CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

INFORMATION NOTE No. 41
on the case-law of the Court
April 2002

The summaries are prepared by the Registry and are not binding on the Court.

Statistical information[1]

Judgments delivered	**April**	**2002**
Grand Chamber	0	1
Section I	8	184(185)
Section II	13	65(66)
Section III	5	79(84)
Section IV	4(7)	81(84)
Sections in former compositions	2	17
Total	**32(35)**	**427(437)**

Judgments delivered in April 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	2[2]	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	6	2	0	0	8
Section II	8	3	2	0	13
Section III	3	2	0	0	5
Section IV	4(7)	0	0	0	4(7)
Total	**21(24)**	**7**	**2**	**2**	**32(35)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
former Section I	2	0	0	0	2
former Section II	0	0	0	2[2]	2
former Section III	8	0	0	0	8
former Section IV	4	0	1	0	5
Section I	166(167)	18	0	0	184(185)
Section II	55(56)	7	3	0	65(66)
Section III	65(67)	13	1(4)	0	79(84)
Section IV	74(77)	6	1	0	81(84)
Total	**375(382)**	**44**	**6(9)**	**2**	**427(437)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Just satisfaction.

[* = Judgment not final]

Decisions adopted		April	2002
I. Applications declared admissible			
Grand Chamber		1	2
Section I		15	77(81)
Section II		6	30
Section III		11	43(45)
Section IV		5	30
Total		**38**	**182(188)**
II. Applications declared inadmissible			
Section I	- Chamber	12	218(252)
	- Committee	304	1234
Section II	- Chamber	10(11)	40(41)
	- Committee	421	1449
Section III	- Chamber	6	28
	- Committee	164	860
Section IV	- Chamber	4	54(56)
	- Committee	315	1259
Total		**1236(1237)**	**5142(5179)**
III. Applications struck off			
Section I	- Chamber	1	53
	- Committee	10	25
Section II	- Chamber	1	5(6)
	- Committee	5	19
Section III	- Chamber	5	37
	- Committee	1	6
Section IV	- Chamber	0	9
	- Committee	2	10
Total		**25**	**164(165)**
Total number of decisions[1]		**1299(1300)**	**5488(5532)**

1. Not including partial decisions.

Applications communicated	April	2002
Section I	26	152(153)
Section II	45(48)	114(118)
Section III	28	109(110)
Section IV	30(33)	76(96)
Total number of applications communicated	**129(135)**	**451(477)**

ARTICLE 2

POSITIVE OBLIGATIONS
Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*.

PRETTY - United Kingdom (Nº 2346/02)
Judgment 29.4.2002 [Section IV]

Facts: The applicant, a 43-year old woman, suffers from motor neurone disease, an incurable degenerative disease which leads to severe weakness of the arms and legs and of the muscles involved in control of breathing, eventually resulting in death. The applicant's condition deteriorated rapidly after it was diagnosed in 1999 and the disease is at an advanced stage: she is paralysed from the neck down and has to be fed by a tube, but her intellect and capacity to take decisions are unimpaired. As the final stages of the disease are distressing and undignified, the applicant wishes to control how and when she dies. However, she is unable to commit suicide without assistance and it is a crime to assist another to commit suicide. The applicant's lawyer requested the Director of Public Prosecutions to give an undertaking that her husband would not be prosecuted if he assisted her to commit suicide. The request was refused and the Divisional Court refused an application for judicial review. The applicant's appeal was dismissed by the House of Lords in November 2001.
Law: Pursuant to Article 29(3) of the Convention, the Court declared the application admissible.
Article 2 – The consistent emphasis in all the cases brought before the Court under this provision has been the obligation of the State to protect life and the Court was not persuaded that the right to life could be interpreted as involving a negative aspect. Article 2 is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life and it cannot, without a distortion of language, be interpreted as conferring a right to die, nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. Accordingly, no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2. Moreover, it was not for the Court in the present case to attempt to assess whether or not the state of law in any other country failed to protect the right to life. Even if circumstances prevailing in a particular country which permitted assisted suicide were found not to infringe Article 2, that would not assist the applicant's case, where the very different proposition that the United Kingdom would be in breach of its obligations under Article 2 if it did not allow assisted suicide had not been established.
Conclusion: no violation (unanimously).
Article 3 – It was beyond dispute that the respondent Government had not inflicted any ill-treatment on the applicant, nor was there any complaint that the applicant was not receiving adequate care from the State medical authorities. There was thus no act or "treatment": the applicant's claim that the refusal to give an undertaking not to prosecute her husband disclosed inhuman and degrading treatment for which the State was responsible in failing to protect her from suffering placed a new and extended construction on the concept of treatment which went beyond the ordinary meaning of the word. Article 3 must be construed in harmony with Article 2, which is first and foremost a prohibition on the use of lethal force or other conduct which might lead to death. The positive obligation on the part of the State which is invoked by the applicant would not involve the removal or mitigation of harm by, for instance, preventing any ill-treatment by public bodies or private individuals or providing improved conditions or care; it would require that the State sanction actions intended to terminate life, an obligation that cannot be derived from Article 3. Consequently, no positive obligation arose under that provision either

to require an undertaking not to prosecute or to provide a lawful opportunity for any other form of assisted suicide.
Conclusion: no violation (unanimously).
Article 8 – Although no previous case has established as such any right to self-determination as being contained in this provision, the notion of personal autonomy is an important principle underlying the interpretation of its guarantees. The ability to conduct one's life in a manner of one's own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned and even where the conduct poses a danger to health or, arguably, life, the case-law of the Convention institutions has regarded the State's imposition of compulsory or criminal measures as impinging on private life. In the sphere of medical treatment, the refusal to accept a particular treatment might, inevitably, lead to a fatal outcome, yet the imposition of medical treatment without consent would interfere with a person's physical integrity in a manner capable of engaging the rights protected by Article 8. The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life, it is under Article 8 that notions of the quality of life take on significance and it could not be excluded that preventing the applicant from exercising her choice to avoid an undignified and distressing end to her life constituted an interference with her right to respect for her private life. Article 8 was therefore applicable. The only remaining issue was the necessity of any interference. Although the Government's assertion that the applicant had to be regarded as vulnerable was not supported by the evidence, States are entitled to regulate through the operation of the general criminal law activities which are detrimental to the life and safety of other individuals and the relevant law in the present case was designed to safeguard life by protecting the weak and vulnerable. Many terminally ill individuals will be vulnerable and it is the vulnerability of the class which provides the rationale for the law in question. It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created. A blanket prohibition on assisted suicide is not, therefore, disproportionate. It did not appear to be arbitrary for the law to reflect the importance of life by prohibiting assisted suicide while providing for a system of enforcement and adjudication which allowed due regard to be given in each particular case to the public interest in bringing a prosecution, as well as to the fair and proper requirements of retribution and deterrence. Nor was the refusal to give an advance undertaking not to prosecute disproportionate: strong arguments based on the rule of law could be raised against any claim by the executive to exempt individuals or classes from the operation of the law and, in any event, the seriousness of the act for which immunity was claimed was such that the refusal could not be said to be arbitrary or unreasonable. Consequently, the interference could be justified as necessary in a democratic society.
Conclusion: no violation (unanimously).
Article 9 – Not all opinions or convictions constitute beliefs in the sense of this provision and the applicant's claims did not involve a form of manifestation of a religion or belief. To the extent that her views reflected her commitment to the principle of personal autonomy, her claim was a restatement of the complaint under Article 8.
Conclusion: no violation (unanimously).
Article 14 – It had been found under Article 8 that there are sound reasons for not introducing into the law exceptions to cater for those deemed not to be vulnerable, and similar cogent reasons existed under Article 14 for not seeking to distinguish between those who are and those who are not physically capable of committing suicide. The borderline between the two categories will often be a very fine one and to seek to build into the law an exemption for those judged to be incapable of committing suicide would seriously undermine the protection of life which the legislation was intended to safeguard and greatly increase the risk of abuse.
Conclusion: no violation (unanimously).

POSITIVE OBLIGATIONS
Refusal to refund the full cost of expensive medicine essential for treatment of applicant, suffering from a terminal illness and of modest means: *inadmissible*.

NITECKI - Poland (N° 65653/01)
Decision 21.3.2002 [Section I]

The applicant, who suffers from sclerosis, was prescribed an expensive medicine as part of his treatment for his terminal illness. The medicine was only refunded up to 70% of its cost by the Health Insurance Fund. The applicant asked the local Health Insurance Fund to reimburse the full cost, claiming that he did not have sufficient means to bear the remaining 30% of its price. The Fund refused, indicating that there was no legal possibility of refunding the full price of the medicine. The District Social Services rejected the applicant's request for a full refund and the Ministry of Health and Social Security informed him that the medicine was refunded only up to 70% despite the high cost it represented for patients. The applicant's degree of invalidity was increased from second to first degree. He lodged an appeal against the decision of the Ministry with the Supreme Court but was informed that no appeal was available against such decisions.
Inadmissible under Article 2: It cannot be excluded that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under this provision. The Court has held in previous cases involving allegations of malpractice that the State's positive obligation under Article 2 to protect life includes the requirement for hospitals to have regulations for the protection of their patients' lives and also the obligation to establish an effective judicial system for establishing the cause of a death which occurs in hospital and any liability on the part of the medical practitioners concerned. Furthermore, with respect to the scope of the State's positive obligations in the provision of health care, the Court has stated that an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk through denial of health care which they have undertaken to make available to the population generally. In the present case, the applicant's social security contributions made him eligible to benefit from the public health service. Like other entitled persons, he had access to a standard of health care offered by the public service. Bearing in mind the medical treatment and facilities provided to the applicant, including a refund of the greater part of the cost of the required drug, the respondent State could not be said, in the special circumstances of the case, to have failed to discharge its obligations under Article 2 by not paying the remaining 30% of the cost of the medicine: manifestly ill-founded.

LIFE
Wounding of applicant by shots fired by soldiers of the TRNC near the UN buffer zone: *communicated*.

ANDREOU - Turquie (N° 45653/99)
[Section III]

In 1996 the applicant attended the funeral of a friend of her son who had been beaten to death in the UN buffer zone. After the funeral, a number of people gathered near where the incident had occurred. The applicant remained outside the buffer zone, observing from a distance. At a certain point soldiers started shooting from the area under the control of the Turkish armed forces. Several people were wounded, including the applicant, who was hit by a bullet in the abdomen. She had to be operated on and lost a kidney. She claims to be still suffering from this injury, as a result of which she has not been able to find work and has suffered psychological distress.
Communicated under Articles 2 and 3.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*.

PRETTY - United Kingdom (Nº 2346/02)
Judgment 29.4.2002 [Section IV]
(see Article 2, above).

INHUMAN OR DEGRADING TREATMENT
Amount of old-age pension and social benefits allegedly insufficient to maintain adequate standard of living: *inadmissible*.

LARIOSHINA - Russia (N° 56869/00)
Decision 23.4.2002 [Section II]

The applicant complained, *inter alia*, about the amount of the old-age pension and additional social benefits she received from the social security authorities. She alleged that it was insufficient to maintain an adequate standard of living.
Inadmissible under Article 3: A complaint about a wholly insufficient amount of pension and other social benefits may, in principle, raise an issue under Article 3. However, in the present case there is no indication that the amount of the applicant's pension and additional social benefits caused damage to her physical and mental health capable of attaining the minimum level of severity required by Article 3: manifestly ill-founded.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Placement in police custody following refusal to disclose identity: *admissible*.

VASILEVA - Denmark (N° 52792/99)
Decision 30.4.2002 [Section I]

On 11 August 1995 the applicant was accused by a conductor of travelling on a public bus without a valid ticket. A dispute started and the police were called. The applicant refused to give her name and address and was arrested at 9.30 p.m., in accordance with the Administration of Justice Act, and taken to a police station. She was put in a waiting room at 9.45 p.m. and moved to a detention cell at 11 p.m. The next day, at 10.45 a.m., she disclosed her identity and was released at 11 a.m. She complains about that her detention was unlawful.
Admissible under Article 5(1).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Inapplicability of Article 6 to extradition proceedings.

PEÑAFIEL SALGADO - Spain (N° 65964/01)
Decision 16.4.2002 [Section IV]

The applicant, an Ecuadorian national, was a banker in Ecuador. In September 1998, he emigrated to Spain when the banks were being criticised for their role in precipitating the economic crisis currently affecting the country. At the time of his departure, a warrant had been issued ordering his remand in custody. As the economic crisis worsened, the Ecuadorian authorities placed particular stress on bankers' share of responsibility for the country's difficulties and decided to seek the extradition of those who, according to them, had fled the country. The applicant, alarmed by calls from the political authorities for popular reprisals against him, decided to apply for political asylum in Spain. He contacted the Spanish authorities for that purpose but was then arrested in Lebanon, where he was on a business trip. Ecuador requested his extradition from Lebanon. Despite an asylum request lodged with the Spanish embassy in Beirut, the Lebanese authorities proceeded with his extradition. He took advantage of a stop-over in Paris to repeat his request for political asylum in Spain and was transferred to that country for his case to be examined. In October 2000, the Spanish authorities rejected his asylum application. The Ecuadorian authorities then asked the Spanish authorities to continue with the extradition that had been interrupted by the asylum application. On 5 February 2001, the *Audiencia Nacional* approved this request. However, the applicant applied for a temporary stay of execution, which was granted until 12 February 2001. On that date, at the applicant's request, the Court decided that Article 39 of the Rules of Court was applicable and the temporary stay of execution was extended to 8 March 2001. On 15 February, the Spanish Government submitted a document to the Court describing the assurances supplied by the Ecuadorian authorities, which it considered would avoid all risk of inhuman treatment or an unfair trial. Following requests for information from the Court on 9 and 11 January 2002, the applicant stated that the very fact of presenting an application to the Court had helped to ensure his safety in Ecuador since his return. The interim measure adopted by the Court had been widely reported in the press and the authorities, including the President, had felt obliged to assure the Court that the applicant's rights would be respected in Ecuador.
Inadmissible under Article 6(1): The right not to be extradited was not, in itself, one of the rights and freedoms secured by the Convention or its protocols. Besides, the extradition procedure did not affect the determination of the applicant's civil rights and obligations or of any criminal charge against him, within the meaning of this article. The fairness of extradition proceedings in a Contracting Party to the Convention fell outside the Court's competence, and this applied even more if the proceedings took place in a State that was not a Party to the Convention, as in the case of Lebanon. The Spanish courts had only been required to establish that the applicant's rights under Articles 2 and 3 would be respected in Ecuador, not to review the form of and grounds for this extradition: incompatible *ratione materiae*.
Regarding the applicant's complaints concerning the political asylum proceedings conducted by the Spanish authorities, neither the Convention nor its protocols enshrined the right to political asylum: incompatible *ratione materiae*.

The complaints concerning the various proceedings conducted by the Ecuadorian authorities against the applicant, some of which were still pending, fell outside the Court's competence *ratione loci*. Besides, the Convention did not as such grant a right to enter and reside in a Contracting Party to persons who were not nationals of that State. Spain could not be held responsible for events and proceedings that might take place in Ecuador following the applicant's extradition, particularly as it had confined itself to not preventing extradition granted by another State, which had been interrupted on account of an asylum application: incompatible *ratione loci*.
Inadmissible under Articles 2 and 3: Circumstances such as a death sentence passed on the applicant or his placement in "death row" did not apply in this case. Besides, the applicant himself had acknowledged that the presentation of his application to the Court had helped to ensure his own safety in the prison where he had been housed since his return to Ecuador, the authorities having assured the Court that his rights would be respected in Ecuador. Consequently, the circumstances of the case and the assurances given by the Ecuadorian authorities were such as to remove the danger of ill-treatment, which the applicant had feared before his extradition, and no serious questions arose concerning his right to life, having regard to his allegations and the provisions of the Ecuadorian Constitution. Regarding any allegations of infringements of the applicant's fundamental rights, Ecuador had been a Party to the American Convention on Human Rights since its ratification in 1977, and had recognised the jurisdiction of the Inter-American Court of Human Rights in 1984: manifestly ill-founded.

ACCESS TO COURT
Refusal of public body to comply with first instance decision against which an appeal is pending: *no violation*.

OUZOUNIS and others - Greece (N° 49144/99)
Judgment 18.4.2002 [Section I]

Facts: In December 1994, the applicants applied to the retirement fund of their former employer for an increase in their retirement pensions. The fund replied favourably but following a disagreement with the Government representative the matter was submitted to the Minister of Health, who supported the unfavourable opinion of the Government representative. The applicants applied to the administrative court for the Minister's decision to be set aside. The court upheld the application. The State appealed against this decision. In the mean time, the applicants unsuccessfully requested the retirement fund to abide by the administrative court's decision and raise their pensions. The case was referred to the administrative court of appeal, which overturned the decision at first instance.
Law: Article 6(1) – The right of access to a court enshrined in this Article would be meaningless if a Contracting Party's domestic legal system made it possible for a final and binding judicial decision to remain inoperative, to the detriment of one of the parties. However, in this case, the administrative court's decision, failure to implement which the applicants had challenged, had not been a final one since it had been delivered at first instance and had been liable to appeal. The scope of Article 6(1) did not extend beyond final and binding court decisions to include decisions liable to appeal. Therefore, particularly since the court of appeal had overturned the decision on which the applicants had based their claims, the authorities' failure to accept this decision, even though in domestic law they had been required to do so, could not be considered incompatible with Article 6.
Conclusion: no violation (unanimously).
Article 1 of Protocol No. 1 – A "claim" could only constitute a "possession" within the meaning of this article if it was sufficiently established to be enforceable. In this case, the administrative court of appeal had found that the applicants were not entitled to an increase in their pensions. Although the administrative court of first instance had upheld their claim, the applicants had never had a definitive right to receive payment. While their case had been

before the Greek courts, their action to secure an increase in their pensions had not established any entitlement to payment, merely the possibility of securing such entitlement. The decision handed down on appeal could not therefore have had the effect of depriving them of a possession. Besides, several similar applications lodged by other retired persons had been rejected by the domestic courts. Consequently, the applicants had not had a "legitimate expectation" that their claim would be recognised.
Conclusion: no violation (unanimously).

ACCESS TO COURT
Absolute privilege protecting defamatory statements made by MP in Parliament and qualified privilege in respect of press reports citing these statements: *admissible*.

A. - United Kingdom (N° 35373/97)
Decision 5.3.2002 [Section II]

The applicant lived with her two children in a house owned by a local housing association. The association moved her and her children to a new house in 1994 following a report that she was suffering serious racial abuse. In July 1996 the Member of Parliament (MP) for the constituency where the applicant's new house was made a speech in the House of Commons on the subject of municipal housing policy. During his speech, the MP referred specifically to the applicant several times, giving her name and address and referring to members of her family. He described her and her family as "neighbours from hell", making derogatory remarks about the behaviour of both her and her children in and around her home. These included references to alleged verbal abuse, truancy, vandalism and drug activity. Shortly before the debate, the MP issued a press release to several local and national newspapers. The press release was to be disclosed only once the speech had commenced; the contents of the press release were substantially the same as those of his speech. The following day, two newspapers published articles with extracts of the speech, based on the press release. Both articles had photographs of the applicant and mentioned her name and address. The applicant subsequently received hate-mail with racist contents and was stopped in the street, spat at and abused by strangers as "the neighbour from hell". She and her children had to be rehoused urgently. Through her solicitors, the applicant wrote to the MP outlining her complaints. The MP referred her letter to the Office of the Parliamentary Speaker, whose representative replied to the MP to the effect that his remarks were protected by absolute parliamentary privilege. A copy of the reply was forwarded to the applicant's solicitors. The applicant unsuccessfully wrote to the Prime Minister as leader of the party to which the MP belonged but the Prime Minister's office replied that there was a strict convention whereby MP's do not intervene in the affairs of other MP's constituencies and that this applied equally to the Prime Minister.
Admissible under Articles 6(1), 8, 13 and 14: The Government submitted that the applicant had failed to exhaust domestic remedies. The first domestic course of action was legal proceedings against the MP in respect of the press release which he issued in advance of his parliamentary speech. The second domestic course of action was legal proceedings against the press in respect of their reporting of the MP's allegations. However, the applicant's principal complaint concerned her inability to take legal action against the MP in respect of the statements he made about her in Parliament, due to the absolute nature of the privilege under domestic law. Furthermore, any legal challenge in respect of the contents of the MP's press release, whether by way of proceedings in defamation or breach of confidence, could not in practice have affected the making of the parliamentary speech, nor the subsequent publicity which led to the consequences suffered by the applicant and her children. The contents of the press release could not have become known to the applicant until after the speech had been delivered. Moreover, the likely application of qualified privilege to the reported speech, together with the fact that the articles concerned were printed the following day, meant that the applicant could not realistically have obtained any prior injunction against publication of

the allegations. Therefore, the Government had failed to show that proceedings in respect of the MP's press release or the newspaper articles would have provided the applicant with an available and sufficient remedy in respect of her complaints.

ACCESS TO COURT
Applicant granted legal aid to bring an action against a lawyer unable to find legal representation: *admissible*.

BERTUZZI - France (N° 36378/97)
Decision 16.4.2002 [Section II]

In June 1995, the applicant was granted full legal aid to bring an action for damages against a lawyer. The three lawyers appointed successively by the chairman of the bar asked to be relieved of their legal aid duties on account of their personal ties with the lawyer in question. Following these withdrawals, in November 1995, the applicant submitted a request to the legal aid office for a new counsel, and this was passed on the chairman of the bar. In March 1997, the applicant received a reply from the chairman of the bar informing him that the decision to award him legal aid in June 1995 had lapsed and that he should therefore renew his request if he wished to continue proceedings against the lawyer concerned. The applicant had meanwhile requested legal aid in another case. This was refused on the grounds that he had not produced the necessary documentation concerning his income. This decision was upheld on appeal.
Admissible under Article 6(1) regarding the decision to grant the applicant full legal aid: failure to exhaust domestic legal remedies - the Government had not supplied information to establish the effectiveness of the available remedies to secure damages on which it relied: an action for damages based on the chairman of the bar's civil liability and an action for negligence by the legal aid office (based on Article L 781-1 of the Judicial Code). The latter Code set very strict admissibility conditions (evidence of "gross negligence" or "refusal to decide a case") and the only domestic decision cited by the Government did not establish that, at least by the date that the application had been lodged, the French courts had interpreted the notions of "gross negligence" or "refusal to decide a case" sufficiently broadly to include, for example, the conduct of a chairman of the bar in a legal aid case. Besides, a disciplinary appeal against the chairman of the bar to the Prosecutor General at the Court of Appeal could not be deemed an available remedy since the applicant, who had not been assisted by a lawyer, could not have been expected to understand all the arcana of judicial or disciplinary remedies against a chairman of the bar.
Inadmissible under Articles 6(1) and (3)(c) concerning the refusal to grant the applicant legal aid because he had failed to produce the necessary documentation concerning his income. The refusal to grant legal aid had been the consequence of the applicant's own failure to act. Moreover, the applicant had been fully familiar with the legal aid system since he had already been granted it in 1995 in connection with another case: manifestly ill-founded.

ACCESS TO COURT
Absence of cassation appeal against dismissal of appeal : *inadmissible*.

PLA PUNCERNAU and PUNCERNAU PEDRO - Andorra (N° 69498/01)
Decision 23.4.2002 [Section IV]
(see Article 8, below).

FAIR HEARING
Absence of hearing prior to decision withdrawing parental rights and failure to hear witnesses for the parents on appeal: *communicated*.

HAASE - Germany (N° 11057/02)
[Section III]

On 18 December 2001 an interim injunction was issued by a District Court to the effect that the applicants' parental rights over their seven children were withdrawn and their separation from their children was ordered. The youngest daughter, born on 11 December 2001, was taken away from the hospital. The decision, issued without any prior hearing, relied on an expert opinion drawn up by an expert appointed by the Welfare Office, to the effect that the applicants were unable to give their children satisfactory care and education and exercised their parental authority abusively, hence jeopardising the children's mental and physical health. The applicants contested the expert's findings. At a later hearing, following an appeal lodged by the applicants, the witnesses whom they proposed were not heard and their children were not represented. The Court of Appeal confirmed the decision of the District Court. The Federal Constitutional Court refused to order the return of the children to their parents by way of an interim injunction, having regard to the fact that the main proceedings were still pending and that a new expert opinion was expected. It considered that it would be contrary to the interests of the children to go back to the applicants considering that there was a possibility that they might be taken into care again shortly afterwards.
Communicated under Article 8 and 6(1). The application was given priority in accordance with Rule 41.

ORAL HEARING
Lack of oral hearing at first instance : *inadmissible*.

VARELA ASSALINO - Portugal (N° 64336/01)
Decision 25.4.2002 [Section III]

The applicant brought two actions, the first an application to set aside a will drafted by his late father in favour of his second wife and the second an application for a declaration that the heirs of his father's second wife were unworthy to inherit. In two decisions handed down without a hearing, the court of first instance dismissed both claims. The court maintained that it had all the information necessary to assess the merits of the first and considered that the will was not void. It rejected the second application after accepting the defendants' argument that the period for submitting such an application had lapsed. The applicant appealed against the two decisions and asked for a hearing by the court. The Court of Appeal rejected his appeal. The Court of Cassation rejected his appeals on points of law.
Inadmissible under Article 6(1): in principle, the applicant had been entitled to a public hearing since none of the exceptions provided for in the second sentence of Article 6(1) applied. Moreover, he had asked the Court of Appeal and the Court of Cassation for a hearing by the court. However, the nature of the matters to be decided had not in this case required a public hearing. The court concerned had considered that the facts of the case were established and that it was merely required to decide on points of law concerning the interpretation of the Civil Code. This conclusion could not be considered unreasonable since the proceedings did not raise any issues that could not be resolved satisfactorily from a consideration of the written evidence. The only dispute had been over the interpretation of the Civil Code. When the only matters to be settled were questions of law, to which written submissions were more suited than oral arguments, an examination based on written evidence might be sufficient. The applicant had provided no evidence to persuade the Court that an

oral stage after the exchange of memorials was necessary to ensure that the proceedings were conducted fairly. Finally, in certain cases it was legitimate for the authorities to take account of the need for effectiveness and economy. For example when, as in this case, the facts were not in dispute and the questions of law not unduly complicated, the fact that there had not been a public hearing did not breach the requirements of Article 6(1) concerning a public hearing: manifestly ill-founded.

Article 6(1) [criminal]

APPLICABILITY
Inapplicability of Article 6 to extradition proceedings.

PEÑAFIEL SALGADO - Spain (N° 65964/01)
Decision 16.4.2002 [Section IV]
(see above).

ARTICLE 8

PRIVATE LIFE
Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*.

PRETTY - United Kingdom (Nº 2346/02)
Judgment 29.4.2002 [Section IV]
(see Article 2, above).

PRIVATE LIFE
Absolute privilege protecting defamatory statements made by MP in Parliament and qualified privilege in respect of press reports citing these statements: *admissible*.

A. - United Kingdom (N° 35373/97)
Decision 5.3.2002 [Section II]
(see Article 6(1) [civil], above).

PRIVATE LIFE
Legal basis for telephone tapping in the context of criminal proceedings: *admissible*.

PRADO BUGALLO - Spain (N° 58496/00)
Decision 16.4.2002 [Section IV]

The applicant is an international tobacco trader and was at the head of a vast financial concern comprising a number of import-export companies. The central investigating judge of the *Audiencia Nacional* started a judicial investigation into drug-trafficking during the course of which he made several orders for the monitoring of various telephones belonging to or used by the applicant and his assistants in Spain. The applicant was arrested by the police and committed for trial on charges of drug-trafficking, smuggling, commission of monetary offences, forgery of public documents and giving bribes. The applicant applied, *inter alia*, for

the evidence obtained by the telephone monitoring devices to be declared inadmissible. He was found guilty, notably on the basis of the police recordings of monitored telephone conversations, his application to have that evidence excluded having failed. In his appeal on points of law, the applicant alleged among other things that the monitoring during the judicial and police investigations had infringed his right to confidential communications. The Supreme Court upheld the conviction. It referred to the case-law of the European Court of Human Rights and held that the interference had been justified – as large-scale drug-trafficking was a serious offence – and was lawful. The Constitutional Court dismissed the applicant's *amparo* appeal.
Admissible under Article 8.

FAMILY LIFE
Detainee giving birth in detention on remand and unable to keep her baby with her in prison: *inadmissible*.

KLEUVER - Norway (N° 45837/99)
Decision 30.4.2002 [Section III]

The first applicant, a Dutch national, was arrested in Norway after a large quantity of drugs was found in her car. She was pregnant at the time. She was remanded in custody in March 1990 and attempted to abscond in May 1990. Between August and November 1990, she was regularly taken to hospital for prenatal checks. Most of the time she was accompanied by police officers in uniform and had to wear handcuffs during the journey and while in the waiting room with other patients. On one occasion, two male police officers stayed in the examination room where she was having an ultra-sound examination; it was considered that there was a risk that she might try to run away as the examination room was on the ground floor of the hospital. At the request of the midwife, one of the officers translated what the midwife and the first applicant wanted to say to each other during the examination. The first applicant complained of the police officers' presence, but only at a later stage. In November 1990, the first applicant gave birth to the second applicant. While she was giving birth, two police officers sat outside the delivery room. The first applicant was transferred back to the prison nine days later. It was not considered suitable for the second applicant to stay with his mother in the prison, which did not have the necessary facilities, and he was placed in a nearby Child Care Centre with appropriate services. Until mid-December the first applicant was able to see her baby five times a week at the Centre; thereafter, the baby was brought to her every day. From 22 to 25 January 1991 the second applicant was hospitalised due to a lung virus. The first applicant was allowed to visit him but had to wear transport cuffs, i.e. a chain attached to one foot and to the opposite arm. On her return to the prison from the visits to the Centre and the hospital, the first applicant sometimes had to undergo body searches, and after 17 December 1990 body searches were occasionally carried out after the baby had visited her. The searches were motivated by the risk of drug abuse by the first applicant. As from 3 January 1991, the searches stopped, the first applicant having given a urine sample which proved negative in a drug test. On 5 February 1991 she was convicted and sentenced to 6 years' imprisonment, a sentence which took into account the fact that she had given birth while in detention on remand and that it would be an extra burden for her to serve a long prison sentence in a foreign country. On 10 February 1991, at the first applicant's initiative, the second applicant left for the Netherlands with his grandmother. The first applicant was able to call her mother and son 20 minutes a week, in accordance with the applicable rules. As of 30 October 1991 she was granted an extra call per week and as of February 1992 time restrictions on her telephone calls were withdrawn. She had several visits by her son at the prison after he had left Norway. She was eventually granted a pardon and released in July 1992.
Inadmissible under Article 8: As to the separation of the first and second applicants, their complaint concerned the fact that the authorities had failed to enable the first applicant to

keep with her the second applicant during the three months that followed his birth, while she was detained almost exclusively on remand. Following this period, and a few days after her conviction, she sent the second applicant with his grandmother to the Netherlands. The first applicant could not legitimately claim that the competent national authorities ought to have taken special measures to secure her interest in having her baby with her in prison. Moreover, she was fully aware of her pregnancy when she engaged in the criminal offence that led to her conviction. Her detention in a closed prison with particular security arrangements was necessary in view of the seriousness of the offence she was suspected and later convicted of, and the risk of her absconding, in view of her attempt to escape in May 1990. Furthermore, the applicants' interests were adequately protected by the manner in which they were treated by the authorities. During the first month, they were able to meet five times a week and, after that, every day. Particular steps were taken so that the mother's views and interests would be taken into consideration. It was her decision that her baby would join his grandmother in the Netherlands, after which they visited the first applicant several times. The applicant was eventually pardoned and released so that she could return to the Netherlands and be reunited with the second applicant.

The first applicant further complained of the use of handcuffs on her while she was in the waiting room at the hospital where prenatal checks were carried out and when she visited the Child Care Centre, as well as the use of transport cuffs when she visited her son at the hospital. However, these measures were justified by the risk that she would abscond during visits outside the prison; there was nothing to indicate that they were meant to debase or humiliate her. On each occasion the responsible officer accompanying her assessed the need for using such means and these particular security measures were made necessary by the applicant's own conduct. Similar considerations applied in respect of her complaint regarding the presence of police officers in uniform at one ultra-sound examination. The examination took place in a room of the hospital from which it could have been possible to abscond. The examination was not of an intimate character and one of the two police officers present served as a translator between the applicant and the midwife. It was not mentioned until after the examination that the presence of the police officers was considered unsuitable by the applicant. Therefore, there was nothing in this respect to suggest a breach of Article 8. The presence of police outside the delivery room during the birth did not amount to an interference transgressing the limits of Article 8 either. As regards the body searches which the applicant complained of, the reason for her arrest, namely drug smuggling, justified such a measure. The measures stopped once she agreed to give a urine sample which permitted a verification of possible drug abuse. The body searches did not exceed their purpose and were carried out by female prison guards without any physical contact. As to the limitations on telephone calls, they did not exceed what follows from ordinary and reasonable requirements of imprisonment. Taking the measures as whole, it could not be concluded that there had been any violation of Article 8.

FAMILY LIFE

Withdrawal of parental rights: *communicated*.

HAASE - Germany (N° 11057/02)
[Section III]
(see Article 6(1) [civil], above).

HOME
Extension of the concept of “home” to a company headquarters, offices and professional premises.

Stés COLAS EST and others - France (N° 37971/97)
Judgment 16.4.2002 [Section II]
(see below).

HOME
Visits to company premises and seizure of documents on the basis of the 1945 ordonnance on investigation, prosecution and suppression of offences against economic laws: *violation*.

Stés COLAS EST and others - France (N° 37971/97)
Judgment 16.4.2002 [Section II]

Facts: As part of an administrative inquiry into the conduct of public road-building companies in connection with local contracts, inspectors from the Office of Fair Trading carried out simultaneous raids on the principal and local offices of the applicant companies, without prior authorisation from the management, and seized numerous documents. They subsequently carried our additional investigations in order to gather statements. The inspectors were acting under a 1945 order on the identification, prosecution and elimination of breaches of financial legislation, which did not require any judicial authorisation for or supervision of these operations. On the basis of the documents seized, the applicant companies were prosecuted for engaging in prohibited practices. The Competitions Board found that they had engaged in such practices and imposed financial penalties of twelve million francs, four million francs and six million francs respectively. In support of their appeals, the applicant companies unsuccessfully challenged the validity of the operations carried out by the inspectors with judicial authorisation. Eventually, the financial penalties imposed on the first two companies were reduced.
Law: Article 8 – As a continuation of its dynamic approach to interpreting the Convention, concerning the notion of "home" and the rights granted to companies, it was time to recognise that in certain circumstances the rights enshrined in this article could be interpreted as including a company's right to respect for its principal office, local offices and commercial premises. In this case, the raids carried out by the inspectors from the Office of Fair Trading on the principal and local offices of the applicant companies for the purposes of seizing thousands of documents amounted to interference in these companies' right to respect for their home. However, the visits and seizures had had a statutory basis and legitimate aims, namely the country's economic well-being and the prevention of criminal offences. As carried out by the authorities, these operations had constituted intrusions into the applicants' "homes". Although the disputed raids on the applicants' homes might have been justified by the need for large-scale operations to avoid the disappearance or concealment of evidence of anti-competitive practices, the relevant legislation and practices should still have offered appropriate and adequate safeguards against abuse. In fact, based on the 1945 order then applicable, the relevant department had had very broad powers that allowed it to determine, acting alone, the expediency, number, duration and scale of such operations. Moreover, these operations had taken place without any prior warrant issued by a judge and with no police officer in attendance. In these circumstances, while accepting that the right of interference might be more extensive in the case of a company's commercial premises, given the procedures described above the disputed operations conducted in the competition field could not be considered to be strictly proportionate to their legitimate aims.
Conclusion: violation (unanimously).
Article 41 – the Court granted each applicant EUR 5 000 for non-pecuniary damage and certain sums for costs and expenses.

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of political party: *violation*.

YAZAR, KARATAŞ, AKSOY and LE PARTI DU TRAVAIL DU PEUPLE (HEP) - Turkey (N^{os} 22723/93, 22724/93 and 22725/93)
Judgment 9.4.2002 [Section IV]

Facts: At the material time, the first applicant was chairman of the People's Labour Party, the HEP, the second applicant its vice-chairman and the third its secretary general. The Party was established in 1990. In 1992, the Principal State Counsel at the Court of Cassation asked the Turkish Constitutional Court to dissolve the HEP. In 1993, the Constitutional Court decided in a judgment to dissolve the party. On the basis of written and oral statements made at meetings by its leaders and officers, it found that the party was seeking to undermine national integrity by differentiating between Turks and Kurds, with the aim of setting up a separate state. The HEP's view was that there was a separate Kurdish people with its own culture and language, which the Turkish authorities did not allow them to practise freely. The party also called for the Kurdish people's right to self-determination. According to the Constitutional Court, the HEP referred to PKK terrorists as freedom fighters and claimed that rather than fighting the latter the security forces were really more concerned with exterminating the Kurdish people. In all its activities, in which the sole emphasis was equality between Turks and Kurds, the HEP were seeking the establishment of an independent state built on racist foundations, which posed a threat to the "Turkish nation". According to the Constitutional Court, "the HEP's objectives resembled those of terrorists" and "statements based on lies, accusations and hostile attitudes, which the HEP's leaders constantly repeated as a form of provocation, were likely to promote tolerance of terrorist acts, and justify and encourage their perpetrators".
Law: Article 11 – The Government maintained that the dissolution of political parties fell within the margin of appreciation of constitutional courts and that in this case Turkey's fundamental constitutional principles were being challenged. The Court considered that political parties made a key contribution to the workings of democracy and were covered by Article 11. Political parties did not cease to be covered by the Convention simply because national authorities considered that their activities posed a threat to the relevant country's constitutional institutions and must have restrictions placed on them. The Government's objection was therefore untenable. Dissolution of the HEP constituted interference in the three applicants' right of freedom of association. Such interference had statutory force, since the contested decisions were based both on the Constitution and on the legislation governing political parties. The lawful aim of such decisions was to protect territorial integrity and national security. However, in judging whether such restrictions were necessary in a democratic society, the Constitutional Court had not taken account of the lawfulness of the HEP's programme and statutes and had confined its assessment to the party's political activities. Its decision to dissolve the party had been based on the party leaders' public statements, which it had accepted as evidence of the HEP's general position. The Court could therefore confine itself to considering these statements. The Government maintained in particular that the party leaders were inciting ethnic hatred, insurrection and violence. Yet the Court noted that the HEP had offered no explicit support or approval for violence for political ends. At the material time, none of the HEP's leaders had been convicted of incitement to ethnic hatred or insurrection, even though these were criminal offences. The Government's arguments were therefore unconvincing. As to whether the HEP's objectives were incompatible with democratic principles, the party's platform amounted to claims that Kurds

were not free to use their own language and were unable to make political demands based on the principle of self-determination, and that the security forces engaged in the struggle against terrorist organisations had committed illegal acts and were responsible in part for the suffering of Kurdish citizens in certain parts of Turkey. These views were not, as such, incompatible with fundamental democratic principles. To see the defence of such views by a political party as support for terrorism could amount to giving terrorist movements a monopoly of the defence of such views. Moreover, even if defending such views ran counter to government policy or the convictions of a majority of the public, it was necessary in a properly functioning democracy for political parties to be able to introduce them into public debate. The Constitutional Court's decision did not establish that the HEP's political proposals posed a threat to Turkey's democratic system. By themselves, the HEP party leaders' strong criticisms of certain actions of the security forces did not provide sufficient evidence that the HEP amounted to a terrorist group. The acceptable limits for criticism were broader when the target was a government rather than an individual. Nor had it been established that by criticising the actions of the armed forces the HEP's members of parliament and officers were pursuing any other goal than that of discharging their duty to draw attention to their electors' concerns. Briefly, since the HEP had not advocated any policy which could have undermined the country's democratic regime and had not urged or sought to justify recourse to force, its dissolution could not be considered to reflect a pressing social need.
Conclusion: violation (unanimously).
Article 6(1) – The proceedings before the Constitutional Court had concerned the HEP's right, as a political party, to pursue its political activities. They therefore concerned a political right, which was not covered by Article 6(1). The party's dissolution had led to the transfer of its assets to the Treasury and as such it could have brought a civil law action, within the meaning of this article, to establish its property rights. However, neither the proceedings before the Constitutional Court nor any other proceedings were concerned with the right to respect for the HEP's property, and the transfer of its assets to the Treasury was a direct legal consequence of the party's dissolution.
Conclusion: no violation (unanimously)
Article 41 – The Court awarded each of the three applicants EUR 10 000 for non-pecuniary damage and a further EUR 10 000 to the three of them for costs and expenses.

FREEDOM OF PEACEFUL ASSEMBLY
Evacuation by the police of a church occupied for two months by a group of illegal immigrants: *no violation*.

CISSE - France (N° 51346/99)
Judgment 9.4.2002 [Section II]

Facts: The applicant was a member of a group of aliens residing in France without residence permits who in 1996 decided to take collective action to draw attention to the difficulties they were having in obtaining a review of their immigration status. Their campaign culminated with the occupation of St Bernard's Church in Paris by a group of some two hundred illegal immigrants, most of whom were of African origin. Ten men within the group decided to go on hunger strike. The movement, known as the "St Bernard *sans papiers*[1]" movement, was supported by several human-rights organisations, some of whose activists decided to sleep on the premises in a show of solidarity with the immigrants' predicament. After approximately two months the Paris Commissioner of Police signed an order for the total evacuation of the premises. It was made on the grounds that the occupation of the premises was unrelated to religious worship, there had been a marked deterioration in the already unsatisfactory sanitary conditions, padlocks had been placed on the church exits and there were serious sanitary,

1. Immigrants without valid immigration papers.

health, peace, security and public-order risks. The following morning the police set up an identity checkpoint at the church exit, entered the church and proceeded to evacuate it. All the occupants of the church were stopped and questioned. The applicant was subsequently prosecuted and convicted.
Law: Government's preliminary objection (non-exhaustion) – The objection had previously been raised at the admissibility stage and dismissed in the decision on admissibility. Under Article 35(4) of the Convention the Court will only reconsider a decision dismissing an objection at the admissibility stage of the application if there is new evidence and exceptional circumstances. Those conditions were not satisfied in the case before it. The objection was therefore dismissed.
Article 11 – Neither the priest nor the parish council had objected to the occupation of their church by the group of illegal immigrants, including the applicant, who had acted collectively to draw attention to the difficulties they were experiencing in obtaining a review of their immigration status in France and the religious services and ceremonies had proceeded without incident. The evacuation of the church had therefore amounted to an interference in the exercise of the right to freedom of peaceful assembly. The interference was prescribed by law and pursued a legitimate aim, namely the prevention of disorder, as the purpose of the evacuation was to bring to an end the continuing occupation of a place of worship by persons who had broken the law. The fact that the applicant was an illegal immigrant did not suffice to justify the breach of her right to freedom of assembly, as that freedom had already been exercised for two months without intervention on the part of the authorities and peaceful protest against legislation which the person protesting has breached was not a legitimate aim for a "restriction" on that liberty within the meaning of Article 11(2). However, following a two-month occupation of the church, the hunger strikers' health had deteriorated and the sanitary conditions become wholly inadequate, such that it may have become necessary to restrict the exercise of the right to assembly. Admittedly, the parish priest had not asked the police to intervene and the means deployed in their intervention, which had been both abrupt and indiscriminate, exceeded what it was reasonable to expect of the authorities when interfering with the freedom of assembly. However, no request from the parish priest was necessary under domestic law for the intervention to be legitimate and the authorities' fear that the situation might deteriorate rapidly and could not continue much longer was not unreasonable. In any event, the immigrants' presence with its symbolic and testimonial value had been tolerated sufficiently long for the interference not to appear unreasonable in the instant case after such a lengthy period. Regard being had to the wide margin of appreciation left to the States in that sphere, the interference was not disproportionate.
Conclusion: no violation (unanimously).

FREEDOM OF PEACEFUL ASSEMBLY
Conviction of members of an anti-war association for authorising members to attend meetings abroad without having obtained authorisation from the authorities : *communicated*.

İZMİR SAVAŞ KARŞITLARI DERNEĞİ and others - Turkey (N° 46257/99)
Decision 18.4.2002 [Section III]

The applicants are members of the "Izmir Anti-War Association", itself an applicant. They authorised members of the association to travel abroad to take part in a meeting in Germany and to represent the association at meetings of conscientious objectors in Colombia and international war resisters in Brazil, without seeking authorisation to leave the country from the Ministry of the Interior, which is a statutory condition imposed on associations. The applicants were prosecuted for their conduct, and for distributing a tract starting with the words "our proletarian brothers" and ending with "stand up in opposition, demand peace, become free". The criminal court found the applicants not guilty of the offence of distributing tracts without authorisation. However, they were convicted under the legislation on associations and one was fined and the others sentenced to imprisonment, subsequently

commuted to fines. The Court of Cassation overturned the lower court's decision on the grounds that the latter had acted incorrectly in commuting the sentences of imprisonment to fines. The Izmir criminal court then found the applicants not guilty of distributing tracts without authorisation but sentenced one applicant to a fine and the others to imprisonment, commuted to fines, under the legislation on associations.
The Court of Cassation confirmed this decision.
Communicated under Article 11.

FREEDOM OF PEACEFUL ASSEMBLY
Prohibition on a series of visits organised by the leaders of a political party in a region subject to a state of emergency: *communicated*.

ESKİ - Turkey (N° 44291/98)
[Section III]

The applicant is one of the elected members of the steering committee of the Democracy and Peace Party (DBP), who decided to visit various towns in south-east Turkey to meet local people and civil organisations. The programme of the visit was sent to the mayors of the towns concerned with a request for the necessary authorisation. The chair of the bureau of the local section of the DBP in Diyarbakı submitted an application to the prefect asking him to set aside his decision to prohibit the visit. In accordance with directives issued by the prefect of the region, where a state of emergency was in force, the prefect of Van had issued an order prohibiting the DBP leaders, who were in their bus, from entering Van. The regional prefect had decided to prohibit the party's visit under Section 11, paragraph k of Act no. 2935 on the region where the state of emergency was in force. The DBP members, including the applicant, who were travelling on the bus were arrested and prevented from entering the south-east region.
Communicated under Articles 10, 11 and 13.

GÜNERI - Turquie/Turkey (N° 42853/98)
[Section III]

As chair of the bureau of the local section of the DBP, the applicant asked the prefect of Van for the necessary authorisation for the party leaders' planned visit to the town, including in particular an outdoor meeting. In accordance with directives issued by the prefect of the region, where a state of emergency was in force, and relying on Section 11, paragraph k of Act no. 2935 on the state of emergency, the prefect of Van issued an order prohibiting the DBP's planned meeting and the entry into the town of anyone likely to take part in the visit.
Communicated under Articles 10, 11 and 13.

ARTICLE 14

DISCRIMINATION (Article 8)
Exclusion of adopted child from inheritance: *communicated*.

PLA PUNCERNAU et PUNCERNAU PEDRO - Andorra (N° 69498/01)
Decision 23.4.2002 [Section IV]

The applicants are an adoptive son and his mother. Their respective father and husband had inherited from his mother in a will drawn up before a lawyer which provided for the estate to

be passed on to legitimate children. It contained a substitution clause under which in the event of his being unable to inherit, the estate would pass to his elder sister, and failing that to the son of his younger sister. In a codicil dated 3 July 1995, the applicants' adoptive father/husband bequeathed the property from his mother's inheritance to his adoptive son as remainderman, with a life interest to his wife. After his death, the great grand-daughters of the testatrix brought a civil action to set aside the codicil of 3 July 1995 and secure the return by the applicants of all the property bequeathed by their great grandmother, on the grounds that as an adoptive child, the male applicant could not benefit from her estate. The Batlles d'Andorra court rejected their claim, on the grounds that the testatrix had not intended to exclude adopted children from her estate. In May 2000, on appeal, the Andorra high court overturned the lower courts' decision. It accepted the appellants' claim, set aside the codicil of 3 July 1995, declared that the appellants were the lawful heirs to their great grandmother's estate and ordered the applicants to restore the property in question. The applicants lodged an appeal to the high court to overturn its previous decision and an *empara* appeal to the Constitutional Court, but these were dismissed.
Communicated under Article 8 taken in isolation and in combination with Article 14.
Inadmissible under Articles 12 and 14.
Inadmissible under Articles 6(1) and 13: the absence in Andorran law of a court of cassation to hear appeals on points of law against decisions handed down on appeal was not incompatible with Article 6, which did not oblige states to establish courts of cassation. In this case, the applicants' case had been considered twice on its merits by two courts, which had reached a decision, giving their reasons, following proceedings at which all the parties were represented, while at final instance the applicants were able to lodge an *empara* appeal before the Constitutional Court: manifestly ill-founded.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (France)
Effectiveness of remedy based on Article L. 781-1 of the Code of Judicial Organisation to complain of the conduct of President of the Bar in the context of granting legal aid : *preliminary objection rejected*.

BERTUZZI - France (N° 36378/97)
Decision 16.4.2002 [Section II]
(see Article 6(1) [civil], above).

EFFECTIVE DOMESTIC REMEDY (France)
Effectiveness of remedy in the civil courts based on the civil liability of the President of the Bar in the context of granting legal aid : *preliminary objection rejected*.

BERTUZZI - France (N° 36378/97)
Decision 16.4.2002 [Section II]
(see Article 6(1) [civil], above).

EFFECTIVE DOMESTIC REMEDY (France)
Effectiveness of a disciplinary appeal to the prosecutor in respect of the failure of the President of the Bar to appoint a legal aid lawyer : *preliminary objection rejected*.

BERTUZZI - France (N° 36378/97)
Decision 16.4.2002 [Section II]
(see Article 6(1) [civil], above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Case-Information Note No. 38):

MĄCZYŃSKI - Poland (Nº 43779/98)
Judgment 15.1.2002 [Section II]

LAINE - France (Nº 41476/98)
JOSEF FISCHER - Austria (Nº 33382/96)
GOLLNER - Austria (Nº 49455/99)
MAURER - Austria (Nº 50110/99)
Judgments 17.1.2002 [Section I]

A.B. - Netherlands (Nº 37328/97)
Judgment 29.1.2002 [Section II]

LANZ - Austria (Nº 24430/94)
Judgment 31.1.2002 [Section I]

GUERREIRO - Portugal (Nº 45560/99)
Judgment 31.1.2002 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Right to reassessment of retirement pension recognised by first instance court but later quashed in final appeal decision: *no violation*.

OUZOUNIS and others - Greece (N° 49144/99)
Judgment 18.4.2002 [Section I]
(see Article 6(1), above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of obtaining reimbursement by the State of VAT payments which were not due: *violation*.

S.A. DANGEVILLE - France (N °36677/97)
Judgment 16.4.2002 [Section II]

Facts: The applicant, S.A. Dangeville, is a company of insurance brokers whose business activity was subject to value added tax (VAT). It paid 292 816 French francs in VAT on the business it had conducted in 1978. The provisions of the Sixth Directive of the Council of the European Communities, which were applicable from 1 January 1978, exempted from VAT "insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents". On 30 June 1978 the French State was notified of the Ninth Directive of the Council of the European Communities, which gave France extra time in which to implement the provisions of Article 13 B (a) of the Sixth Directive of 1977. Nonetheless, as it was not of retrospective effect, the Sixth Directive was applicable from 1 January to 30 June 1978. The applicant company, relying on the Sixth Directive, sought a refund of the VAT paid for the year 1978. The Administrative Court dismissed its claim. In a decision of March 1986, the *Conseil d'Etat* dismissed the claim on the ground, among other things, that a Directive could not be directly invoked against a provision of national law. An administrative direction of 2 January 1986 annulled the supplementary tax assessments levied against insurance brokers who had not paid VAT for that period. The applicant lodged a second application, which was ultimately dismissed by a further judgment of the *Conseil d'Etat* in October 1996, which, in accordance with the traditional legal principle of "distinction of means of appeal", held that the applicant could not seek to obtain by way of an action for damages satisfaction which had been refused it in the tax proceedings in a decision (of the *Conseil D'Etat* in 1986*)* which had become *res judicata*. However, in a judgment of the same date concerning an application brought by another company, whose business activity and claims were initially identical to those of the applicant, the *Conseil d'Etat* departed from its earlier decision and upheld that company's claim for a refund by the State of sums wrongly paid.
Law: Article 1 of Protocol No. 1 – This article was applicable because the sum owed by the State to the applicant on account of the VAT wrongly paid amounted to a pecuniary right and was therefore in the nature of a possession. The applicant had had at least the legitimate hope of being able to secure reimbursement of the VAT. In considering the justification for interfering with the applicant's right to respect for his possessions, it had to be established whether a fair balance had been struck between the requirements of the general interest and the need to safeguard the applicant's fundamental rights. Regarding the first point, the 1986 administrative direction had been intended to bring domestic legislation into line with the Sixth Community Directive, which was a legitimate aim, compatible with the "general interest". However, the *Conseil d'Etat's* particularly strict interpretation of the traditional legal principle of "distinction of means of appeal" had deprived the applicant of the sole domestic procedure capable of offering a sufficient remedy to ensure compliance with Article 1 of Protocol No. 1. Nothing relating to the general interest could justify the *Conseil d'Etat's* refusal to draw the consequences of a provision of Community law that was directly applicable. The interference in question was the consequence of Parliament's failure to bring domestic law into compliance with a Community directive. Although this compliance was achieved through the January 1986 administrative direction, the *Conseil d'Etat's* decision handed down two and a half months later, in March 1986, did not draw the consequences of this. While it appeared that there were difficulties in applying Community law at the domestic level, the applicant should not have had to bear the consequences of these difficulties and differences between the various domestic authorities. The interference in the applicant's possessions did not therefore reflect the requirements of the general interest. Both the applicant company's inability to enforce its debt against the State and the lack of domestic

proceedings providing a sufficient remedy to protect its right to respect for enjoyment of its possessions upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental right. The interference with the applicant company's enjoyment of its property had therefore been disproportionate.
Conclusion: violation (unanimously).
Article 14 combined with Article 1 of Protocol No. 1 – In view of its finding, the Court decided unanimously that it was not necessary to examine this complaint separately.
Article 41 – The Court awarded EUR 21 734.49 for pecuniary damage and EUR 21 190.41 for costs and expenses.

PEACEFUL ENJOYMENT OF POSSESSIONS
Alleged impossibility for Greek Cypriot national to have access to property in northern Cyprus: *communicated*.

YALLOUROU - Turkey (N° 50648/99)
YALLOUROU - Turkey (N° 51272/99)
[Section II]

The applicant, a Greek Cypriot national, claims that since the Turkish invasion of the northern part of Cyprus, the Turkish army has prevented him from having access to his home and exercising his right to the peaceful enjoyment of his possessions. The cases raise issues similar to those in the Loizidou v. Turkey case (judgment of 18 December 1996).
Communicated under Articles 8 and 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Court decisions allegedly influenced by retrospective laws initiated by Government for that purpose: *inadmissible*.

CREDIT BANK and others - Bulgaria (N° 40064/98)
Decision 30.4.2002 [Section I]

In 1994 the applicant companies bought the debts of two State-owned companies, Himko and K., with regard to a third one, Bulgargas, in respect of natural gas delivered under an inter-governmental agreement. A debt assignment contract was signed. Pursuant to an arbitration clause of the contract, K. brought proceedings against the first applicant before the Arbitration Court, which found that the debt assignment contract was valid. Bulgargas brought another claim before the Arbitration Court. On 28 September 1995 the Arbitration Court rejected the argument that the debts concerned by the contract were the property of the State, that they were thus not transferable and that the debt assignment contract was as a consequence invalid. In 1995 the first applicant started proceedings in the Regional Court against Himko, which had still made no payment. The court found in the first applicant's favour, considering the position of the Arbitration Court of 28 September 1995 as binding. Upon Himko's appeal, the Supreme Court overturned this judgment in 1995. The Supreme Court held that the judgment of the Arbitration Court was only binding for the parties to the contract. It further found that there had been a particular legal frame established by the State whereby all income from gas supplies had to be paid to the State as part of the national budget. The transfer of the debts to the applicant was contrary to this legal frame and the requirements of the 1993 and 1994 budget Acts. Therefore the contract was void. The Supreme Court expressly stated that its findings were not based on the Law on the 1995 State Budget concerning the applicability of the Law on the Collection of State Debts. The first applicant submitted a petition for review to the Supreme Court of Cassation, which upheld the judgment of the Supreme Court. It found that in all State budgets, from 1993 to 1996, the income from the sale of natural gas had been

listed as an item among the expected revenues for the national budget. The transfer of Himko's debt was thus unlawful. In the meantime, the Council of Ministers introduced in Parliament a Bill for the interpretation of the Law on the 1996 State Budget concerning the question whether claims for the sale of natural gas were transferable. By Acts of July and September 1996, the Law on the 1996 State Budget was amended. The amendments provided, *inter alia*, that all claims regarding the sale of natural gas were claims of the State and were not transferable. The amendments also provided that a debtor who had paid to the State budget arrears due in respect of deliveries of natural gas should be considered to have discharged their debt and that the State should not be liable to any third person in respect of any sums received for the national budget. By a judgment of 10 December 1996, the Constitutional Court declared the amendments unconstitutional.

Inadmissible under Article 1 of Protocol N° 1: As to whether the applicants' possessions were affected by retrospective legislation or "attacks" by the executive and legislative powers, the interpretative Bill introduced in Parliament in 1996 and the Acts of July and September 1996 amending the Law on the 1996 State Budget were undoubtedly an attempt on the part of the Government to use retrospective legislation in order to influence the outcome of the pending civil proceedings to which the applicants were parties. However, the adopted legal provisions were declared unconstitutional and repealed by the Constitutional Court. The judgment of the Constitutional Court was delivered before the end of the civil proceedings between Himko and the applicants. Therefore, the Government's attempt to amend the Law on the 1996 Budget through retrospective legislation adopted in July and September 1996 did not result in any interference with the applicants' possessions. The applicants further complained that the Laws on the State Budgets of 1995 and 1996 required retrospectively that arrears of the unpaid gas debt, including those already assigned to the applicants, should be collected under the special fiscal procedure, as provided by the Law on the Collection of State Debts. The applicability of the procedure under this law was introduced by a regulation of April 1994, before the debt assignment contract was signed. However, the fiscal authorities would not have been entitled to collect Himko's debt if the courts had found that the debt assignment contract was valid and that therefore Himko had to pay the applicants. The central issue was whether the courts decided on the basis of retrospective legislation initiated by the Government and, if so, whether such an approach could be justified under Article 1 of Protocol N° 1. The judgments of the Supreme Court and the Supreme Court of Cassation did not rely on the 1996 amendments. The Supreme Court did not mention them and they had been declared unconstitutional when the Supreme Court of Cassation delivered its judgment. As regards the alleged arbitrariness of the impugned judgments, an important feature of the present case was that it concerned legal regulations of economic activities in a period of transition from a wholly State-owned and centrally planned economy to a private property and a market economy. In assessing whether it resulted in an unjustified interference of the State contrary to Article 1 of Protocol N° 1, due account had to be taken of the exceptional character of this transitional period. The debt assignment was executed at a time when the transition had not been completed and concerned sums owed by a State-owned company to another and to the State budget under specific legislation on the implementation of an inter-governmental agreement. Having regard to the transitional period and the fact that the Supreme Court and the Supreme Court of Cassation gave very detailed reasoning, it could not be considered that the fact that an arbitration tribunal reached different conclusions or the alleged lack of foreseeability rendered the impugned judgment arbitrary. It was not established that the Government's alleged hostility to the contract unduly influenced the Supreme Court or the Supreme Court of Cassation. In conclusion, these judgments which declared the debt assignment contract void as contrary to the law were not based on retrospective legislation and were not arbitrary: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Striking of candidate from list for parliamentary elections, due to insufficient knowledge of the official language: *violation*.

PODKOLZINA - Latvia (N° 46726/99)
Judgment 9.4.2002 [Section IV]

Facts: The applicant, a Latvian national, is a member of the Russian-speaking minority in Latvia. She stood as a candidate in parliamentary elections. When her list of candidates was registered, she supplied a certificate of proficiency in the State's official language - Latvian. Following registration, the State Language Centre submitted nine candidates, including the applicant, to a second Latvian language test. Twelve other candidates were not required to sit the test. After the test the State Language Centre ruled that the applicant did not have an adequate command of the official language and informed the Central Electoral Commission, which struck her name off the list of candidates. In her appeal, the applicant argued that the Central Electoral Commission's decision to strike her name off was based solely on the attestation of the State Language Centre, to the exclusion of the certificate she had supplied on registration. The Riga Regional Court rejected the appeal. In particular, it stated that the Parliamentary Elections Act authorised the Electoral Commission to modify the candidate lists already drawn up, by striking off ones whose command of the official language turned out to be inadequate, which in the applicant's case had been confirmed by the State Language Centre's attestation. An appeal was lodged, but was unsuccessful.
Law: Article 3 of Protocol No. 1 – the obligation in domestic law for candidates to the national Parliament to have an adequate command of the official language pursued a legitimate aim, given the wide margin of appreciation enjoyed by States in this area. Every State had a legitimate interest in ensuring that its institutional system functioned properly, and even more so that of its national parliament, which had legislative powers and played a key role in a democratic state. Similarly, in accordance with the principle of respect for national characteristics, the Court was not required to reach an opinion on the choice of working language of a national parliament. This choice was dictated by historical and political considerations unique to each State and in principle formed part of that State's exclusive area of competence. However, the right to stand for election would be illusory if the individual concerned could, at any time, be deprived of it. Decisions concerning individual candidates' compliance with eligibility conditions had to satisfy a certain number of criteria to avoid arbitrariness. In particular, such decisions had to be taken by a body offering a minimum number of guarantees of impartiality. This body's independent power of appreciation must be sufficiently clearly laid down in domestic law. Finally, the procedure for ruling on candidates' eligibility had to be such as to ensure that decisions were fair and objective, and avoid any abuse of authority by the relevant officials. In this case, the decision to strike the applicant off the list of candidates had not been based on the lack of a valid language certificate. In fact the applicant did have such a certificate, whose validity was never questioned by the national authorities. Moreover, this certificate had been issued in accordance with the regulations governing proficiency in the official language. Nevertheless, the national authorities had decided to impose a fresh language examination on the applicant. Only nine, including the applicant, of the twenty-one candidates who had been required to submit their certificates of proficiency in the official language had had to sit a second examination. There were also doubts about the legal basis for this differential treatment. While the new test might have been based on the Parliamentary Elections Act, the procedure followed had differed fundamentally from the normal language attestation procedure under

the aforementioned regulations. In particular, the assessment had been left solely to the judgment of a single official, with excessive discretionary powers. The applicant had also been mainly questioned on a subject that was clearly irrelevant to the language skills requirement. Consequently, in the absence of any objective guarantees and whatever the objective sought by this new examination, the procedure followed in the applicant's case was incompatible with the Convention's procedural requirements of fairness and legal certainty. By accepting as incontrovertible the results of an examination the procedure for which lacked any fundamental guarantees of fairness, the Regional Court had deliberately failed to rectify the violation committed. As a result, the decision to remove the applicant from the candidate list could not be deemed proportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

The Court concluded unanimously that it was unnecessary to examine separately the complaints under Articles 13 and 14 combined with Article 3 of Protocol No. 1.

Article 41 – The Court awarded EUR 7 500 for pecuniary damage and EUR 1 500 for costs and expenses.

Other judgments delivered in April 2002

Article 2

T.A. - Turkey (Nº 26307/95)
Judgment 9.4.2002 [Section II]

disappearance of applicant's brother following abduction, allegedly by police officers, in 1994 – striking out (*ex gratia* payment and unilateral declaration by the Government).

TOGCU - Turkey (Nº 27601/95)
Judgment 9.4.2002 [Section II]

disappearance of applicant's son in 1994 – striking out (*ex gratia* payment and unilateral declaration by the Government).

Article 3

Z.Y. - Turkey (Nº 27532/95)
Judgment 9.4.2002 [Section II]

alleged ill-treatment on arrest and in custody – friendly settlement.

Articles 3 and 5

MEHMET ÖZKAN - Turkey (Nº 29856/96)
Judgment 9.4.2002 [Section II]

alleged ill-treatment in custody, alleged failure to bring detainee promptly before a judge and alleged absence of review of lawfulness of detention – friendly settlement.

Article 6(1)

AEPI SA - Greece (Nº 48679/99)
Judgment 11.4.2002 [Section I]

dismissal of cassation appeal as out of time, the time-limit running from the date of delivery rather than the date on which the written judgment became available – violation.

MERCURI - Italy (Nº 47247/99)
Judgment 11.4.2002 [Section I]

fairness of proceedings concerning a claim for compensation for detention on remand – friendly settlement.

VOLKWEIN - Germany (Nº 45181/99)
Judgment 4.4.2002 [Section III]

ERDŐS - Hungary (Nº 38937/97)
Judgment 9.4.2002 [Section II]

GOC - Poland (Nº 48001/99)
Judgment 16.4.2002 [Section IV]

FERNANDES - Portugal (Nº 47459/99)
Judgment 18.4.2002 [Section III]

length of civil proceedings – violation.

ANGELOPOULOS - Greece (Nº 49215/99)
SAKELLAROPOULOS - Greece (Nº 46806/99)
Judgments 11.4.2002 [Section I]

length of administrative proceedings – violation.

SEGUIN - France (Nº 42400/98)
Judgment 16.4.2002 [Section II]

length of administrative proceedings and proceedings relating to employment – violation.

OUENDENO - France (Nº 39996/98)
Judgment 16.4.2002 [Section II]

length of medical disciplinary proceedings – violation.

BAPTISTA DO ROSÁRIO - Portugal (Nº 46772/99)
MARQUES JORGE RIBEIRO - Portugal (Nº 49018/99)
Judgments 4.4.2002 [Section III]

length of civil proceedings – friendly settlement.

EXAMILIOTIS - Greece (Nº 52538/99)
Judgment 18.4.2002 [Section I]

length of administrative proceedings – friendly settlement.

MARCEL - France (Nº 44791/98)
Judgment 9.4.2002 [Section II]

length of labour court proceedings – friendly settlement.

MANGUALDE PINTO - France (Nº 43491/98)
Judgment 9.4.2002 [Section II]

length of labour court proceedings – no violation.

Article 6(1) and Article 1 of Protocol No. 1

ANGHELESCU - Romania (Nº 29411/95)
Judgment 9.4.2002 [Section II]

access to court – quashing by Supreme Court of Justice of final and binding judgment and exclusion of courts' jurisdiction of competence to review nationalisation of property – violation.

SMOKOVITIS and others - Greece (Nº 46356/99)
Judgment 11.4.2002 [Section I]

passing of legislation affecting outcome of pending court proceedings and quashing of awards on basis of that legislation – violation.

Article 1 of Protocol No. 1

HATZITAKIS - Greece (Nº 48392/99)
Judgment 11.4.2002 [Section I]

lengthy delay in payment of compensation for expropriation, due to difficulties in checking title to property – violation.

LALLEMENT - France (Nº 46044/99)
Judgment 11.4.2002 [Section III]

adequacy of compensation for expropriation of part of a dairy farm, affecting viability of the remainder – violation.

MALAMA - Greece (Nº 43622/98)
LOGOTHETIS - Greece (Nº 46352/99)
Judgments (just satisfaction) 18.4.2002 [Section II (former composition)]

Articles of the European Convention of Human Rights and Protocols Nos. 1, 4, 6 and 7

Convention

Article 2	:	Right to life
Article 3	:	Prohibition of torture
Article 4	:	Prohibition of slavery and forced labour
Article 5	:	Right to liberty and security
Article 6	:	Right to a fair trial
Article 7	:	No punishment without law
Article 8	:	Right to respect for private and family life
Article 9	:	Freedom of thought, conscience and religion
Article 10	:	Freedom of expression
Article 11	:	Freedom of assembly and association
Article 12	:	Right to marry
Article 13	:	Right to an effective remedy
Article 14	:	Prohibition of discrimination
Article 34	:	Applications by person, non-governmental organisations or groups of individuals

Protocol No. 1

Article 1	:	Protection of property
Article 2	:	Right to education
Article 3	:	Right to free elections

Protocol No. 2

Article 1	:	Prohibition of imprisonment for debt
Article 2	:	Freedom of movement
Article 3	:	Prohibition of expulsion of nationals
Article 4	:	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

Article 1	:	Procedural safeguards relating to expulsion of aliens
Article 2	:	Right to appeal in criminal matters
Article 3	:	Compensation for wrongful conviction
Article 4	:	Right not to be tried or punished twice
Article 5	:	Equality between spouses