existed concerning his lucidity not only while he was hospitalised, but also before and after (see §§ 20 to 25 of the judgment).

Individual measures: The applicant may ask for the reopening of his case in application of Articles L 626-1 ff. of the Code of Criminal Procedure. He made no request for a just satisfaction before the European Court.

• *Assessment: no further measure seems necessary.*

General measures: Given that the violation in this case was due to the manner in which the law was implemented, it would be appropriate to publish the European Court's judgment end to bring it to the attention of the *Cour de cassation* in order to ensure that, in the future, the law will be implemented in accordance with the Convention as interpreted in the present judgment

Furthermore, it is recalled that on a related question (admissibility of an appeal on points of law to the *Cour de cassation*, lodged out of time, also in very particular circumstances; see the Tricard case, Resolution CM/ResDH(2007)52 adopted at the 992nd meeting, April 2007), the French authorities indicated that the criminal chamber of the *Cour de cassation* now admits that appeals may be accepted even after the expiry of the time limit if, “due to a case of *force majeure* or to an insuperable obstacle beyond his/her control, the complainant was unable to conform to the time limit”.

• *Information is awaited on the dissemination of the judgment of the* Cour de cassation *and its publication, as well as on the possibility of applying the general measures adopted in the Tricard case to the legal problem at issue in the Labergere case.*

• *Information has been provided by the French delegation on the dissemination of this judgment. Furthermore, general information relating to the mechanism of publication and dissemination of the judgments of the European Court of Human Rights was provided by the delegation by letter of 26/10/2007. This information is currently being assessed*

1007 (October 2007) section 5.3

27678/02 Bernard Gérard, judgment of 26/09/2006, final on 26/12/2006

The case concerns the excessive length of the applicant's detention on remand (violation of Article 5§3). The European Court considered that, to comply with the Convention, strong grounds were required for depriving the applicant of his liberty for so long (two years, 11 months and 13 days) and whilst the grounds had been relevant initially, they had ceased to be so with the passage of time.

Individual measures: None: the applicant is no longer on remand and the European Court awarded him just satisfaction in respect of non-pecuniary damage.

General measures: Publication of the Court's judgment and dissemination to the judges involved in the case seem necessary.

1007 (October 2007) section 2

***17070/05 Farhi, judgment of 16/01/2007, final on 23/05/2007**

The case concerns a breach of the applicant's right to be tried by an impartial tribunal (violation of Article 6 §1) due to the refusal by an Assize Court to take formal note of an unlawful communication, within the meaning of Article 304 of the Code of Criminal Procedure, between certain jurors and the advocate-general during an adjournment.

The European Court considered that the defendant and the public prosecutor's office, who had separate and competing interests, could be regarded as “opposing parties” in the proceedings. It took the view that the allegation that the advocate-general had had contact with members of the jury was sufficiently serious to warrant the instigation of an inquiry by the President of the Assize Court. In the Court's view, only by hearing evidence from the jurors would it have been possible to shed light on the nature of the remarks exchanged and the influence they might have had on jurors' opinions.
Individual measures: The European Court considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. In application of Article 626-1 of the Code of Criminal Procedure, the applicant may request reopening of the proceedings.
• *Assessment: No further measure therefore seems necessary*
General measures: What is criticised in this case is the way in which Article 304 of the Code of Criminal Procedure was applied.
• *It will be necessary to publish the European court's judgment and to send it out to the Cour de cassation and to Courts of appeal, assize-court judges being chosen amongst the magistrates of appeal courts.*

1013 (December 2007) section 5.3
77773/01 Flandin, judgment of 28/11/2006, final on 28/02/2007
This case concerns the unfairness of criminal proceedings against the applicant, in that his right to free legal assistance by a court-appointed lawyer was not respected and, thus, he has not had adequate facilities for the preparation of his defence (violation of Article 6, paragraphs 1 and 3 b) and c)). He had been granted legal assistance, and counsel designated, by a decision of 21/03/2000, but this decision was not notified to him until more than three weeks after the hearing before the court of appeal which substantially increased the fine imposed on the applicant. The Court of Cassation did nothing to remedy the violation, rejecting the applicant's appeal on points on law on the ground that as he had been able to defend himself in person at the hearing at issue, he had renounced assistance by counsel; on this point the European Court noted, to the contrary that the applicant had constantly expressed the wish to be defended by counsel before the court of appeal.
Individual measures: The applicant may request the re-examination of his conviction under Articles L 626-1 ff. of the Code of Criminal Procedure. He made no application to the European Court for just satisfaction.
• *Assessment: no other measure appears necessary.*
General measures: The shortcoming at the origin of the violation is the long period of time taken by the Legal Aid Office to communicate the decision granting legal aid to the applicant and to his lawyer, and the Court of Cassation failed to rectify this.
• *The dissemination of this judgment to the Legal Aid Offices and to the Court of cassation seems necessary.*
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*

1013 (December 2007) section 5.3
66053/01 Simon, judgment of 08/06/2004, final on 08/09/2004
This case concerns the excessive length of certain proceedings concerning civil rights and obligations before administrative courts (violation of Article 6§1). The proceedings began in 1996 and are closed. They lasted more than 4 years and 7 months, for 3 degrees of jurisdiction.
The European Court said that, in view of what was at stake for the applicant (dispute relating to the applicant's means of subsistence) the authorities should have acted with “particular promptness”.
Individual measures: None (proceedings are closed).
General measures: This case presents similarities to other cases of length of proceedings before administrative courts, closed by Final Resolution ResDH(2005)63 following the measures announced by the respondent state, in particular: Law No. 2002-1138 of 09/09/2002, providing *inter alia* for recruitment of staff, the creation of new courts and budgetary resources and procedural measures to enable administrative courts both to reduce their backlogs more quickly and reduce the flow of incoming cases.
• *Having regard to the “particular promptness” required according to the European Court, confirmation is awaited that the judgment of the European Court has been sent out to the competent authorities, so*

that they may directly apply the Convention as interpreted by the Court in this judgment. It is recalled that the Convention and the case-law of the European Court have direct effect in France.
• *General information relating to the mechanism of publication and dissemination of the judgments of the European Court was provided by the delegation by letter of 26/10/2007. This information is currently being assessed.*
Finally, it should be recalled that in the case of Broca and Texier-Micault (judgment of 21/10/2003) the European Court found that a remedy now exists in French law whereby complaint may be made against the excessive length of proceedings before administrative courts. However, applicants whose applications had been lodged before 01/01/2003 (as in these cases) could not be expected to have exhausted this remedy. A change is nonetheless to be noted in this respect: since 01/09/2005, this remedy falls under the exclusive jurisdiction of the *Conseil Etat*; thus applications lodged on this basis will be settled promptly, avoiding any excessive length of proceedings to engage the state's responsibility (see the Richard-Dubarry case mentioned above).

1013 (December 2007) section 4.2
53929/00 Richard-Dubarry, judgment of 01/06/2004, final on 01/09/2004
49699/99+ Siffre, Ecoffet and Bernardini, judgment of 12/12/2006, final on 12/03/2007, rectified on 27/03/2007
This case concerns the excessive length of certain proceedings concerning civil rights and obligations before financial courts (violations of Article 6§1). In the case of Richard-Dubarry, the four sets of proceedings concerned began in November and December 1994 and were still pending when the European Court delivered its judgment (nearly 9½ years). In the case of Siffre, Ecoffet and Bernardini, the proceedings lasted from 1995 to 2000.
Individual measure:
1) Case of Siffre, Ecoffet and Bernardini: No individual measure is necessary, the proceedings being closed.
2) Case of Richard-Dubarry: the delegation provided detailed information on the progress of the proceedings.
In two of the sets of proceedings (those of the *Association du personnel de la commune de Noisy-le-Grand* and the *Association Noisy communication*), the *Cour des comptes* (the highest court of audit) had acted to accelerate the proceedings. In particular, after having annulled on 21/12/2006 several early judgments of the *Chambre régionale des comptes* (regional audit court) in strict application of the European Court's case-law in the Martinie case (judgment of 12/04/2006), the *Cour des Comptes* decided to consider itself the merits of the cases, rather that sending them back to the *Chambre régionale des comptes*, so as to reduce the length of the proceedings.
In the two other sets of proceedings concerned (those of the *Association centre culturel Michel Simon* and the *Association Michel Simon Arts Production*), after the European Court's judgment, the *Chambre régionale des comptes* delivered judgments in 2005 and 2006. Appeals lodged by the applicant against these judgments are pending before the *Cour des comptes*.
• *Information would be useful on the progress of these proceedings.*
General measures:
1) Excessive length of proceedings:
• *Information provided by the French authorities* on measures taken recently in this respect:
- Article R 112-2 of the Code of Administrative Justice, as worded following a Decree of 09/12/2005, provides that any party considering that proceedings before an administrative tribunal or court of appeal are excessively lengthy may seise the Head of the Standing Inspectorate of Administrative Courts (*mission permanente d'inspection des juridictions administratives*), who may make recommendations to redress the situation.
- The Head of the Standing Inspectorate also receives copies of all administrative or judicial decisions allocating compensation for the damage caused by the excessive length of proceedings before the administrative courts. If he considers it appropriate, he may bring any shortcoming in the provision of justice to the attention to the attention of court presidents.
• *Information has been requested as to whether or not there is a general problem of excessive length of proceedings before financial courts. In this context it would be helpful to know whether the measures taken regarding the excessive length of proceedings before administrative courts (Final Resolution ResDH(2005)63, adopted on 18/07/2005, SAPL case and other cases) are also valid for financial courts.*

In this context, the Secretariat notes that in the Martinie case (section 4.2) the delegation indicated that, upon request of the President of the Cour des comptes*, an internal working group of the audit courts has been set up with a view to preparing draft legislative and statutory provisions in order to draw the consequences of the Martinie judgment. This group held that the revision of the judicial procedures of the* Cour des comptes *and of the* Chambres régionales et territoriales des comptes *should cover "the entirety of the proceedings before financial courts to determine* de facto *financial responsibility, of which the judgment in the case of Siffre, Ecoffet and Bernardini against France emphasised the incompatibility with the requirement of "reasonable time".*

• *Further information in this respect would appear necessary.*

2) Effective remedy to complain of the excessive length of proceedings:

• *Information provided by the French authorities*: The *Cour des comptes* confirmed the information previously provided by the delegation that the effective remedy for complaints about the excessive length of administrative proceedings - generally speaking - also applies to proceedings before the financial courts.

Since then reminders and details have been provided with regard to this remedy. In the Broca and Texier-Micault judgment of 21/10/2003, the European Court found (on the basis of the established case-law of the national courts) that there exists an effective remedy in respect of the excessive length of proceedings before administrative courts. The delegation added that, since 01/09/2005, this remedy has been included in Code of Administrative Justice (Article R 311-1, paragraph 7) and, since then, falls under the exclusive jurisdiction of the Conseil Etat. The delegation also stated that accordingly, applications lodged on this basis may be settled promptly, avoiding any excessive length of proceedings to engage the state's responsibility.

• *Assessment: No further measure would appear necessary.*

1013 (December 2007) section 4.2

36436/97 Piron, judgment of 14/11/00, final on 14/02/01
42928/02 Epoux Machard, judgment of 25/04/2006, final on 13/09/2006

These cases concern violations of the applicants' right to the peaceful enjoyment of their possessions, due to the particularly lengthy duration (more than thirty years in each case) of certain consolidation proceedings (violations of Article 1 of Protocol No. 1). The European Court recalled that the duration of such proceedings "is material, together with other elements, in determining whether the disputed transfer was compatible with the guarantee of the right of property".

In the Piron case, the Court also found that the judicial proceedings had been excessively long, before administrative courts, concerning the consolidation proceedings (violation of Article 6§1).

Individual measures:

1) Piron case: Following the cancellation on 29/03/2002 by the *Conseil d'Etat* of the decision of 27/06/2000 on the applicant's compensation by the competent authority (*commission nationale de réaménagement foncier*), the latter re-examined the case on 16/12/2003 and, in a motivated decision taken in the light of the report of a new expert and the oral observations of the applicant, increased the compensation from 28 730.85 to 93 741 euros. The decision indicates that the new amount takes into consideration "among other things the abnormal delay since the first decision of justice concerning the dispute (…), and the subsequent loss of productivity". On 10/08/2005, the *Conseil d'Etat* rejected the applicant's appeal against the decision of 16/12/2003. Whether or not the applicant has started proceedings before the civil courts is currently being checked.

• *Information would be useful on the latter point.*

2) Epoux Machard case: It transpires from the European court's judgment that the proceedings are closed and that no question arises concerning the execution of the internal decisions. The European Court compensated the non-pecuniary damage resulting from the length of the proceedings and dismissed the applicants' claims relating to pecuniary damage, in view of the absence of any causal link with the violation found.

• *Assessment: Thus, no individual measure is necessary.*

General measures:

• *Information provided by the delegation:* on 23/02/2005 the law on Promotion of the Development of Rural Areas was adopted. This law simplifies and decentralises land-use development processes, provides for the abolition of the relevant national authority and makes it easier to obtain compensation where it is impossible to alter the division of land. By letter of 06/07/2007, the delegation indicated that the Office of the Government's Agent would question the Ministry of Agriculture on the concrete improvements brought by this law in order to avoid new, similar violations of the Convention.

• *Further information is awaited on this issue.*

1013 (December 2007) section 4.2

508/02 L.L., judgment of 10/10/2006, final on 12/02/2007

The case concerns an infringement of the applicant's right to respect for his private and family life (violation of Article 8) on account of the production and use in divorce proceedings of documents from his medical records. The European Court held that it was only on a subsidiary basis that the courts had referred to the medical report at issue in support of their decisions and that therefore the interference with the applicant's right to respect for his private life was not was not "necessary in a democratic society".

Individual measures: The European Court considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage. Moreover, the Court stated that, under sections 1440 and 1441 of the new Code of Civil Procedure, anyone may ask the registry of the tribunal concerned, without justifying any particular interest, for a copy of any judicial decision in civil, social or commercial matters, and that the registry must deliver a copy or extracts of the decision (§ 33).

• *Information is awaited on measures envisaged to ensure that information regarding the applicant's private life is not given if a copy of a judgment concerning the applicant were requested.*

General measures:

• *Dissemination of this judgment to the Cour de cassation and to civil courts is awaited. Moreover information is awaited on measures envisaged to provide sufficient safeguards as regards the use in divorce proceedings of data concerning the parties' private lives (§47).*

1013 (December 2007) section 4.2

71611/01 Wisse, judgment of 20/12/2005, final on 20/03/2006

This case concerns a breach of the applicants' right to respect for their private and family life in that from November 1998 to February 1999, while they were in detention on remand their conversations with their relatives in prison visiting rooms were recorded (violation of Article 8).

According to the European Court, the systematic recording of conversations in a visiting room for purposes other than prison security is a denial of the sole purpose of such facilities, namely to allow detainees to maintain some degree of "private life", including the privacy of conversations with their families. In this respect the Court considered that French law did not indicate with sufficient clarity how and to what extent the authorities could interfere with detainees' private lives, or the scope and manner of exercise of their powers of discretion in that sphere.

The proceedings resulted, in 2002, in the applicants being sentenced respectively to 25 and 20 years imprisonment by the Ille-et-Vilaine Assize Court (first degree of jurisdiction). They did not appeal this decision

Individual measures: It may be noted that in its (partial) decision on the admissibility of this application, the European Court rejected the applicants' complaint that the criminal proceedings had been unfair on account of the use of the recordings as evidence against them (complaint under Article 6§1) for non exhaustion of internal remedies.

• *Information on the fate of the recordings would be useful*

General measures: After the events a law was passed containing provisions relating to the recording of conversations in the context of proceedings concerning facts of organised crime (law No.2004-204 of 09/03/204, "adapting justice to the evolutions of crime"). On 14/06/2006, the Secretariat wrote to the French authorities requesting information concerning the exact scope of the new provisions, in order to assess the need to adopt further measures.

• *Information is requested as to whether and to what extent Law (No. 2004-204 of 9/04/2004) may be applied to facts similar to those of the Wisse case. If it cannot apply, information would be required as to the measuress the French authorities envisage to avoid the repetition of the violation found in this case.*

1013 (December 2007) section 4.2

58675/00 Martinie, judgment of 12/04/2006 - Grand Chamber

This case concerns the violations of the right to a fair trial of the applicant, a former accountant in the Bayonne Lycée and the French Federation of Basque Pelota (CNEA), a body which had no separate legal personality and was attached to the school's budget. In October 1997, the Aquitaine Regional Audit Office considered that the applicant owed the school a sum corresponding to the payments he had made as the school's public accountant between 1989 and 1993 to the CNEA's director and himself, acting as its secretary general. At appeal, by its judgment of 20/10/1998, the Court of Audit reduced that amount to FRF 191 900 (29 117,76 euros). In October 1999, the applicant's appeal on points of law lodged before the *Conseil d'Etat* was declared inadmissible.

The European Court found two violations of Article 6§1 as regards the proceedings before the Audit Court, since the applicant could not request a public hearing before this court and there was an imbalance detrimental to him due to the Prosecutor's position in these proceedings.
Moreover, the European Court found a violation of Article 6§1 because of the Government Commissioner's participation in the deliberations of the bench of the *Conseil d'Etat*, and confirmed its case-law in the Kress judgment (judgment of 07/06/2001, Grand Chamber).
Individual measures: On 17/06/2001, the Minister of Finance granted the applicant partial remission of the surcharge levied by the Court of Audit, in the sum of 21 053,91 euros, with 762,25 euros thus remaining payable by him (§ 12 of the judgment). Before the European Court, the applicant claimed reimbursement of that sum plus statutory interest as well as just satisfaction for non-pecuniary damage.
The European Court considered it could not speculate as to the outcome of the proceedings had there not been a breach and rejected the applicant's claims for compensation for pecuniary damage. As to the non-pecuniary damage, it found it was sufficiently made good by its finding of the violation.
• *Assessment: The applicant does not seem to suffer any serious consequence of the violation, therefore no additional individual measure is required.*
General measures:
1) Violations of Article 6§1 during the proceedings before the Court of Audit: As proceedings before regional audit offices are conducted *in camera*, the European Court considers it essential that public accountants are able to request a public hearing before the Court of Audit in appeals against first-instance judgment levying a surcharge against them.
The European Court was critical of the Prosecutor's position in the impugned proceedings: as a matter of fact, the Prosecutor was present at the hearing, was informed beforehand of the reporting judge's point of view, heard the latter's submissions at the hearing, fully participated in the proceedings and could express his own point of view orally without being contradicted by the accountant. That imbalance was accentuated by the fact that the hearing was not public and therefore conducted in the absence of any scrutiny either by the accountant concerned or by the public.
• *Information provided by the French authorities* (letters of 29/08/2006 and 25/04/2007): The interim measures taken by the First President of the Court of Audit have been in force with regard to financial courts since 16/05/2006. A public hearing is now organised before any repayment may be ordered, just as it was for any appeal against a repayment order. The reporting judge does not take part in deliberations, nor does the prosecution. The investigation report is no longer confidential; it is placed on file together with the conclusions of the prosecution, and the parties may consult the file, any element of which may be disclosed to them.
A working group has been set up within the financial courts to draft legislative and regulatory texts to give definitive effect to measures required since the European Court's judgment in Zervudacki (Application No. 73947/01 in Section 4.2 at the 997th meeting and another recent judgment (Siffre, Ecoffet and Bernardini, Application No. 49699/99 in Section 4.2).
A draft text should be transmitted to the competent authorities by mid-year.
Information is awaited on the state of progress of this draft and a copy of the draft text would be helpful.
2) Violation of Article 6§1 due to the Government Commissioner's participation in the deliberations of the bench of the Conseil d'Etat: General measures were adopted following the judgment in the Kress case (see Resolution CM/ResDH(2007)44 in the case of Kress against France and in 5 other cases concerning the right to a fair trial before the *Conseil d'Etat*).

1013 (December 2007) section 4.2
954/05 Chiesi S.A., judgment of 16/01/2007, final on 16/04/2007
The case concerns a violation of the right to a fair trial (violation of Article 6§1) resulting from the enactment of a law intended to resolve pending disputes and the application of this law to a dispute between the applicant company and public authorities. The applicant company had brought administrative proceedings following a decision by the Minister of Health to reduce the rate of reimbursement in respect of certain pharmaceutical products - in particular a medicament manufactured by the applicant - from 65% to 35%. While the proceedings were in progress, Law No. 2003-1199 on social-security funding for 2004 entered into force. This Law contained a provision applicable to proceedings in progress and opposed the previous case-law of the *Conseil d'Etat*, which had benefited those in the applicant company's situation.
The Court also found that the public authorities would not have been prevented from achieving the aim pursued in this case if pending proceedings had been excluded from the scope of the Law, but the equality of arms in proceedings in progress would have been respected.

Individual measures: The Court dismissed the applicant's request for pecuniary damage, seeing no link between the violation found and the pecuniary damage claimed, but awarded just satisfaction in respect of non-pecuniary damage.
• *Assessment: bilateral contacts are under way to determine whether further measures are required.*
General measures: It will be necessary to publish and disseminate the European Court's judgment.
• *Information provided by the French authorities in the framework of the examination of the Cabourdin group:* The French authorities, and in particular the Ministry of Economy and Finance, are holding exchanges of views on the use of laws designed to legalise existing practices (*lois de validation*) and on measures necessary to avoid new violations (letter of 25/06/2007).
• *Information is awaited on the results of these exchanges of views and on the measures envisaged to avoid further violations.*