CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 52
on the case-law of the Court
April 2003

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

Statistical information[1]

Judgments delivered	April	2003
Grand Chamber	0	2(5)
Section I	36(38)	77(81)
Section II	26	62(64)
Section III	10	31
Section IV	16	39
Sections in former compositions	0	9
Total	**88(90)**	**220(229)**

Judgments delivered in April 2003					
	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	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	30(32)	6	0	0	36(38)
Section II	17	6	1	2[2]	26
Section III	10	0	0	0	10
Section IV	9	5	2	0	16
Total	**66(68)**	**17**	**3**	**2**	**88(90)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(5)	0	0	0	2(5)
former Section I	4	0	0	0	4
former Section II	0	0	0	0	0
former Section III	4	0	0	0	4
former Section IV	0	0	0	1[2]	1
Section I	58(62)	17	0	2[3]	77(81)
Section II	48(50)	10	2	2[2]	62(64)
Section III	30	1	0	0	31
Section IV	31	6	2	0	39
Total	**177(186)**	**34**	**4**	**5**	**220(229)**

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. Revision.
3. One revision judgment and one just satisfaction judgment.

Decisions adopted		April	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		16(17)	47(49)
Section II		8	30
Section III		5	34
Section IV		12(36)	33(57)
former Sections		0	1
Total		**41(66)**	**146(171)**
II. Applications declared inadmissible			
Section I	- Chamber	10	27
	- Committee	385	1535
Section II	- Chamber	2	20
	- Committee	279	1392
Section III	- Chamber	3(4)	32(34)
	- Committee	167	886
Section IV	- Chamber	7	38
	- Committee	139	978
Total		**992(993)**	**4908(4910)**
III. Applications struck off			
Section I	- Chamber	1	5
	- Committee	4	9
Section II	- Chamber	1	13
	- Committee	2	13
Section III	- Chamber	3	20
	- Committee	3	5
Section IV	- Chamber	1	62(80)
	- Committee	0	15
Total		**15**	**142(160)**
Total number of decisions[1]		**1048(1074)**	**5196(5241)**

1. Not including partial decisions.

Applications communicated	April	2003
Section I	22(23)	92(97)
Section II	35	116
Section III	85(86)	238(246)
Section IV	26(49)	141(165)
Total number of applications communicated	**168(193)**	**587(624)**

ARTICLE 2

LIFE
Death in custody and lack of effective investigation: *violation*.

AKTAŞ - Turkey (Nº 24351/94)
Judgment (final) 24.4.2003 [Section III]

Facts: The applicant's brother died in custody in 1990, allegedly as a result of torture. Although there was extensive bruising on the body, the autopsy and subsequent forensic examination failed to establish the cause of death. Two gendarmes were prosecuted but were acquitted in 1994. As the Government denied that the death had resulted from ill-treatment, a delegation of the European Commission of Human Rights carried out an investigation. The delegates refused requests by the Government for a number of gendarmes to be allowed to give evidence in the absence of the applicant's representatives or at least separated from them by a screen, although the delegates suggested that evidence could be given in the absence of the applicant and his relatives. As a result of the delegates' refusal, the witnesses did not appear before them.
Law: Article 38(1)(a) and inferences to be drawn – The Court expressed concern over three matters. Firstly, it was struck by the Government's stated inability to trace the doctor who had pronounced the applicant's brother dead. Secondly, it was not convinced of the necessity for security reasons of the witnesses – some of whose evidence would have been invaluable – being heard in the absence of the applicant and his relatives and representatives. Thirdly, photographs of a body said to be that of the applicant's brother had been handed to the Commission delegates only after the applicant had been heard; they bore no identifying information and for reasons that had never been explained the Government had been unable to produce the negatives. In these circumstances, the Court considered that it was entitled to draw inferences from the Government's conduct.
Evaluation of the facts – The available medical evidence indicated that at the time of his arrest, the applicant's brother was not suffering from any potentially fatal condition and did not bear the bruises and scars subsequently observed in the post mortem examination. In the light of the absence of any hospital record of the death and the failure of the Government to produce the doctor who pronounced the applicant's brother dead, it could be inferred that the applicant's brother was dead on arrival at the hospital and thus had died in the hands of the gendarmerie. The Court therefore found it proven beyond a reasonable doubt that the applicant's brother had been a prisoner of the authorities and had been subjected to violence which had directly caused his death.
Article 2 – In the light of the established facts, the applicant's brother had been deprived of his life in circumstances engaging the responsibility of the respondent State and there was nothing to suggest that this was necessary for any of the reasons set out in the second paragraph of Article 2. There had therefore been a violation in that respect. As to the effectiveness of the investigation, firstly the inspection of the premises had been carried out by members of the gendarmerie itself, including several actually attached to the unit involved, so that the inspection could not be regarded as part of an "effective investigation". Secondly, no responsible gendarmerie official seemed to have taken the initiative of immediately alerting any competent authority to the death in custody. Thirdly, the provincial administrative council to which the case was later referred did not satisfy the requirements of independence and such councils had already been found to be unlikely to initiate effective investigative measures. Fourthly, whether or not the major who took part in the investigation had interrogated the applicant's brother, he was a member of the gendarmerie and part of the same chain of command as those he was investigating. Fifthly, there was an unexplained

delay in taking statements from gendarmes and it was not apparent that any had been asked to account for the injuries on the body. In conclusion, the investigation was not capable of yielding the information required to determine whether the force used was justified or of securing evidence sufficient to bring the perpetrators to justice. There had therefore been a violation also in that respect.
Conclusion: violation (unanimously).
Article 3 – On the basis of its finding that the applicant's brother had been ill-treated while in detention, the Court concluded that he had been the victim of inhuman and degrading treatment. There could be no doubt that the treatment was particularly serious, as it had resulted in death, and in the light of the evidence that the marks on the body were consistent with mechanical asphyxiation such as would result from pinioning of the chest so as to prevent breathing, crucifixion or Palestinian hanging, the Court had no difficulty in drawing the inference that the suffering was particularly severe and cruel. Moreover, as it was not disputed that the victim had been interrogated, it was reasonable to infer that the purpose of the ill-treatment was to obtain information or a confession and the treatment therefore constituted torture. In addition, there had been a violation of this provision on account of the inadequacy of the investigation.
Conclusion: violation (unanimously).
Article 6 – The Court found it appropriate to examine the complaint of lack of access to a court under the more general obligation to provide an effective remedy under Article 13.
Conclusion: not necessary to examine (unanimously).
Article 13 – For the reasons already given, no effective criminal investigation could be considered to have been conducted. The applicant had therefore been denied an effective remedy.
Conclusion: violation (6 votes to 1).
Article 14 – The Court could not find that the treatment of the applicant's brother leading to his death was linked to his ethnic origins as such.
Conclusion: no violation (unanimously).
Article 34 – It had not been alleged that any authority had tried to enter into direct contact with the applicant in connection with the application. The complaint seemed to be rather that by failing to conduct a proper investigation the respondent Government had made it more difficult for him to present his case. The Court had already found violations under Articles 2, 3 and 13 with regard to the investigation and it would serve no useful purpose to consider the matter also under Article 34.
Conclusion: not necessary to examine (unanimously).
Article 38(1)(a) – In its report, the Commission had expressed the view that a request for security measures should be decided in the light of the particular circumstances of the case to which it related. To that end it was imperative that due notice be given and sufficient reasons provided to allow it to examine whether there existed an objective situation justifying the measures requested as well as a reasonable, plausible and subjective fear on the part of each witness to whom the request applied. In the present case, the requests had been made at a very late stage and observations regarding the reasons had been submitted only after the Commission had already decided on the requests. The Commission had pointed out that many members of the security forces had been heard by its delegates since 1995 without a need for security measures having been expressed and that no indication had been provided of how the present case fell to be distinguished. Moreover, the Commission could not see why its proposal to take evidence in the absence of the applicant and his relatives would not have sufficed to allay concerns. In so far as it was suggested that the appearance of the witnesses before the applicant's representatives might lead to their descriptions being communicated to terrorists, the Commission had considered this to be unbecoming and unsubstantiated. The Commission had concluded that the Government had fallen short of their obligation under former Article 28(1)(a) to furnish all necessary facilities. The Court agreed with this conclusion.
Conclusion: failure to fulfil obligations (unanimously).

Article 41 – The Court awarded 226,065 € in respect of future loss of earnings and 58,000 € in respect of non-pecuniary damage, to be held by the applicant for his brother's widow and daughter. It also awarded the applicant 4,000 € as an "injured party", despite the fact that no breach of Article 3 had been found with regard to him and he could not be considered a victim in his own right of the violations found. Finally, the Court made an award in respect of costs and expenses.

ARTICLE 3

TORTURE
Torture in custody: *violation*.

AKTAŞ - Turkey (Nº 24351/94)
Judgment (final) 24.4.2003 [Section III]
(See Article 2, above).

INHUMAN OR DEGRADING TREATMENT
Conditions of detention of prisoner sentenced to death: *violation*.

POLTORATSKIY - Ukraine (Nº 38812/97)
Judgment 29.4.2003 [Section IV]

Facts: The applicant was sentenced to death in 1995. The sentence was upheld in 1996 and he was transferred to an isolation block to await execution. However, a moratorium on capital punishment was declared in 1997 and all death sentences were commuted to life imprisonment by virtue of a law adopted in 2000. According to the applicant, a secret instruction applying to prisoners sentenced to death prevented him enjoying his rights, including exercise in the open air, access to television and newspapers and receipt of food parcels. He also submitted that he was prohibited from corresponding until September 1997 and that he was not allowed to receive visits from a priest (until December 1998) or, initially, from his father. Family visits were thereafter limited to one per month. It was further alleged that the applicant was beaten on several occasions in 1998. In that respect, the authorities informed his parents that after thorough investigations the allegations had been found to be unsubstantiated. As the applicant's allegations concerning the conditions of his detention were disputed by the Government, the European Commission of Human Rights carried out an investigation. A delegation visited the prison in November 1998 and took evidence from witnesses. The Commission found that it was impossible to establish beyond a reasonable doubt that the applicant had been subjected to the ill-treatment which he alleged. However, no investigation appeared to have been carried out by any domestic authority other than those directly involved, while the medical certificate produced was dated two months after the alleged incidents. The delegates found that the applicant was held in a single cell with an open toilet, a washbasin with cold water, two beds, a table and a bench, central heating and a window with bars. The light was on constantly and inmates were frequently observed by prison warders through a spy hole. Moreover, until May 1998 inmates had not been allowed to have daily outdoor walks and the windows of their cells had been completely shuttered. The Commission accepted the applicant's evidence that conditions had been worse prior to the delegates' visit. With regard to family visits, it noted that virtually all requests by the applicant's parents had been granted, but for dates two or three months after submission of the requests. Furthermore, visits took place in the presence of warders who could intervene. With regard to correspondence, the Commission noted that the applicant had sent and received a number of letters. However, rules allowed the applicant to send only one letter per month to

his family and all his correspondence was censored. Finally, while it had not been established with sufficient clarity whether permission for a priest to visit had been requested, there had been no regular visits.
Law: Article 3 – (i) It had not been established to the requisite standard of proof that the applicant was assaulted in prison in breach of this provision.
Conclusion: no violation (unanimously).
(ii) The Commission had concluded that the investigations had been both perfunctory and superficial and did not reflect any serious effort to discover what had really occurred. The Court shared the findings and reasoning of the Commission and concluded that the applicant's claim that he was assaulted had not been subjected to an effective investigation by the domestic authorities.
Conclusion: violation (6 votes to 1).
(iii) As to the conditions of the applicant's detention, the Court had jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention came into force in respect of Ukraine. However, in assessing the effect of the conditions, it could also have regard to the overall period of his detention and to the conditions during that period. The Court accepted that the applicant must initially have been in a state of uncertainty, fear and anxiety as to his future but it considered that the risk of execution and the accompanying fear and anxiety must have diminished as time went on. It relied on the findings made by the Commission's delegates and also had regard to reports of the European Committee for the Prevention of Torture. It viewed with particular concern the fact that the applicant, until May 1998, was locked up in his cell for 24 hours a day and had no access to natural light, no opportunity for outdoor exercise and little or no opportunity for other activities or for human contact. Detention in unacceptable conditions of that kind amounted to degrading treatment, and the situation was aggravated by several other factors, including the fact that throughout the period in question the applicant was subject to a death sentence. While there was no evidence of a positive intention to humiliate or debase him, the conditions must nevertheless have caused him considerable mental suffering, diminishing his human dignity. Although significant improvements had taken place after May 1998, the applicant had already been in detention for 30 months by then. Furthermore, the serious economic difficulties encountered by Ukraine could not explain or excuse the unacceptable conditions of the applicant's detention.
Conclusion: violation (unanimously).
Article 8 – The restrictions on visits and correspondence constituted interferences with the right to respect for family life and correspondence. The conditions of detention of persons sentenced to death were at the material time governed by an instruction which was an internal and unpublished document not accessible to the public. The interferences were consequently not “in accordance with the law”.
Conclusion: violation (unanimously).
Article 9 – The Commission had found it established that the applicant was not able to participate in the weekly religious service available to other prisoners and that he was not in fact visited by a priest until December 1998. This situation amounted to an interference with the exercise the “freedom to manifest [his] religion or belief” and, since the above-mentioned instruction did not confer any right to be visited by a priest, the interference was not “prescribed by law”.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 2,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

KUZNETSOV - Ukraine (Nº 39042/97)
Judgment 29.4.2003 [Section IV]

This case raises issues similar to those in Poltoraskiy v. Ukraine, above.

KHOKHLICH - Ukraine (Nº 41707/98)
Judgment 29.4.2003 [Section IV]

Facts: The applicant was sentenced to death in 1996. However, a moratorium on capital punishment was declared in 1997 and all death sentences were commuted to life imprisonment by virtue of a law adopted in 2000. The applicant complained about the conditions of his detention. A delegation from the Court visited the prison in October 1999 and took evidence from several witnesses, including the applicant. The applicant stated that he had been informed of his rights in September 1999. He complained that he was given insufficient food, that his cell was very cold in winter and that the shower room was in an unacceptable state. He claimed that the cell light was on constantly, although he added that this did not disturb him too much. He stated that the cell window had remained shuttered until just before the delegates' visit and that he had only been allowed to take a daily walk since May 1998. The applicant had been diagnosed in September 1997 as having tuberculosis and he submitted that this was as a result of having shared a cell with another inmate with the disease (diagnosed in July 1997). He further complained about restrictions on receiving parcels and on his visiting rights and added that although the Regional Court had given permission in December 1997 for a notary to visit him, the visit had only taken place in February 1998. The delegates found that the applicant's cell, measuring $9m^2$, was in order and clean, with an open toilet, a basin with cold water, two beds, central heating and a window with bars, and appeared to be sufficiently heated and ventilated.
Law: Government's preliminary objections – The question of the applicant's victim status had not been raised at the admissibility stage and the Government were therefore estopped. As to the exhaustion of domestic remedies, the evidence of the applicant and his mother that they had lodged several complaints with the prison authorities was reliable, and the authorities were therefore sufficiently aware of his situation and had an opportunity to examine the conditions of detention and, if appropriate, offer redress. In so far as the applicant had not lodged a formal written complaint, he had not been properly informed of his rights until September 1999 and thus did not have sufficient knowledge of those rights before then. Finally, the Government had not shown how recourse to a civil action could have brought about an improvement in the conditions and had not produced any domestic case-law to show that such an action would have had any prospects of success. The objections were therefore dismissed.
Article 3 (conditions of detention) – The Court had jurisdiction to examine the applicant's complaints in so far as they related to the period after 11 September 1997, when the Convention came into force in respect of Ukraine. However, in assessing the effect of the conditions, it could also have regard to the overall period of his detention and to the conditions during that period. The Court accepted that the applicant must initially have been in a state of uncertainty, fear and anxiety as to his future but it considered that the risk of execution and the accompanying fear and anxiety must have diminished as time went on. It largely accepted the applicant's evidence as to the conditions of his detention and, while it could not establish with complete clarity the conditions prior to the delegates' visit, certain facts were beyond dispute. The Court viewed with particular concern the fact that, until May 1998, the applicant had been locked up for 24 hours a day in a cell which offered only a very restricted living space, with no access to natural light, no opportunity for outdoor exercise and little or no opportunity for other activities or for human contact. Detention in unacceptable conditions of that kind amounted to degrading treatment, and the situation was aggravated by the fact that throughout the period in question the applicant was subject to a death sentence. While there was no evidence of a positive intention to humiliate or debase him, the conditions which he had had to endure, in particular until May 1998, must nevertheless have caused him considerable mental suffering, diminishing his human dignity. Although significant improvements had taken place thereafter, the applicant had by then already been in detention for 24 months. Furthermore, the serious economic difficulties encountered by Ukraine could not explain or excuse the unacceptable conditions of the applicant's detention.

Conclusion: violation (unanimously).
Article 3 (infection with tuberculosis) – To the extent that the oral evidence and the prison records conflicted, the Court preferred to rely on the latter as likely to be more accurate and found on that basis that the applicant had been detained in a separate cell from 23 April 1997. It did not consider reliable the applicant's evidence that, during the period that he shared a cell, his cell-mate was already ill. The latter had been diagnosed with tuberculosis more than two months after they had been detained together and while it was theoretically possible for him to have been suffering from tuberculosis while they shared a cell, an independent medical commission had concluded that they actually had different types of tuberculosis and that the other inmate's was not active. It was not therefore plausible that the applicant had been infected by his cell-mate. Moreover, both had received appropriate and adequate treatment, so that when they subsequently shared a cell again there was little risk of repeat infection. Finally, the health of both was satisfactory and they were under continuous medical supervision. In these circumstances, the applicant had not been subjected to ill-treatment on account of being infected with tuberculosis.
Conclusion: no violation (unanimously).
Article 8 – By limiting the number of parcels which the applicant was allowed to receive and by preventing him from receiving two-hour visits from his relatives, the public authorities had interfered with his right to respect for private and family life and correspondence.
(i) During the period from September 1997 to July 1999, the general legal basis for conditions of detention was the Correctional Labour Code. However, the relevant provision referred to persons sentenced to imprisonment, which did not clearly include the applicant, who had been sentenced to death. Moreover, although the provision also stated that convicted persons serving their sentence in a prison were not allowed to receive parcels, the applicant was not held in any of the types of institution mentioned in the same provision. Consequently, the restrictions imposed by the Code were not sufficiently foreseeable in the present case. In addition, the instruction referred to by the Government was an internal and unpublished document not accessible to the public.
Conclusion: violation (unanimously).
(ii) Although the applicant had not complained about the period after July 1999, the Court considered it appropriate, taking into account the importance of contacts between prisoners sentenced to death and their families, to examine the restrictions imposed by the Temporary Provisions which came into force at that time and which allowed six parcels and three small packages a year. These restrictions were in accordance with the law and could be regarded as pursuing the legitimate aim of the prevention of disorder or crime. As to their necessity, taking into account the logistical problems involved in processing an unrestricted quantity of parcels arriving at a large penitentiary, the limitations could be regarded as respecting a fair balance, bearing in mind that the prison authorities were able to provide clothing, meals and medical care and that there were no restrictions on relatives sending money to inmates to purchase goods in the prison shop.
Conclusion: no violation (unanimously).
Artocle 13 – It was the applicant's mother who had requested that a notary visit him in prison; the applicant had not personally applied for the visit in writing. Moreover, while he had complained to the delegates about the delay, he had confirmed that this had not caused him any damage.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded the applicant 2,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

NAZARENKO - Ukraine (Nº 39483/98)
DANKEVICH - Ukraine (Nº 40679/98)
ALIEV - Ukraine (Nº 41220/98)
Judgments 29.4.2003 [Section IV]

These cases raise issues similar to those in Khokhlich v. Ukraine, above. In the case of Nazarenko, although the applicant's lawyer had indicated that he was of the view that the applicant's complaints had been resolved as a result of the improvements which had taken place, the Court considered that the complaints raised serious issues of a general nature requiring its continued examination of the case. In the case of Aliev, the Court found that the applicant's allegation that he had been ill-treated by prison officers had not been proved beyond a reasonable doubt; it also found under Article 8 that the denial of conjugal visits could for the present time be regarded as justified for the prevention of disorder and crime.

INHUMAN OR DEGRADING TREATMENT
Adequacy of medical care provided by prison authorities to heroin addict suffering withdrawal symptoms: *violation*.

McGLINCHEY and others - United Kingdom (Nº 50390/99)
Judgment 29.4.2003 [Section II]

Facts: The applicants are the mother and children of Judith McGlinchey, a heroin addict who died while serving a prison sentence for theft. On arrival at prison, she complained about withdrawal symptoms and severe asthma and was consequently kept in the health centre pending examination by a doctor. She was given an inhaler during the night and was examined the following day by a doctor who prescribed medication to appease the symptoms of heroin withdrawal. On one occasion, the medication was not administered, due to a drop in her blood pressure. During the next few days, she vomited frequently and although on several occasions anti-nausea medication was given, its effects were only short-term. The prison medical officer considered, nevertheless, that her condition was stable and that there were no signs of dehydration. By the sixth day of detention, Ms McGlinchey had lost several kilos (although it later emerged that there were discrepancies between the different scales used). Two days later, she collapsed vomiting blood and was taken to hospital, where she had a cardiac arrest. She died a few days later. An inquest was held and a number of deficiencies were identified. However, the jury returned an open verdict. In the light of a medical opinion that there was insufficient evidence to establish the necessary causal link between the death and negligent care, the applicants did not pursue any civil claims.
Law: Article 3 – (i) With regard to the allegation that the prison authorities failed to adminster the medication for heroin withdrawal on one occasion as a punishment, the medical notes supported the Government's submission that it was in fact on the doctor's instructions and due to a drop in blood pressure that the medication was not administered. It had not been substantiated that relief for the withdrawal symptoms had been denied as a punishment. (ii) With regard to the allegation that Ms McGlinchey was left to lie in her vomit, the Court could not find that in the urgency of the transfer to hospital the failure to ensure that she was adequately cleaned disclosed any element of degrading treatment. Moreover, there was insufficient material to reach any finding on the allegation that she had had to clean up her own vomit in prison. (iii) With regard to the allegation that medication for her asthma was not administered, she was in fact given an inhaler. (iv) Finally, as to the complaint that not enough was done, or done quickly enough, to treat Ms McGlinchey's withdrawal symptoms, while it appeared that her condition was subject to regular monitoring during the first six days and steps were taken to respond to the symptoms, she was vomiting repeatedly during that period and lost considerable weight. Moreover, although her condition was still deteriorating,

she was apparently not examined during the next two days, as the medical officer did not work at weekends. Serious weight loss and dehydration had occurred as a result of a week of largely uncontrolled vomiting and inability to eat or hold down liquids. In addition to causing her distress and suffering, this posed very serious risks to her health. Having regard to the responsibility of prison authorities to provide the requisite medical care for detainees, there had been a failure to meet the standards imposed by Article 3. The treatment of Ms McGlinchey had thus contravened the prohibition against inhuman and degrading treatment.
Conclusion: violation (6 votes to 1).
Article 13 – Internal prison remedies would not provide any right to compensation, and no action in negligence could be pursued in the civil courts where conduct fell short of causing physical or psychological injury. Moreover, it was not apparent that in an action for judicial review damages could be awarded on a different basis. Thus, no compensation was available under English law for the suffering and distress found to disclose a breach of Article 3. In the case of a breach of Articles 2 or 3, compensation for non-pecuniary damage should in principle be available as part of the range of possible remedies.
Conclusion: violation (unanimously).
Article 41 – The Court awarded 11,500 € to Ms McGlinchey's estate and 3,800 € to each of the applicants in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

POSITIVE OBLIGATIONS
Lawyers insulted during hearings and attacked on leaving court by private individuals: *inadmissible*.

TUNCER and others - Turkey (N° 12663/02)
Decision 13.3.2003 [Section III]

The applicants are lawyers and were defending a number of persons accused before the Istanbul National Security Court of, *inter alia,* the murder of the President of the local office of the National Movement Party. At the hearing, the applicants were verbally abused by a group of militants from that party. At three further hearings, the applicants were subjected to insults and threats by close relatives of the parties claiming civil damages, and on two occasions the police had to escort the applicants from the court building. Following one hearing, two of the applicants were physically assaulted by a group of persons thirty or forty metres from the exit from the court building, where they could not be seen from the security court building. One of the applicants was kicked and punched and the other was stabbed twice in the leg. However, they managed to regain the main entrance to the court building and their assailants, afraid of being seen by the police officers guarding the entrance, fled.
Inadmissible under Article 3: This article requires the contracting States to take appropriate measures to prevent persons coming within their jurisdiction from being subjected to ill-treatment: the responsibility of the State may therefore be engaged, in particular, where the authorities have not taken reasonable measures to ensure that a risk of which they were or should have been aware did not become a reality, even where the risk was posed by persons or groups of persons not belonging to the public service. The insults and assaults on the part of civil groups who had attended the hearings before the security court, do not appear to have reached the threshold of gravity required for it to be necessary to consider whether the responsibility of the respondent State may have been engaged.
As regards the physical assaults, Article 3 does not impose a positive obligation to prevent any potential violence or any criminal act by a third party. In this case, there is no evidence to suggest that the judges or security personnel guarding the court building might have foreseen that things would get worse outside, and in particular that fifteen or so individuals would gather in order to commit the assault in question. In particular, the applicants were unable to

show the Court how the police officers in the court building, approximately thirty metres from the scene of the assault, could have taken effective action: manifestly ill-founded.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Transfer to prison in country of origin, where provisions for early release allegedly less favourable: *communicated*.

ALTOSAAR - Finland (Nº 9764/03)
[Section IV]

The applicant, an Estonian national, is currently serving a prison sentence in Finland for drugs offences. He began his sentence of six years and ten months in June 2001. In September 2002, the authorities decided to transfer him to Estonia to serve out the remainder of his sentence. The applicant appealed to the Administrative Court, arguing *inter alia*, that a transfer would effectively lengthen his sentence, since he could expect to be released in Finland after serving half his time whereas early release in Estonia is discretionary and in any event not available until two-thirds of sentence has been served. His appeal was rejected in March 2003.
Communicated under Articles 5 and 6.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Failure to examine civil party' compensation claim as a result of delays by the prosecution authorities: *violation*.

ANAGNOSTOPOULOS - Greece (N° 54589/00)
Judgment 3.4.2003 [Section I]

Facts: The applicant lodged a criminal complaint against certain employees of a bank, applied to join the proceedings and claim civil damages and in that context claimed compensation for non-pecuniary damage. Four years after the complaint had been lodged, the investigating judge summoned the employees in respect of the alleged offences, which then dated from five years previously. The court of first instance and the court of appeal concluded that the alleged offences were covered by the five-year limitation period and therefore dismissed the charges.
Law: Article 6(1) – The applicant had lodged a criminal complaint and applied to claim civil damages in the proceedings. It is apparent from the judicial decisions delivered that the applicant's claim for damages could no longer be considered by the criminal courts, since the alleged criminal offences were time-barred. Admittedly, the applicant could have brought proceedings for compensation before the criminal courts, in which case no problem of access to the courts would have arisen. However, the Court attaches particular weight to the circumstances of this case: on the one hand, it was the belated summoning of the accused by

the investigating judge that led to the offence becoming time barred, and in the meantime a new law had reduced the period within which a prosecution could be initiated; last, the Greek criminal courts are required to examine the claim for civil damages where the proceedings result in a conviction and can refer the case to the civil courts only in certain circumstances. Where the internal legal order affords a remedy to the persons coming within its jurisdiction, such as a claim for civil damages in the context of criminal proceedings, the State is under an obligation to ensure that the persons concerned enjoy the fundamental guarantees provided for in Article 6. The applicant had a legitimate expectation that the courts would adjudicate on his claim for damages, whether favourably or unfavourably. The prosecution authorities' delay in dealing with the case, which led to the alleged offences becoming time barred and to the applicant's being unable to obtain an adjudication on his claim for damages, deprived the applicant of a right of access to a court.
Conclusion : violation (5 votes to 2).
Article 41 – The Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary harm sustained.

ACCESS TO COURT
Service by public notice where the defendant cannot be traced: *inadmissible*.

NUNES DIAS - Portugal (N° 69829/01 and N° 2672/03)
Decision 10.4.2003 [Section III]

An action for damages was initiated against the applicant in respect of the loss resulting from a road traffic accident which had led to the death of a member of the claimants' family. The judge summoned the applicant to appear before him but the applicant, who in the meantime had moved home, could not be found at the address given by the claimant. The police informed the court that the applicant's new address was unknown. Thus, pursuant to the applicable legislation, the service of the summons was effected by public display and by publication of notices in a national newspaper stating that a claim for damages had been brought against the applicant. The applicant failed to enter an appearance and the hearing took place in his absence. In 1989, the court decided to make an order for damages against the applicant. In 1999, the applicant was notified that proceedings had been initiated against him to enforce the decision taken against him, which had become final. He initiated proceedings against the decision ordering him to pay damages, but without success. The applicant then lodged an objection against the enforcement of that decision and was successful in part before the lower courts. The higher courts dismissed his action, in particular the plea alleging that the summons in the main proceedings served by being publicly displayed was void.
Inadmissible under Article 6(1): The rules on the summoning of the applicant by means of public display applied in the present case – the rules relating to the procedures and time limits to be observed in bringing proceedings – were designed to ensure the proper administration of justice and compliance, in particular, with the principle of legal certainty. To extend proceedings indefinitely in order to find the address of one of the persons involved might prove to be inconsistent with those principles. The right of access to a court therefore does not prevent the Contracting States from making provision in their legislation for a procedure to apply in a situation of this type, provided that the rights of those concerned are properly protected. That is the position here, in the light of the facts in issue and the rules applied. The court ordered service by public display only when it was satisfied, after making enquiries of the police, that the applicant's address could not be found. Furthermore, persons in the same situation as the applicant have available a remedy in domestic law, which gives them the opportunity to challenge the validity of service by public display either during the main proceedings or within five years of the date on which the decision became final, or in the context of the subsequent enforcement proceedings. In the latter proceedings, the applicant was able to submit argument to demonstrate that such service should not have been ordered; in rejecting such argument, the national courts did not interpret the disputed procedural rules

arbitrarily or unreasonably. Accordingly, there was no breach of the very substance of the applicant's right of access to a court: manifestly ill founded.

EQUALITY OF ARMS
Adoption of retroactive legislation during court proceedings involving the State: *admissible*.

OGIS–Institut Stanislas - France (N° 42219/98)
OGEC St. Pie X and 39 others and Blanche de Castille and 15 others v. France
(N° 54563/00)
Decision 3.4.2003 [Section I]

The first applicant is the management board of a private establishment, the Institut Stanislas, and the other applicants are the management boards of Catholic establishments (OGECs). These management boards administer private educational establishments, with State participation. Although the State is responsible for paying the schoolteachers and the associated social security contributions, it transpired that the management boards were required to pay a supplementary social security contribution. In 1992, a judgment of the Council of State established the principle that they were entitled to repayment in full of the contributions which they had paid in advance, at the rate of 1.5%. The management boards, apart from the applicants, who sought repayment in full of the contributions following the judgment of the Council of State, were in certain cases successful. As regards the applicants, they submitted applications to the authorities and they brought the matter before the administrative courts, seeking an order that the State should make reimbursement in full for the contributions for the periods concerned. While the actions in question were pending, the legislature enacted section 107 of the Law of 31 December 1995, intended to regulate retroactively, for the period prior to 1 November 1995, the question of the proportion of the reimbursement for which the State was responsible. The implementing decree adopted on 16 July 1996 set the rate of that reimbursement at 0.062%. It was at this rate that the applicants obtained reimbursement for the periods concerned.
Admissible under Article 6(1) (equality of arms), and (Nº 54563/00) Article 6(1) and Article 1 of Protocole No. 1, also in conjunction with Article 14.

EQUALITY OF ARMS
Role of Government Commissioner in proceedings concerning the fixing of compensation for expropriation: *violation*.

YVON - France (N° 44962/98)
Judgment 24.4.2003 [Section III]

Facts: Following an expropriation measure affecting the applicant, and in the absence of agreement with the State on the amount of compensation payable, the applicant referred the matter to the Expropriations Judge. The Expropriations Judge determined the amount payable by the State, after hearing submissions by the applicant, the Inspector of the Charente-Maritime Fiscal Services Directorate, representing the State in the proceedings, and the Deputy Director of the Charente-Maritime Fiscal Services Directorate, acting as Government law officer. The applicant challenged the amount of the compensation before the Court of Appeal. In those proceedings, the Fiscal Services Directorate lodged a memorial in reply and the Deputy Director of the Charente-Maritime Fiscal Services filed submissions in his capacity as Government law officer. The applicant claimed that this twofold involvement of the Director of Fiscal Services was contrary to his right to a fair trial. The Court of Appeal held that the double capacity of the Director of Fiscal Services, acting as Government law officer, and of the Director of Fiscal Services, representing the expropriating authority, did not amount to an irregularity. The Court of Appeal set the compensation at a higher amount

than that awarded at first instance but below the amount claimed by the applicant. The Court of Cassation dismissed the applicant's appeal on a point of law.
Law: Article 6(1) – (a) Equality of arms: The Government law officer is a "party" to the compensation proceedings before the Expropriations Judge. He protects interests similar to those protected by the expropriating authority and advocates a reasonable evaluation of the compensation. Sometimes, moreover, as in this case, he belongs to the same administration, indeed to the same departmental service, as the representative of the expropriating authority. This may lead to situations in which, as appears to have been the case here, the Government law officer is the hierarchical superior of the representative of the expropriating State, and in which there is thus a certain confusion between those two parties. Those circumstances undoubtedly undermine the position of the expropriated party. However, they do not in themselves suffice to characterise a breach of the principle of equality of arms. The situation is one which is commonly found before the courts of the member States of the Council of Europe. In short, the fact that a similar point of view is argued by a number of parties in judicial proceedings does not necessarily place the opposite side at a "clear disadvantage" in presenting his case. The conditions on which the Government law officer participates in the proceedings must still enable a "fair balance" to be struck between the parties. In the compensation proceedings, the expropriated party is faced not only with the expropriating authority but also with the Government law officer. The Government law officer and the expropriating authority – which in certain cases is represented by an official from the same department as the Government law officer – have significant advantages in access to the relevant information; furthermore, the government law officer, who is both an expert and a party, is in a dominant position in the proceedings and has considerable influence on the findings of the judge. All of this gives rise, *vis-à-vis* the expropriated party, to an imbalance which is incompatible with the principle of equality of arms.
Conclusion : violation (unanimous).
(b) *Inter partes* proceedings: although there was no legal requirement to that effect, the applicant received a copy of the submissions of the government law officer on the day before the date of the hearing and was thus able to prepare a reply in satisfactory circumstances. He cannot therefore complain of a breach of the *inter partes* principle in this regard.
The applicant also complains that at the hearings before the expropriation courts the government law officer was the last to address the court. However, the applicant was notified of the government law officer's written submissions before the hearing, on appeal as well as at first instance, in circumstances which enabled him to prepare a written reply; he was also able – and in fact did so before the appellate court – to lodge a note for consideration by the court during its deliberations. The applicant was therefore able to reply to the government law officer in satisfactory circumstances. Accordingly, there was no breach of the *inter partes* principle in this regard either.
Article 41 – The Court considers that the finding of a violation affords in itself sufficient just satisfaction for the non-pecuniary harm sustained by the applicant. It awards the sum of EUR 15,973.86 by way of costs and expenses.

IMPARTIAL TRIBUNAL
Indebtedness of judge's husband to a bank party to proceedings being dealt with by her: *violation*.

SIGURÐSSON - Iceland (Nº 39731/98)
Judgment 10.4.2003 [Section III]

Facts: The applicant brought proceedings against the National Bank of Iceland. The District Court dismissed his claim. On 31 May 1996 he appealed to the Supreme Court, which rejected the appeal in April 1997. It subsequently emerged that one of the judges and her husband had a financial relationship with the bank which, in the applicant's view, disqualified her from participating. In the spring of 1996 the judge's husband, who had acted as guarantor

in respect of certain debts, had attempted to reach a settlement with the creditors, including the National Bank. On 30 May 1996 he had issued debt certificates to a financial institution owned by the National Bank, secured on two properties owned by his wife. The certificates had been sold to a private company on 4 June 1996. On 6 June 1996 the National Bank and the other main creditor had agreed to accept payment of 25% of the debts and to release the judge's husband from the remainder of his obligations. The applicant's petitions for reopening the proceedings were rejected by the Supreme Court.
Law: Article 6(1) – There was no evidence to suggest that the judge was personally biased and nothing to suggest that her personal interests were at stake in the proceedings brought by the applicant. Moreover, while the judge's husband was indebted to the National Bank when the Supreme Court gave its judgment, there was no reason to doubt the information provided by the Government to the effect that at that time the amount which he owed could reasonably be considered to be moderate. Consequently, there was nothing to suggest that this, on its own, could have constituted financial pressure capable of affecting the judge's impartiality. As to the debt certificates, the creditor as from 4 June 1996 was a private company and it did not appear that after that date the certificates as such established any direct financial link between the judge's husband and the National Bank that could shed negative light on the judge's impartiality. However, neither of these sets of circumstances could be dissociated from a third factor, namely the wider context of the settlement agreement of 6 June 1996. In that connection, the judge had played a role in facilitating the settlement achieved by her husband by putting her properties up as security in respect of amounts which were not negligible. The settlement released the husband from substantial financial obligations and the cancellation of 75% of the debts had to be regarded as favourable treatment. Furthermore, the applicant's case was already before the Supreme Court at that time. Against that background, there was at least the appearance of a link between the legal dispositions taken by the judge and the advantages obtained by her husband from the National Bank. While there was no reason to believe that either the judge or her husband had any direct interest in the outcome of the case between the applicant and the National Bank, the judge's involvement in the debt settlement, the favours received by her husband and his links to the National Bank were of such a nature and amplitude and were so close in time to the Supreme Court's examination of the case that the applicant could entertain reasonable fears that the court lacked the requisite impartiality.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 25,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

IMPARTIAL TRIBUNAL
Investigation by auditor into loss caused to local authority by wilful misconduct in office: *inadmissible*.

PORTER - United Kingdom (Nº 15814/02)
Decision 8.4.2003 [Section IV]

The applicant is a British national resident in Israel. In the 1980s, she was the Conservative leader of Westminster Council. In an attempt to improve their electoral prospects, the applicant and other Conservative councillors devised a scheme to sell local authority housing at below cost to purchasers who were more likely to vote Conservative. In the period 1987-1989, 618 dwellings were sold to an approved list of purchasers at discounts varying from 30% to 70% of their real value. In July 1989, a number of persons complained to the Council Auditor about the sales. He sought a formal response from the Council, which reacted in November 1989. This marked the beginning of an investigation that lasted for more than six years, entailed 135 interviews of 50 persons, including the applicant, many thousands of pages of evidence and thirty two days of hearings. In January 1994, the Auditor reached provisional findings and issued "Notices to Show Cause" to ten persons. In relation to the

applicant, he concluded that he was provisionally minded to find her guilty of wilful misconduct. The persons concerned were given the opportunity to make representations to the Auditor before he reached final conclusions. The Auditor gave a press conference that same day in which he made public his findings. In May 1996, the Auditor found six individuals (including the applicant) jointly and severally liable for the sum of GBP 31,677,064, being the amount of money lost through their wilful misconduct. The six respondents appealed to the Divisional Court, which held a full rehearing of the merits and upheld the Auditor's conclusions. They then appealed to the Court of Appeal, which quashed the Auditor's findings. The Auditor appealed to the House of Lords, which overruled the Court of Appeal and restored his findings. In December 2001, Westminster Council issued proceedings in the High Court for the certified sum. The applicant opposed the application. Judgment was entered against her in July 2002. She was granted leave to appeal. To date, she has not complied with the judgment and her appeal is liable to be dismissed.

Inadmissible under Article 6: The applicant was ordered to pay a huge sum, but this related to the sum lost by the Council, which the applicant was required by law to make good. Although the surcharge was applied on account of the applicant's "wilful misconduct", it did not include any element of a fine and there was no question of imprisonment, even in the case of default. The proceedings were therefore not criminal in nature. Instead, they had the appearance of public law proceedings. However, since the domestic courts had proceeded on the basis that the proceedings involved the determination of the applicants civil rights and obligations, the Court was prepared to assume the same. The applicant contested the Auditor's independence and impartiality. However, the procedures adopted by him were essentially investigatory in nature. Despite the publicity attracted by his investigation, it was essentially an internal inquiry. It was only when the Auditor reached his provisional findings that the proceedings could be said to come within Article 6(1). Even if, as the House of Lords acknowledged, there was some validity in the criticism of the Auditor's role thereafter, the fact that the Divisional Court had engaged in a complete rehearing of the issues meant that the applicant's claims were heard before a body satisfying the requirements of Article 6(1).

The applicant complained of inequality of arms in that the burden of proof lay on her and she was unable to cross-examine the Auditor. Regarding the former complaint, the fact that the applicant had to discharge an initial burden of proof in putting the Auditor's findings into doubt was not unfair. She had the benefit of legal representation and the services of accountants to challenge the report and was not prevented from making her arguments before the courts. In the same way, although she was not able to cross-examine the Auditor himself, her representatives were able to challenge his financial calculations.

The applicant complained of the length of the proceedings before the Auditor and the Divisional Court. Article 6(1) only applied from the time the Auditor reached his provisional findings (January 1994). The total duration of the proceedings, up to the judgment of the House of Lords, was seven years and eleven months. They were complex, raising difficult issues of law and fact. The Auditor was not responsible for any part of the delay. The Divisional Court was delayed by the time taken by the appellants to file their evidence. The higher courts did not exceed what was reasonable, given the indisputable complexity of the case.

Article 6(1) [criminal]

CRIMINAL CHARGE
Proceedings involving the confiscation of a vehicle in connection with the criminal conviction of a third person who had used it unlawfully: *Article 6 not applicable*.

YILDIRIM - Italy (N° 38602/02)
Decision 10.4.2003 [Section I]
(see Article 1 of Protocol No. 1, below).

CRIMINAL CHARGE
Contempt of court proceedings for insulting judges: *Article 6 applicable*.

SADAY - Turkey (N° 32458/96)
Decision 10.4.2003 [Section I]
(see Article 10, below).

CRIMINAL CHARGE
Order to pay a very large sum to local authority for loss caused by wilful misconduct in office: *inadmissible*.

PORTER - United Kingdom (Nº 15814/02)
Decision 8.4.2003 [Section IV]
(see above).

ARTICLE 8

FAMILY LIFE
Adequacy of measures taken to enforce court decisions ordering return of child to father living abroad: *violation*.

SYLVESTER - Austria (Nº 36812/97 and Nº 40104/98)
Judgment 24.4.2003 [Section I]

Facts: The first applicant, a United States citizen, married an Austrian national in 1994. Their daughter, the second applicant, was born the same year. Under the law of the state in which they lived, the parents had joint custody. In October 1995 the mother took the child to Austria without the first applicant's consent. However, in December 1995 the Graz District Court found that the child had been wrongfully removed and ordered her return to the first applicant. It dismissed the mother's claim that return would entail a grave risk of physical or psychological harm within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction. The mother's appeals were dismissed. In May 1996 the court ordered enforcement of the return order. However, an attempt to enforce the order was unsuccessful and in August 1996, on the mother's appeal, the Regional Court quashed the order and referred the case back to the District Court with instructions to examine whether the situation had changed in view of the lapse of time and to obtain an expert report. The

Supreme Court rejected the applicant's appeal, considering that abrupt removal of the child from her main person of reference and return to the United States would cause irreparable harm. The District Court subsequently dismissed an application by the first applicant for enforcement of the return order, referring to the expert's opinion that return would expose the child to psychological harm. The first applicant's appeals were unsuccessful. The mother was awarded sole custody in December 1997.

Law: Article 8 – In cases of this kind, the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremedial consequences. A change in the relevant facts may exceptionally justify the non-enforcement of a final return order under the Hague Convention, but the change must not have been brought about by the State's failure to take all measures that could reasonably be expected. In the present case, the decisions quashing the return order relied rather heavily on the lapse of time and the ensuing alienation between the applicants and the question therefore arose whether the delays were caused by the authorities' failure to take adequate measures. In that respect, while the initial proceedings were conducted with exemplary speed there were important delays thereafter. In particular, it took three and a half months for the Regional Court to decide on the mother's appeal, although the courts were under a duty to decide expeditiously, and it took more than five months for the District Court to obtain the expert opinion. The case was ultimately decided on the basis of the time which had elapsed but the lapse of time was to a large extent caused by the authorities' own handling of the case. Moreover, they did not take any measures to create the necessary conditions for executing the return order while the lengthy enforcement proceedings were pending. The authorities had thus failed to take, without delay, all the measures that could reasonably be expected for enforcement of the return order.

Conclusion: violation (unanimously).

Article 6(1) – The lack of respect for the applicants' family life lay at the heart of the complaint and it was unnecessary to examine the facts also under Article 6.

Conclusion: no violation (unanimously).

Article 41 – The Court awarded the first applicant 20,000 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses. It considered that the finding of a violation constituted sufficient just satisfaction in respect of the second applicant.

FAMILY LIFE

Adequacy of measures taken by the authorities to enforce court decisions awarding applicant rights over her son, taken abroad by her ex-husband: *violation*.

IGLESIAS GIL and A.U.I. - Spain (N° 56673/00)
Judgment 29.4.2003 [Section IV]

Facts: Following her divorce, the first applicant was awarded custody of her son, the second applicant; the father had visiting rights. In February 1997, during a visit, the father fled to the United States with the child. The applicant lodged a complaint for removal of a child, together with a claim for civil damages, against her former husband and then against certain members of his family who, she alleged, had collaborated in the removal of her son. By order of February 1997, the investigating judge ordered that inquiries be made to establish the father's whereabouts and ordered that the son be returned forthwith. The investigating judge dismissed the applicant's applications for the father's mobile telephone to be monitored, for a number of members of the family who had allegedly collaborated in the child's removal to be questioned and for the registered office of her former husband's company and his vehicle to be searched. The investigating judge then dismissed the applicant's application for an international search and arrest warrant to be issued against her former husband. In June 1997, the investigating judge dismissed further applications for measures of investigation submitted by the applicant relating to the offence of contempt of court and failure to comply with the judgment of the family court. In May 1998, the investigating judge stated that according to

established domestic case-law, it was not possible to prosecute a person sharing parental authority of a minor for the offence of removing a child. In July 1998, the investigating judge reiterated his view that it was not possible to issue an international search and arrest warrant for the presumed offence of contempt of court. The applicant appealed against these orders; both her appeals were dismissed. A request that the judge should decline to deal with the case had been rejected in November 1997 and an application for the proceedings to be declared void was dismissed in February 1999. At the close of the investigation, the investigating judge, by decision of July 1998, made an order provisionally discontinuing the proceedings against the applicant's former husband and continuing the search and seizure order in respect of the latter's assets; he also definitively discontinued the proceedings against the members of the former husband's family implicated by the applicant. The applicant's appeal was dismissed and she commenced *amparo* proceedings, complaining, in particular, that the investigating judge had systematically refused to grant her application to order an international search for her child, which in her view constituted a breach of the positive obligation to protect the child and its family; she also claimed that by failing to order any measure of investigation, the investigating judge had directly infringed her and her child's right to private and family life. In June 1999, the Constitutional Court dismissed her application as manifestly unfounded. In February 1999, the family court withdrew parental authority from the child's father and awarded full parental authority to the applicant. In June 2000, the applicant lodged a complaint against her former husband for threats and duress. In September 2000, the investigating judge made a provisional order discontinuing the proceedings. This decision was annulled in May 2001 upon appeal by the applicant. In the meantime, in April 2000, the applicant had seen her son again for the first time since he was taken away in February 1997. She finally succeeded in recovering him in June 2000, with the help of the police.

Law: Article 8 – The right to respect for family life places positive obligations on the States, entailing the right of a parent to have measures taken to reunite the parent with the children and the obligation on the national authorities to take such measures. These obligations, which are not absolute, must be interpreted in the light of the Hague Convention of 25 October 1980, *a fortiori* when both the respondent State and the State to which the child had been taken are parties to that Convention. As regards the implementation of the rights recognised to the applicant to the custody and exclusive parental authority over her child, it is necessary to determine whether the national authorities took all the measures which might have been reasonably demanded of them to facilitate the implementation of the decisions taken to that effect, which here, owing to the fact that the child had been taken abroad and unlawfully not returned, entailed making appropriate and sufficient efforts to ensure compliance with the applicant's right to the return of her child and the child's right to be reunited with his mother. The preliminary investigation opened following the removal of the applicant's child by his father quickly established that the child's father was in the United States. Once it was found that the child had been unlawfully removed, the competent national authorities, who were capable of implementing of their own motion the arsenal of measures set out in the Hague Convention, which was applicable to such a situation, were required to act in order to ensure that the child was returned to the mother. None of the measures set out in those provisions was taken by the authorities in order to facilitate the implementation of the decisions delivered in favour of the applicant and her child. Furthermore, the Spanish law on the legal protection of minors provided that the court could of its own motion take any appropriate measures to protect the child from danger or to prevent harm to it. As regards the criminal aspect of the case, the national judge cannot be criticised for being completely inactive. The finding by the domestic courts that the removal of the child by the father did not constitute a ground for issuing an international arrest warrant raises a problem primarily concerning the domestic legislation in force; furthermore, the Spanish legislature subsequently considered it necessary to amend the criminal provisions in question and increased the penalties. In short, notwithstanding the State's margin of appreciation, the abovementioned omissions on the part of the national authorities constituted a breach of the applicant's and her child's right to respect for “family life”.

Conclusion: violation (unanimous).

Article 41 – The Court awards EUR 20,000 by way of damages for the non-pecuniary harm sustained by the mother and the child and a sum by way of costs and expenses.

FAMILY LIFE
Restrictions on family visits to prisoner sentenced to death: *violation*.

POLTORATSKIY - Ukraine (Nº 38812/97)
KUZNETSOV - Ukraine (Nº 39042/97)
KHOKHLICH - Ukraine (Nº 41707/98)
Judgments 29.4.2003 [Section IV]
(see Article 3, above).

FAMILY LIFE
Denial of conjugal visits to prisoner sentenced to death: *no violation*.

ALIEV - Ukraine (Nº 41220/98)
Judgment 29.4.2003 [Section IV]
(see Article 3, above).

FAMILY LIFE
Permanent exclusion order commuted to 10 years following a judgment of the Court followed by return and admission to country: *no violation*.

MEHEMI - France (Nº 53470/99)
Judgment 10.4.2003 [Section III]

Facts: The applicant is an Algerian national who was born in France. He lived In France with all his family from his birth in 1962 until his deportation in February 1995 under a permanent exclusion order. In 1986 he married an Italian national – who subsequently acquired French nationality – with whom he had three children who are French nationals. In 1991 he was found guilty of drug-trafficking and sentenced to six-years' imprisonment. That sentence was upheld by the court of appeal, which also made a permanent exclusion order. An application by the applicant to have the exclusion order lifted was dismissed by the court of appeal and the Court of Cassation. The applicant was deported in February 1995. He lodged an application with the Convention institutions and on 26 September 1997 the Court delivered a judgment in which it held that had been a violation of Article 8, since the permanent exclusion order was disproportionate to the aims pursued. In October 1997, relying on the Court's judgment, the applicant made a further application to have the exclusion order lifted. In March 1998 the court of appeal reduced the term of the exclusion order to ten years. The applicant appealed to the Court of Cassation without success. In the meantime, in October 1997, he sought a pardon, but this was ultimately refused; his lawyer sent a letter to the Minister of Foreign Affairs enquiring what he proposed to do following the Court's judgment of 26 September 1997. In a letter in reply of November 1997 the Minister of Foreign Affairs indicated that the Government were prepared to allow the applicant to return to France immediately. He added that the applicant would be subject to a compulsory residence requirement until either the exclusion order was lifted or he had obtained a pardon. The applicant was granted a special visa in February 1998 and returned to France. He was required to reside in a specified district in Lyons and to report to the local police station twice monthly. He was issued with a temporary six-month residence permit in April 1998 that

stated that he was authorised to work and required to reside in the *département* of Rhône. The residence permit was systematically renewed until September 2001. In October 2001 the compulsory residence requirement imposed in 1998 was relaxed and the permanent exclusion order made in July 1991, which had subsequently been reduced to ten years, was deemed to have been running from that latter date. The applicant was thereafter entitled to apply for a one-year residence permit endorsed: "worker".
Law: Article 8 – (a) The applicant's position from the date of the Court's judgment until his return to France: in its judgment, the Court had found that the applicant had family ties in France and that his deportation to a country with which he had no connections other than his nationality constituted an unjustified interference with his private and family life. In the proceedings now before the Court, the Government had not produced any fresh evidence calling those findings into question. In the circumstances, implicit in the notion of "respect" for the applicant's "private and family life" was a requirement for the State to bring the applicant's exile to an end by taking measures to enable him to be reunited with his family in France. Furthermore, the interests at stake and the fact that by then the applicant had been separated from his family and exiled in a country with which he had no connections for more than three years meant that the measures should have been implemented with particular expedition. A certain period was required for residence permits to be processed and delivered. In the case before the Court, there had been delays attributable to the authorities during the three and a half months that had elapsed between the initial moves by the applicant's lawyer following the Court's judgment and the decision to issue a special visa. However, delays of a maximum of three and a half months could not be regarded as being so unreasonable as to interfere with the applicant's right to respect for his private and family life, even in the special circumstances of the case in which administrative considerations had necessarily to play a secondary role. The authorities had used reasonable endeavours to facilitate the applicant's rapid return and, therefore, had not violated his right to respect for his private and family life.
Conclusion: no violation (unanimously).
(b) The applicant's situation since his return to France: since the end of February 1998 the applicant had thus no longer been required to reside in a country with which he had no connections other than his nationality and had been able to renew his links with his family. The authorities had subsequently issued him with residence permits authorising him to work. While the exclusion order remained effective, the permits were subject to a compulsory residence requirement. Those circumstances, and in particular, the compulsory residence requirement, had deprived the exclusion order of all legal effect. Accordingly, while subject to the exclusion order the applicant had been in no danger of proximate or immediate deportation. Once the exclusion order had lapsed the risk had disappeared altogether. As the Contracting States retained an unfettered discretion to control the entry of aliens and the length of their stay subject only to their complying with the provisions of the Convention and in particular Article 8 thereof, the applicant could not lay claim to any special immigration status in France. Moreover, he had been authorised to carry on a professional activity.
Conclusion: no violation (unanimously).
The Court held unanimously that no separate issue arose under Article 2 to Protocol No. 4.

CORRESPONDENCE
Recording of telephone conversation by one party with the assistance of the police: *violation*.

M.M. - Netherlands (Nº 39339/98)
Judgment 8.4.2003 [Section II]

Facts: The applicant, a lawyer, met with S., the wife of a client who was in pre-trial detention. S. told her husband that the applicant had made sexual advances towards her. He informed the police, who in turn informed the public prosecutor. It was suggested to S. that a tape recorder be connected to her telephone with a view to recording incoming calls from the applicant. Police officers went to her home to connect the tape recorder and show her how to operate it.

They suggested that she steer the conversation towards the sexual advances. The police later took away recordings of several conversations. The applicant was convicted of sexual assault. The Court of Appeal quashed the judgment but also convicted the applicant of sexual assault. It did not rely on the recordings.
Law: Article 8 – It was not in dispute that the police had suggested to S. that she record her conversations with the applicant. The police, with the permission of the public prosecutor, had connected the tape recorder to her phone, had instructed her how to use it, had suggested that she steer the conversations towards the sexual advances and had gone to her home to collect the tapes. The police had thus made a crucial contribution to the execution of the scheme as well as being responsible for its inception and both they and the public prosecutor had acted in the performance of their official duties. The responsibility of the State was therefore engaged and there had been an interference by a "public authority" with the applicant's right to respect for his correspondence. At the relevant time, the tapping or interception of telecommunications presupposed a preliminary judicial investigation and an order by an investigating judge, neither of which conditions was met in the present case. The interference was consequently not in accordance with the law.
Conclusion: violation (6 votes to 1).
Article 41 – The Court made an award in respect of costs and expenses. The applicant had not sought any non-pecuniary damages.

CORRESPONDENCE
Restrictions on correspondence (including receipt of parcels) of prisoners sentenced to death: *violation*.

POLTORATSKIY - Ukraine (Nº 38812/97)
KUZNETSOV - Ukraine (Nº 39042/97)
NAZARENKO - Ukraine (Nº 39483/98)
DANKEVICH - Ukraine (Nº 40679/98)
ALIEV - Ukraine (Nº 41220/98)
KHOKHLICH - Ukraine (Nº 41707/98)
Judgments 29.4.2003 [Section IV]
(see Article 3, above).

ARTICLE 10

FREEDOM OF EXPRESSION
Award of damages against a journalist for defamation of a religious official: *inadmissible*.

HARLANOVA - Latvia (Nº 57313/00)
Decision 3.4.2003 [Section I]

The applicant, a journalist on a major Latvian daily newspaper, was convicted for publishing two articles containing allegations against the President of the Central Council of the Old Orthodox Church, I.M. In those articles, the applicant stated that I.M. had received a large gift in money from the Catholic Curia in Riga to build a temple, but that instead of immediately using the money for building purposes he had deposited it with a business whose activities included the export of organs and tissues of human origin. I.M. claimed that the allegations were untrue. The court of first instance dismissed his application for damages: the impugned articles contained no reference to external sources of information and therefore represented the applicant's personal opinion, but all the facts alleged were to be found in a report of the

Council of the Old Orthodox Church and also in a letter from M.P., a member of the internal audit committee of that Church. The Riga Regional Court examined the documents in the file and held that the imputations in question were not proved and that the abovementioned evidence could not support the truth of the allegations, since the first item was declared null and void by the Council and the second item was not legally useable. The court ordered the journalist to pay the sum of approximately EUR 800 by way of compensation for the harm to I.M.'s reputation and ordered that an official denial be published. The Senate of the Supreme Court dismissed the applicant's appeal.

Inadmissible under Article 10: The award of damages against the applicant and the order to publish a denial of the allegations in issue constitute an interference with the exercise of her right to freedom of expression. The interference was "in accordance with the law" and pursued a legitimate aim, namely the protection of the reputation and the rights of others. As regards the need for the interference in a democratic society, the articles published contained a specific allegation of fact against a specific person; the applicant could therefore expect to be required to prove the truth of the imputation. The regional court expressly found, on the evidence in the file available to it, that I.M. had never done what the applicant accused him of having done in the articles. In principle, it is not for the Court to substitute its own assessment of the facts of the case for that of the national courts; it will therefore take it as established that the allegations in issue were false. It is therefore necessary to ascertain whether there were any particular grounds to relieve the applicant of the obligation placed on her, in her professional capacity, to verify factual allegations which defamed I.M. Of particular relevance in that regard are the nature and the degree of the defamation in question, and also the extent to which the applicant could at the material time consider, reasonably and in good faith, that the letter from M.P. and the minutes of the Council were credible sources of information and that they made it unnecessary for her to carry out any research or investigations into the matter. On the first point, the national authorities are better placed than the international judge to determine the place and the importance of religion and the Church in the State. The accusation in this case was a serious one. On the second point, the allegations in question were made within the wider context of the conflict splitting the Old Orthodox community in Latvia, in the knowledge that the two parties to the conflict regularly published accusations and charges against each other. In those circumstances, any journalist intending to report those charges was under a particular duty of vigilance. Consequently, where a particularly serious charge was made by one of the parties, the applicant could not automatically give credence to it; she was under a duty to ascertain that the allegations were true, by herself obtaining further information and, if appropriate, hearing the other side's version of the facts. It is also necessary to examine the form in which the allegations in issue were presented to the reader. The applicant's articles, which were written in a polemical tone, made no reference to the source of the information and did not appear until a year after the information had appeared. Furthermore, all the imputations made against I.M. were expressed in a strictly positive manner and left the reader in no doubt as to their veracity, without any indication that the applicant intended to distance herself from them. Any uninformed reader reading either of the articles could infer that I.M.'s financial machinations were a firmly established fact and were in principle not open to controversy, and that the information came directly from the applicant and not from another source. The applicant therefore failed to fulfil the professional and ethical obligation which she bore as a journalist to provide society with accurate and credible information. The gravity of the penalty applied in the present case cannot be held to be disproportionate to the legitimate aim pursued: manifestly ill founded.

Inadmissible under Article 14.

FREEDOM OF EXPRESSION
Imposition of prison sentence on accused on account of the content of his pleadings: *admissible*.

SADAY - Turkey (N° 32458/96)
Decision 10.4.2003 [Section I]

The applicant was arrested in connection with a police investigation into persons suspected of belonging to the Communist Party of Turkey / Marxist-Leninist. He was brought before the National Security Court charged with having sought to undermine the constitutional regime of the Republic of Turkey. At the hearing before the court, the applicant read a pleading several pages long, in which, essentially, he defended the legitimacy of his political convictions and criticised the Turkish judicial mechanism, in particular the *raison d'être* of the National Security Courts. Thereupon the İzmir National Security Court, taking the view that the applicant's words contained "improper" remarks against its authority, ordered his immediate arrest. The applicant was questioned forthwith by the members of the court, in the absence of his lawyer, and the court immediately imposed the maximum penalty provided for in the rules on the maintenance of order in hearings before the Security Courts, as a "disciplinary" penalty, for disrupting the proceedings, namely six months' imprisonment, including two months' solitary confinement. This decision was final. Subsequently, on the offence charged, the Security Court sentenced the applicant to life imprisonment.
Admissible under Article 6(1) (independence and impartiality of a National Security Court) and Article 3(b), following the dismissal of the objections of non-exhaustion of domestic remedies. On the existence of a "criminal charge": rules which authorise a court, as the Security Court in this case, to impose penalties for improper remarks are inherent in the court's power to ensure the proper and orderly conduct of the proceedings; measures ordered in that regard are similar to disciplinary prerogatives. As regards the nature and degree of severity of the penalty incurred, the charge against the applicant was a "criminal charge" within the meaning of the Convention, since it involved the imposition of a heavy custodial sentence; the applicant, moreover, was sentenced to six months' imprisonment, including two months' solitary confinement. Article 6 therefore applies.
Admissible under Article 10: The judges were offended by the applicant's pleadings and convicted him forthwith; both they and the prosecutor described the pleadings as defamatory of them. Thus, there is no reason to think that if the applicant had relied in substance before them on his right to freedom of expression, the complaint would have had any prospect of success; furthermore, there is no domestic remedy against such a decision; last, the procedure used was "summary" in the extreme. The objection of non-exhaustion raised by the Government is therefore dismissed.

ARTICLE 12

MARRY
Prohibition on marriage of father-in-law to daughter-in-law: *communicated*.

B. and L - United Kingdom (Nº 36536/02)
[Section IV]

The applicants complain that they are prevented by law from marrying. The first applicant is the father of the second applicant's former husband. When their respective marriages failed, the applicants moved in together with L.'s son, who is B.'s grandson but now refers to B. as "Dad". The Marriage Act 1949 prohibits the marriage of a parent-in-law to a child-in-law unless the former spouse of each party is dead. There is no such prohibition regarding other

relationships of affinity but not consanguinity, e.g. step-parent with step-child. The prohibition may be lifted by a personal Act of Parliament. There are no established criteria for such a procedure, which is at Parliament's discretion. Legal aid is not available to pay the costs.
Communicated under Article 12.

ARTICLE 13

EFFECTIVE REMEDY
Lack of effective remedy in respect of excessive length of court proceedings: *violation*.

KONTI-ARVANITI - Greece (Nº 53401/99)
Judgment 10.4.2003 [Section I]

The case concerned the length of civil proceedings (almost 15 years). The Court concluded unanimously that there had been a violation of Article 6(1). It further concluded unanimously that there had been a violation of Article 13 in that no effective remedy was available in domestic law with regard to a complaint about the excessive length of court proceedings.

EFFECTIVE REMEDY
Refusal of courts to award non-pecuniary damages in respect of the death of her daughter in a road traffic accident: *admissible*.

ZAVOLOKA - Latvia (N° 58447/00)
Decision 29.4.2003 [Section I]

In September 1996, the applicant's twelve-year-old daughter was run over by a motor vehicle driven by A.A. She died from her injuries. In March 1997, the court of first instance found A.A. guilty of failing to provide assistance to a person in danger and of causing serious injuries by failing to observe the road safety regulations; it sentenced A.A. to three years' immediate imprisonment. In September 1997, the applicant applied to the court of first instance for compensation for the non-pecuniary harm sustained as a result of her daughter's death. Her application was dismissed, as the court considered that the Civil Code made no provision for such compensation. The applicant appealed against that decision before the regional court, which by judgment of March 1998 allowed her appeal. The court acknowledged that the Civil Code did not expressly provide for compensation for non-pecuniary harm and further stated that no definition of harm of that type was to be found in that Code. Referring, in particular, to Article 1835 of the Civil Code, which defines the general obligation to make reparation for harm caused to others, the court none the less held that the applicant was entitled to expect A.A. to pay damages covering her non-pecuniary loss. A.A. appealed on a point of law to the Supreme Court, which held that Article 1635 of the Civil Code concerned only compensation for material harm and, by judgment of March 1999, set aside the judgment of the Regional Court and remitted the case to the Regional Court. In its judgment, the Supreme Court stated that, contrary to what the Regional Court had claimed, the Civil Code did contain a definition of non-pecuniary harm and that the applicant's situation did not correspond to any of the cases, specifically provided for, which gave entitlement to compensation for non-pecuniary loss. By judgment of August 1999, the Regional Court to which the case had been transferred dismissed the applicant's application. Her appeal on a point of law was then dismissed.
Admissible under Articles 2 and 13.

ARTICLE 14

DISCRIMINATION (Article 8)
Refusal to recognise full adoption of child: *communicated*.

THIBAUD - France (N° 69603/01)
[Section II]

Following a judgment delivered in June 1996 by the civil court in Port-au-Prince (Haïti), the applicant adopted a young boy born of unknown parents and abandoned. On returning to France with her child, the applicant lodged an application for an order granting full adoption of her son. Her application was dismissed by the French courts, which held that the legal conditions of full adoption were not satisfied and only granted a simple adoption.
Communicated under Articles 14 and 18 (private and family life).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Slovakia)
Effectiveness of remedy in respect of length of court proceedings.

SLOVÁK - Slovakia (Nº 57983/00)
Judgment 8.4.2003 [Section IV]

Facts: The applicant filed an action for rehabilitation in 1995. In 1999 the Constitutional Court found that the District Court had violated the applicant's right to have his case decided without undue delay. However, at that time the Constitutional Court could not award damages or impose a sanction on the public authority liable for the violation. The District Court dismissed the applicant's action in 2001. An appeal is pending. Since a constitutional amendment which came into force in January 2002, the Constitutional Court can order the authority concerned to proceed with the case without delay and it may also award financial satisfaction.
Law: Article 6(1) – While the Court has held the new remedy to be effective in law and practice, in the present case the Constitutional Court had already found a violation of the applicant's rights but did not at that time have power to provide redress. Given that any new proceedings which he may bring before that court can relate only to the period since its 1999 judgment, the applicant is not required to have recourse to the new remedy. The complaint is therefore admissible and the length of the proceedings did not comply with the reasonable time requirement.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicant 3,500 € in respect of non pecuniary damage.

ARTICLE 37

Article 37(1)(c)

CONTINUED EXAMINATION NON JUSTIFIED
Death of applicant: *striking out of the list*.

SEVGİ ERDOĞAN - Turkey (N° 28492/95)
Judgment 29.4.2003 [Section IV]

The applicant complained of violence and ill-treatment at the hands of the security forces. She died while her application was being examined by the Court. Only the Counsel representing her before the Court requested that the proceedings be continued. On the basis of the information provided by the applicant's Counsel, it was not possible to contact a close relative or legal heir of the applicant. Her Counsel stated that the applicant's deceased husband's mother wished to proceed with the application, but failed to provide either a duly completed mandate or a document showing that intention.
The applicant's Counsel cannot, as such, claim a legitimate interest – whether material or non-material – in continuing the proceedings on his own behalf. Since it has been impossible to establish any contact with one of the applicant's close relatives or legal heirs, the applicant's representative cannot continue the proceedings before the Court. Accordingly, it is no longer justified to continue the examination of the case.

ARTICLE 38

Article 38(1)(a)

FURNISH ALL NECESSARY FACILITIES
Refusal of witnesses to give evidence without security measures: *failure to fulfil obligations*.

AKTAŞ - Turkey (N° 24351/94)
Judgment (final) 24.4.2003 [Section III]
(see Article 2, 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 Information Note No. 49):

POPESCU NASTA - Romania (N° 33355/96)
LAIDIN - France (N° 39282/98)

WIOT - France (Nº 43722/98)
MACGEE - France (Nº 46802/99)
Judgments 7.1.2003 [Section II]

ŽIAČIK - Slovakia (Nº 43377/98)
Judgment 7.1.2003 [Section IV]

SHISHKOV - Bulgaria (Nº 38822/97)
Judgment 9.1.2003 [Section I]
(see Information Note no. 50)

L. and V. - Austria (Nº 39392/98 and Nº 39829/98)
S.L. - Austria (Nº 45330/99)
DI TULLIO - Italy (Nº 34435/97)
C.T. v. Italy (Nº 35428/97)
TOLOMEI - Italy (Nº 35637/97)
CARLONI and BRUNI - Italy (Nº 35777/97)
CECCHI - Italy (Nº 37888/97)
CICCARIELLO - Italy (Nº 34412/97)
E.P. - Italy (Nº 34658/97)
MARINI - Italy (Nº 35088/97)
KADEM - Malta (Nº 55263/00)
Judgments 9.1.2003 [Section I]

D'AMMASSA and FREZZA - Italy (Nº 44513/98)
Judgment 9.1.2003 [Section IV (ancienne composition)]

OPRESCU - Romania (Nº 36039/97)
Judgment 14.1.2003 [Section II]

LAGERBLOM - Sweden (Nº 26891/95)
K.A. - Finland (Nº 27751/95)
RAWA - Poland (Nº 38804/97)
W.M. - Poland (Nº 39505/98)
Judgments 14.1.2003 [Section IV]

KARAGIANNIS and others - Greece (Nº 51354/99)
NASTOU - Greece (Nº 51356/99)
Judgments 16.1.2003 [Section I]

OBASA - United Kingdom (Nº 50034/99)
Judgment 16.1.2003 [Section III]

VEEBER - Estonia (no. 2) (Nº 45771/99)
Judgment 21.1.2003 [Section IV]

RICHEN and GAUCHER - France (Nº 31520/96 and Nº 34359/97)
KIENAST - Austria (Nº 23379/94)
PAPAZAFIRIS - Greece (Nº 55753/00)
Judgments 23.1.2003 [Section I]

MOLLES - France (Nº 43627/98)
Judgment 28.1.2003 [Section II]

DEMIREL - Turkey (Nº 39324/98)
PECK - United Kingdom (Nº 44647/98)
Judgments 28.1.2003 [Section IV]

CORDOVA - Italy (nº 1) (Nº 40877/98)
CORDOVA - Italy (nº 2) (Nº 45649/99)
NIKOLOV - Bulgaria (Nº 38884/97)
KUBISZYN - Poland (Nº 37437/97)
GÖKCE - Belgium (Nº 50624/99)
DAUTEL - Belgium (Nº 50855/99)
Judgments 30.1.2003 [Section I]

SPINELLO - Italy (Nº 40231/98)
Judgment (revision) 30.1.2003 [Section I]

AHMET ACAR - Turkey (Nº 26546/95)
FIGUEIREDO SIMÕES - Portugal (Nº 51806/99)
N.K. - Turkey (Nº 43818/98)
Judgments 30.1.2003 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Compulsory reafforestation of land on basis of ministerial decision of 1934, without re-examination : *violation*.

PAPASTAVROU and others - Greece (Nº 46372/99)
Judgment 10.4.2003 [Section I]

Facts: In 1994 the Prefect of Athens decided that a certain area of land should be reafforested. The applicants, who are involved in a long-standing dispute with the State over ownership of a plot of land within that area, challenged the Prefect's decision, on the basis of their alleged ownership of the plot. In 1998 the Council of State declared their appeal inadmissible on the ground that the Prefect's decision was not an executory act, since it simply confirmed a ministerial decision of 1934.
Law: Article 1 of Protocol No. 1 – It was not for the Court to settle the issue of the ownership of the disputed land. Although the Council of State had not been called upon to determine that issue, it had accepted that the applicants had *locus standi*, and for the purposes of the proceedings before the Court they could therefore be regarded as owners of the plot at issue or at least had an interest that would normally be protected by Article 1 of Protocol No. 1. As to whether reafforestation of the land was appropriate, there was conflicting evidence concerning the character of the land, but it was not for the Court to take a position on such a technical matter. Since the Prefect's decision was based on the ministerial decision of 1934, a fresh reassessment of the situation should have been made by the authorities when ordering such a serious measure affecting the position of the applicants and other persons claiming property rights. However, the Council of State rejected the applicants' claims on the sole ground that the Prefect's decision had simply confirmed the earlier one. Such a manner of proceeding in such a complex situation in which any administrative decision might weigh heavily on the properties of a great number of persons could not be considered as respectful of the rights enshrined in Article 1 of Protocol No. 1 and did not provide adequate protection to those who *bona fide* possessed or owned property, in particular taking into account that

there was no possibility of obtaining compensation. Consequently, no reasonable balance had been struck.
Conclusion: violation (unanimously).
Article 41 – The Court reserved the question of just satisfaction.

PEACEFUL ENJOYMENT OF POSSESSIONS
Seizure of vessel carrying arms through Bosphorous to Iran: *partly inadmissible*.

ISLAMIC REPUBLIC OF IRAN SHIPPING LINES - Turkey (Nº 40998/98)
Decision 10.4.2003 [Section I]

The applicant is a state-owned company based in Teheran. It chartered a ship in September 1991 to transport, *inter alia*, arms and ammunition from Bulgaria to Iran. The bills of lading described the arms and ammunition as "special equipment" and gave the ship's destination as Syria. The ship entered the Bosphorous in October 1991. The Turkish authorities had received information about the true nature of the cargo and suspected that the vessel was in fact bound for Cyprus. The Turkish coast guard boarded the vessel and it was towed to a Turkish port. All parties to the case subsequently proceeded on the basis that the seizure of the vessel had taken place in the Straits governed by the Montreux Convention of 1936. The vessel was searched and the crew questioned. The Master of the vessel and two other crew members were taken into custody. In November 1992, the detained crew members were charged with organised transportation of arms and ammunition. The prosecution maintained that there was a state of war between Turkey and Cyprus and that, consequently, the action of the Turkish authorities was justified under the Montreux Convention. The Iranian Government sought to obtain the release of the vessel through diplomatic and political channels, certifying the real destination of the cargo. Both the Ministry of Foreign Affairs and the office of the Prime Minister confirmed that there was no state of war with Cyprus. On 12 March 1993, the State Security Court convicted the Master of the vessel of illegal importation of arms and ordered the confiscation of the vessel and the arms cargo. The court disregarded the official statements about relations with Cyprus, reasoning instead that in the absence of a peace agreement, the state of hostility had not been ended. Following this judgment, the applicant paid the hire and expenses due to the owner of the vessel. The owner was granted a lien over the non-arms cargo by the Court of Commerce. The judgment of the State Security Court was quashed on appeal in June 1992, on the basis that it had not been established that the arms were to be imported into Turkey and that there was no state of war to justify the application of the Montreux Convention. The applicant sought to have the lien over the remainder of the cargo removed, but failed. It then made an agreement with the owner to pay 80% of the outstanding hire and all future charges. In the resumed criminal proceedings, the Master of the vessel was acquitted and the vessel finally left Turkey on 8 December 1992. The applicant returned the vessel to its owner in March 1993. The applicant then instituted proceedings seeking compensation against the Turkish state for the economic loss caused by the seizure and detention of the vessel. The Court of Commerce ruled that the vessel could not be regarded as a merchant vessel in view of the cargo it carried. The Turkish authorities were therefore not liable, either under the Montreux Convention or domestic law. The applicant was able to recoup some of the money paid to the owner through arbitration proceedings, which established that the charter-party had been frustrated from 12 March 1992 onwards. However, it was unable to recover the sum paid in respect of the period from the seizure of the vessel to 12 March 1992 (approximately 1.3 million USD).
Communicated under Article 6(1) and under Article 1 of Protocol No. 1 regarding the seizure of the cargo.
Inadmissible under Article 1 of Protocol No. 1 regarding the seizure of the vessel, since it was not the applicant's property.
Inadmissible under Article 13: The applicant had access to competent courts to challenge the seizure of the vessel and cargo and to seek compensation.

Inadmissible under Article 14: The applicant's claim that the fact that the vessel was Cypriot-registered caused or contributed to the seizure was unsubstantiated.

DEPRIVATION OF PROPERTY
Agreement on amount of compensation for expropriation: *no violation*.

GUERRERA and FUSCO - Italy (N° 40601/98)
Judgment (final) 3.4.2003 [Section I]

Facts: The applicants were the owners of a plot of land which in 1982 was occupied by the local council for the purpose of work which was stated to be in the public interest. On the basis of an offer on account of the compensation for expropriation, the applicants concluded an agreement to convey the land, which legally formalised the expropriation. However, following a declaration that the law on the basis of which the conveyance had been concluded was unconstitutional, the applicants intitated proceedings in 1986 in order to obtain compensation for their land. In January 1996, the appellate court awarded them an additional sum by way of compensation for the expropriation, on the basis of a law of 1992 of immediate application. Before the judgment of the Court of Appeal had become final, the applicants concluded a settlement with the town. It transpired from that agreement that, in accordance with the decision of the Court of Appeal, the sum payable to the applicants on the date of the agreement was approximately 170 million lire. By the terms of the agreement, the applicants declared that they accepted, by way of final settlement of the matter, the sum of 141,500,000 lire and waived the right to appeal on a point of law.
Law: Article 6(1) – As the sums awarded under the friendly settlement did not include any compensation for the length of the proceedings, the applicants can claim to be "victims" from the aspect of that complaint. The duration of the proceedings, more than thirteen years and nine months for two levels of jurisdiction, is excessive.
Conclusion : violation (unanimous).
Article 1 of Protocol No. 1 – The applicants claimed that there had been a breach of their right to the peaceful enjoyment of their possessions owing to the amount of the compensation for expropriation awarded to them by the national courts. The expropriation constituted a deprivation of property which was in accordance with the law and pursued a legitimate aim in the general interest. As regards its justification, it is necessary to take into account that the applicants concluded a settlement with the expropriating authority. The agreement which they reached when the judgment of the Court of Appeal had not yet become final and might in principle form the subject-matter of an appeal to the Court of Cassation entailed, on the applicant's part, the waiver of a part of the compensation awarded by the Court of Appeal, of the pending and future proceedings and of any claim connected with the expropriation of the asset. At domestic level, the settlement put an end to the dispute over the compensation for the expropriation. For the Court, the settlement therefore had the practical effect of largely satisfying the applicants' claims under Article 1 of Protocol No. 1. Furthermore, the applicants were not acting under constraint when they waived the possibility of obtaining higher compensation.
Conclusion: no violation (unanimous).
Article 41 – The Court awards the applicants EUR 30,000 for non-pecuniary harm and EUR 2,500 for costs and expenses.

CONTROL THE USE OF PROPERTY
Refusal to return to the owner a rented vehicle seized after being used to transport illegal immigrants: *inadmissible*.

YILDIRIM - Italy (N° 38602/02)
Decision 10.4.2003 [Section I]

The applicant was the owner of a bus which he hired to a company. The rental agreement stated that the vehicle would be used for the carriage of persons in the countries of Europe and Asia. Subsequently, the drivers of the bus were apprehended while they were unlawfully carrying illegal immigrants and the bus was seized. The drivers were given custodial sentences and the court ordered that the bus be confiscated. The applicant brought proceedings to recover the vehicle. He claimed, in particular, that he had acted in good faith, submitting that he was unaware of the unlawful use of his bus. He was unsuccessful at all levels of jurisdiction, primarily on the ground that he had not duly shown that he had acted in good faith. In particular, the courts considered that there was some doubt as to his knowledge of the possible unlawful use of his bus, since the local situation, characterised by frequent illegal immigration, called for special diligence on the part of the owner of a vehicle used to take persons abroad. The vehicle was eventually broken up.
Inadmissible under Article 1 of Protocol No. 1: The confiscation affected an asset which the courts found to have been put to an unlawful use and was intended to prevent the vehicle from being used to commit further offences of a type which were harmful to the community. The measure therefore entails the regulation of the use of possessions. The confiscation was in accordance with the law and pursued the legitimate aim of combating clandestine immigration and the traffic in human beings, which corresponds with the general interest. As regards the balance between that aim and the fundamental rights of the owner, every legal system recognises presumptions of fact or of law and, provided that they are reasonable and respect the rights of the defence, the Convention does not stand in their way. The applicant was able to apply for the return of his vehicle and to appeal on a point of law against the decision dismissing his application. These proceedings, which related to the legality and also to the non-arbitrary nature of the seizure, involved the participation of both parties and the applicant had the opportunity to adduce evidence and to present the arguments which he considered necessary to protect his interests. Nor was any irrebuttable presumption applied to his detriment. Quite to the contrary, the applicant had the opportunity to show evidence of his good faith, which would have led to the restoration of his possession. There was no arbitrary assessment of the evidence adduced by the applicant on this point. In those circumstances, having regard to the margin of appreciation which the States have in regard to combating criminal phenomena, the interference was not disproportionate to the aim pursued: manifestly ill founded.
Inadmissible under Article 6: The offence at the origin of the seizure and confiscation of the applicant's motor vehicle had been committed by another party and no criminal proceedings had been initiated against the applicant. The applicant was therefore not the subject of a "criminal charge": incompatibility *ratione materiae*. As the applicant's right of ownership was affected by the proceedings in issue, Article 6 applies in its civil aspect. In this case, there was no breach of the principles of a fair trial or equality of arms: manifestly ill founded.
Inadmissible under Article 7: The applicant claimed that the confiscation measure was an "ancillary penalty". The existence of a "penalty" implies that the measure in question was imposed following conviction of an "offence". In this case, no prior criminal conviction had been pronounced against the applicant and the proceedings relating to the seizure and confiscation did not concern a "criminal charge" against him. Accordingly, the confiscation in issue did not entail a finding of guilt, which follows a charge; it therefore does not constitute a "penalty" within the meaning of Article 7: incompatibility *ratione materiae.*

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Constitutional provision excluding male descendants of the last king of Italy from exercise of electoral rights: *struck out*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
Judgment 24.4.2003 [Section II]
(see Article 3(2) of Protocol No. 4, below).

STAND FOR ELECTION
Refusal to register political party and to refund deposit: *communicated*.

RUSSIAN CONSERVATIVE PARTY OF ENTREPRENEURS - Russia (Nº 55066/00)
ZHUKOV and VASILYEV - Russia (Nº 55638/00)
[Section I]

The Russian Conservative Party of Entrepreneurs is a nation-wide political party. The second applicant was a party candidate in the legislative elections of 1999 and the third applicant is a party supporter. The party fielded 151 candidates in the Duma elections. Its list was approved by the Central Electoral Registry (CER) on 15 October and the party paid a deposit of RUR 2,087,250. On 8 November, the CER struck off 18 of the party's candidates for giving false information. As one of these candidates was among the first three on the list, this led to the refusal of the party's registration, in accordance with electoral law at that time. The party challenged the CER's decision, arguing that the term used in the legislation ("withdrawal") did not include disqualification. This argument succeeded. The CER's appeal to the Appellate Panel of the Supreme Court of the Russian Federation was rejected on 22 November. The party was registered the same day. On 26 November, the Deputy Prosecutor General of the Russian Federation lodged an extraordinary request for supervisory review with the Presidium of the Supreme Court, arguing that the term "withdrawal" should be interpreted as including the striking off of a candidate. The request for review was granted on 8 December. The following day, the CER ordered that the party be removed from ballot papers. The party therefore did not participate in the elections held on 19 December. In April 2000, the Constitutional Court declared that the relevant legislative provision was unconstitutional but specified that its ruling had no effect on the outcome of the 1999 elections. The party applied unsuccessfully to the Presidium of the Supreme Court in 2001 to re-examine its decision of 8 December 1999. It also tried to have its deposit returned. The CER refused on the ground that the Constitutional Court's ruling had no effect on the 1999 elections. The party's appeal against the CER's decision was rejected by the courts, which equated it with a request for review of the election results.
Communicated under Article 3 of Protocol No. 1.

ARTICLE 3 OF PROTOCOL No. 4

Article 3(2) of Protocol No. 4

ENTER OWN COUNTRY
Constitutional provision prohibiting male descendants of the last king of Italy from entering and staying in the country: *struck out*.

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
Judgment 24.4.2003 [Section II]

The applicant is a descendant of the last King of Italy and the head of the House of Savoy. When he introduced his application, he complained, in particular, that under paragraphs 1 and 2 of the XIIIth transitional and final provision of the Italian Constitution, which entered into force in 1948, he was prohibited from exercising his active and passive electoral rights and from entering and staying within Italian territory. The Court declared the application partially admissible under Article 3(2) of Protocol No. 4 and Article 3 of the Convention and under Article 3 of Protocol No. 1, taken on their own or in conjunction with Article 14 of the Convention. When depositing the instrument ratifying Protocol No. 4 to the Convention, the Italian Government had expressed a reservation, specifying that Article 3(2) of Protocol No. 4 could not prevent the application of the constitutional prohibition on entry and stay in respect of the members of the House of Savoy. Since a Constitutional Law entered into force on 10 November 2002, paragraphs 1 and 2 of the XIIIth constitutional provision no longer have effect.
Since paragraphs 1 and 2 of the XIIIth provision no longer have any effect in domestic law, since the respondent Government have withdrawn their reservation and since the applicant can now enter Italy – which, moreover, he has already done –, the Court considers that it is no longer justified to continue the examination of the application (Article 37(1)(c) of the Convention).

Other judgments delivered in April 2003

Articles 2 and 13

MACIR - Turkey (Nº 28516/95)
Judgment 22.4.2003 [Section II]

killing by unidentified perpetrators in 1994 and effectiveness of investigation – friendly settlement (*ex gratia* payment, statement of regret and undertaking to take appropriate measures).

GÜLER and others - Turkey (Nº 46649/99)
Judgment 22.4.2003 [Section II]

shooting of shepherd by soldier in 1994 and effectiveness of investigation – friendly settlement (*ex gratia* payment, statement of regret and undertaking to take appropriate measures).

Article 3

YILDIZ - Turkey (Nº 28308/95)
Judgment 22.4.2003 [Section II]

alleged ill-treatment of prisoner by prison officers – friendly settlement (*ex gratia* payment, statement of regret and undertaking to take appropriate measures).

Ö.Ö. and S.M. - Turkey (Nº 31865/96)
Judgment 29.4.2003 [Section IV]

alleged ill-treatment in custody in 1992 – friendly settlement (*ex gratia* payment, statement of regret and undertaking to take appropriate measures).

Articles 3, 8 and 13, and Article 1 of Protocol No. 1

ATEŞ - Turkey (Nº 28292/95)
Judgment 22.4.2003 [Section II]

alleged destruction of possessions and home by security forces – friendly settlement (*ex gratia* payment, statement of regret and undertaking to take appropriate measures).

Article 5(3) and (4), and Article 8

KLAMECKI - Poland (no. 2) (Nº 31583/96)
Judgment 3.4.2003 [Section I]

ordering of detention on remand by prosecutor, length of detention on remand, absence of possibility to attend or be represented at hearings on detention on remand, opening of detainee's correspondence and prolonged prohibition on his receiving visits from his wife or contacting her by telephone – violations.

Article 6(1)

BAKKER - Austria (Nº 43454/98)
Judgment 10.4.2003 [Section I]

lack of an oral hearing in proceedings before the Administrative Court – violation.

KOLB and others - Austria (Nº 35021/97 and Nº 45774/99)
Judgment 17.4.2003 [Section I]

length of land consolidation proceedings and lack of oral hearing – violation.

ESTEVES - Portugal (Nº 53534/99)
Judgment 3.4.2003 [Section III]

RICHART-LUNA - France (Nº 48566/99)
SIMKÓ - Hungary (Nº 42961/98)
Judgments 8.4.2003 [Section II]

WILLEKENS - Belgium (Nº 50859/99)
GILLET - Belgium (Nº 52229/99)
Judgments 24.4.2003 [Section I]

COSTA RIBEIRO - Portugal (Nº 54926/00)
Judgment 30.4.2003 [Section III]

length of civil proceedings – violation.

MARTIAL LEMOINE - France (Nº 65811/01)
Judgment 29.4.2003 [Section II]

length of civil proceedings – no violation.

MOCIE - France (Nº 46096/99)
Judgment 8.4.2003 [Section II]

JARLAN - France (Nº 62274/00)
Judgment 15.4.2003 [Section II]

length of administrative proceedings – violation.

NEZBEDA - Slovakia (Nº 56452/00)
Judgment 29.4.2003 [Section IV]

length of civil proceedings – friendly settlement.

PETSCHAR - Austria (Nº 36519/97)
Judgment 17.4.2003 [Section I]

DIARD - France (Nº 42279/98)
Judgment 22.4.2003 [Section II]

length of administrative proceedings – friendly settlement.

HUTT-CLAUSS - France (Nº 44482/98)
Judgment 10.4.2003 [Section III]

length of inheritance proceedings conducted by notaries – violation.

JUSSY - France (Nº 42277/98)
JULIEN - France (Nº 50331/99)
LEVAI and NAGY - Hungary (Nº 43657/98)
Judgments 8.4.2003 [Section II]

length of proceedings relating to employment – violation.

LANCZ - Slovakia (Nº 62171/00)
ROTREKL - Slovakia (Nº 65640/01)
Judgments 8.4.2003 [Section IV]

length of civil proceedings – friendly settlement.

GARON - France (Nº 49613/99)
JARREAU - France (Nº 50975/99)
Judgments 8.4.2003 [Section II]

length of proceedings relating to employment – friendly settlement.

SCHIETTECATE - France (Nº 49198/99)
Judgment 8.4.2003 [Section II]

length of proceedings in the commercial courts – violation.

DE SOUSA MARINHO and MARNIHO MEIRELES PINTO - Portugal (Nº 50775/99)
Judgment 3.4.2003 [Section III]

length of criminal proceedings which applicants joined as *assistentes* – violation.

KITOV - Bulgaria (Nº 37104/97)
Judgment 3.4.2003 [Section I]

RABLAT - France (Nº 49285/99)
BARILLOT - France (Nº 49533/99)
Judgments 29.4.2003 [Section II]

length of criminal proceedings – violation.

MÕTSNIK - Estonia (Nº 50533/99)
Judgment 29.4.2003 [Section IV]

length of criminal proceedings – no violation.

Article 6(1) and Article 13

LOYEN and others - France (Nº 55926/00)
Judgment 29.4.2003 [Section II]

length of civil proceedings (in respect of which a violation had already been found by the European Commission of Human Rights in 1994) – violation.

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

POPA and others - Romania (Nº 31172/96)
GHITESCU - Romania (Nº 32915/96)
Judgments 29.4.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation, deprivation of property – violation.

ZANGUROPOL - Romania (Nº 29959/96)
Judgment 8.4.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation, deprivation of property – struck out (absence of intention to pursue).

C. Spa - Italy (Nº 34999/97)
FEGATELLI - Italy (Nº 39735/98)
DEL BEATO - Italy (Nº 41427/98)
L.M. - Italy (Nº 41610/98)
MALESCIA - Italy (Nº 42343/98)
G.G. - Italy (Nº 43580/98)
CAPURSO - Italy (Nº 45006/98)
Judgments 3.4.2003 [Section I]

P.M. - Italy (Nº 34998/97)
NIGIOTTI and MORI - Italy (Nº 35024/97)
LOSANNO and VANACORE - Italy (Nº 36149/97)
MASSIMO ROSA - Italy (Nº 36249/97)
CLUCHER - Italy (Nº 36268/97)
ZANETTI - Italy (Nº 36377/97)
PANNOCCHIA - Italy (Nº 37008/97)
DE BENEDETTIS - Italy (Nº 37117/97)
APONTE - Italy (Nº 38011/97)
PEPE - Italy (Nº 46161/99)
FABI - Italy (Nº 48145/99)
PULCINI - Italy (Nº 59539/00)
Judgments 17.4.2003 [Section I]

staggering of granting of police assistance to enforce eviction orders, prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions staggering granting of police assistance – violation.

TAMMA - Italy (Nº 43616/98)
ZITO and CORSI - Italy (Nº 54612/00)
MATTA - Italy (Nº 55674/00)
GIANNI - Italy (Nº 64450/01)
Judgments 10.4.2003 [Section I]

GIANNATIEMPO - Italy (Nº 35969/97)
Judgment 17.4.2003 [Section I]

staggering of granting of police assistance to enforce eviction orders, prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions staggering granting of police assistance – friendly settlement.

Article 8

YILMAZ - Germany (Nº 52853/99)
Judgment 17.4.2003 [Section III]

expulsion of second-generation immigrant – violation.

Article 14

ATKINSON - United Kingdom (Nº 65334/01)
Judgment 8.4.2003 [Section IV]

unavailability of widows' allowances to widower – friendly settlement.

Article 1 of Protocol No. 1

YILTAŞ YILDIZ TURISTIK TESISLERI A.Ş. - Turkey Nº 30502/96)
Judgment 24.4.2003 [Section III]

adequacy of compensation for expropriation – violation.

Revision

PERHIRIN and others - France Nº 44081/98)
Judgment 8.4.2003 [Section II]

ARMANDO GRASSO - Italy Nº 48411/99)
Judgment 29.4.2003 Section II]

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. 4

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