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EUROPEAN COURT OF HUMAN RIGHTS

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ARTICLE 2

LIFE
Death of a conscript while performing military service and effectiveness of subsequent investigation: *violation*.

ATAMAN - Turkey (N° 46252/99)
Judgment 27.4.2006 [Section III]

Facts: In 1997 the applicant's son, Mikail Ataman, 21, had been conscripted into military service in Kars. In September 1997 his family noticed that he was behaving strangely whenever he spoke to them on the telephone and they began to find it difficult to contact him. They also learnt that he was no longer authorised to carry a weapon or leave the barracks. A family friend who visited him considered that his psychological condition was alarming and required treatment. The applicant arranged for his son to come home on annual leave and sought to have him treated at Malatya, but he ran away and was arrested in a state of delirium by military police. On 4 November 1997 Mikail Ataman was given a neuroleptic injection at the military hospital in Malatya, before being taken to the psychiatric department of a military hospital in Ankara, where, according to a medical certificate dated 19 November 1997, he showed symptoms of anxiety. The certificate further stated that if the symptoms persisted he was to be treated at the military hospital in the province where his unit was stationed, and mentioned that it was necessary "for [the patient] to be registered and for his unit to be informed". Mikail Ataman appeared to be in better health when he returned to the barracks. However, his psychological condition worsened again on the return of his commanding officer, Captain U. On 16 January 1998, at 2 a.m., the applicant was informed that his son had killed himself while on guard duty in the barracks garage. The military prosecutor arrived on the scene immediately and various investigative steps were taken. According to the autopsy report, death was caused by a wound from a bullet fired at the heart from point-blank range. On a complaint by the applicant the prosecutor opened preliminary enquiries. In that connection a number of statements were taken from servicemen but also from Mikail Ataman's family. A commission of inquiry consisting of three expert officers, set up by the military prosecutor to investigate the administrative aspects of the case, considered that the military regulations had not been breached, that no negligence could be attributed to military personnel responsible for supervision and/or inspection, and that the suicide was the direct result of the conscript's overreaction to his family problems. A further inquiry into the conduct of Captain U. cleared him of any responsibility. On 23 March 1998 the prosecutor decided that it was a case of suicide and that it was unnecessary to open a criminal investigation into the matter. On 4 May 1998 the appropriate military tribunal dismissed an appeal by the applicant on the ground that no shortcomings had been identified by the inquiry.

Law: Article 2 – Positive obligations of the State: The parties' views differed considerably as to the conclusions to be drawn from the facts. The Government stated that Mikail Ataman had killed himself, whilst the applicant claimed that his son had been intentionally killed by an officer. However, the evidence in the case-file suggested that it was a suicide. On the night of the incident Mikail Ataman had been on guard duty in the garage at the barracks with two other conscripts. They had been on the other side of the garage and, immediately after the shot was fired, had found him lying on the ground with his rifle resting on his body. Expert assessments carried out at the scene had confirmed the suicide theory. Accordingly, the applicant's allegations that his son had been killed were in fact based on supposition and were not capable of casting doubt on the relevance of the evidence showing that Mikail Ataman's death had been suicide. However, the issue for the Court to determine was whether the authorities had known or should have known that there was a real and immediate risk that Mikail Ataman would kill himself and, if so, whether they had done everything that could reasonably have been expected of them to avert that risk. The Court reiterated in that connection that States had an obligation to take preventive operational measures to protect all individuals whose lives were at risk, so that a State with compulsory military service – which entailed handling weapons – could be expected to display special diligence and to provide treatment appropriate to conditions in the armed forces for soldiers with psychological disorders. In the

present case Turkey had not taken the practical measures that could reasonably have been expected of it, namely preventing the applicant's son from having access to lethal weapons.
Conclusion: violation (unanimously).

Investigation into the circumstances of the death: Although enquiries had been initiated immediately by the authorities, it was noteworthy that the military prosecutor had not sought to ascertain the reasons for the lack of communication between the psychiatric department of the military hospital in Ankara and the deceased's superiors. Such enquiries could have been decisive in apportioning responsibility among the various authorities. The relevant findings would have been different according to whether the medical staff had omitted to inform Mikail Ataman's unit about his psychological problems, or whether his superiors had been negligent in not taking the young conscript's weapon away from him despite having been informed of his condition. Accordingly, Turkey had failed in its obligation to conduct an adequate and effective investigation into the circumstances of the applicant's son's death.
Conclusion: violation (unanimously).

Article 8 – Having regard to the finding of an Article 2 violation, it was not considered necessary to examine separately the complaint under Article 8.
Conclusion: not necessary to examine (unanimously).

Article 13 – The criminal investigation had not provided an adequate framework for apportioning responsibility between the medical authorities and the victim's superiors concerning the transmission or assessment of information about Mikail Ataman's state of health – in other words, about the precise circumstances surrounding the death of the applicant's son. That being so, it could not be said that an effective criminal investigation had been conducted in accordance with Article 13.
Conclusion: violation (unanimously).

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Exceptionally lengthy period of detention: *no violation*.

LÉGER - France (N° 19324/02)
Judgment 11.4.2006 [Section II]

(see Article 5(1) below).

INHUMAN OR DEGRADING TREATMENT
Alleged police brutality and failure to conduct an effective investigation: *admissible*.

JAŠAR - "the former Yugoslav Republic of Macedonia" (N° 69908/01)
Decision 11.4.2006 [Section III]

In 1998 the applicant, of Roma ethnic origin, was in a local gambling bar. One of the losing gamblers complained that the dice had been loaded and fired several gunshots. Several police officers came to restore the peace. It is in dispute whether the applicant also took part in the disturbance or just watched it unfold. Police officers allegedly grabbed him by his hair and forcibly put him in a police van. He was allegedly kicked in the head as well as punched and beaten with a truncheon by a police officer while in custody. A medical report concluded that the applicant had sustained "light bodily injury" in the form of numerous injuries to his head, hand and back.
The applicant filed a criminal complaint against an unidentified police officer. After two inquiries, the public prosecutor notified him that he had officially requested the Ministry of the Interior to make additional inquiries. There is no indication of any further steps having been taken as regards the applicant's complaint of alleged ill-treatment. The applicant also brought civil proceedings against the

State but his claim for damages was dismissed as ill-founded for want of sufficient evidence showing that his injuries had been inflicted as a result of police brutality. His appeal was unsuccessful.
Before the European Court the applicant complains that he was subjected to treatment proscribed by Article 3 of the Convention. Moreover, in violation of Articles 3 and 13, the authorities have failed to carry out an effective investigation capable of leading to the identification and punishment of the police officers responsible for his treatment.

Admissible as a whole: for the purpose of exhausting domestic remedies within the meaning of Article 35(1) of the Convention, the applicant made a criminal complaint to the public prosecutor, initiating a procedure capable of leading to the identification and prosecution of the alleged perpetrators of the assaults. As the public prosecutor did not formally reject the applicant's criminal complaint, the applicant could not take over the prosecution as a subsidiary prosecutor. Moreover, criminal proceedings could not be instituted where the perpetrator was unknown, as was the case here. In addition, the applicant also brought a civil action to obtain damages for the injury and suffering caused. He therefore brought the alleged police brutality to the attention of the authorities, placing them under a duty to carry out an appropriate investigation, and instituted a court procedure able to establish the facts, attribute responsibility and award monetary redress. Furthermore, although the application to the European Court was submitted more than six months after the court of appeal had dismissed his compensation claim with final effect, the Court was not persuaded by the Government's argument that, for the purposes of Article 35(1), the six-month period should be calculated from the final decision in the civil proceedings. The proceedings before the public prosecutor are still pending as the latter has not dismissed the complaint and the investigation does not appear to have produced any tangible results.

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Arbitrariness of the applicant's continued detention during an exceptionally lengthy period: *no violation*.

LÉGER - France (N° 19324/02)
Arrêt 11.4.2006 [Section II]

Facts: In July 1964 the applicant was arrested and prosecuted following the abduction and murder of an 11-year-old boy. He made a confession while in police custody but retracted it several months later. He has protested his innocence ever since. In a judgment of 7 May 1966 the Assize Court found him guilty as charged and sentenced him to life imprisonment. He made unsuccessful applications in 1971 and 1974 for a retrial. On 5 July 1979 he became eligible for parole after a "probationary period" of 15 years. Between 1985 and 2000 he made numerous applications to be released on licence, but all were refused, in some cases for his own safety despite evidence supporting his release. In addition, he made several unsuccessful applications for a presidential pardon. In January 2001 the applicant made a further application to be released, submitting that friends had offered to put him up and give him work on his release. The Sentence Enforcement Board gave a unanimous opinion in favour of the applicant's release on licence and his probation and rehabilitation officer was likewise strongly in favour. However, on 6 July 2001 the Regional Parole Court refused the applicant's application. It observed that he still denied having committed the offence of which he had been convicted and that experts had been unable to conclude that he no longer posed a potential danger and that there was no risk of his reoffending; since those risks could be averted only through psychotherapeutic counselling and support, which he was reluctant to accept, it was not clear that he was making "serious efforts to ensure his social rehabilitation" even though there was a coherent plan for his resettlement. That decision was upheld on appeal on 23 November 2001 by the National Parole Court on the grounds that the applicant's planned rehabilitation had been put in doubt by the intervening bankruptcy of the person who had offered to put him up and give him work and that he did not intend to receive any psychological counselling in spite of his paranoid tendencies. In January 2005 the applicant again requested his release on licence. The prison authorities were in favour but the public

prosecutor was opposed, arguing in particular that there was a risk that he might reoffend. Holding that the applicant's conduct no longer stood in the way of his release and that the risk of his reoffending had become virtually non-existent, the court responsible for the execution of sentences granted him release on licence. He was conditionally released on 3 October 2005, having spent more than 41 years in prison.

Law: Article 5(1)(a) – The applicant had indisputably been convicted by a competent court in accordance with a procedure prescribed by law and his detention had complied with national law. His complaint in fact concerned the irrelevance of the reasons given for keeping him in prison, particularly in relation to the refusal of his application for release on licence in 2001 by the courts specialising in the execution of sentences, and the absence of any connection between those reasons and the punitive purpose of his initial conviction. As regards his argument that the national authorities had applied an additional criterion not provided for by domestic law, namely the lack of reform on his part, that was a matter relating to the national authorities' interpretation of the applicable domestic provision and could not in itself amount to a breach of the rules of national law. As to whether the applicant's detention had been consistent with the purpose of the restrictions provided for in Article 5, it was important to note at the outset that there was no uniform parole system in Europe and that the French model, notwithstanding its discretionary nature, did not call for particular condemnation in relation to others. However, in order to assess whether a person's detention had been arbitrary, it had to be ascertained whether there was a sufficient causal connection with the conviction. In the present case the applicant's life sentence had not prevented him from regaining his liberty since he had been released on licence with a view to preventing his permanent exclusion from society. Prior to that, in view of the extreme gravity of his offence, his life sentence had not been arbitrary for the purposes of Article 5, seeing that his continued imprisonment had never lost its connection with the initial punitive purpose and that other factors relating to "risk" and "dangerousness" had justified the refusal of his applications for release. Furthermore, the applicant had been released on licence in 2005 because the courts had considered that his conduct no longer stood in the way of his release and that the risk of his reoffending had become virtually non-existent. The grounds given by the French courts for keeping him in prison had therefore not been unwarranted in view of both the initial punitive aim and the persistence of reasons militating against his release. Although the courts had decided to release him only in 2005, after 41 years in prison – an exceptionally lengthy period which raised serious questions regarding the management of prisoners serving life sentences – it did not appear that the reasons they had previously given had been "unreasonable", including when they had refused to follow the favourable opinions of the prison authorities in 2001. Indeed, in 2004 the experts had still not been able to conclude with any certainty that the applicant posed no danger, in view of his character and personality. Accordingly, the applicant's detention after 2001 had been justified under Article 5(1)(a).
Conclusion: no violation (five votes to two).

Article 3 – The applicant had been released after an exceptionally lengthy period of imprisonment, resulting from a sentence imposed at a time when the system of periods of unconditional imprisonment did not exist. However, from 1979 onwards, after he had spent fifteen years in prison, he had been able to apply for release on licence at regular intervals and had been protected by procedural safeguards. He could not therefore maintain that he had been deprived of all hope of obtaining partial remission of his sentence, which was not irreducible. Accordingly, the applicant's continued detention, no matter how long it had been, had not constituted inhuman or degrading treatment as such. While a life sentence such as the one in issue in the present case necessarily entailed anxiety and uncertainty linked to prison life and, after release, to the measures of assistance and supervision and the possibility of returning to prison, the applicant's sentence could not be said to have attained the level of severity required for a violation of Article 3. No other circumstances, in terms of any aggravation of the suffering inherent in imprisonment, warranted the conclusion that the applicant had undergone an exceptional ordeal capable of constituting treatment contrary to that provision.
Conclusion: no violation (five votes to two).

LAWFUL ARREST OR DETENTION
Alleged political motives for detaining a well-known business executive supporting opposition parties: *communicated*.

KHODORKOVSKIY - Russia (N° 5829/04)
[Section I]

The applicant is the former head of Yukos, a large oil company. In 2002-2003 Yukos was pursuing a number of business projects which would make it one of the strongest players on the market, independent from the State. Around the same time the applicant became engaged in politics, announcing that he would allocate significant funds to support the opposition parties Yabloko and SPS. The applicant asserts that those activities were perceived by the Russian leadership of the country as a breach of loyalty and a threat to national economic security. As a counter-measure the authorities undertook a massive attack on the applicant, his company, colleagues and friends, including arrests, criminal charges, extradition requests and searches of company premises.
On 23 October 2003, while the applicant was on a business trip in Eastern Russia, an investigator summoned him to appear as a witness in Moscow on the following day. The summons was delivered to the applicant's office in Moscow, where his staff told the investigator that the applicant would be away for another five days and explained why. As the deadline had passed without the applicant having appeared before him, the investigator ordered his arrest. In the early of 25 October, armed officers of the Federal Security Service launched an assault on the applicant's airplane on an airstrip in Novosibirsk, from where he was flown to Moscow to be brought before the investigator. The investigator explained to the applicant why he had been arrested, interviewed him as a witness, charged him, and then interviewed him as a defendant. He was subsequently detained on remand for suspected white-collar crimes. In May 2005 he was convicted and sentenced to nine years' imprisonment.
The applicant complains, among other things, that the conditions of his detention and his treatment during court hearings have been inhuman and degrading; that his arrest in Novosibirsk was unlawful in letter and in spirit; that he was not informed promptly of the reasons for that arrest; that his detention on remand has been "unlawful" on account of various flaws in the detention proceedings; that he has been detained for unreasonable period of time; that the hearings in which the domestic courts ordered or prolonged his detention offered no procedural guarantees; and that his arrest, detention, and prosecution have been politically motivated.
Communicated under Article 3, Article 5(1), (3) and (4) as well as Article 18.

ARTICLE 6

Article 6(1) civil

APPLICABILITY
Proceedings in which a surcharge was levied against a State secondary school's accountant: *Article 6 applicable*.

MARTINIE - France (N° 58675/00)
Judgment 12.4.2006 [GC]

Facts: The applicant was the accountant of a public institution. On an audit of the accounts submitted by the applicant, the regional audit office declared, at the end of proceedings held in camera, that he owed the institution certain sums of money plus interest. The amounts corresponded to payments made irregularly by the applicant as public accountant of the institution. After a hearing that was not held in public, the Court of Audit gave its ruling on an appeal by the applicant. The *Conseil d'Etat* subsequently dismissed an appeal on points of law lodged by the applicant. After he was declared personally and financially liable, a surcharge was levied against the applicant and he was ordered to pay a sum in excess of FRF 190,000 back to the local authority. He was later granted partial remission of the surcharge, with EUR 762 remaining payable by him.

Article 6(1) – *Applicability*: The Grand Chamber applied the *Pellegrin* case-law ([GC], ECHR 1999-VIII) and examined the applicant's post, the nature of his functions and the responsibilities attached to them. The case concerned a civil servant in the employ of the State education service who had been appointed by the Director of Education as accountant of a school and was responsible, in that capacity, for the accounts of a secondary school and of those of a centre attached to it that had no separate legal personality. Neither the nature of the duties carried out by the applicant, nor the responsibilities attached to them, supported the view that he participated in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. In short, Article 6 was applicable.

Lack of a public hearing before the Court of Audit: Since proceedings before regional audit offices were conducted in private, the Court considered it essential that public accountants be able to request a public hearing before the Court of Audit on appeal from a judgment of the regional audit office levying a surcharge against them. Where no such request was made, the hearing could remain private, given the technical nature of the proceedings. In the present case the applicant had been unable to request a public hearing before the Court of Audit because hearings before that court on appeal from a judgment of a regional audit office levying a surcharge against a public accountant were not public.
Conclusion: violation (unanimously).

Fairness of the proceedings before the Court of Audit: Where the issue before the Court of Audit was whether to levy a surcharge against a public accountant, there was an imbalance detrimental to public accountants on account of State Counsel's position in the proceedings: unlike the accountant, State Counsel was present at the hearing, was informed beforehand of the reporting judge's point of view, heard the latter's submissions at the hearing, fully participated in the proceedings and could express his own point of view orally without being contradicted by the accountant. It was irrelevant whether State Counsel was or was not regarded as a "party", since he was in a position to influence the bench's decision whether to levy a surcharge in a manner that could be unfavourable to the accountant. That imbalance was accentuated by the fact that the hearing was not public and was conducted in the absence of any scrutiny either by the accountant concerned or by the public.
Conclusion : violation (fourteen votes to three).

Presence of the Government Commissioner at the deliberations of the bench of the Conseil d'Etat: Although the terms "participation", "presence" and "assistance" of the Government Commissioner were used synonymously in the *Kress* judgment ([GC], ECHR 2001-VI), the mere presence of the Government Commissioner at the deliberations, be it "active" or "passive", was deemed to be a violation in that judgment.
Conclusion: violation (fourteen votes to three).

Article 41 – The Court considered that the finding of a violation in itself afforded sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It awarded a sum for costs and expenses.

ACCESS TO COURT
Non-enforcement of a final judgment which was later quashed following the adoption of a ministerial instruction giving a different interpretation of the relevant law: *violation*.

SUKHOBOKOV - Russia (N° 75470/01)
Judgment 13.4.2006 [Section I]

Facts: The applicant brought proceedings against his local labour and social development authority, arguing that his pension should be increased. A judgment was rendered in his favour which became final in December 1999. The judgment was not enforced due to lack of funds from the State budget. The judgment was finally quashed in September 2000 on account of the discovery of a new circumstance,

namely a ministerial instruction which was issued after the judgment had entered into force and which interpreted the Pensions Law in a way different to that in the judgment.

Law: The Court reiterated that it was not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. It was conceivable that statutory pensions regulations were liable to change and a judicial decision could not be relied on as a guarantee against such changes in the future. However, the enforcement of a final judgment awarding a pension in respect of a period preceding the judgment should be guaranteed. The Court's task in the present case was not to assess whether the quashing of the judgment as such was compatible with the Convention, but rather whether the quashing was capable of justifying the failure to enforce the judgment. Referring to its findings in a similar case (*Pravednaya v. Russia*, no. 69529/01, 18 November 2004), the Court concluded that the quashing of the judgment, which did not respect the principle of legal certainty and the applicant's "right to a court", could not be accepted as a reason to justify the non-enforcement of the judgment.
Conclusion: violation (unanimously).

FAIR HEARING
State Counsel's position in proceedings before the Court of Audit on appeal from a judgment levying a surcharge against a public accountant: *violation*.

MARTINIE - France (N° 58675/00)
Judgment 12.4.2006 [GC]

(see above).

EQUALITY OF ARMS
Presence of the "*commissaire du gouvernement*" at the deliberations of the *Conseil d'Etat*: *violation*.

MARTINIE - France (N° 58675/00)
Judgment 12.4.2006 [GC]

(see above).

PUBLIC HEARING
Inability of public accountant against whom a surcharge has been levied to request a public hearing in the Court of Audit: *violation*.

MARTINIE - France (N° 58675/00)
Judgment 12.4.2006 [GC]

(see above).

REASONABLE TIME
Insufficient amount and delay in payment of awards made in the context of a compensatory remedy available to victims of excessively lengthy proceedings: *violation*.

SCORDINO - Italy (N° 36813/97)
COCCHIARELLA - Italy (N° 64886/01)
MUSCI - Italy (N° 64699/01)
RICCARDI PIZZATI - Italy (N° 62361/00)
MOSTACCIUOLO (n° 1) - Italy (N° 64705/01)
MOSTACCIUOLO (n° 2) - Italy (N° 65102/01)
APICELLA - Italy (N° 64890/01)

ZULLO - Italy (N° 64897/01)
PROCACCINI - Italy (N° 65075/01)
Judgments 29.3.2006 [GC]

Facts: ***Scordino***: In 1992 the applicants inherited land that had been expropriated in March 1983 with a view to the construction of housing. They declared their intention to continue the proceedings that had been instituted on 25 May 1990 by the person from whom they had inherited the land disputing the amount of compensation for expropriation. On account of the entry into force of Law no. 359 of 1992, which introduced new criteria for calculating compensation for expropriation of building land, the Court of Appeal instructed an expert to determine the expropriation compensation according to the criteria established by the new Law. The expert assessed the market value of the land at the date of expropriation at ITL 165,755 per square metre and the compensation payable in accordance with the criteria introduced by the 1992 Law at ITL 82,890 per square metre. Accordingly, in a judgment of 17 July 1996, the Court of Appeal awarded the applicants expropriation compensation on the basis of the expert's conclusions. In a judgment lodged with the registry on 7 December 1998, the Court of Cassation upheld the Court of Appeal's judgment on this point. On 18 April 2002 the applicants applied to the Court of Appeal under the "Pinto Act" of 24 March 2001, seeking compensation for the length of the proceedings to which they had been parties. In a judgment of 1 July 2002, deposited with the registry on 27 July 2002, the Court of Appeal found that the length of the proceedings had been excessive. It ordered the Ministry of Justice to pay the applicants a total sum of EUR 2,450 for non-pecuniary damage alone and apportioned the costs between the parties.

In the eight other similar cases against Italy, which were examined on the same date (***Cocchiarella***, ***Musci***, ***Riccardi Pizzati***, ***Giuseppe Mostacciuolo (no. 1)***, ***Giuseppe Mostacciuolo (no. 2)***, ***Apicella***, ***Ernestina Zullo***, ***Giuseppina and Orestina Procaccini***), the applicants, who had all applied to the Italian courts under the Pinto Act complaining of the excessive length of civil proceedings to which they had been parties, complained of what they considered to be a derisory amount of compensation for their loss. In all these cases the Italian courts found that the proceedings had exceeded a reasonable time and awarded the applicants compensation ranging from EUR 1,000 to EUR 5,000 according to the case.

Law: Article 1 of Protocol No. 1 (***Scordino***): The interference with the applicants' right to the peaceful enjoyment of their possessions had been provided for by law and had pursued an aim in the public interest. Regarding the proportionality of the interference, less than full compensation did not make the taking of the applicants' property by the State *eo ipso* wrongful. However, the compensation awarded to the applicants, which had been calculated according to the criteria laid down in Law no. 359 of 1992, was far lower than the market value of the property in question and was not justified by any legitimate aim "in the public interest". Accordingly, the applicants had had to bear a disproportionate and excessive burden which could not be justified by any legitimate aim in the public interest pursued by the authorities. Having regard to that conclusion, there was no need to examine separately under Article 1 of Protocol No. 1 the complaint based on interference by the legislature.
Conclusion: violation (unanimously).

Article 6 (fairness of the proceedings) (***Scordino***): Prior to the entry into force of the 1992 Law, the law applicable to the present case provided for compensation to the full market value of the property. As a result of the application of the 1992 Law, the compensation payable to the applicants had been substantially reduced. The Government had not demonstrated that the considerations to which they had referred – budgetary considerations and the legislature's intention to implement a political programme – amounted to an "obvious and compelling general interest" required to justify the retrospective effect of the Law.
Conclusion : violation (unanimously).

Under Article 46, the Court asked the respondent State to ensure, by appropriate statutory, administrative and budgetary measures, that the right in question was guaranteed effectively and rapidly in respect of all claimants affected by the expropriation of property, in accordance with the principles of the protection of pecuniary rights, and in particular with the principles applicable to compensation arrangements.

Article 6 (length) (***part common to the nine cases***):
Preliminary objections: non-exhaustion of domestic remedies: The Court had already held that the remedy before the courts of appeal introduced by the Pinto Act was accessible and that there was no reason to question its effectiveness. It reiterated, furthermore, its earlier finding that it was reasonable to assume that the departure from precedent in the Italian Court of Cassation's judgment of 26 January 2004, in which it had established the principle that the courts of appeal had to determine the amounts to be awarded in "Pinto" proceedings on the basis of the ECHR's case-law, must have been public knowledge from 26 July 2004. It had therefore held that, from that date onwards, applicants had to be required to avail themselves of that remedy for the purposes of Article 35 § 1 of the Convention. In these nine cases the time-limit for appealing to the Court of Cassation had expired before 26 July 2004 and the applicants were therefore dispensed from the obligation to exhaust domestic remedies: *preliminary objection dismissed.*

Victim status of the applicants: In that connection the Court was required to verify that there had been an acknowledgement, at least in substance, by the authorities of a violation of a right protected by the Convention and whether the redress could be considered as appropriate and sufficient. It was not disputed that there had been a finding of a violation of the Convention on account of the excessive length of the proceedings in issue. With regard to the characteristics of the redress, excessive delays in an action for compensation could affect whether the remedy was an adequate one. Even if the Court could accept that the authorities needed time in which to make payment, in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings that period should not exceed six months from the date on which the decision awarding compensation became enforceable. Moreover, for the purpose of making available a remedy affording compensation within a reasonable time, it was acceptable that the proceedings might be subject to more summary procedural rules than ordinary applications for damages, provided that the procedure conformed to the principles of fairness guaranteed by Article 6 of the Convention. Lastly, it was reasonable that in this type of proceedings, where the State – on account of the poor organisation of its judicial system – forced litigants to have recourse to a compensatory remedy, the rules regarding legal costs might be different and thus avoid placing an excessive burden on litigants where their action was justified. Whether or not an applicant lost his or her victim status also depended on the amount of compensation awarded at domestic level on the basis of the facts about which he or she had complained before the Court, an amount which should not be unreasonable. In the present case the four-month period prescribed by the Pinto Act complied with the requirement of speediness necessary for a remedy to be effective. However, a risk subsisted regarding appeals to the Court of Cassation since no maximum period for giving a ruling had been fixed. The Court held in these nine cases that, even if the statutory time-limit for giving a ruling had sometimes been exceeded, the length of the proceedings had still been reasonable. However, it was unacceptable that, other than in the ***Scordino*** case, the applicants had had to wait several months, and sometimes even bring enforcement proceedings, before receiving the compensation awarded to them. It was important to stress that, in order to be effective, a compensatory remedy had to be accompanied by adequate budgetary provision so that effect could be given within six months of their being deposited with the registry to decisions of the courts of appeal awarding compensation, which, in accordance with the Pinto Act, were immediately enforceable. With regard to procedural costs, certain fixed expenses (such as the fee for registering the judicial decision) might significantly hamper the efforts made by applicants to obtain compensation. The Court drew the Government's attention to those various aspects with a view to eradicating at the source problems that might give rise to further applications. In assessing the amount of compensation awarded by the court of appeal, the Court considered, on the basis of the material in its possession, what it would have done in the same position for the period taken into account by the domestic court. It noted that, in these nine cases, the amounts awarded by the Italian courts were, according to the case, a minimum of 8% and a maximum of 27% of what it awarded generally in similar Italian cases. In conclusion, the Court considered that various requirements had not been satisfied and that the redress was therefore insufficient. Accordingly, the applicants could still claim to be "victims" of a breach of the "reasonable-time" requirement: *preliminary objection dismissed.*

Compliance with Article 6: The Court sought to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility. Italy's position in that regard had not changed sufficiently following the creation of Pinto proceedings to call into question the conclusion that

that accumulation of breaches constituted a practice that was incompatible with the Convention. In these nine cases the Italian courts had admittedly found that a reasonable time had been exceeded. However, the fact that the "Pinto" proceedings, examined as a whole, had not caused the applicants to lose their "victim" status constituted an aggravating circumstance regarding a breach of Article 6 § 1 for exceeding the reasonable time. Consequently, the Court considered in the nine cases that the length of the proceedings had been excessive and had failed to meet the "reasonable-time" requirement.
Conclusion: violation (unanimously).

Under Article 46 the Court invited the respondent State to take all measures necessary to ensure that the domestic decisions were not only in conformity with the case-law of the Court but also executed within six months of being deposited with the registry.

Under Article 41 it awarded the applicants in the nine cases various sums of money for non-pecuniary damage and for costs and expenses. It also awarded the applicants in the ***Scordino*** case an amount in respect of pecuniary damage.

FAIR HEARING
Inadequate amount of compensation for expropriation on account of retrospective application of a law: *violation*.

SCORDINO - Italy (N° 36813/97)
Judgment 29.3.2006 [GC]

EQUALITY OF ARMS
Refusal to reimburse costs borne in respect of a public prosecutor's unsuccessful civil-law claim in favour of a third party: *violation*.

STANKIEWICZ - Poland (N° 46917/99)
Judgment 6.4.2006 [Section I]

Facts: The applicants purchased a property from the State Treasury following a tender organised by a district office. In accordance with the Land Administration and Expropriation Act, the equivalent of the value of the property left by the applicants' ancestors in the former eastern territories of Poland was counted towards the purchase price. The public prosecutor brought an action against the applicants on behalf of the State Treasury, claiming that they had acted to the detriment of the State Treasury by inflating the value of the property they had left behind. The prosecutor claimed a sum of about PLN 111,000 (almost EUR 31,000) as the State's alleged loss. A regional court dismissed the prosecutor's claim against the applicants and ordered the State Treasury to reimburse their litigation costs. The court relied on Articles 98 and 106 of the Code of Civil Procedure, under which the costs of litigation are to be borne by the unsuccessful party to the proceedings. A court of appeal dismissed the prosecutor's appeal as regards the purchase price for the property but overturned the regional court's decision to award the applicants their costs. The appellate court considered that the situation of a prosecutor bringing a civil action in favour of a third party was particular. This singular character of the prosecutor's role in a civil case was reflected in Article 106 of the Code of Civil Procedure under which such participation by the prosecutor did not entail for the other party a right to reimbursement of litigation costs. Moreover, as the district office had not joined the proceedings as a plaintiff all litigation costs had to be borne by the defendants. The costs totalled almost PLN 24,000 (approximately EUR 6,600).

Law: The Court noted that under Article 98 of the Code of Civil Procedure the party losing a civil case was normally obliged to reimburse the litigation costs to the successful party. Under Article 106 of the Code that principle was not applicable when a public prosecutor participated in civil proceedings in his or her capacity of guardian of legal order. The Supreme Court's case-law enabled the courts to apply the Code of Civil Procedure in such a manner as to mitigate the privileged position of the prosecuting authorities in respect of the litigation costs, thus better taking into account the particularities of each

individual case and the legitimate interests of an individual. The appellate court had nonetheless overturned the decision in respect of costs simply because the opponents in the case had been the prosecuting authorities, and despite the fact that the lower courts had found against the prosecutor concerning the merits of the case.
The Court noted moreover that from the outset the prosecuting authorities enjoyed a privileged position with respect to the costs of civil proceedings and had in any event at their disposal legal expertise and ample financial means exceeding those available to any individual. While such a privilege might be justified for the protection of the legal order, it should not be applied so as to put a party to civil proceedings to undue disadvantage vis-à-vis the prosecuting authorities. Having noted the complexity of the case and the substantial amount of money involved, the Court found that the applicants' decision to have professional legal representation could not be said to have been unwarranted. Neither had the Government shown that that the legal fees incurred in the case had been inconsistent with those practised at the time in cases of a similar character. In those circumstances, the costs of professional legal assistance in the civil case had not been incurred recklessly or without good justification.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant some EUR 12,800 (around PLN 50,000) in respect of pecuniary damage, EUR 2,500 in respect of non-pecuniary damage as well as costs and expenses.

TRIBUNAL ESTABLISHED BY LAW
Non-compliance with rules on participation of lay judges: *violation*.

FEDOTOVA - Russia (N° 73225/01)
Judgment 13.4.2006 [Section I]

(see below, Article 34).

Article 6(1) [criminal]

FAIR HEARING
Reasoning grounding a conviction: *communicated*.

GRĂDINAR - Moldova (N° 7170/02)
[Section IV]

The applicant is the widow of the late P., who was shot dead by persons unknown on 11 June 1999.
On 16 September 1995 a burned-out car containing human remains was found in a forest. The remains were identified as those of one D., a police officer with whom P. and others were allegedly in conflict. P. was arrested the following day, along with co-suspects, interrogated, and released; P. and his co-suspects were later tried.
On 16 September 1999 P. and his co-suspects were acquitted by the Chişinău Regional Court. It was found that confessions had been extracted from them unlawfully, that statements of witnesses heard in court did not support the prosecution case and that the available technical evidence was so flawed that it even called into question the identification of the human remains.
On 31 January 2000 the Court of Appeal quashed the first-instance judgment and found all accused guilty. It found no evidence of coercion, so that it could rely on the confessions. It also relied on unspecified witness statements and statements discarded by the first-instance court, and considered the technical evidence reliable. It did not sentence P. because he was no longer alive. This judgment was upheld by the Supreme Court of Justice on 30 May 2000.
Communicated under Article 6(1).

Article 6(2)

PRESUMPTION OF INNOCENCE
Compensation for prison sentence refused owing to lack of evidence amounting to total certainty of convicted person's innocence: *violation*.

PUIG PANELLA - Spain (N° 1483/02)
Judgment 25.4.2006 [Section IV]

Facts: The applicant had been convicted of theft, illegal use of vehicles and unlawful possession of firearms, and his sentences had included terms of imprisonment and fines. The Constitutional Court allowed an *amparo* appeal by the applicant. It found that he had been convicted solely on the basis of documents obtained at the investigation stage, which had not been produced or submitted for adversarial argument at trial. The conviction was quashed on the ground that it had infringed the principle of the presumption of innocence. The applicant sought compensation for the damage caused by the 1,663 days he had spent in prison. His claim was rejected on the ground that the conviction had been set aside for want of evidence and for an infringement of the "presumption of innocence" principle. It had not positively been established that the applicant had not participated in the offences of which he had been convicted. Compensation could have been paid if the applicant had been acquitted on the basis of clear evidence that he had not been involved in the offences.

Law: Article 6(2) – The refusal to compensate the applicant for the prison sentence he had served, before his conviction was quashed, had been based on his supposed guilt or lack of "total certainty as to his innocence". That reasoning had cast doubt on his innocence, despite the judgment of the Constitutional Court allowing his *amparo* appeal and restoring his right to the presumption of innocence. The voicing of suspicions regarding an accused's innocence was only conceivable where the conclusion of criminal proceedings did not result in a decision on the merits of the accusation. Moreover, the conviction had remained on the applicant's criminal record for more than 13 years despite having been irrevocably quashed by the Constitutional Court.
Conclusion: violation (unanimously).

Article 41 – The Court made awards for non-pecuniary damage and for costs and expenses.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Failure of authorities to remedy manifest shortcomings on the part of officially appointed counsel: *violation*.

SANNINO - Italy (N° 30961/03)
Judgment 27.4.2006 [Section III]

Facts: At the beginning of the criminal proceedings against him, the applicant was represented in succession by two lawyers of his choosing, who were both given leave to summon a number of defence witnesses. The second lawyer chosen by the applicant subsequently ceased to act for his client and the court assigned counsel to represent him. Whilst the assigned counsel was aware of the date of the following hearing, neither he nor the applicant was informed of his appointment. Counsel failed to appear at the hearings and the court ordered his replacement by a different assigned counsel at each hearing. The witnesses on the applicant's list were not called. The applicant attended the hearings except for the last two. Witnesses for the prosecution were examined. The applicant was sentenced to two years' imprisonment. He appealed, but without success.

Law: Articles 6(1) and 6(3) – The lawyer assigned by the authorities to represent the applicant had been informed of the date of the next hearing, but not of his appointment. As a result of that omission the

lawyer had been absent and this had given rise to the situation the applicant complained of – that he had been represented at each hearing by different assigned counsel, who did not have the slightest knowledge of the case. They had not requested an adjournment and had not called the defendant's witnesses, whose appearance had been authorised. The applicant, who attended many of the hearings, admittedly failed to inform the authorities of the difficulties he was encountering in preparing his defence, did not make contact with his assigned counsel and did not enquire as to the outcome of the proceedings. However, the applicant's conduct could not by itself have released the authorities from their obligation to ensure that the defendant was afforded effective representation. Given the patent shortcomings of the assigned counsel, it had been incumbent upon the authorities to intervene. But they had taken no steps to ensure that the accused was effectively represented and defended.
Conclusion: violation (unanimously).

The Court considered unanimously that it was unnecessary to examine the complaint under Article 2 of Protocol No. 7.

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage. The Court indicated that a retrial or the reopening of the case at the applicant's request represented, in principle, an appropriate way of redressing the violation. It made an award for costs and expenses.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Inability of applicant to examine or have examined any witnesses at any stage of proceedings: *violation*.

VATURI - France (N° 75699/01)
Judgment 13.4.2006 [Section I]

Facts: Following a police investigation concerning a property development project, the applicant was summoned to stand trial on charges of forgery of private documents, uttering forgeries and misappropriation of assets. The Criminal Court found the applicant guilty and gave him a suspended sentence of two years' imprisonment, also ordering him to pay a fine and damages. The applicant appealed and requested the examination of the witnesses against him and on his behalf. He relied on the fact that there had been no confrontation with the witnesses against him and that defence witnesses had not been examined. The Court of Appeal rejected the request to have the witnesses examined, finding that it would not help to establish the constituent elements of the charges. It upheld the judgment except in respect of the award of damages, which it increased. The applicant appealed unsuccessfully on points of law. The Court of Cassation held in particular that the request for the examination of witnesses had been made for the first time on appeal.

Law: Articles 6(1) and 6(3)(d) – The applicant's request for the examination of witnesses had been dismissed by the Court of Appeal, and as he had not made any such request at first instance he had been unable to examine or have examined the witnesses in question. His appeal on points of law was dismissed in particular on the ground that his request for the examination of witnesses had been made for the first time on appeal. In the Court's view, if a request for the examination of witnesses submitted on appeal were to be found admissible only where such a request had been made at first instance, the requirements of a fair trial might be infringed in so far as the exercise of the rights of the defence would be significantly diminished. In this case, however, the Court of Appeal had dismissed the request for a hearing on the merits and not simply because the applicant had failed to make it at first instance.
As to the proceedings leading to the conviction, the Court of Appeal had not based its finding of guilt solely on the evidence of witnesses against the applicant. However, the Court considered that an examination of all the acts performed throughout the proceedings, when considered as a whole, revealed an imbalance detrimental to the exercise of the rights of the defence. The applicant had been unable, at any stage in the proceedings, to examine or have examined witnesses of any kind. Despite the complexity of the case there had been nothing more than an ordinary police investigation, after which the applicant

had been directly summoned to stand trial. No judicial investigation had been opened and no investigating judge appointed, with the result that during the pre-trial proceedings the applicant had been unable to apply for any investigative measures and had not been confronted with his accusers. At the trial stage his sole request for the examination of witnesses and confrontation was dismissed. In short, the applicant's whole system of defence had been undermined, relying as it did on the adversarial and public examination of witnesses, both those against him and those to be called on his behalf. The examination of the witnesses, as sought by the applicant, could have contributed to the necessary balance and equality throughout the proceedings between the prosecution and the defence. The general logic of criminal proceedings required that the applicant should be afforded the right to examine or have examined a witness of his choosing.
Conclusion: violation (unanimously).

Article 41 – The Court reiterated that a retrial or the reopening of the case at the applicant's request represented, in principle, an appropriate way of redressing the violation. It made an award for non-pecuniary damage.

ARTICLE 7

Article 7(1)

NULLUM CRIMEN SINE LEGE
Sentence subject to rules on recidivism as a result of the application of a new law: *no violation*.

ACHOUR - France (N° 67335/01)
Judgment 29.3.2006 [GC]

Facts: On 16 October 1984 the Lyons Criminal Court sentenced the applicant to three years' imprisonment for drug trafficking. He finished serving his sentence on 12 July 1986. On 1 March 1994 the provisions of Article 132-9 of the new Criminal Code came into force, amending the laws on recidivism so that where a person who had already been convicted with final effect of a serious crime or other major offence punishable under the law by ten years' imprisonment committed, within ten years of the expiry of the previous sentence or of the time allowed for its enforcement, a further offence carrying a similar sentence, the maximum sentence and fine that could be imposed was to be doubled. On 7 December 1995 the applicant was arrested in the course of a judicial investigation into drug trafficking, and a search led to the discovery at his home address of several kilograms of cannabis. On 11 December 1995 he was placed under formal investigation and detained pending trial. On 14 April 1997 the Lyons Criminal Court found him guilty of a drug offence and sentenced him to eight years' imprisonment, also ordering his exclusion from French territory for ten years. On 25 November 1997, applying Article 132-9 of the Criminal Code, the Lyons Court of Appeal held that the applicant was subject to the rules on recidivism and increased his sentence to twelve years. The applicant appealed on points of law, complaining, among other things, that the harsher provisions of the new legislation on recidivism had been applied retrospectively whereas the applicable period in his case had expired on 12 July 1991. The Court of Cassation dismissed his appeal on the ground that where a law introduced new rules on recidivism, for them to apply immediately it was sufficient for the offence constituting the second component of recidivism to have been committed after the law's entry into force.

Law: Article 7 – Although the Court clearly had to examine the rules on recidivism and the way in which they had been applied in the circumstances of the case, it considered that matters relating to the existence of such rules, the manner of their implementation and the reasoning behind them fell within the power of the High Contracting Parties to determine their own criminal policy, which was not in principle a matter for it to comment on. In the present case it had to ascertain, in particular, whether the relevant statutory provision on recidivism, read in the light of the accompanying interpretative case-law, had satisfied the requirements of accessibility and foreseeability at the material time. In that connection, Article 132-9 of the new Criminal Code provided that the maximum sentence and fine that could be imposed were to be

doubled in the event of recidivism and that the applicable period was no longer five years, as prescribed by the former legislation, but ten years from the expiry of the previous sentence or of the time allowed for its enforcement. As the new statutory rules had come into force on 1 March 1994, they had been applicable when the applicant had committed fresh offences in 1995, so that he had been a recidivist in legal terms as a result of those offences. In reply to the applicant's argument that it had been impossible for him to have been treated as a recidivist between 13 July 1991 and 1 March 1994 and that the relevant period had consequently expired with final effect, the Court noted that his 1984 conviction had not been expunged and remained in his criminal record and that the expiry of the relevant period had not afforded him any right to have his first offence disregarded. Furthermore, the Court of Cassation had taken a clear and consistent position for more than a century to the effect that where a law introduced new rules on recidivism, for them to apply immediately it was sufficient for the offence constituting the second component of recidivism to have been committed after the law's entry into force. Accordingly, there was no doubt that the applicant could have foreseen that by committing a further offence before the expiry of the statutory ten-year period on 13 July 1996, he had run the risk of being convicted as a recidivist and of receiving a prison sentence and/or a fine that was liable to be doubled. He had thus been able to foresee the legal consequences of his actions and to adapt his conduct. The applicant's complaint did not raise any issues in terms of the retrospective application of the law since the case merely concerned successive statutes designed to apply solely with effect from their entry into force. Admittedly, the French courts had subsequently taken the applicant's initial conviction from 1984 into consideration, but such an approach, made possible by the fact that that conviction remained in his criminal record, was not in breach of the Convention, seeing that the offence for which he had been prosecuted and punished had taken place after the entry into force of Article 132-9 of the new Criminal Code. The practice of taking past events into consideration was to be distinguished from the notion of retrospective application of the law *stricto sensu*. Accordingly, the sentence imposed on the applicant, who had been found guilty and deemed to be a recidivist in the proceedings in issue, had been applicable at the time when the second offence was committed, pursuant to a "law" which had been accessible and foreseeable as to its effect.
Conclusion: no violation (sixteen votes to one).

ARTICLE 8

PRIVATE AND FAMILY LIFE
Contact of person held in police custody with relatives: *violation*.

SARI and ÇOLAK - Turkey (N° 42596/98 and N° 42603/98)
Judgment 4.4.2006 [Section II]

Facts: The applicants were held in police custody for more than seven days and were then convicted. They complained of the length of the custody and that they had been held incommunicado during that period.

Law: Article 5(3) – It had not been necessary to detain the applicants for more than the statutory seven-day period before bringing them before a judge.
Conclusion: violation (unanimously).

Article 8 – The applicants complained that they had not been able to contact their families during the period of more than seven days they had spent in incommunicado detention. Prior to 2002 there had been no legislation governing the right of suspects in police custody to contact family members or other persons outside. Although the applicants had been unable to prove that they had been refused permission to contact their families, the procedure for arranging such contact had not been clearly established either. The Government had not indicated what means had been available to the applicants to make contact with their families rapidly after being taken into custody. There had been no legislative framework affording practical and effective protection against a violation of Article 8.
Conclusion: violation (unanimously).

Article 41 – The Court made awards for non-pecuniary damage and for costs and expenses.

PRIVATE AND FAMILY LIFE
Husband in prison refused permission for artificial insemination: *no violation*.

DICKSON - United Kingdom (N° 44362/04)
Judgment 18.4.2006 [Former Section IV]

Facts: In 1994 the first applicant, Mr Dickson, was convicted of murder and sentenced to life imprisonment with a tariff (the minimum period to be served) of 15 years. He has no children. In 1999 he met a woman who was likewise imprisoned and in 2001 they were married. Mrs Dickson already had three children from other relationships. After Mrs Dickson had been released the couple requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given Mr Dickson's earliest release date and Mrs Dickson's age. The Secretary of State refused their application. They appealed unsuccessfully.

Law: Article 8 – The Court noted that the Secretary of State had given careful consideration to the applicants' circumstances, including the unlikely event of the couple being able to conceive after Mr Dickson's release from prison, before concluding that those factors had been outweighed by the other factors. Particular reference had been given to the nature and gravity of Mr Dickson's crime and the welfare of any child who might be conceived, in the light of the father's prolonged absence for an important part of its childhood years and the apparent lack of sufficient material provision and immediate support network in place for the mother and child. Moreover, both the High Court and the Court of Appeal had found the decision of the Secretary of State to refuse the facilities had been neither unreasonable nor disproportionate. In those circumstances it had not been shown that the decision to refuse facilities for artificial insemination had been arbitrary or unreasonable or had failed to strike a fair balance between general interest of the community and the interests of the individual. There had accordingly been no failure to respect the applicants' rights to private and family life.
Conclusion: No violation (four votes to three).

Article 12 – An interference with family life which is justified under Article 8 cannot at the same time constitute a violation of Article 12.
Conclusion: No violation (four votes to three).

PRIVATE AND FAMILY LIFE
Expulsion following conviction: *inadmissible*.

ÇÖMERT - Denmark (N° 14474/03)
Decision 10.04.2006 [Section V]

Facts: The applicant, a Turkish national, lived in Turkey until he moved to Denmark at the age of thirteen. He later married a Turkish national, who remained in Turkey; the first two of their three children were born there. The applicant's wife and first two children joined the applicant in Denmark several years later. A third child was born to them in Denmark. In 2002 the applicant was convicted of having sexually abused his elder daughter by resorting to violence and threats over a four-year period; he was sentenced to a term of imprisonment and ordered to be expelled from Denmark forever. The applicant's wife divorced the applicant in Denmark in 2003 and was granted custody of the children; the applicant did not seek access to any of the children. Divorce proceedings under Turkish law are still pending. The applicant was expelled to Turkey in 2004 immediately after his release.

Inadmissible under Article 8 – At the time of the expulsion order, the applicant's wife, his three children, his father and three of his siblings lived in Denmark. Accordingly, the expulsion order interfered with the applicant's family life. The interference was prescribed by law and pursued a legitimate aim. Despite the considerable time spent by the applicant in Denmark, he entered Denmark at the age of thirteen and thus

spent most of his childhood and youth in Turkey. His situation was therefore not comparable to that of a second generation immigrant. Moreover, he was well acquainted with the Turkish language and culture, and almost every year he spent his vacations in Turkey, where at the relevant time his mother and five of his siblings resided. Subsequently his father and a brother left Denmark and returned to Turkey. In view of the divorce proceedings, within the meaning of Article 8 of the Convention the applicant's "family-life" can no longer relate to his ex-wife. The expulsion of the applicant has not so far prevented him from seeing his two youngest children, who have visited him in Turkey; there are no elements in the case which suggest that in the future he cannot continue to maintain a family life, at least with his son, who in any event comes of age in two years. Finally, there can be no doubt that the expulsion order was based on a crime which was not only serious, but also of such a nature that the applicant himself, by committing it, significantly injured his family life. *Manifestly ill-founded*.

ARTICLE 10

FREEDOM OF EXPRESSION
Defamation conviction for allegations by a candidate for Parliament suggesting abuse of power by Deputy Speaker of Parliament: *violation*.

MALISIEWICZ-GĄSIOR - Poland (N° 43797/98)
Judgment 6.4.2006 [Section I]

Facts: In 1992 Mr. Kern, then Deputy Speaker of the Sejm (Poland's Lower House of Parliament) lodged a complaint against the applicant with the Łódź regional public prosecutor, alleging that she had kidnapped his 17-year-old daughter M.K. According to the applicant, however, M.K. had run away from home accompanied by her long-term boyfriend (the applicant's son). The prosecutor instructed his deputy to take charge of the case and the latter authorised an unsuccessfully searched the applicant's flat for M.K. and drugs. The applicant's telephone was also tapped and she was briefly taken into custody on charges of kidnapping and was detained on the psychiatric ward of a prison hospital. The allegations of kidnapping received extensive media coverage in Poland. The applicant applied successfully for her case to be transferred to a prosecutor who worked outside the Łódź region. In September 1992 the new prosecutor discontinued the criminal proceedings, finding the allegations of kidnapping to be groundless.
In 1993 the applicant decided to stand as an independent candidate in the parliamentary elections. During her campaign, she wrote two articles in a weekly, accusing Mr Kern of "abuse of power", of having orchestrated her arrest and detention in a psychiatric cell, having had her phone tapped and her flat searched. She also described her ideas about working in the Senate (Poland's Upper House of Parliament). Her statements were subsequently broadcast on local radio and television stations. Mr Kern then lodged a private prosecution, charging the applicant with defamation. In 1996 she was convicted, the national courts finding her comments about Mr Kern to have been both defamatory and untrue and considering that she had been acting in her own rather than the public interest. She appealed unsuccessfully against her conviction but her sentence was reduced from a suspended prison term of 18 months to one of 12 months. The appellate courts also accepted that it was "beyond doubt" that the applicant could have felt that the prosecuting authorities had been "overactive". She was ultimately ordered to pay for the publication of the judgment in a national daily, to have an apology to Mr Kern published in the weekly in question, and to pay costs.
The Polish Ombudsman subsequently found, among other things, that the regional Łódź prosecutors had broken the law and that the courts had failed to take into account important evidence in support of the applicant's case. The Polish courts eventually decided not to enforce the applicant's prison sentence after she had failed to apologise to Mr Kern.

Law: The Court observed that the applicant's comments about Mr Kern had been made in articles published during her electoral campaign as a parliamentary candidate, in which she had also set out her political convictions and her ideas about working in the Senate. In addition, her comments had been based on personal experience, namely Mr Kern's request for criminal proceedings to be brought against her and the events which followed. The appellate court had found that she could have subjectively felt that the

Łódź prosecutors had been overactive in her case. Moreover, the Ombudsman had concluded that certain prosecutors had even broken the law. When her case had been transferred to the new prosecutor, the criminal proceedings against her had been discontinued, the prosecutor considering those charges to have been groundless. Therefore the applicant's allegations of abuse of power had not been a gratuitous personal attack but part of a political debate. Even if some of her statements had contained harsh words, they had been made against a well-known politician concerning whom the limits of acceptable criticism were wider than as regards a private individual. Very strong reasons were required to justify restrictions on political speech as allowing broad restrictions on political speech in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned.
The Court did not subscribe to the domestic courts' view that the applicant had been acting in her own interest; the matters covered by her in her articles had concerned issues of public interest. The right to stand as a candidate in an election was of prime importance in the Convention system. The domestic courts had failed to take into account the fact that Mr Kern, being a politician, should have shown a greater degree of tolerance towards criticism. Accordingly, the domestic authorities failed to take into consideration the crucial importance of free political debate in a democratic society, particularly in the context of free elections. The defamation of a politician in the context of a heated political debate did not justify the imposition of a prison sentence. The conviction of the applicant for making, during her parliamentary campaign, press and radio statements alleging abuse of power by one of the most powerful politicians in the country must have had "a chilling effect" on the freedom of expression in public debate in general. In sum, there had been no reasonable relationship of proportionality between the measures applied by the domestic courts and the legitimate aim pursued and the authorities had failed to strike a fair balance between the relevant interests.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 5,000 for non-pecuniary damage.

FREEDOM OF EXPRESSION
Criminal conviction of investigating journalist for having obtained, in breach of official secret, information about previous convictions of private persons: *violation*.

DAMMANN - Switzerland (N° 77551/01)
Judgment 25.4.2006 [Section II]

Facts: As a court reporter for a daily newspaper the applicant decided to investigate a major robbery that had taken place after a break-in at a post office in Zürich. As part of that investigation he telephoned the switchboard of the Public Prosecutor's Office. As none of the public prosecutors were available, the applicant transmitted to an administrative assistant a list of names of persons who had been arrested in connection with the robbery and asked her for information as to whether the individuals concerned had any previous convictions. After consulting the prosecuting authorities' database, the assistant sent the applicant a fax containing the information he had requested.
The applicant did not publish the information, nor did he use it for any other purpose. However, he apparently showed the fax to a police officer, who reported the incident to the prosecuting authorities. Criminal proceedings were then brought against the applicant and the administrative assistant. She was convicted of breaching official secrets and lost her employment in the Public Prosecutor's Office.
The applicant was prosecuted for inciting another to disclose official secrets. He was acquitted at first instance and sentenced, on appeal, to a criminal fine of approximately EUR 325. The Court of Appeal considered in particular that the applicant, as an experienced court reporter, must have known that the assistant was bound by professional secrecy, that information on those involved in criminal proceedings was confidential, and that no public prosecutor would have agreed to comply with his request. The court noted that the interest of individuals in the preservation of their private life prevailed over any public interest, especially as at that stage it was impossible to know whether or not the persons in question would ultimately be convicted of the offences of which they were suspected. Appeals by the applicant on grounds of nullity were dismissed by the Court of Cassation and by the Federal Court.

Law: The interference in this case had been prescribed by law. As to its foreseeability, the Court expressed doubts, without reaching a final conclusion on that point. The interference had pursued a legitimate aim, namely the prevention of the "disclosure of information received in confidence". The case did not concern the restraining of a publication as such or a conviction following a publication, but a preparatory step towards publication, namely a journalist's research and investigative activities. That phase, which also fell within its supervision, called for the closest scrutiny on account of the great danger represented by that sort of restriction on freedom of expression. There was no doubt that in principle data relating to a suspect's criminal record merited protection. However, as the Federal Court had acknowledged, the information could have been obtained by other means, such as consulting case-law reports or press archives. In the circumstances the grounds relied on by the Swiss authorities to justify fining the applicant did not appear "relevant and sufficient", since it had not actually been "information received in confidence" within the meaning of the Convention and, accordingly, the details in question had been in the public domain. The information had been of a kind that raised matters of public interest in that it had concerned a very spectacular break-in that had been widely reported in the media. With regard to the Swiss courts' argument that the applicant should have known that the information he had requested was confidential, the Court considered that the Swiss Government had to bear a large share of responsibility for the indiscretion committed by the assistant at the public prosecutor's office, especially as the applicant had apparently not tricked, threatened or pressurised her into disclosing the desired information. Furthermore, no damage had been done to the rights of the persons concerned. While there might have been a risk, at a particular time, of interference with other persons' rights, the risk had disappeared once the applicant had himself decided not to publish the information in question.
Moreover, although the penalty imposed on the applicant had not been very harsh, what mattered was not that he had been sentenced to a minor penalty, but that he had been convicted at all. While the penalty had not prevented the applicant from expressing himself, his conviction had nonetheless amounted to a kind of censorship which was likely to discourage him from undertaking research, inherent in his job, with a view to preparing an informed press article on a topical subject. Punishing, as it did, a step that had been taken prior to publication, such a conviction was likely to deter journalists from contributing to public discussion of issues affecting the life of the community and might thus hamper the press in its role as information provider and watchdog. That being so, the applicant's conviction had not been reasonably proportionate to the pursuit of the legitimate aim in question, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.
Conclusion: violation (unanimously)

FREEDOM OF EXPRESSION
Criminal conviction of journalist for having published a confidential report by an ambassador on strategies to be adopted in diplomatic negotiations: *violation*.

STOLL - Switzerland (N° 69698/01)
Judgment 25.4.2006 [Section II]

Facts: In 1996 Carlo Jagmetti, who was then the Swiss Ambassador to the United States, drew up a "strategic document", classified as "confidential", in the course of negotiations between, among others, the World Jewish Congress and Swiss banks concerning compensation due to Holocaust victims for unclaimed assets deposited in Swiss banks. The document was sent to a very limited number of senior officials in Switzerland. The applicant obtained a copy, probably as a result of a breach of professional confidence by a person whose identity remains unknown.
One month later a Swiss newspaper published two articles by the applicant under the headings "Carlo Jagmetti insults the Jews" and "Bathrobed ambassador makes new faux-pas with heavy boots", accompanied by extracts from the report in question. The next day two other newspapers reproduced long extracts from the strategic document.
In 1999 a district court sentenced the applicant to a fine of approximately 520 euros for publishing "secret official deliberations". The court noted that by publishing the document, the applicant had undermined Switzerland's foreign policy position. Appeals lodged by the applicant were dismissed by the Federal Court. Moreover, the Swiss Press Council, to which the case had been referred by the Swiss Federal Council in the meantime, acknowledged the public interest of the document and the legitimacy of its

publication, but found that by abridging essential passages of the report and failing to place it sufficiently in context, the applicant had irresponsibly made the ambassador's remarks appear sensational and shocking.

Law: The interference, prescribed by law, had pursued a legitimate aim, namely the prevention of the "disclosure of information received in confidence". The criticism expressed in the impugned articles had directly targeted a senior official, namely a member of the diplomatic corps having the rank of ambassador, who had had a particularly important mission to perform in relation to the United States. The confidentiality of diplomatic relations was justified in principle, but could not be protected at any price. Moreover, the role of the media as critic and watchdog also applied to foreign policy matters.
The information contained in the report in question had been of a kind that raised matters of public interest. The articles had been published in the context of a public debate about a matter widely reported in the Swiss media and one that had deeply divided public opinion in Switzerland, particularly as the discussions about the assets of Holocaust victims and Switzerland's role in the Second World War had then been very heated and had taken on an international dimension. The Swiss ambassador to Washington had occupied an important position in the discussions and the public had had a legitimate interest in receiving information about the officials dealing with such a sensitive matter and their negotiating style and strategy.
The Court recognised the importance of protecting the work of the diplomatic corps from outside interference. However, it was not persuaded that the disclosure of aspects of the strategy to be adopted by the Swiss Government in the negotiations concerning the assets of Holocaust victims and Switzerland's role in the Second World War was capable of prejudicing interests that were so precious that they outweighed the freedom of expression in a democratic society. By concluding that there had been mitigating circumstances, the District Court had, moreover, explicitly acknowledged that the disclosure of the confidential document had not undermined the very foundations of Switzerland.
With regard to the form of the published articles, the Press Council had considered that the ambassador's remarks had been made to appear sensational and shocking. The Court pointed out, however, that freedom of the press afforded the public one of the means of discovering and forming an opinion on the ideas and attitudes of leaders, observing in that connection that press freedom also covered possible recourse to a degree of exaggeration, or even provocation.
Furthermore, although the penalty imposed on Mr Stoll had not been very harsh, the Court reiterated that what mattered was not that he had been sentenced to a minor penalty, but that he had been convicted at all. While the penalty had not prevented the applicant from expressing himself, his conviction had nonetheless amounted to a kind of censorship which was likely to discourage him from making criticisms of that kind again in future. In the context of a political debate such a conviction was likely to deter journalists from contributing to public discussion of issues affecting the life of the community and might thus hamper the press in its role as information provider and watchdog.
That being so, Mr Stoll's conviction had not been reasonably proportionate to the pursuit of the legitimate aim in question, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.
Conclusion: violation (four votes to three)

FREEDOM OF EXPRESSION
Withdrawal from sale of a magazine which had published notes prepared by an investigating judge for a hearing before a parliamentary commission of inquiry: *admissible*.

LEEMPOEL and S.A. ÉDITIONS CINÉ REVUE - Belgium (N° 64772/01)
Decision 2.3.2006 [Section I]

In connection with a parliamentary commission of inquiry set up to examine "the manner in which the police and judicial investigations were conducted in the Dutroux case", D., the investigating judge who had been responsible for the investigation into the abduction of two girls, gave evidence to the commission at public hearings that were broadcast in full on television. Following one of the hearings the chairman of the commission unexpectedly asked the judge to hand over the file she had brought with her in preparation, which contained a series of documents including personal notes about her defence and

recommendations as to how to communicate and conduct herself before the commission. After the file had been handed over, it was made available exclusively to members of the commission of inquiry, who were nonetheless obliged to consult it on the premises and were unable to make copies of it. At a subsequent hearing, which was also public and broadcast on television, Judge D. was questioned by commission members about certain extracts from her preparatory notes. The weekly magazine *Ciné Télé Revue* published an article which contained lengthy extracts from the preparatory file which the judge had handed to the commission of inquiry. The article was advertised on the front cover of the magazine by the headline "Exclusive – A surprising attitude: how Judge D. prepared her defence – Revelations from her file", superimposed on a photograph of the judge. On the same day, on an application by Judge D., the urgent-applications judge ordered the withdrawal of every copy of the magazine from sales outlets within three hours after notification of the decision, with a penalty of approximately EUR 250 per copy for failure to comply, and prohibited any subsequent distribution of a copy featuring the same cover and the same article. The injunction was upheld on appeal, on the ground that the information published was subject to the rules on confidentiality of parliamentary inquiries and that its publication had interfered with defence rights and with the judge's right to respect for her private life. The applicants were considered to have been negligent because they must have known that the published notes were only to be consulted by members of the commission and were not to leave the parliament's premises. The applicants replied that most of the content of the notes had been read out by the members of the commission at a hearing that had been broadcast on television live and in full two weeks before the prohibited publication.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Conviction of Member of Parliament for accusing minister of neglecting his duties out of loyalty towards father with Nazi sympathies: *inadmissible*.

KELLER - Hungary (N° 33352/02)
Decision 4.4.2006 [Section II]

The applicant is a Member of Parliament. At a parliamentary session, while questioning the Prime Minister, the applicant alleged that failure to investigate a matter of national security, namely the practices of extreme right-wing groups, might have been due to the fact that the responsible Minister's father was a member of the Hungarista movement (an extreme right-wing movement related to Nazis). The applicant did not name the Minister in question. The next day, however, the national daily published an article quoting the applicant and specifying the identity of the Minister concerned (E.D.). Some days later, during his interview on a TV programme, the applicant confirmed that his statement in the Parliament had concerned indeed E.D. and his father.
The Minister E.D. and his father sued the applicant for violation of their "personality rights". The first-instance court separated the Minister's action from that of his father and found for the Minister. It held that the applicant had made a statement of fact supported by no evidence, thereby undermining the plaintiff's reputation and political credibility in light of the upcoming elections. The applicant was ordered to pay compensation for non-pecuniary damage and costs (totalling about 3,240 EUR), to have the decision published in the daily, and to make its contents public on a TV programme, all at his expense. The regional court dismissed the applicant's appeal, after having endorsed the first-instance court's finding that the impugned statement was a statement of fact. The regional court concluded that the applicant had failed to prove that E.D. had breached his official duties, namely to conduct a national security investigation, on account of his personal interests. The court nonetheless reduced the procedural fees payable by the applicant and exempted him from having a rectification broadcast.
The European Court found that the interference with the applicant's right to freedom of expression had a legal basis and pursued the legitimate aim of protecting reputation and rights of others. As to whether the measures were "necessary in a democratic society", the Court observed that it was not disputed before the domestic courts that no investigation had taken place. Moreover, the issue of the alleged extreme right-wing affiliation of the plaintiff's father was excluded by those courts from the scope of their examination. As regards the sole remaining issue – namely whether the real motive for the plaintiff's omission to initiate the investigation in question was his father's participation in the *Hungarista* movement – the Court agreed with the domestic courts that the applicant's statement was essentially

factual and susceptible of proof, which he had failed to offer. The Court shared the domestic courts' view that the applicant's utterances were capable of undermining public confidence in the integrity of the plaintiff as a high-ranking executive officer, accusing him of deliberately neglecting his duties for personal reasons, and all the more so since the applicant had implied that this reason might have been the plaintiff's loyalty towards his father who allegedly belonged to a movement with Nazi sympathies.
The Court recalled that the protection of the reputation of others provided for by Article 10(2) extended to politicians too, *a fortiori* to a situation where a politician was criticised by another one, especially if that criticism was voiced in the privileged arena of Parliament. However, the applicant had not limited himself to attacking his opponent in Parliament. The identity of the applicant's target had only become clear afterwards, with his further explanation in a television broadcast. Such public insinuations no longer benefited from the privilege afforded to parliamentary debate. Moreover, the applicant had been sued before the civil courts (rather than the criminal courts) and had been ordered to arrange for a rectification in the press and to pay damages in an amount which was less than twice the gross monthly salary to which he had been entitled at the time. The Court did not find those sanctions excessive in the circumstances of the case. The Court concluded that that the domestic courts' finding against the applicant and the sanctions imposed had not been disproportionate to the legitimate aim pursued, and that the reasons given by the domestic courts to justify those measures had been relevant and sufficient. The interference with the applicant's exercise of his right to freedom of expression could therefore reasonably be regarded by the national authorities as necessary in a democratic society for the protection of the reputation and rights of others: *manifestly ill founded*.

FREEDOM TO RECEIVE INFORMATION
Refusal of the Central Election Committee to provide an NGO with the documents allegedly needed to perform its observer functions at the parliamentary elections: *communicated*.

GERAGUYN KHORHURD PATGAMAVORAKAN AKUMB - Armenia (N° 11721/04)
Decision 11.04.2006 [Section III]

The applicant is an NGO which acted as an election observer at the parliamentary elections in May 2003. In the days following the elections, the applicant requested, by registered mail, that the Central Election Committee (CEC) provide it with the copies of all the decisions taken and records of all the meetings held by the CEC after 12 March 2003, as well as the other documents allegedly needed to perform its observer functions.
Its requests remaining unanswered, the applicant contested the CEC's inactivity before the courts. The first-instance court rejected its complaint for lack of proof, without notifying the applicant about the hearing. The applicant appealed against this decision to the Civil Court of Appeal and to the Court of Cassation, submitting the copies of the relevant post office receipts with postmarks. His appeals were dismissed on the ground that the above post office receipts could not serve as a proof because there was no postmark on them.
Communicated under Article 10.

Complaints under Article 6 of the Convention and article 3 of Protocol No.1: *communicated.*

ARTICLE 12

FOUND A FAMILY
Husband in prison refused permission for artificial insemination: *no violation*.

DICKSON - United Kingdom (N° 44362/04)
Judgment 18.4.2006 [Former Section IV]

(see Article 8 above (private and family life)).

ARTICLE 13

EFFECTIVE REMEDY
Lack of effective investigation into death of a conscript while performing military service: *violation*.

ATAMAN - Turkey (N° 46252/99)
Judgment 27.4.2006 [Section III]

(see Article 2 above).

EFFECTIVE REMEDY
Refusal to grant compensation for excessive length of proceedings under the law designed to redress such a breach: *communicated*.

LENDZION - Poland (N° 41587/05)
[Section IV]

Criminal proceedings against the applicant have been pending since 1994. In 2004 the applicant lodged a complaint about a breach of his right to a trial within a reasonable time with a regional court under Section 5 of the Law of 17 June 2004 designed to counteract and/or redress the undue length of judicial proceedings. The regional court gave a decision in which it acknowledged the excessive length of the proceedings but refused to grant any just satisfaction, holding that the applicant had not taken any steps in order to accelerate the proceedings.
Communicated under Articles 6(1) and 13.

See also: CLR No. 75, at p. 26 (*Ratajczyk v. Poland*, no. 11215/02; admissible).
CLR No. 73, at p. 41 (*Charzyński v. Poland,* no. 15212/03; inadmissible).

ARTICLE 14

DISCRIMINATION
Differences in the entitlement for men and women to certain industrial injuries social security benefits: *no violation*.

STEC and Others - United Kingdom (N° 65731/01 and N° 65900/01)
(formerly **HEPPLE and Others and KIMBER - United Kingdom**)
Judgment 12.04.2006 [GC]

The applicant Mrs Hepple informed the Court that for personal reasons she no longer wished to continue with the case; her application was struck out. Subsequently Mrs Hepple informed the Court that she had changed her mind. The Court decided, however, not to restore her application to the list.

Facts: The pensionable age in the United Kingdom for persons born before 6 April 1950 is 65 for men and 60 for women. The applicants, two men and two women, all suffered work-related injuries and received reduced earnings allowances as a result; all received retirement allowances when they reached their respective pensionable ages. For all applicants, this resulted in various ways in a drop in income that would have been spared them had they been of the sex opposite to theirs and hence subject to the other pensionable age. In the course of the domestic proceedings, the domestic tribunal sought a preliminary ruling from the European Court of Justice (ECJ), which on 23 May 2000 ruled that there was no incompatibility with Council Directive 79/7/EEC on Equal Treatment in Social Security.

Law: Article 14 – The Court had held already in its decision on admissibility (6 July 2005) that the applicants' interests fell within the scope of Article 1 of Protocol No. 1. All agree that it is reasonable to

aim to stop paying reduced earnings benefits after the age when the beneficiaries would in any case have retired. A single cut-off date divorced from the pensionable age, as advocated by the applicants, would however not have achieved the same level of consistency with the State pension scheme, which is based on a "notional end of working life" at 60 for women and 65 for men. Nor would such a scheme have been as easy to understand and administer. It is moreover significant that the ECJ found that since the reduced earnings allowance was intended to compensate people of working age for loss of earning capacity due to an accident at work or occupational disease, it was necessary for the sake of coherence to link the age-limits. Both the policy decision to stop paying reduced earnings allowances to persons who would otherwise have retired from paid employment and the decision to achieve this aim by linking the cut-off age to the notional "end of working life", or State pensionable age, therefore pursued a legitimate aim and were reasonably and objectively justified. The remaining question is whether the underlying difference in treatment between men and women in the State pension scheme was acceptable under Article 14. It would appear that the difference in treatment was adopted in order to mitigate financial inequality and hardship arising out of the woman's traditional unpaid role of caring for the family in the home rather than earning money in the workplace. At their origin, therefore, the differential pensionable ages were intended to correct "factual inequalities" between men and women and appear therefore to have been objectively justified under Article 14. It follows that the difference in pensionable ages continued to be justified until such time that social conditions had changed so that women were no longer substantially prejudiced because of a shorter working life. This change, must, by its very nature, have been gradual, and it would be difficult or impossible to pinpoint any particular moment when the unfairness to men caused by differential pensionable ages began to outweigh the need to correct the disadvantaged position of women. It is significant that many of the other Contracting States still maintain a difference in the ages at which men and women become eligible for the State retirement pension. In the light of the original justification for the measure as correcting financial inequality between the sexes, the slowly evolving nature of the change in women's working lives, and in the absence of a common standard amongst the Contracting States, the Court finds that the United Kingdom cannot be criticised for not having started earlier on the road towards a single pensionable age. Having once begun the move towards equality, moreover, the Court does not consider it unreasonable of the Government to carry out a thorough process of consultation and review, nor can Parliament be condemned for deciding in 1995 to introduce the reform slowly and in stages. Given the extremely far-reaching and serious implications, for women and for the economy in general, these are matters which clearly fall within the State's margin of appreciation.
Conclusion: no violation (sixteen votes to one).

ARTICLE 18

RESTRICTIONS FOR UNAUTHORISED PURPOSES
Alleged political motives for detaining a well-known business executive supporting opposition parties: *communicated*.

KHODORKOVSKIY - Russia (N° 5829/04)
[Section I]

(see above Article 5(1)).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Police inquiry into the payment of taxes by the applicant's translator and representative before the Court in connection with her claim for just satisfaction: *violation*.

FEDOTOVA - Russia (N° 73225/01)
Judgment 13.4.2006 [Section I]

Facts: The town court, composed of a presiding judge and two lay judges, dismissed the applicant's claims in a civil suit to which she was a party and ordered her to bear costs and expenses. The applicant appealed alleging, among other things, a breach of the requirements of the Lay Judges Act in that the sitting lay judges had not been drawn by lot and had exceeded their two weeks' service per year. The regional court dismissed the appeal, concluding that the lay judges at issue were exempted from the requirements of the Federal Lay Judges Act.
On 1 April 2004 the European Court declared Ms Fedotova's application partly admissible and she submitted her claim for just satisfaction. Shortly afterwards, an officer of the town police department questioned the applicant's representative and translator in the Court proceedings about their relationship with the applicant and formally requested them to submit evidence that they had paid taxes on the amounts disbursed by the latter.

Law: Article 6(1) – The Court noted that the parties disagreed as to whether at the relevant time the status of lay judges in question had been governed by the USSR Judiciary Act of 1981 or by the more recent Federal Lay Judges Act. The Court observed that in either case essential requirements of the procedure for selection of lay judges had not been respected. The Court therefore concluded that the town court could not be considered a "tribunal established by law".
Conclusion: violation (unanimously).

See also CLR No. 51, at p. 15 (*Posokhov v. Russia*, No. 63486/00, violation of Art. 6(1)).

Article 34 – The Court recalled that it was of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy. In the instant case it was not in dispute that the local police had summoned the applicant's legal representative and translator for a formal interview in connection with the applicant's claims for just satisfaction. The Government had furnished no explanation as to how the regional police had obtained the documents submitted in the framework of the Convention proceedings. There was no doubt, however, that the inquiry had been launched at the request of the Government's representative before the Court because the Government had relied on the findings of the police inquiry in their comments on the applicant's claim for just satisfaction.
It was of particular concern that the police interview had not been confined to matters regarding the applicant's translator's tax reporting but had probed into more general aspects of her relationship with the applicant and other persons. Also, the Court saw no plausible reason as to why, in the absence of any apparent indication of a criminal offence, the questioning had been conducted by the regional police rather than by a competent tax authority.
In sum, to proceed as the Government had done in the case could very well have been interpreted by the applicant as an attempt to intimidate her. The fact that the summons had been served on the applicant's legal representative and translator made no difference. The moves made by the Russian Government to investigate the applicant's disbursements to her representatives, even though apparently not resulting in any criminal prosecution, had to be considered an interference with the exercise of the applicant's right of

individual petition and incompatible with the respondent State's obligation under Article 34 of the Convention.
Conclusion: violation (unanimously).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY ("the former Yugoslav Republic of Macedonia")
Criminal complaint alleging police brutality still pending and civil claim for damages dismissed: *Government's preliminary objection rejected*.

JAŠAR - "the former Yugoslav Republic of Macedonia" (N° 69908/01)
Decision 11.4.2006 [Section III]

(see above Article 3).

EFFECTIVE DOMESTIC REMEDY (Poland)
Effectiveness of new domestic remedy concerning length of judicial proceedings: *communicated*.

LENDZION - Poland (N° 41587/05)
[Section IV]

(see above Article 13).

ARTICLE 37

Article 37(2)

RESTORING AN APPLICATION TO THE LIST OF CASES

STEC and Others - United Kingdom (N° 65731/01 et N° 65900/01)
(formerly **HEPPLE and Others and KIMBER –United Kingdom**)
Judgment 12.04.2006 [GC]

(see Article 14 above).

ARTICLE 1 OF PROTOCOL No. 1

DEPRIVATION OF PROPERTY
Inadequate amount of compensation for expropriation: *violation*.

SCORDINO - Italy (N° 36813/97)
Judgment 29.3.2006 [GC]

(see Article 6(1) above).

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
Delimitation of constituencies for parliamentary elections: *inadmissible*.

BOMPARD - France (N° 44081/02)
Decision 4.4.2006 [Section II]

The applicant is a French voter who disputed the parliamentary election results on the ground that the constituency boundaries had not been reviewed to take account of population changes. In her view, statistics from the most recent censuses showed that the constituencies, whose boundaries had been drawn before they were taken, were unbalanced and differed significantly in terms of population. The applicant appealed unsuccessfully to the Constitutional Court, arguing that the distribution of parliamentary seats between constituencies did not have an essentially demographic basis, in breach of the principle of voting equality.

Inadmissible under Article 3 of Protocol No. 1 – The system of electoral boundaries laid down by an Act of 1986 had ensured that the right to vote was granted under conditions that reflected the need to ensure both citizen participation and knowledge of the particular situation of the region in question, in accordance with Article 3 of Protocol No. 1. In particular, such conditions could not in themselves have the effect of impeding the "free expression of the opinion of the people in the choice of the legislature". In the constituency where the applicant had voted, even though its boundary had not been redrawn, there had been no demographic discrepancy leading to an inaccurate reflection of the opinion of the people in the choice of their national representation or capable of altering the result of the parliamentary election at issue. The Government explained that there had not been enough time to organise a boundary review before the date of the election. The Court found that it was legitimate in a democratic society to carry out such a review only after comprehensive studies and consultations. In addition, States enjoyed a wide margin of appreciation in such matters: *manifestly ill-founded*.

Inadmissible under Articles 6 and 13.

ARTICLE 3 OF PROTOCOL No. 7

COMPENSATION
Impossibility of obtaining compensation in the event of a miscarriage of justice: *communicated*.

DI SALVO - Italy (N° 16098/05)
Section III

In December 1984 the applicant was convicted of perjury. He was given a six-month suspended prison sentence and was disqualified from holding public office. His conviction was upheld on appeal and, in 1988, by the Court of Cassation. The applicant subsequently lodged a number of applications to reopen the proceedings, but without success. One such application, lodged on 1 June 1998, was declared admissible by the Court of Appeal but was dismissed on the merits on the ground that the applicant was essentially seeking a fresh assessment of evidence that had already been produced during the initial trial. In the meantime, the applicant had been ordered to pay damages for the pecuniary and non-pecuniary damage arising from his allegedly false statement. A further application to reopen the proceedings was declared inadmissible by the Court of Appeal on 14 October 2003. The applicant appealed to the Court of Cassation, which in a judgment of 4 March 2004 quashed the impugned judgment, observing that an application to reopen proceedings was admissible if the convicted person was seeking an assessment of existing evidence that had never been considered by the trial court. The applicant's trial was consequently reopened. In a judgment of 14 January 2005 his conviction was quashed and he was acquitted of the offence with which he had been charged on the ground that it had not occurred (*perché il fatto non sussiste*). The judgment became final on 1 March 2005.

In the applicant's submission, under Italian law the right to compensation in the event of a miscarriage of justice arises only where a custodial sentence has been served. Seeing that the prison sentence imposed on him was suspended, he submits that it was impossible for him to obtain compensation for the miscarriage of justice of which he was the victim.
Communicated under Article 3 of Protocol No. 7.

Other judgments delivered in April

Bodur and Others v. Turkey (Nº 42911/98), 4 April 2006 [Section II]
Güzel v. Turkey (no. 1) (Nº 54479/00), 4 April 2006 [Section II]
Malik v. Poland (Nº 57477/00), 4 April 2006 [Section IV]
Karaaslan v. Turkey (Nº 72970/01), 4 April 2006 [Section II]
Demir v. France (Nº 3041/02), 4 April 2006 [Section II]
Kobtsev v. Ukraine (Nº 7324/02), 4 April 2006 [Section II]
Pomazanyy and Shevchenko v. Ukraine (Nº 9719/02), 4 April 2006 [Section II]
Pachman and Mates v. Czech Republic (Nº 14881/02), 4 April 2006 [Section II]
Vojáčková v. Czech Republic (Nº 15741/02), 4 April 2006 [Section II]
Lisyanskiy v. Ukraine (Nº 17899/02), 4 April 2006 [Section II]
Corsacov v. Moldova (Nº 18944/02), 4 April 2006 [Section IV]
Heřmanský v. Czech Republic (Nº 20551/02), 4 April 2006 [Section II]
Sergey Vasilyevich Shevchenko v. Ukraine (Nº 32478/02), 4 April 2006 [Section II]
Bitton v. France (Nº 41828/02), 4 April 2006 [Section II]
Magyar v. Hungary (no. 2) (Nº 442/03), 4 April 2006 [Section II]
Maršálek v. Czech Republic (Nº 8153/04), 4 April 2006 [Section II]

Smoleanu v. Romania (Nº 30324/96), 6 April 2006 [Grand Chamber] (friendly settlement)
Popovici v. Romania (Nº 31549/96), 6 April 2006 [Grand Chamber] (friendly settlement)
Lindner and Hammermayer v. Romania (Nº 35671/97), 6 April 2006 [Grand Chamber] (friendly settlement)
Rahbar-Pagard v. Bulgaria (Nº 45466/99 and Nº 29903/02), 6 April 2006 [Section I]
Mazzei v. Italy (Nº 69502/01), 6 April 2006 [Section III]
Gavrielidou and Others v. Cyprus (Nº 73802/01), 6 April 2006 [Section I]
Prekoršek v. Slovenia (Nº 75784/01), 6 April 2006 [Section III]
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Huseinović v. Slovenia (Nº 75817/01), 6 April 2006 [Section III]
Cekuta v. Slovenia (Nº 77796/01), 6 April 2006 [Section III]
Ferlič v. Slovenia (Nº 77818/01), 6 April 2006 [Section III]
Deželak v. Slovenia (Nº 1438/02), 6 April 2006 [Section III]
Jenko v. Slovenia (Nº 4267/02), 6 April 2006 [Section III]
Gaber v. Slovenia (Nº 5059/02), 6 April 2006 [Section III]
Drozg v. Slovenia (Nº 5162/02), 6 April 2006 [Section III]
Chernitsyn v. Russia (Nº 5964/02), 6 April 2006 [Section I]
Belošević v. Slovenia (Nº 7877/02), 6 April 2006 [Section III]
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Gradič v. Slovenia (Nº 9277/02), 6 April 2006 [Section III]
Repas v. Slovenia (Nº 10288/02), 6 April 2006 [Section III]
Ramšak v. Slovenia (Nº 16263/02), 6 April 2006 [Section III]
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Pažon v. Slovenia (Nº 17337/02), 6 April 2006 [Section III]
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Lesjak v. Slovenia (Nº 33553/02), 6 April 2006 [Section III]
Divkovič v. Slovenia (Nº 38523/02), 6 April 2006 [Section III]
Bizjak Jagodič v. Slovenia (Nº 42274/02), 6 April 2006 [Section III]
Chatzibyrros and Others v. Greece (Nº 20898/03), 6 April 2006 [Section I]

Mut v. Turkey (Nº 42434/98), 11 April 2006 [Section IV]
Emin Yaşar v. Turkey (Nº 44754/98), 11 April 2006 [Section IV]
Dicle v. Turkey (no. 2) (Nº 46733/99), 11 April 2006 [Section IV]
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Mehmet Emin Yildiz and Others v. Turkey (Nº 60608/00), 11 April 2006 [Section II]
Cabourdin v. France (Nº 60796/00), 11 April 2006 [Section II]
Sevgi Yilmaz v. Turkey (Nº 62230/00), 11 April 2006 [Section II]
Brasilier v. France (Nº 71343/01), 11 April 2006 [Section II]
Akilli v. Turkey (Nº 71868/01), 11 April 2006 [Section II]
Karakaş and Bayır v. Turkey (Nº 74798/01), 11 April 2006 [Section IV]
Kořínek and Others v. Czech Republic (Nº 77530/01), 11 April 2006 [Section II]
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Duhamel v. France (Nº 15110/02), 11 April 2006 [Section II]
Kristóf v. Hungary (Nº 23992/02), 11 April 2006 [Section II]
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Mehmet Kiliç v. Turkey (Nº 28169/02), 11 April 2006 [Section II]
Kalló v. Hungary (Nº 30081/02), 11 April 2006 [Section II]
Oberling v. France (Nº 31520/02), 11 April 2006 [Section II]
Csík v. Hungary (Nº 33255/02), 11 April 2006 [Section II]
Vondratsek v. Hungary (Nº 39073/02), 11 April 2006 [Section II]
Société au Service du Développement v. France (Nº 40391/02), 11 April 2006 [Section II]
Kocsis v. Hungary (Nº 2462/03), 11 April 2006 [Section II]
Fejes v. Hungary (Nº 7873/03), 11 April 2006 [Section II]
Ratalics v. Hungary (Nº 10501/03), 11 April 2006 [Section II]
Mohai v. Hungary (Nº 30089/03), 11 April 2006 [Section II]

Tsonev v. Bulgaria (Nº 45963/99), 13 April 2006 [Section I]
Kosteski v. "the former Yugoslav Republic of Macedonia" (Nº 55170/00), 13 April 2006 [Section III]
Ožek v. Slovenia (Nº 1423/02), 13 April 2006 [Section III]
Marinović v. Slovenia (Nº 1461/02), 13 April 2006 [Section III]
Goričan v. Slovenia (Nº 4507/02), 13 April 2006 [Section III]
Muratovič v. Slovenia (Nº 6799/02), 13 April 2006 [Section III]
Rober v. Slovenia (Nº 7210/02), 13 April 2006 [Section III]
Zemljič v. Slovenia (Nº 9301/02), 13 April 2006 [Section III]
Hriberšek v. Slovenia (Nº 10296/02), 13 April 2006 [Section III]
Lukenda v. Slovenia (no. 2) (Nº 16492/02), 13 April 2006 [Section III]
Lorbek v. Slovenia (Nº 17321/02), 13 April 2006 [Section III]
Kotnik v. Slovenia (Nº 17330/02), 13 April 2006 [Section III]
Zentar v. France (Nº 17902/02), 13 April 2006 [Section III]
Rozman v. Slovenia (Nº 20254/02), 13 April 2006 [Section III]
Pavlovič v. Slovenia (Nº 20543/02), 13 April 2006 [Section III]
Jurkošek v. Slovenia (Nº 20610/02), 13 April 2006 [Section III]
Soleša v. Slovenia (Nº 21464/02), 13 April 2006 [Section III]
Witmajer v. Slovenia (Nº 22235/02), 13 April 2006 [Section III]
Požin v. Slovenia (Nº 22266/02), 13 April 2006 [Section III]
Alekhina v. Russia (Nº 22519/02), 13 April 2006 [Section I]
Blatešič v. Slovenia (Nº 23571/02), 13 April 2006 [Section III]
Stradovnik v. Slovenia (Nº 24784/02), 13 April 2006 [Section III]
Zakonjšek v. Slovenia (Nº 24896/02), 13 April 2006 [Section III]
Rupnik v. Slovenia (Nº 24897/02), 13 April 2006 [Section III]
Bedi v. Slovenia (Nº 24901/02), 13 April 2006 [Section III]

Škrablin v. Slovenia (Nº 25053/02), 13 April 2006 [Section III]
Pfeiffer v. Slovenia (Nº 25055/02), 13 April 2006 [Section III]
Avdič v. Slovenia (Nº 26881/02), 13 April 2006 [Section III]
Mouzoukis v. Greece (Nº 39295/02), 13 April 2006 [Section I]
Kunqurova v. Azerbaijan (Nº 5117/03), 13 April 2006 [Section I] (striking out)
Šundov v. Croatia (Nº 13876/03), 13 April 2006 [Section I]
Agibalova v. Russia (Nº 26724/03), 13 April 2006 [Section I]

Katar and Others v. Turkey (Nº 40994/98), 18 April 2006 [Section II]
Chadimová v. Czech Republic (Nº 50073/99), 18 April 2006 [Section II]
Mora do Vale and Others v. Portugal (Nº 53468/99), 18 April 2006 [Section II] (just satisfaction)
Tanrikulu and Deniz v. Turkey (Nº 60011/00), 18 April 2006 [Section II]
Vezon v. France (Nº 66018/01), 18 April 2006 [Section II]
Tariq v. Czech Republic (Nº 75455/01), 18 April 2006 [Section II]
Patta v. Czech Republic (Nº 12605/02), 18 April 2006 [Section II]
Roseiro Bento v. Portugal (Nº 29288/02), 18 April 2006 [Section II]
Kozák v. Czech Republic (Nº 30940/02), 18 April 2006 [Section II]
Zbořilová and Zbořil v. Czech Republic (Nº 32455/02), 18 April 2006 [Section II]
Kovač v. Hungary (Nº 37492/02), 18 April 2006 [Section II]
Karácsonyi v. Hungary (Nº 37494/02), 18 April 2006 [Section II]
Metzová v. Czech Republic (Nº 38194/02), 18 April 2006 [Section II]

Başlik and Others v. Turkey (Nº 35073/97), 20 April 2006 [Section III]
Berk v. Turkey (Nº 41973/98), 20 April 2006 [Section III] (friendly settlement)
I.H. v. Austria (Nº 42780/98), 20 April 2006 [Section I]
Raichinov v. Bulgaria (Nº 47579/99), 20 April 2006 [Section I]
Uzun v. Turkey (Nº 48544/99), 20 April 2006 [Section III]
Çelik and Others v. Turkey (Nº 56835/00), 20 April 2006 [Section III]
Yayan v. Turkey (Nº 57965/00), 20 April 2006 [Section III]
Carta v. Italy (Nº 4548/02), 20 April 2006 [Section I]
Milošević v. "the former Yugoslav Republic of Macedonia" (Nº 15056/02), 20 April 2006 [Section III]
Mehmet Kökmen v. Turkey (no. 1) (Nº 35768/02), 20 April 2006 [Section III]
Defalque v. Belgium (Nº 37330/02), 20 April 2006 [Section I]
De Sciscio v. Italy (Nº 176/04), 20 April 2006 [Section I]
Patrono v. Italy (Nº 10180/04), 20 April 2006 [Section I]

Erdoğan and Others v. Turkey (Nº 19807/92), 25 April 2006 [Section IV]
Bruncrona v. Finland (Nº 41673/98), 25 April 2006 [Section IV] (just satisfaction)
Prodan v. Moldova (Nº 49806/99), 25 April 2006 [Section IV] (just satisfaction - striking out)
Lönnholtz v. Finland (Nº 60790/00), 25 April 2006 [Section IV] (friendly settlement**)**
Oliver and Britten v. United Kingdom (Nº 61604/00 and Nº 68452/01), 25 April 2006 [Section IV] (friendly settlement)
Ahmet Mete v. Turkey (Nº 77649/01), 25 April 2006 [Section II]
Roux v. France (Nº 16022/02), 25 April 2006 [Section II]
Sabri Taş v. Turkey (Nº 21179/02), 25 April 2006 [Section II] (revision)
Bekir Özdemir v. Turkey (Nº 23321/02), 25 April 2006 [Section II]
Ibrahim Halil Yiğit v. Turkey (Nº 23322/02), 25 April 2006 [Section II]
Çerkez Kaçar v. Turkey (Nº 23323/02), 25 April 2006 [Section II]
Halil Kendirci v. Turkey (Nº 23324/02), 25 April 2006 [Section II]
Özdemir and Others v. Turkey (Nº 23325/02), 25 April 2006 [Section II]
Gołek v. Poland (Nº 31330/02), 25 April 2006 [Section IV]
Machard v. France (Nº 42928/02), 25 April 2006 [Section II]
Zaveczky v. Hungary (Nº 11213/03), 25 April 2006 [Section II]
Keszthelyi v. Hungary (Nº 14966/03), 25 April 2006 [Section II]

Macovei and Others v. Moldova (Nº 19253/03, Nº 17667/03, Nº 31960/03, Nº 19263/03, Nº 17695/03 and Nº 31761/03), 25 April 2006 [Section IV]
Kocsis v. Hungary (Nº 32763/03), 25 April 2006 [Section II]

Novosets v. Ukraine (Nº 32021/03), 26 April 2006 [Section V]
Zubko and Others v. Ukraine (Nº 3955/04, Nº 5622/04, Nº 8538/04 and Nº 11418/04), 26 April 2006 [Section V]

Yiltaş Yildiz Turistik Tesisleri A.Ş. v. Turkey (Nº 30502/96), 27 April 2006 [Section III] (just satisfaction)
Soner and Others v. Turkey (Nº 40986/98), 27 April 2006 [Section III]
Varli and Others v. Turkey (Nº 57299/00), 27 April 2006 [Section III]
Zasurtsev v. Russia (Nº 67051/01), 27 April 2006 [Section I]
Fazilet Partisi and Kutan v. Turkey (Nº 1444/02), 27 April 2006 [Section III] (striking out)
Krajnc v. Slovenia (Nº 27694/02), 27 April 2006 [Section III]
Antolič v. Slovenia (Nº 27946/02), 27 April 2006 [Section III]
Kunstič v. Slovenia (Nº 28922/02), 27 April 2006 [Section III]
Đaković v. Slovenia (Nº 32964/02), 27 April 2006 [Section III]
Šolinc v. Slovenia (Nº 33538/02), 27 April 2006 [Section III]
Hribar v. Slovenia (Nº 33541/02), 27 April 2006 [Section III]
Ovniček v. Slovenia (Nº 33561/02), 27 April 2006 [Section III]
Zgonjanin v. Slovenia (Nº 35063/02), 27 April 2006 [Section III]
Hriberšek v. Slovenia (Nº 36054/02), 27 April 2006 [Section III]
Višnjar v. Slovenia (Nº 36550/02), 27 April 2006 [Section III]
Gashi v. Slovenia (Nº 37057/02), 27 April 2006 [Section III]
Dragovan v. Slovenia (Nº 37289/02), 27 April 2006 [Section III]
Radanović v. Slovenia (Nº 37296/02), 27 April 2006 [Section III]
Draganović v. Slovenia (Nº 38310/02), 27 April 2006 [Section III]
Grušovnik v. Slovenia (Nº 38333/02), 27 April 2006 [Section III]
Ješič v. Slovenia (Nº 38341/02), 27 April 2006 [Section III]
Rodič v. Slovenia (Nº 38528/02), 27 April 2006 [Section III]
Šimek Hudomalj v. Slovenia (Nº 38933/02), 27 April 2006 [Section III]
Fonda v. Slovenia (Nº 39137/02), 27 April 2006 [Section III]
Stropnik v. Slovenia (Nº 39160/02), 27 April 2006 [Section III]
Benedejčič and Tratnik v. Slovenia (Nº 39178/02), 27 April 2006 [Section III]
Kefalas and Others v. Greece (Nº 40051/02), 27 April 2006 [Section I]
Mandir v. Slovenia (Nº 40125/02), 27 April 2006 [Section III]
Kočevar v. Slovenia (Nº 40128/02), 27 April 2006 [Section III]
Casse v. Luxembourg (Nº 40327/02), 27 April 2006 [Section I]
Radivojević v. Slovenia (Nº 41511/02), 27 April 2006 [Section III]
Inexco v. Greece (Nº 11720/03), 27 April 2006 [Section I]
Mohd v. Greece (Nº 11919/03), 27 April 2006 [Section I]
Basoukos v. Greece (Nº 7544/04), 27 April 2006 [Section I]
Horomidis v. Greece (Nº 9874/04), 27 April 2006 [Section I]
Koleci v. Greece (Nº 14309/04), 27 April 2006 [Section I]

Referral to the Grand Chamber

Article 43(2)

The following cases have been referred to the Grand Chamber in accordance with Article 43(2) of the Convention:

J.A.Pye (Oxford) Ltd – United kingdom (44302/02) - Former Section IV, 5 November 2005
Ramsahai and Others – the Netherlands (52391/99) - Section III, 10 November 2005

Relinquishment in favour of the Grand Chamber

Article 30

O'HALLORAN and FRANCIS - United Kingdom (Nº 15809/02 and 25624/02)

The applicants are the registered keepers of cars which were caught by a speed camera driving over the permitted speed limit. They received a notice of intention to prosecute (NIP) informing them that proceedings were envisaged against the driver of the vehicle and, in this connection, were asked to furnish the full name and address of the driver at the relevant time. The first applicant confirmed that he had been the driver. When he was committed to trial he sought to exclude the confession he had made in response to the notice of intention to prosecute. He was convicted for the actual speeding offence. The second applicant refused to give the name of the driver invoking his right to silence and privilege against self-incrimination. He was also convicted and fined, and stated that the fine imposed was substantially heavier than that which would have been imposed if he had pleaded guilty to the speeding offence.

Judgments which have become final

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. 82):

Wasilewski - Poland (N° 63905/00)
Judgment 6.12.2005 [Section IV]

Xenides-Arestis - Turkey (N° 46347/99)
Judgment 22.12.2005 [Section III]

Kuzu and Others - Turkey (Nº 44000/98)
Teltronic-CATV - Poland (Nº 48140/99)
Halis Doğan and Others - Turkey (Nº 50693/99)
Hatice Acar and Others - Turkey (Nº 53796/00)
Refik Karakoç - Turkey (Nº 53919/00)
Kaba and Güven - Turkey (Nº 59774/00)
Yavuz - Turkey (Nº 67137/01)
Gruais and Bousquet - France (Nº 67881/01)
Ezel Tosun - Turkey (Nº 33379/02)
Koshchavets - Ukraine (Nº 12170/03)
Kotelnikova - Ukraine (Nº 21726/03)
Dunda - Ukraine (Nº 23778/03)
Patrino - Ukraine (Nº 26907/03)
Judgments 10.1.2006 [Section II]

W.B. - Poland (Nº 34090/96)
Bora and Others - Turkey (Nº 39081/97)
İmret - Turkey (Nº 42572/98)
Bişkin - Turkey (Nº 45403/99)
Mordeniz - Turkey (Nº 49160/99)
Güler - Turkey (Nº 49391/99)
Budak and Others - Turkey (Nº 57345/00)
Świerzko - Poland (Nº 9013/02)
Selçuk - Turkey (Nº 21768/02)
Harazin - Poland (Nº 38227/02)
Judgments 10.1.2006 [Section IV]

Mizzi - Malta (Nº 26111/02)
Kehaya and Others - Bulgaria (Nº 47797/99 and Nº 68698/01)
Mihailova - Bulgaria (Nº 35978/02)
Judgments 12.1.2006 [Section I]

Nazif Yavuz - Turkey (Nº 69912/01)
Sciarrotta and Others - Italy (Nº 14793/02)
Judgments 12.1.2006 [Section III]

Aristimuño Mendizabal - France (Nº 51431/99)
Akbaba - Turkey (Nº 52656/99)
Barbier - France (Nº 76093/01)
Vodopyanovy - Ukraine (Nº 22214/02)
Ratnikov - Ukraine (Nº 25664/02)

Tribunskiy - Ukraine (Nº 30177/02)
Konyukhov - Ukraine (Nº 1858/03)
Kuzu - Turkey (Nº 13062/03)
Monteiro da Cruz - Portugal (Nº 14886/03)
Gordeyevy and Gurbik - Ukraine (Nº 27370/03 and/et Nº 30049/04)
Savenko - Ukraine (Nº 6237/04)
Volkov - Ukraine (Nº 8794/04)
Voykina - Ukraine (Nº 17686/04)
Judgments 17.1.2006 [Section II]

Aoulmi - France (N° 50278/99)
Goussev and/et Marenk - Finland (Nº 35083/97)
Soini and Others - Finland (Nº 36404/97)
Hagert - Finland (Nº 14724/02)
Judgments 17.1.2006 [Section IV]

Albert-Engelmann GmbH - Austria (Nº 46389/99)
United Macedonian Organisation Ilinden and Others - Bulgaria (Nº 9491/00)
Cichowicz - Cyprus (Nº 6470/02)
Papakokkinou - Cyprus (Nº 20429/02)
Paroutis - Cyprus (Nº 20435/02)
Tsaggaris - Cyprus (Nº 21322/02)
Josephides - Cyprus (Nº 2647/02)
Clerides and Kynigos - Cyprus (Nº 35128/02)
Waldner - Cyprus (Nº 38775/02)
R.H. - Austria (Nº 7336/03)
Judgments 19.1.2006 [Section I]

Ülke - Turkey (Nº 39437/98)
Yaşar - Turkey (Nº 46412/99)
Yasar Kaplan - Turkey (N° 56566/00)
Kelali and Others - Turkey (Nº 67585/01)
Deligöz - Turkey (Nº 67586/01)
Barillon - France (N° 32929/02)
Judgments 24.1.2006 [Section II]

Kezer and Others - Turkey (Nº 58058/00)
Kreuz - Poland (no. 3) (Nº 75888/01)
Maria Kaczmarczyk - Poland (Nº 13026/02)
Skowroński - Poland (Nº 36431/03)
Judgments 24.1.2006 [Section IV]

Mikheyev - Russia (Nº 77617/01)
Brugger - Austria (Nº 76293/01)
Tzaggaraki and Others - Greece (Nº 17965/03)
Judgments 26.1.2006 [Section I]

Lungoci - Romania (Nº 62710/00)
Judgment 26.1.2006 [Section III]

Giniewski - France (N° 64016/00)
Dukmedjian - France (Nº 60495/00)
Malinovskiy - Ukraine (Nº 6028/02)
Shiker - Ukraine (Nº 10614/02)
Yurtayev - Ukraine (Nº 11336/02)
Judgments 31.1.2006 [Section II]

Bernát - Slovakia (N° 1395/02)
Jugement 31.1.2006 [Section IV]

Article 44(2)(c)

On 12 April 2006 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Bratchikova - Russia (66462/01) - Section I, judgment of 17 November 2005
Kazartseva and Others - Russia (13995/02) - Section I, judgment of 17 November 2005
Tolokonnikova - Russia (24651/03) - Section I, judgment of 17 November 2005
Ivannikova - Russia (24659/03) - Section I, judgment of 17 November 2005
Korchagina and Others - Russia (27295/03) - Section I, judgment of 17 November 2005
Khudoyorov - Russia (6847/02) - Section IV, judgment of 8 November 2005
Ielo - Italy (23053/02) - Section IV, judgment of 6 December 2005
R.R. - Italy (42191/02) - Section III, judgment of 9 June 2005
Zaugolnova - Russia (1144/03) - Section I, judgment of 15 December 2005
Süß - Germany (40324/98) - Section III, judgment of 10 November 2005
Tanrikolu and Others - Turkey (45907/99) - Section III, judgment of 20 October 2005
Czech - Poland (49034/99) - Section IV, judgment of 15 November 2005
Akdoğdu - Turkey (46747/99) - Section II, judgment of 18 October 2005
Talattin Akkoç - Turkey (50037/99) - Section III, judgment of 10 November 2005
Hüsniye Tekin - Turkey (50971/99) - Section II, judgment of 25 October 2005
Wróblewski - Poland (52077/99) - Section III, judgment of 1 December 2005
Tourancheau and July - France (53886/00) - Section I, judgment of 24 November 2005
P.D. - France (54730/00) - Section II, judgment of 20 December 2005
Yiğit - Turkey (62838/00) - Section IV, judgment of 25 October 2005
Golinelli and Freymuth - France (65823/01 and 65273/01) - Section II, judgment of 22 November 2005
Reinprecht - Austria (67175/01) - Section IV, judgment of 15 November 2005
Mlynár - the Czech Republic (70861/01) - Section II, judgment of 13 December 2005
Karagöz - Turkey (78027/01) - Section II, judgment of 8 November 2005
Mogoş - Romania (20420/02) - Section III, judgment of 13 October 2005
Posedel-Jelinović - Croatia (35915/02) - Section I, judgment of 24 November 2005
Hayrettin Kartal - Turkey (4520/02) - Section III, judgment of 20 October 2005
Korga - Hungary (4825/02) - Section II, judgment of 6 December 2005
Khanenko - Ukraine (10174/02) - Section II, judgment of 13 December 2005
Majercsik - Hungary (13323/02) - Section II, judgment of 20 December 2005
Atanasovic and Others - « Former Yugouslav Republic of Macedonia » (13886/02) - Section III, judgment of 22 December 2005
Polach - the Czech Republic (15377/02) - Section II, judgment of 25 October 2005
Szoboszlay - Hungary (16348/02) - Section II, judgment of 22 November 2005
Shestopalova and Others - Russia (39866/02) - Section I, judgment of 17 November 2005
Ushachov - Ukraine (44221/04) - Section II, judgment of 13 December 2005
Vasilyev - Russia (66543/01) - Section I, judgment of 13 October 2005

Statistical information[1]

Judgments delivered	April	2006
Grand Chamber	5	19(20)
Section I	29(30)	80(86)
Section II	63(64)	163(178)
Section III	89	178(180)
Section IV	19(25)	71(84)
Section V	2(5)	2(5)
former Sections	1	5
Total	**208(219)**	**518(558)**

Judgments delivered in April 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	3	0	0	5
Section I	28(29)	0	1	0	29(30)
Section II	61(62)	0	0	2	63(64)
Section III	86	1	1	1	89
Section IV	15(20)	2(3)	0	2	19(25)
Section V	2(5)	0	0	0	2(5)
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 SectionIV	1	0	0	0	1
Total	**195(205)**	**6(7)**	**2**	**5**	**208(219)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	16(17)	3	0	0	19(20)
Section I	78(84)	1	1	0	80(86)
Section II	156(171)	3	2	2	163(178)
Section III	170(170)	6	1	1	178(180)
Section IV	65(77)	3(4)	1	2	71(86)
Section V	2(5)	0	0	0	2(5)
Former Section I	1	0	0	0	1
Former Section II	3	0	0	0	3
Former Section III	0	0	0	0	0
former SectionIV	1	0	0	0	1
Total	**492(531)**	**16(17)**	**5**	**5**	**518(558)**

Decisions adopted	April	2006
I. Applications declared admissible		
Grand Chamber	0	0
Section I	4	70
Section II	0	19(20)
Section III	1	8
Section IV	2	25(26)
Section V	0	0
Total	**7**	**122(124)**

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

II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	1	18
	- Committee	281	2179
Section II	- Chamber	3	22
	- Committee	293	1827
Section III	- Chamber	3	625(627)
	- Committee	408	2420
Section IV	- Chamber	15	56(57)
	- Committee	285	2150
Section V	- Chamber	1	1
	- Committee	126	126
Total		**1416**	**9424(9427)**
III. Applications struck off			
Section I	- Chamber	2	30
	- Committee	1	21
Section II	- Chamber	3	58
	- Committee	2	43
Section III	- Chamber	2	20
	- Committee	1	21
Section IV	- Chamber	3	24
	- Committee	1	33
Section V	- Chamber	1	1
	- Committee	1	1
Total		**17**	**252**
Total number of decisions[1]			***8337(8341)***

1. Not including partial decisions.

Applications communicated	**April**	**2006**
Section I	38	242
Section II	25	206(208)
Section III	30	257
Section IV	22	197
Section V	37	37
Total number of applications communicated	**152**	**939(941)**

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