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STEPHENS - Malta (no. 1) (N° 11956/07)
Judgment 21.4.2009 [Section IV]

Facts: The applicant, a British national residing in Spain, was arrested and detained in Spain under a warrant issued by a Maltese court which was seeking his extradition in connection with a suspected drug-trafficking offence. Following an appeal by the applicant, the Maltese Civil Court ruled that the warrant was defective under Maltese law as the issuing court had acted *ultra vires*. In a decision that was upheld by the Maltese Constitutional Court, it therefore found that the applicant's arrest had no lawful basis and awarded him compensation. The applicant, who had by then spent more than three months in custody, was released on bail by the Spanish authorities ten days later before being re-arrested on the basis of a new request for his extradition.

Law: Article 1 (*jurisdiction*) – The Court decided of its own motion to examine whether the applicant's detention in Spain could be attributed to Malta so as to bring the applicant's Article 5 complaints against Malta within the Court's jurisdiction. It noted that although the applicant had been under the control and authority of the Spanish authorities throughout the period of his detention, the sole origin of his deprivation of liberty lay in the measures taken exclusively by the Maltese authorities. By setting in motion a request for the applicant's detention pending extradition, the responsibility had lain with Malta to ensure that the arrest warrant and extradition request were valid as a matter of both its substantive and procedural law. In the context of extradition proceedings, a requested State should be able to presume the validity of the legal documents issued by the requesting State on the basis of which a deprivation of liberty was requested. In the applicant's case the arrest warrant had been tainted by a technical irregularity which the Spanish court could not have been expected to notice. Accordingly, the defective arrest warrant issued by Malta on the basis of its own domestic law and followed-up by Spain in response to its treaty obligations had to be attributed to Malta notwithstanding the fact that it was executed in Spain. The applicant's Article 5 complaints thus engaged the responsibility of Malta under the Convention.
The Court went on to find that the applicant no longer had victim status in respect of his detention up to the Civil Court's order setting aside the arrest warrant as the Convention violation had been acknowledged by the Maltese courts and he had been awarded compensation. However, it found a violation in respect of the subsequent ten-day period before his release and awarded him EUR 500 in respect of non-pecuniary damage.

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ARTICLE 6

Article 6 § 1 [civil]

APPLICABILITY
Access to "court" to challenge an administrative decision cancelling the applicant's participation in a programme for the unemployed: *Article 6 § 1 applicable*.

MENDEL - Sweden (N° 28426/06)
Judgment 7.4.2009 [Section III]

Facts: The applicant was registered with the Employment Service and its activity included a guarantee scheme designed mainly to give the unemployed greater opportunities to find a job. Each participant was required to attend information meetings, to meet his or her supervisor on a regular basis and to apply for suitable jobs. In 2005 the Employment Service excluded the applicant from the scheme on the grounds that she had failed to comply with these requirements. She unsuccessfully challenged this decision before the National Labour Market Board. The latter's decision indicated that no appeal lay against it.

Law: *Admissibility*: The Convention did not guarantee any right to participate in a labour-market policy programme. Therefore, the question whether the right claimed by the applicant existed in Sweden had to be answered solely with reference to domestic law. As the relevant provisions were drafted with the word "may" and required that such participation be justified in terms of labour-market policy, the claimed "right" could not, on arguable grounds, be said to be recognised under national law. However, the Court also had to consider whether a person who had already been assigned to the activity guarantee scheme could be considered to have gained, on at least arguable grounds, a right not to have his or her assignment arbitrarily revoked. Under the relevant provision, an assignment to the activity guarantee scheme could be revoked if a person refused an offer of suitable work or another measure under the scheme without an acceptable reason, if he or she acted improperly or otherwise disrupted the activities, or if there were other special reasons to revoke the assignment. This provision had to be considered to have laid down tangible criteria which could be examined without particular difficulties by the competent authorities and, subject to appeal, the national courts. It did not leave the domestic authorities a wide margin of discretion. Moreover, exclusion from the scheme entailed serious economic consequences for the individual concerned as he or she lost benefits and would only be entitled to receive other unemployment benefits after completing a new qualifying period of employment. Therefore, the applicant's claim not to have her participation in the scheme arbitrarily revoked concerned a "right" which could arguably be said to be recognised under Swedish law. The proceedings before the National Labour Market Board, which had upheld the decision to exclude the applicant from the scheme, were directly decisive of that right. Article 6 § 1 of the Convention was therefore applicable.

Merits: The Court found a breach of the applicant's right of access to a court.
Conclusion: violation (unanimously).

Article 41 – EUR 2,000 in respect of non-pecuniary damage.

APPLICABILITY
Internal institutions of national parliament vested with judicial powers in respect of members of parliamentary staff: *Article 6 § 1 applicable*.

SAVINO and Others - Italy (N^os 17214/05, 20329/05 and 42113/04)
Judgment 28.4.2009 [Section II]

Facts: *Applications no. 17214/05 and no. 20329/05*: The applicants, a surveyor and an architect, were employees of the Italian Chamber of Deputies. They applied to their administration for a special project

award, and the first applicant also requested the reimbursement of insurance contributions. The case was brought before the Judicial Committee for Officials of the Chamber of Deputies. The Committee partly upheld the applicants' claims and granted the first applicant's specific request concerning the reimbursement of insurance contributions. The administration appealed to the Judicial Section of the Bureau of the Chamber of Deputies and requested a stay of execution of the decisions. By decisions of 2004, the Judicial Section of the Bureau of the Presidency of the Chamber of Deputies, while finding inadmissible the requests for a stay of execution as out of time, upheld the administration's appeals on the merits and set aside the Committee's decisions.

Application no. 42113/04: In August 2000 the Italian Chamber of Deputies gave notice of a competition to fill 130 parliamentary assistants' posts, for which the professional qualifications and economic treatment were set out in the Rules on the Services and Staff of the Chamber of Deputies. The applicants were selected and invited to take part in the competition. However, they were not included on the shortlist of candidates who passed the written examination. They appealed to the Judicial Committee for Officials of the Chamber of Deputies, contesting the organisation of the examination and the criteria adopted for assessment of the papers. They sought the annulment of the administration's decision not to include them on the shortlist of candidates invited to the oral examination and, at the same time, a stay of execution of that decision. The Committee upheld the applicants' appeals. The administration of the Chamber of Deputies appealed to the Judicial Section of the Bureau of the Presidency of the Chamber of Deputies and also requested a stay of execution of the Committee's decisions. The Section upheld the administration's appeals. The applicants appealed to the Court of Cassation, which declared inadmissible their appeal against the decisions by the internal judicial bodies of the Chamber of Deputies.

Law: *On the admissibility*: The Court referred to its case-law in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, ECHR 2007), in which it had set out two criteria that had both to be fulfilled before a respondent State could validly claim that Article 6 § 1 was inapplicable to an applicant who was also a civil servant, in the absence of a "civil" right: on the one hand, the civil-servant applicant had to be expressly denied access to a court under national law; secondly, the exclusion of the rights guaranteed under Article 6 § 1 had to be based on objective grounds that were related to the interests of the State. In evaluating the applicability of Article 6 § 1 in each case, it was necessary to establish whether the applicants enjoyed judicial protection at domestic level, that is, whether they had the possibility of obtaining a judicial remedy at national level and thus to have their claims concerning salaries, allowances or even recruitment examined. It appeared from the relevant normative provisions of the Rules on the Judicial Protection of Staff that the Judicial Committee and the Judicial Section of the Chamber of Deputies were competent to decide any dispute against the administration of the Chamber of Deputies. They reached their decisions at the close of organised proceedings, with full jurisdiction and in a binding manner, both for the administration and for the claimants. Consequently, there was no doubt that they exercised a judicial function and that Article 6 § 1 was therefore applicable to the present applications under the first criterion laid down in the *Vilho Eskelinen* judgment. In the instant case, however, even if the national legislative framework had specifically denied the applicants a right of access to a court, the non-applicability of Article 6 § 1 could not in any event be based on objective grounds linked to the interests of the State. Given the respective subject-matter of the proceedings brought by the applicants, which concerned the right to obtain a special project allowance (linked to the exercise of the activities of a director of public works) and to obtain the post of parliamentary assistant, the special bond of trust between the State and the applicants was not in question. It could not therefore be claimed that the exercise of public power was at stake in the instant case or that there existed a special bond of trust between the State and the applicants such as to justify excluding them from the rights safeguarded by the Convention. Article 6 § 1 was thus also applicable in the light of the second criterion laid down in the *Vilho Eskelinen* judgment.

On the merits: In the instant cases, it was necessary to determine whether the Committee and the Section of the Chamber of Deputies were "independent and impartial tribunals established by law" when they heard the applicants' cases.

1. Were the courts "established by law"?
The issue of the normative scope of the Rules of the Chamber of Deputies was examined by the domestic courts, which found that any Rules concerning the Chamber of Deputies derived from the Constitution and were not susceptible to review by any other State authorities. As to the requirements of accessibility and foreseeability of the law in question, the fact that the "Rules for the Judicial Protection of Officials of the Chamber of Deputies" had not been published in the Official Journal did not in itself affect its accessibility, provided that the individuals concerned had been able to consult them without difficulty. Bearing in mind the area covered by these Rules, namely the regulation of internal judicial proceedings before the Chamber of Deputies, their publication in a bulletin for internal distribution was sufficient to satisfy the criterion of accessibility set out in the Convention. Furthermore, the applicants had not alleged that they had faced difficulties in obtaining the text in question. Finally, the provisions concerned had been drafted in terms that were sufficiently clear to enable any participants in the proceedings to be aware of the rules governing proceedings before the Committee and the Section. It followed that the Judicial Committee and Judicial Section of the Chamber of Deputies satisfied the requirement of having a legal basis in domestic law, as set out in Article 6 § 1.

2. Did the courts meet the requirements of impartiality and independence?
The applicants complained that the Committee and the Section had lacked objective impartiality and independence with regard to one of the parties to the dispute (the Chamber of Deputies), particularly in the light of the arrangements for appointing their members.
The mere fact that the members of both judicial bodies of the Chamber of Deputies were selected from among the Deputies (members) of the Chamber was insufficient to cast doubt on the independence of those bodies. Nonetheless, the Section (the appellate body), whose decisions were final, was made up entirely of members of the Bureau, that is, the body of the Chamber of Deputies that had jurisdiction for ruling on its main administrative matters, including those concerning finance and the organisation of staff recruitment competitions. In particular, the additional protocol to the finance rules of the Chamber of Deputies and the rules on staff recruitment competitions, that is, the subject-matter of the applicants' respective complaints, were decisions adopted by the Bureau in accordance with its rule-making powers. In addition, the Chamber of Deputies was represented before the Section by the Secretary General, who was himself appointed by the Bureau. In the Court's opinion, the fact that the administrative body with powers such as that of the Bureau was the same as the judicial body with competence to rule on any administrative dispute was sufficient to give rise to doubts as to the impartiality of the tribunal thus formed. Furthermore, the close link between the subject-matter of the proceedings brought before the Section and the decisions adopted by the Bureau in the context of its functions could not be denied. In the light of the foregoing, the applicants' fears as to the lack of independence and impartiality of the Judicial Section of the Chamber of Deputies had been objectively justified.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

APPLICABILITY
Refusal to grant a parliamentary election observer access to documents of an election committee: *Article 6 § 1 inapplicable.*

GERAGUYN KHORHURD PATGAMAVORAKAN AKUMB - Armenia (N° 11721/04)
Decision 14.4.2009 [Section III]

Facts: The applicant, an NGO which acted as an election observer at the parliamentary elections in May 2003, requested, by registered mail, the Central Election Committee (CEC) to provide it with a copy of various election-related documents. The Government argued that the letter in question had never been received by the CEC. Alleging that its requests had remained unanswered, the applicant contested the CEC's inactivity before the courts. The first-instance court rejected its complaint as unsubstantiated. The applicant appealed against that decision, submitting copies of the relevant post-office receipts. Its appeal

was dismissed on the ground that the post-office receipts could not serve as proof because there was no postmark on them. Submitting copies of the same post-office receipts with the postmarks on the back, the applicant lodged an appeal on points of law, but to no avail.

Inadmissible: Article 6 – The documents which the applicant had sought to obtain did not contain any information concerning the applicant itself, but were necessary for the effective performance of its unremunerated public function as an election observer. The outcome of the proceedings in question was not decisive as regards the applicant's rights in private law. The proceedings did not, therefore, concern the determination of the applicant's "civil rights and obligations" and fell outside the scope of Article 6 § 1: *incompatible* ratione materiae.

Article 10 and Article 3 of Protocol No. 1 – Even though the applicant appeared to have submitted to the Court of Cassation a copy of the receipts with the postmarks, that court's jurisdiction extended only to points of law and did not include the examination of evidence or making findings of fact, which questions fell within the sole jurisdiction of the first-instance and appeal courts. Thus, as a result of the applicant's failure to substantiate its case properly, its complaint had not been examined by the domestic courts on the merits: *non-exhaustion of domestic remedies*.

ACCESS TO COURT
Access to "court" to challenge an administrative decision cancelling the applicant's participation in a programme for the unemployed: *violation*.

MENDEL - Sweden (N° 28426/06)
Judgment 7.4.2009 [Section III]

(See above).

ACCESS TO COURT
Applicants' inability to effectively present their case due to authorities' refusal to grant them access to decisive evidence: *violation*.

K.H. and Others - Slovakia (N° 32881/04)
Judgment 28.4.2009 [Section IV]

(See Article 8 below).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Impartiality and independence of internal institutions of national parliament vested with judicial powers in respect of members of parliamentary staff: *violation.*

SAVINO and Others - Italy (N°s 17214/05, 20329/05 and 42113/04)
Judgment 28.4.2009 [Section II]

(See above).

Article 6 § 3

RIGHTS OF DEFENCE
Failure to duly notify the applicant of a fresh appeal hearing in his criminal case: *violation*.

SIBGATULLIN - Russia (N° 32165/02)
Judgment 23.4.2009 [Section I]

Facts: In February 2002 the applicant was convicted of three murders and sentenced to twenty years' imprisonment. On appeal, he challenged the quality of the evidence on which his conviction had been based. In August 2002, in the presence of the prosecutor, the Supreme Court examined the applicant's appeal and dismissed it. Neither the applicant nor his counsel were present at that hearing. In April 2006, following an application for supervisory review by the Deputy Prosecutor General, the Presidium of the Supreme Court quashed the decision on the applicant's appeal because he had not been properly notified of the hearing and remitted the case for fresh examination. Neither the applicant nor his counsel were present at that hearing and it does not appear that they were notified of its outcome. On 23 May 2006 the applicant received a telegram in prison stating that his case was to be heard by the Supreme Court on 29 June 2006. Similar notification was sent to his counsel. On the latter date, the Supreme Court held an appeal hearing in the absence of the applicant and his counsel. It does not appear to have verified whether the applicant was duly informed of the hearing or had expressed a wish to take part in it. Having heard the prosecutor's submissions, it upheld the applicant's conviction.

Law: Having regard to the proceedings in their entirety, the Court concluded, firstly, that the appeal court could not have properly determined the issues before it without a direct assessment of the evidence given by the applicant in person. As the Government had acknowledged, the appeal proceedings of August 2002 had fallen short of the fair-trial guarantee since neither the applicant nor his counsel had been duly informed of the appeal hearing. However, it was necessary to determine whether the guarantees had been complied with in the appeal proceedings following the quashing by supervisory review of the first appeal decision and whether, by failing to submit a special request, the applicant lost the opportunity to be present at that hearing. In that connection, the Court reiterated that the Contracting States enjoyed the choice of means in ensuring the enjoyment of the rights of those charged with a criminal offence to defend themselves in person or through legal assistance. Furthermore, the requirement to lodge a prior request for participation in an appeal hearing did not in itself contradict the requirements of Article 6, if the procedure was clearly set out in the domestic law. Likewise, defendants were free to waive, either expressly or tacitly, their entitlement to those fair-trial guarantees. In the applicant's case, there had been no explicit waiver of those rights. As to whether there had been a tacit one, the Court observed that on 23 May 2006, the date on which the applicant received the telegram informing him that his case would be heard by the Supreme Court, he had not been aware that his case had previously been quashed and could not, therefore, have known what hearing was to be held by the Supreme Court. In such circumstances, the Court considered that the applicant had not been duly notified of the appeal hearing of 29 June 2006. Moreover, given that the appeal court had failed to verify whether either the applicant or his counsel had been duly informed of the hearing, it could not have been concluded that the applicant had waived his right to take part in the hearing in an unequivocal manner.
Conclusion: violation (unanimously).

ARTICLE 8

APPLICABILITY
Prison cell which had been prisoner's sole "living space" for many years: *Article 8 applicable*.

BRÂNDUSE - Romania (N° 6586/03)
Judgment 7.4.2009 [Section III]

Facts: The applicant was sentenced to ten years' imprisonment for fraud. While in pre-trial detention he was first held in Arad police headquarters. Following his conviction he was transferred to prisons in Timişoara and Arad, where he had spent most of his detention to date. The applicant brought judicial proceedings to complain of his conditions of detention and the fact that in Arad Prison he had had to put up with stale air and the nauseous stench from a site, about 20 metres from the prison, that had formerly been used for the disposal of household waste. This former refuse tip, managed by company S., which was itself run by Arad City Council, was in use from 1998 to 2003. The applicant's applications were rejected by the domestic courts.

Law: Article 3 – The applicant complained of the conditions in which he had been held in Arad police headquarters and Timişoara and Arad Prisons, particularly in respect of prison overcrowding, the poor quality of food and hygiene conditions. Although there was nothing in the present case to indicate that there had been a real intention to humiliate or degrade the applicant, the absence of such an objective could not rule out a finding that there had been a violation of Article 3. The conditions of detention in issue, which the applicant had had to endure for several years, had subjected him to an ordeal of an intensity which went beyond the level of suffering inherent in detention.
Conclusion: violation (unanimously).

Article 8 – *Applicability*: In the instant case, the applicant's allegations concerning the highly offensive smells that he had had to endure were supported by several elements, including the environmental impact studies prepared by experts at the request of the authorities, which confirmed the very high level of air pollution in the perimeter of the refuse tip and the "extreme unpleasantness" endured by the residents of the neighbouring buildings. While noting that the applicant's health had not deteriorated through proximity to the former refuse tip, it was to be noted that, in the light of the conclusions of the above-mentioned studies and the length of time for which the applicant had to suffer the nuisance in question, his quality of life and well-being had been affected to the detriment of his private life in a way which was not merely the consequence of his deprivation of liberty. The applicant's complaint related to aspects which went beyond the context of his conditions of detention as such and which, moreover, concerned the only "living space" that the applicant had had available to him for several years. Article 8 was applicable in this case.

Merits: The Romanian authorities were responsible for the offensive fumes and smells complained of by the applicant, as the company S. was run by Arad City Council. In addition, responsibility had been transferred from the Council to S. only in February 2006, and even after that date the environmental authorities had made the City Council directly responsible for closing the refuse tip. Moreover, the file showed that the tip in question had been in operation effectively from 1998 to 2003, and that it had even continued to be used by private individuals thereafter, since the authorities had not taken measures to ensure effective closure of the site. However, throughout that period, the tip had had no proper authorisation either for its operation or for its closure. By failing to follow the required procedure, the local authorities had failed in several of their obligations. Although the relevant authorities were required to commission studies in advance to assess the effects of the polluting activity in question in order to ensure a fair balance between the various competing interests at stake, it was only a posteriori that they had fulfilled that obligation. These studies had shown that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the established norms and

that persons living nearby had to put up with significant levels of nuisance caused by offensive smells. In particular, the relevant authorities had explicitly penalised Arad City Council for the absence from the site of any means of informing the public about risks to the environment and public health arising from the existence of the refuse tip, in respect of which closure works and ecological rehabilitation had not been carried out. Finally, the proceedings relating to the work to effect the closure of the refuse tip near Arad Prison were still pending and the Government had not supplied any information about the progress – or even the beginning – of the work to cover over and rehabilitate the site, which was supposed to be completed in 2009. Accordingly, it had to be concluded that the respondent State had failed in its obligations under Article 8 of the Convention and that there had been a violation of the applicant's right to respect for his private life, within the meaning of that Article.
Conclusion: violation (unanimously).

Article 41 – EUR 8,000 in respect of non-pecuniary damage.

APPLICABILITY
Obligation on person found unfit for military service to pay exemption tax: *Article 8 applicable*.

GLOR - Switzerland (N° 13444/04)
Judgment 30.4.2009 [Section I]

(See Article 14 below).

PRIVATE LIFE
Offensive smells emanating from waste tip in vicinity of prisoner's cell and affecting his quality of life and well-being: *violation.*

BRÂNDUŞE - Romania (N° 6586/03)
Judgment 7.4.2009 [Section III]

(See Article 8 above).

PRIVATE LIFE
Publication in newspaper articles of information in which applicant could be identified and perceived as prime suspect in murder case: *violation*.

A. - Norway (N° 28070/06)
Judgment 9.4.2009 [Section I]

Facts: The applicant, who had served prison sentences for murder and assault with a knife, was released from prison about a year before two girls were raped and stabbed to death in an area he frequented. He was questioned about the murders as a possible witness but was released after 10 hours; two other men were subsequently convicted of the crimes. The police's interest in the applicant attracted considerable media attention and several newspapers reported on his interrogation and criminal past, but did not disclose his identity. However, the main district newspaper published articles on the case on two consecutive days in May 2000 which disclosed details of the applicant's past criminal convictions and stated that he had allegedly been seen by witnesses in the area at the time the girls were killed. It also stated that the applicant was "probably the most interesting of several convicted persons whose movements the police were now checking". The articles did not name the applicant, but contained details of his place of work, residence and neighbourhood, and pictures of him (albeit from a distance and somewhat blurred). The newspaper also published interviews with the Chief Constable and a statement by the applicant maintaining his innocence. The applicant subsequently brought defamation proceedings against the newspaper and a television station that had also reported on the case. The domestic courts

found in his favour and awarded him compensation as regards the television report. In respect of the newspaper articles, however, the Supreme Court found that while the articles were defamatory inasmuch as they left the impression that the applicant was suspected of the murders, publication had been justified by the applicant's own statements to the media and the public interest, especially as the coverage was balanced and the police had underlined that no one was in fact under suspicion.

Law: The issue before the Court was whether the respondent State had fulfilled its positive obligation to protect the applicant's honour and reputation as part of his right to respect for his private life. There was no reason to disagree with the domestic courts' finding that the impugned newspaper articles were defamatory in nature. Although the applicant had not been mentioned by name, the photographs and details of his places of work and residence had made his identification possible. Likewise, although the factual information published about the investigation was largely true and was accompanied by the applicant's protestations of innocence and clarification by a chief constable that he had been questioned as a witness not as a suspect, the overall impression the articles conveyed to the ordinary reader was that the applicant was suspected of the murders and that there was a factual basis for the suspicion. While the press had the right to deliver and the public the right to receive information on such a serious matter, this could not justify such defamatory allegations and the harm it caused. The applicant had been persecuted by journalists in order to obtain his pictures and interviews at a time when he was undergoing rehabilitation and reintegration into society. As a result of the newspaper reports, he had found himself unable to continue his work, and had been forced to leave his home and driven into social exclusion. The articles in question had thus gravely damaged his reputation and honour and had been especially harmful to his moral and psychological integrity. Despite a careful and thorough review and a wide margin of appreciation in this sphere, the national courts had failed to strike a fair balance between the newspaper's freedom of expression and the applicant's right to respect for his private life.
Conclusion: violation (unanimously).

Article 41 – EUR 19,000 in respect of non-pecuniary damage.

PRIVATE LIFE
Dismissal of criminal-libel proceedings against a political opponent on grounds that allegedly defamatory remarks constituted a value judgment: *no violation*.

KARAKÓ - Hungary (N° 39311/05)
Judgment 28.4.2009 [Section II]

Facts: The applicant was a politician and a Member of Parliament. During the 2002 parliamentary elections, a flyer, signed by L.H., the chairman of the regional assembly, was distributed in the applicant's electoral district. The flyer contained criticism of the applicant's conduct as regards major decisions in his county. Subsequently, the applicant filed a criminal complaint against L.H., accusing him of libel. The prosecutor's office terminated the investigation finding that the impugned act did not concern a matter of public prosecution. In 2005 the applicant, acting as a private prosecutor, filed an indictment against L.H. However, the district court dismissed his indictment finding that the impugned statements were value judgements concerning a politician, who had to show greater tolerance.

Law: The applicant had complained that, by refusing to prosecute his opponent for allegedly ruining his reputation in the voters' eyes, the authorities had failed to protect his right to private life as defined under Article 8 of the Convention. The Court noted, firstly, that in cases in which the alleged interference with Article 8 rights originated in an expression, the protection granted by the State should be understood as taking into consideration its obligations under Article 10 of the Convention. Distinguishing between the notions of personal integrity, as interpreted in the *Von Hannover* judgment (Information Note no. 65), and reputation, the Court further observed that the latter had been deemed an independent right only sporadically, when factual allegations had been of such a seriously offensive nature that their publication had had an inevitable direct effect on the applicant's private life. In the applicant's case, however, he had not shown that the publication that had allegedly affected his reputation had constituted such a serious

interference with his private life as to undermine his personal integrity. It was his reputation alone which had been at stake. Given that paragraph 2 of Article 10 recognised that freedom of speech might be restricted in order to protect reputation, such a rule precluded the possibility of a conflict with Article 8. Moreover, "the right of others" contained in the latter provision encompassed the right to personal integrity and served as a ground for limiting freedom of expression in so far as the interference designed to protect private life was proportionate. The Court was therefore called upon to determine whether the Hungarian authorities had properly applied the principles inherent in Article 10 to the applicant's case. Since the impugned statements had been found to be value judgements and had been made during a political campaign and since the applicant was a politician, the Court was satisfied that the authorities' decision not to prosecute L.H. was in conformity with the relevant Convention standards. Consequently,

the applicant's allegation that his reputation had been harmed was not a sustainable claim regarding the protection of his right to respect for personal integrity under Article 8.
Conclusion: no violation (unanimously).

PRIVATE LIFE
Affixing of seals to television set for non-payment of licence fee: ***inadmissible.***

FACCIO - Italy (N° 33/04)
Decision 31.3.2009 [Section II]

(See Article 10 below).

PRIVATE AND FAMILY LIFE
Former patients prevented from photocopying their medical records: *violation*.

K.H. and Others - Slovakia (N° 32881/04)
Judgment 28.4.2009 [Section IV]

Facts: The applicants, eight women of Roma origin, were treated at gynaecological and obstetrics departments in two hospitals in eastern Slovakia during their pregnancies and deliveries. Despite continuing attempts to conceive, none of the applicants had become pregnant since their last stay in the hospitals, when they had delivered by caesarean section. The applicants suspected that the reason for their infertility might have been that they had been sterilised without their knowledge or consent during their caesarean deliveries. In 2004 the applicants issued powers of attorney to NGO lawyers, who then sought to review and make photocopies of the applicants' medical records. Having encountered difficulties in gaining access to the records, the applicants instituted proceedings in the local courts. As a result, most of the applicants were allowed to view their files. However, their requests to make photocopies were eventually denied with reference to domestic legislation in force at the time, which provided that medical records were owned by the hospital and that restrictions on access were justified in order to prevent abuse of the data contained therein. Following the introduction of new legislation in 2005, all the applicants – except for the second, whose medical records had meanwhile been lost – were eventually afforded full access to the requested medical documentation and allowed to take photocopies.

Law: Article 8 – The States' positive obligations under Article 8 necessarily included an obligation to make available to the data subject copies of his or her data files. It was for the States to determine the arrangements for copying personal data files, or, where appropriate, to show compelling reasons for refusing to make copies. In the applicants' case the domestic courts had mainly justified the prohibition on making copies of medical records by the need to protect the relevant information from abuse. However, the Court failed to see how the applicants, who had in any event been given access to their entire medical files, could have abused information concerning themselves. Moreover, the risk of such abuse could have been prevented by means other than denying copies of the files to the applicants, such as by limiting the range of persons entitled to access to the files. The State had thus failed to show the

existence of sufficiently compelling reasons to deny the applicants effective access to information concerning their health.
Conclusion: violation (unanimously).

Article 6 § 1 – The applicants further complained that the authorities' refusal to allow them to photocopy their medical records had deprived them of effective access to court since they had been unable to obtain crucial evidence for any future civil claim for damages they might have wished to make. Even though the right to a court was not unlimited, the Court considered that such a guarantee necessarily extended to situations like that of the applicants in which persons who, in principle, had a civil claim considered that the statutory restrictions on their access to evidence had effectively prevented them from seeking redress before a court or had rendered the seeking of such judicial protection difficult without appropriate justification. Even though not entirely barred from bringing a civil action, the applidants were subjected by the strict application of a provision of domestic law to a disproportionate limitation on their ability to present their cases in an effective manner. For reasons similar to those mentioned in respect of Article 8, the restriction of the applicants' rights to copy their medical files could not be considered compatible with an effective exercise of their right of access to court.
Conclusion: violation (six votes to one).

Article 41 – EUR 3,500 to each of the applicants in respect of non-pecuniary damage.

ARTICLE 10

FREEDOM OF EXPRESSION
Convictions of newspaper editors for publishing photographs of a person on the point of being arrested to serve a lengthy sentence she had just received for her part in a triple murder: *no violation*.

EGELAND and HANSEID - Norway (N° 34438/04)
Judgment 16.4.2009 [Section I]

Facts: The applicants were the editors in chief of two national newspapers in Norway which were covering a major murder trial. The case had attracted significant media attention and the identities of the defendants were known to the general public. The defendants, who had been on bail for more than a year, were convicted at the trial and given lengthy prison sentences. The applicants' newspapers published photographs of one of the defendants, B, as she was making her way to an unmarked police vehicle parked in the vicinity of the court to begin a 21-year prison sentence for complicity. She had broken down on hearing the verdict and was described as being in a state of "deep despair". The applicants were charged under a provision that made it an offence to photograph defendants in criminal proceedings on their way to or from court without their consent, unless there were special reasons for making an exception. They were acquitted at first instance but convicted by the Supreme Court following an appeal by the public prosecutor and ordered to pay 10,000 Norwegian kroner (approximately EUR 1,139) in fines with 15 days' imprisonment in default. The Supreme Court found that although the defendant's identity was already widely known, she had nevertheless been in obvious distress and in a situation of "reduced control" following her conviction and so within one of the core areas the legislation was intended to protect. Neither the shocking nature of the offence of which she had been convicted nor the extensive public interest in the case could deprive her of that protection.

Law: The Supreme Court, which was to be afforded a wide margin of appreciation to weigh up the conflicting interests, had based its decision to convict the applicants on the need to protect privacy and to safeguard due process. These were undoubtedly relevant reasons for the interference with the applicants' freedom of expression, but the Court also had to determine whether they were sufficient.
It accepted that, in view of the heinous character of the crimes, B's conviction, sentencing and immediate arrest had been a matter of public interest, that the photographs concerned a public event in a public place and that B's identity was already well known to the public. Nevertheless, it considered that the manner in

which the photographs portrayed B was particularly intrusive: she had just been arrested inside the court house after being notified of her conviction for triple murder and sentence to the maximum 21-year term; the photograph showed her in tears and great distress, emotionally shaken and at her most vulnerable. She had not consented to being photographed and the fact that she had cooperated with the press on previous occasions could not justify depriving her of protection on this occasion.
In sum, while on the facts the Court attached greater weight to the protection of B's privacy than to the safeguard of due process, both the reasons relied on by the Supreme Court had corresponded to a pressing social need and were sufficient to justify the restriction on the applicants' right to freedom of expression. Lastly, the fines imposed on the applicants had not been particularly severe.
Conclusion: no violation (unanimously).

FREEDOM TO IMPART INFORMATION
NGO denied access to information on a pending constitutional case: *violation.*

TÁRSASÁG A SZABADSÁGJOGOKÉRT - Hungary (N° 37374/05)
Judgment 14.4.2009 [Section II]

Facts: In March 2004 a Member of Parliament and other individuals lodged a complaint for review of the constitutionality of amendments to the Criminal Code concerning drug-related offences. Several months later the applicant, a human-rights non-governmental organisation active in the field of drug policy, requested access to the pending complaint. Without consulting the MP, the Constitutional Court refused the applicant's request explaining that complaints before it could be made available to outsiders only with the approval of the complainant. Subsequently, the applicant brought an action in the regional court for an order requiring the Constitutional Court to give it access to the file, in accordance with the relevant provisions of the Data Act 1992. In a decision that was upheld by the court of appeal, the regional courts dismissed the applicant's action after finding that the requested data was "personal" and could therefore not be accessed without the complainant's approval. The protection of such data could not, in the courts' view, be overridden by other lawful interests, including the accessibility of public information. Meanwhile, the Constitutional Court decided the constitutionality question and published a summary of the complaint in its decision.

Law: In relation to freedom of the press, the Court had consistently held that the public had the right to receive information of general interest. Given the nature of the applicant's activities involving human-rights litigation, *inter alia*, in the field of protection of freedom of information, the Court characterised the applicant as a social "watchdog", whose activities warranted similar Convention protection to that afforded to the press. The Court further observed that an application for abstract review of constitutionality, particularly when made by a Member of Parliament, undoubtedly constituted a matter of public interest. In creating an administrative obstacle and refusing to grant access to the content of such application to the applicant, which was involved in the legitimate gathering of information on matters of public importance, the authorities had interfered in the preparatory stage of that process. Moreover, the Constitutional Court's monopoly of information in such cases amounted to a form of censorship. As to the merits, the Court reiterated that the right to freedom to receive information under Article 10 in the first place prohibited Governments from restricting the receipt of information that others wished or might be willing to impart. However, the applicant's case primarily concerned the exercise of the functions of a social watchdog rather than a denial of a general right of access to official documents. The information sought by the applicant was ready and available and did not require any collection of any data by the Government. In such circumstances, the States had an obligation not to impede the flow of information sought by the applicant. Further, no reference to the private life of the MP in question could be discerned in his complaint. It would be fatal for freedom of expression in the sphere of politics if public figures were able to censor the press and public debate in the name of their personality rights. Finally, the Court considered that obstacles designed to hinder access to information of public interest might discourage

those working in the media or related fields from performing their vital role of "public watchdog" and thus affect their ability to provide accurate and reliable information.
Conclusion: violation (unanimously).

Article 41 – Finding of a violation constituted sufficient just satisfaction for any damage.

FREEDOM TO RECEIVE INFORMATION
Affixing of seals to television set for non-payment of licence fee: *inadmissible.*

FACCIO - Italy (N° 33/04)
Decision 31.3.2009 [Section II]

The applicant applied to the subscriptions office of a public-service broadcasting channel for the cancellation of his subscription to the public television service. Three years later the tax police affixed seals to his television set, wrapping it in a nylon bag to prevent it being used.

Inadmissible: It was not disputed that the affixing of seals to the applicant's television set amounted to an interference in his right to receive information and his right to respect for property and his private life. This measure, provided for by law, pursued a legitimate aim, namely that of dissuading individuals from failing to pay a tax or dissuading them from cancelling the subscription to the public television service. The Court, like the Government, considered that the proportionality of the measure was to be analysed in the light of the fiscal nature of the broadcasting licence. The licence fee was a tax intended for funding the public broadcasting service. In the Court's opinion, and as was clear from the wording of the relevant legislation, the mere fact of possessing a television set entailed an obligation to pay the tax in question, independently of the applicant's wish to watch the programmes broadcast by the public channels.
Indeed, by converse impliction, even accepting that a system which made it possible to watch only private channels without paying the licence fee was technically possible, this would be tantamount to stripping the tax of its very essence, namely a contribution to a community service rather than the price paid by an individual in exchange for reception of a given channel. In this context, it was to be noted that taxation matters still belonged to the "hard core" of prerogatives of the State authorities, and that the public nature of the relationship between the tax-payer and the community remained predominant. In the light of the foregoing, and of the reasonable amount of the tax in question (107.50 euros for 2009), the affixing of seals to the applicant's television set was a measure that was proportionate to the objective pursued by the State: *manifestly ill-founded*.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Disciplinary penalties imposed on public servants for taking part in a strike: *violation*.

ENERJİ YAPI-YOL SEN - Turkey (N° 68959/01)
Judgment 21.4.2009 [Section V]

Facts: The applicant was a union of public servants which was active in the fields of land registration, energy, infrastructure services and motorway construction. In 1996 the Prime Minister's Public-Service Staff Directorate published a circular five days before industrial action planned by the Federation of Public-Sector Trade Unions to secure the right to a collective-bargaining agreement, stating, in particular, that "information has been received concerning a possible gathering of civil servants for the purpose of strikes and go-slows, in violation of the prohibition in the legislation establishing civil servants' legal status" and that "public-sector employees are to be prevented by their hierarchy from taking part in the above- mentioned meetings or protests". Three members of the applicant union's board took part in the strikes and in making statements to the press and received disciplinary sanctions as a result. The applicant

union applied to the Supreme Administrative Court for the circular in question to be set aside. Its application was rejected, and the plenary assembly of the Supreme Administrative Court upheld that judgment.

Law: The applicant union was directly affected by the impugned circular and could therefore claim to be victim of an interference in the exercise of its right to trade-union freedom. For members of a union, strikes – which enabled a trade-union to make its views heard – were an important element in the protection of their interests. Indeed, the right to strike had been recognised by the supervisory bodies of the International Labour Organisation (ILO) as the intrinsic corollary of the right to trade-union association, protected by ILO Convention C87 on Freedom of Association and Protection of the Right to Organise. The European Social Charter also recognised the right to strike as a means to ensure the effective exercise of the right to collective bargaining.
As to the necessity of the interference in a democratic society, it was to be noted that the impugned circular had been adopted five days before the action planned by the Federation of Public-Sector Trade Unions, at a time when work was under way to bring Turkey's legislation into line with international conventions on the trade-union rights of State employees and the legal situation of public servants was unclear. Although the principle of trade-union freedom could be compatible with the prohibition on the right to strike in respect of certain categories of public servants, this restriction could not however extend to all public servants, as in the instant case, or to employees of State-run commercial or industrial concerns. In this particular case the circular had been drafted in general terms, completely depriving all public servants of the right to strike. Furthermore, the prohibition in the circular concerned only the participation of public servants in this national action day, and there was no evidence that the action day in question had been prohibited. In joining in the action the members of the applicant union's board had merely been making use of their freedom of peaceful assembly. Yet disciplinary action had been taken against them on the strength of the impugned circular, which was capable of discouraging trade-union members and others from exercising their legitimate right to take part in such one-day strikes or actions aimed at defending their members' interests. Thus, the adoption and application of the circular did not answer a "pressing social need" and there had been a disproportionate interference with the applicant union's effective enjoyment of the rights enshrined in Article 11 of the Convention.
Conclusion: violation (unanimously).

ARTICLE 14

DISCRIMINATION (Article 8)
Obligation on person found unfit for military service to pay exemption tax: *violation.*

GLOR - Switzerland (N° 13444/04)
Judgment 30.4.2009 [Section I]

Facts: In 1997 the applicant was declared unfit for military service by a military doctor on the ground that he suffered from diabetes. In 1999 he was also released from the obligation to perform Civil Protection Service. In 2000 this second discharge was lifted and he was assigned to the civil protection reserves. In 2001 the authorities sent him an order to pay the military-service exemption tax for 2000, amounting to 716 Swiss francs (CHF – about 477 euros (EUR)), a sum calculated on the basis of his taxable income for that year. The applicant challenged the payment order, alleging that he was the victim of discriminatory treatment. He pointed out that he had always expressed his willingness to perform military service. In 2001 the Federal Tax Administration informed the applicant that all male Swiss citizens who did not suffer from a "major" disability were subject to the military-service exemption tax and pointed out that, under the Federal Court's recent case-law, the threshold for "major" physical or psychological disability was to be considered at least 40%. By a decision of July 2003, the competent authorities considered, on the basis of a medical examination and expert report, that the applicant could not be exempted from payment of the tax as his degree of disability was lower than 40%. The Federal Tax Appeal Board upheld the decision. In a judgment of 2004, the Federal Court dismissed the applicant's administrative appeal.

Law: Article 14 in conjunction with Article 8 – A State tax which, as in the instant case, originated in an inability to serve in the army on account of illness, and thus in a fact that was independent of the person concerned's will, indisputably fell within the ambit of Article 8 of the Convention, even if the consequences of this measure were primarily financial.
As to the merits, the applicant had not performed his military service because he had been declared unfit by the military doctor. As a result, he found himself obliged to pay the impugned tax, like all those in the same situation, with the exception of those who suffered from a serious disability or who performed the alternative civilian service. However, only conscientious objectors were eligible for the alternative civilian service. It was this situation that was challenged by the applicant in the instant application. Persons in similar situations were treated differently in two respects. Given that the list of grounds for discrimination in Article 14 was not exhaustive, it was indisputable that the scope of that provision covered the prohibition of discrimination based on disability. It remained to be examined whether the difference in treatment was based on objective and reasonable grounds and, in particular, whether there was a reasonable relationship of proportionality between the aim pursued, namely to restore a certain equality between those who performed military or civil protection service and those who were exempted, and the means employed.
The type of tax in question, which was imposed even on individuals who could not fulfil the obligation to compete military or civil protection service for medical reasons, did not seem to exist in other countries, or at any rate not in Europe. Furthermore, the fact of obliging the applicant to pay the tax in question, after having refused him the possibility of performing military (or civil protection) service, could appear to be in contradiction with the need to fight discrimination in respect of disabled persons and to promote their full participation in society. Consequently, the margin of appreciation enjoyed by States Parties in introducing different legal treatment for disabled persons was substantially reduced.
As to the interests at stake in this case, the Court was not convinced that it was in the interests of the community to require the applicant to pay an exemption tax to compensate for the efforts of military service. As to the applicant's interest, the amount claimed as military-service exemption tax could not be described as insignificant in the light of the relatively modest nature of his taxable income.
Furthermore, the manner in which the relevant domestic authorities had acted in the case was open to question. Firstly, they had not taken sufficient account of the applicant's personal circumstances. Further, once it had been decided that he suffered from a minor disability, the applicant had been prevented from contesting the presumption, based on section 4(1) (a) of the relevant federal law and the Federal Court's case-law, that an individual who suffered from only a minor disability was not professionally disadvantaged. In other words, the applicant could not argue that his income was relatively modest and that, in consequence, the obligation to pay the exemption tax had been disproportionate in his case. The legislation did not provide for any exemption from the tax in question for those who were below the 40% disability threshold but who, like the applicant, had only a modest income. Finally, it was to be noted that the applicant had always stated his willingness to fulfil his military service, but that he had been declared unfit by the military doctor. In this case, the applicant's unfitness for military service was based, according to the Government, on the obligation to inject himself with insulin four times a day. Without going beyond the margin of appreciation enjoyed by the States with regard to the organisation and operational effectiveness of their armed forces, the possibility of alternative forms of service for persons in a situation similar to that of the applicant could have been envisaged. Indeed, it was not disputed that the applicant would also have been willing to carry out alternative civilian service. However, and even if the legalisation in force in Switzerland provided for that option only in respect of conscientious objectors, assuming that civilian service required the same physical and psychological capacities as military service, alternative forms of civilian service, adapted to the needs of individuals in the same position as the applicant, could nonetheless be envisaged without difficulty.
In conclusion, in the instant case the domestic authorities had not struck a fair balance between the protection of the interests of the community and respect for the applicant's rights and freedoms. In the light of the aim and effects of the impugned tax, the objective justification for the distinction made by the domestic authorities, particularly between persons who were unfit for service and not liable to the tax in question and persons who were unfit for service but nonetheless obliged to pay it, did not seem reasonable in relation to the principles which prevailed in democratic societies.
Conclusion: violation (unanimously).

DISCRIMINATION (Article 1 of Protocol No. 1)
Absence of right to index-linking for pensioners resident in overseas countries which had no reciprocal arrangements with the United Kingdom: *case referred to the Grand Chamber*.

CARSON and Others - United Kingdom (N° 42184/05)
Judgment 4.11.2008 [Section IV]

This case concerns allegedly discriminatory rules governing the entitlement to index-linking of the State pension. Under the rules, pensions are only index-linked if the recipient is ordinarily resident in the United Kingdom or in a country having a reciprocal agreement with the United Kingdom on the uprating of pensions. Persons such as the applicants who are resident elsewhere continue to receive the basic State pension, but frozen at the rate payable on the date they left the United Kingdom.
In a judgment delivered by a Chamber, the Court held by six votes to one that there had been no violation of Article 14 read in conjunction with Article 1 of Protocol No. 1 as the applicants had not been in a relevantly similar position to pensioners entitled to index-linked pensions or to pensioners living in countries where uprating was available through a reciprocal agreement. Further, any difference in treatment had, in any event, been objectively and reasonably justified as place of residence was a matter of choice, so that there was no need for the same high level of protection against differences of treatment as with differences based on inherent characteristics, such as gender or racial or ethnic origin. Moreover, residents moving abroad had been informed about the absence of index-linking in certain countries and the pattern of reciprocal agreements was the result of history and perceptions in each country as to the perceived costs and benefits of such arrangements. The United Kingdom had not, therefore, exceeded its very wide margin of appreciation to decide on matters of macro-economic policy.
The case was referred to the Grand Chamber at the applicants' request.

For further details, see Information Note no. 113.

ARTICLE 35

Article 35 § 2 b)

SAME AS MATTER SUBMITTED TO OTHER PROCEDURE
Complaints previously examined by United Nations Working Party on Arbitrary Detention: *inadmissible*.

PERALDI - France (N° 2096/05)
Decision 7.4.2009 [Section V]

In 1999 two bomb attacks were carried out in Corsica, resulting in injury to nineteen persons. The applicant was placed under investigation and taken into detention. His pre-trial detention was extended on numerous occasions, for a total of about six years. During this period he submitted several applications for release, all of which were dismissed. By a final judgment of April 2005 an assize court sentenced him to fifteen years' imprisonment. In March 2005 his brother applied to the United Nations Working Group on Arbitrary Detention (hereafter "the Working Group"). In his communication, he complained of the applicant's arbitrary detention and alleged that the length of his pre-trial detention had exceeded a reasonable time. The Working Group issued an opinion in which it considered that the applicant's pre-trial detention had not been arbitrary.

Inadmissible: The applicant had applied to the Court through his lawyer in January 2005. In March 2005 the applicant's brother wrote to the Working Group, which concluded in an opinion of November 2005 that the applicant's pre-trial detention had not been arbitrary. Under the Convention, which sought to avoid a plurality of international proceedings relating to the same cases, the Court could not deal with any application which had already been investigated by an international body. This rule applied irrespective of

the date on which those proceedings were lodged, as the element to be taken into consideration was the prior existence of a decision on the merits at the date on which the Court examined the case.
The Court had to determine whether the present application was "essentially the same" as that submitted to the Working Group where the facts, the parties and the complaints were identical. It was his brother and not the applicant himself who had applied to the Working Group. In principle, where the persons submitting complaints to the two bodes were not the same, the application received by the Court could not be considered as essentially the same as an application already submitted to another international body. In the instant case, however, although the applicants in the two cases were different from a formal point of view, the applicant's brother had submitted an application to the Working Group requesting it to examine the applicant's situation rather than his own. In addition, the two applications concerned the applicant's pre-trial detention and its allegedly abusive nature. The Working Group had ruled on the issue of whether the applicant's detention was arbitrary on the basis of numerous elements, mainly that of the length of the pre-trial detention. Its examination had thus covered the complaints submitted by the application to the Court. It followed that the facts, parties and complaints were identical.
In addition, the Court had to determine whether the application had already been submitted to "another procedure of international investigation or settlement". The Working Group was an extra-conventional mechanism made up of independent experts and leading figures specialising in human rights. The communications procedure to the Working Group differed clearly from the complaints filed under the UN's "1503 procedure", which had been considered by the Court not to correspond to a procedure of international investigation or settlement. The examination conducted in the context of the "1503 procedure" concerned the human-rights situation in a specific country rather than individual complaints, and its objective was not to offer direct reparation to victims. In contrast, the Working Group could accept individual applications, and the individuals submitting those applications were entitled to take part in the proceedings and to be informed of the opinions issued by it. The Working Group's opinions, which were accompanied by recommendations to the government concerned if it considered that the detention was arbitrary, were appended to the annual report transmitted to the Commission on Human Rights (since 2006, the special procedures had been taken over by the Human Rights Council, created to replace the Commission), which in turn could adopt resolutions and address recommendations to the General Assembly of the United Nations through the intermediary of the Economic and Social Council. It followed that the procedure before the Working Group was akin, from both a procedural perspective and in terms of its potential impact, to the individual application provided for by Article 34 of the Convention. Accordingly, although the Working Group had not been created by a treaty but by a resolution of the Commission on Human Rights, it was nevertheless a body whose proceedings were adversarial and whose decisions were reasoned, notified to the parties and published in an appendix to its report. In addition, its recommendations made it possible to determine State liability in cases where arbitrary detention was found, and even to put an end to the impugned situations. Its opinions were also subject to a monitoring procedure for the purpose of ensuring that the recommendations contained in them were implemented. The procedure before the Working Group had many similarities to that before the United Nations Human Rights Committee, which, under the Court's settled case-law, represented a procedure of international investigation or settlement. Consequently, the Working Group was a procedure of international investigation or settlement within the meaning of Article 35 § 2 (b) of the Convention. Thus, given that the complaint submitted to the Court was essentially the same as that which resulted in the above-mentioned opinion from the Working Group, the Government's objection of inadmissibility was to be accepted.

Article 35 § 3

MANIFESTLY ILL-FOUNDED
Court not called on to seek inspiration in amendment contained in Protocol No. 14 and related to absence of "significant disadvantage": *preliminary objection dismissed.*

FERREIRA ALVES - Portugal (no. 4) (N° 41870/05)
Judgment 14.4.2009 [Section II]

Facts: In 2004 the applicant brought proceedings against private citizens, requesting the payment of fees and the imposition of a fine in the event of the defendants' failure to pay. The court partly allowed his claim. The applicant lodged an appeal against the judgment, alleging that it was null and void because the first-instance court had failed to rule on his request for the imposition of a fine. The judge at the first-instance court affixed a note to the case file sent to the appeal court, which concerned, *inter alia*, the question of nullity. The applicant was not informed of this note. Noting that the applicant had not raised any specific ground for nullification, the appeal court dismissed the appeal and upheld the judgment of the lower court.
Law: *Admissibility*: The Government had raised an objection alleging the absence of a significant disadvantage for the applicant. Under Article 35 § 3 (b) of the Convention as amended by Protocol No. 14, the Court could declare an application inadmissible where "the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on its merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal". Protocol No. 14 had not yet entered into force on the date the Court's judgment was adopted. Admittedly, the Court could, and frequently had, sought inspiration from international instruments that had not yet entered into full legal force, particularly where these revealed common denominators in the relevant provisions of international law, especially and par excellence where they had already been accepted by a large majority of States (including, in the instant case, the respondent State). However, and in any event, the criteria set out in Article 35 § 3 (b) of the Convention as amended by Protocol No. 14 had not been met in this case. Nor was it clear either that an "insignificant disadvantage" would automatically arise from the fact, relied on by the Government, that the Court had not awarded financial compensation to the applicant under Article 41 of the Convention in a related case, or that the domestic courts had "duly considered" the case. In this latter connection, given that the failure to provide the applicant with a copy of the reporting judge's note was at the material time provided for in the legislation and accepted by the case-law, the applicant had not had a genuine possibility of having such a complaint examined by the national courts. In the instant case, the court of appeal – which was the court of final instance – had not examined that complaint. Accordingly, the Court did not consider it necessary to seek inspiration in a text for the purpose of identifying a solution that, in any event, would not have been compatible with that instrument, even if it had already entered into force. It therefore had no choice but to dismiss the Government's objection in this regard.

Merits: The Court found a violation of Article 6 § 1 on account of the failure to provide the applicant with a copy of the note from the judge to the appeal court and the fact that the court of appeal had not replied to a ground of appeal submitted by the applicant concerning the first-instance court's failure to rule on his application for the imposition of a fine.
Conclusion: violation (unanimously).

See also the judgment in *Ferreira Alves v. Portugal (no. 5),* no. 30381/06, of 14 April 2009.

COMPETENCE *RATIONE TEMPORIS*
Court's temporal jurisdiction in respect of procedural limb of Article 2 where death occurred prior to entry into force of Convention in respect of respondent State: *admissible*.

ŠILIH - Slovenia (N° 71463/01)
Judgment 9.4.2009 [GC]

Facts: The applicants' son died in hospital in May 1993 after suffering anaphylactic shock, probably as a result of an allergic reaction to a drug administered by a duty doctor. The applicants immediately lodged a criminal complaint against the doctor, but it was dismissed by the public prosecutor for lack of evidence. On 28 June 1994 the European Convention on Human Rights entered into force in respect of Slovenia. In August 1994, the applicants used their right under Slovenian law to act as subsidiary prosecutors and lodged a request for a criminal investigation. The investigation was reopened in April 1996 and an indictment was lodged on 28 February 1997; the case was twice remitted for further investigation before the criminal proceedings were discontinued in October 2000 again for lack of evidence. The applicants appealed unsuccessfully.
In the meantime, in July 1995, the applicants had also brought civil proceedings against the hospital and the doctor. The first-instance proceedings were stayed between October 1997 and May 2001 pending the outcome of the criminal proceedings and ended with the dismissal of the claim in August 2006. During that period, the case was dealt with by at least six different judges. Subsequently, the applicants lodged an appeal and an appeal on points of law, both of which were unsuccessful. When the Grand Chamber delivered its judgment, the case was still pending before the Constitutional Court.
In a judgment of 28 June 2007, a Chamber of the European Court found that it had no jurisdiction to hear the applicants' complaint of a violation of the substantive limb of Article 2 as the death had occurred before the Convention entered into force in respect of Slovenia. However, it declared the complaint under the procedural limb admissible and found a violation (see Information Note no. 98).

Law: Article 2 – (a) *Temporal jurisdiction*: The Grand Chamber clarified the Court's case-law concerning its temporal jurisdiction to hear complaints under the procedural limb of Article 2 in cases where death occurred before the date the Convention entered into force in respect of the respondent State ("the critical date"). It found that the procedural obligation to carry out an effective investigation under Article 2 had evolved into a separate and autonomous duty, which though triggered by acts concerning the substantive aspects of Article 2 could give rise to a finding of a separate and independent "interference". The procedural obligation could thus be considered a detachable obligation capable of binding the State even when the death took place before the critical date. Accordingly, the Court could assume temporal jurisdiction in such cases. However, the principle of legal certainty meant that its jurisdiction was not open-ended: Firstly, where the death occurred before the critical date, only procedural acts and/or omissions occurring after that date could fall within the Court's temporal jurisdiction. Secondly, there had to be a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect; this meant that a significant proportion of the procedural steps required by that provision had to have been or ought to have been carried out after the critical date (although it was not excluded that in certain circumstances the connection could also be based on the need to ensure that the guarantees and underlying values of the Convention were protected in a real and effective manner).
Applying these principles to the circumstances of the applicants' case, the Court noted that the death of the applicants' son had occurred just over a year before the entry into force of the Convention in respect of Slovenia and that, apart from the preliminary investigation, all the criminal and civil proceedings had been initiated and conducted after that date. The Court therefore had temporal jurisdiction in respect of the procedural complaint to the extent that it related to events after the critical date.
Conclusion: preliminary objection dismissed (fifteen votes to two).

(b) *Merits*: In view of the allegation of death through medical negligence, the State had been required to set up an effective and independent judicial system to determine the cause of death and bring those responsible to account. The applicants had used two legal remedies, one criminal the other civil. The excessive length of the criminal proceedings, and in particular of the investigation, could not be justified

by either the conduct of the applicants or the complexity of the case. The civil proceedings were still pending more than 13 years after they were instituted. While the applicants' requests for a change of venue and for certain judges to stand down had delayed the proceedings to a degree, many of the delays after the stay was lifted were unreasonable. It was also unsatisfactory for the applicants' case to have been dealt with by at least six different judges in a single set of first-instance proceedings, as frequent changes of judge were bound to impede effective processing. The domestic authorities had therefore failed to deal with the applicants' claim with the requisite level of diligence.
Conclusion: violation (fifteen votes to two).

Article 41 – EUR 7,540 in respect of non-pecuniary damage.

COMPETENCE *RATIONE PERSONAE*
Montenegrin authorities' failure to enforce an order given by a court in Montenegro several years before declaration of independence by Montenegro: *admissible in respect of Montenegro and inadmissible in respect of Serbia*.

BIJELIĆ - Montenegro and Serbia (N° 11890/05)
Judgment 28.4.2009 [Section II]

Facts: In 1994 the first applicant obtained a court decision ordering her former husband to vacate the family flat. Subsequently, she donated the flat to the second and third applicants. Between 1994 and 2007 the bailiffs, assisted by the police, made several unsuccessful attempts to evict her former husband.
The European Court communicated the application to the Government of the State Union of Serbia and Montenegro. On 3 June 2006 Montenegro declared its independence. The applicants stated that they wished to proceed against both Montenegro and Serbia, as two independent States. In 2008 the Court decided to re-communicate the application, in its entirety, to the Governments of Montenegro and Serbia.

Law: *Admissibility*: Domestic law and the Montenegrin Government's observations suggested that Montenegro should be considered bound by the Convention and its Protocols as of 3 March 2004, that being the date when these instruments had entered into force in respect of the State Union of Serbia and Montenegro. The Committee of Ministers had accepted, taking into account the earlier ratification of the Convention by the State Union of Serbia and Montenegro, that it was not necessary for Montenegro to deposit its own formal ratification of the Convention. Bearing in mind the Court's practice following the dissolution of the Czech and Slovak Federal Republic, the practical requirements of Article 46 of the Convention, and the principle that fundamental rights protected by international human rights treaties should belong to individuals living in the territory of the State party concerned, despite its subsequent dissolution or succession, the Convention and Protocols thereto should be deemed as having continuously been in force in respect of Montenegro since 3 March 2004. As the impugned proceedings had been solely within the competence of the Montenegrin authorities, the Court found the applicants' complaints in respect of Montenegro compatible and their complaints in respect of Serbia incompatible *ratione personae* with the provisions of the Convention.

Merits: The Court found a violation of Article 1 of Protocol No. 1 on account of the Montenegrin authorities' failure to enforce the eviction order.
Conclusion: violation (unanimously).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Affixing of seals to television set for non-payment of licence fee: *inadmissible.*

FACCIO - Italy (N° 33/04)
Decision 31.3.2009 [Section II]

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Inability of persons with multiple nationality to stand as candidates in parliamentary elections: *case referred to the Grand Chamber.*

TĂNASE and CHIRTOACĂ - Moldova (N° 7/08)
Judgment 18.11.2008 [Section IV]

In the Chamber judgment the Court held unanimously that there had been a violation of Article 3 of Protocol No. 1 concerning Mr Tănase's complaint that a new electoral law in Moldova had breached his right to stand as a candidate in free elections and to take his seat in Parliament if elected.
The case was referred to the Grand Chamber at the Government's request.
For further details, see Information Note no. 113.

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:

CARSON and Others - United Kingdom (N° 42184/05)
Judgment 4.11.2008 [Section IV]

(See Article 14 above).

TĂNASE and CHIRTOACĂ - Moldova (N° 7/08)
Judgment 18.11.2008 [Section IV]

(See Article 3 of Protocol N° 1 above).

Judgments having become final under Article 44 § 2 (c)[1]

On 6 April 2009 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

BELL – Belgium (N° 44826/05)
OREB – Croatia (N° 9951/06)
FEŠAR – Czech Republic (N° 76576/01)
DIMITRIEVA – the "former Yugoslav Republic of Macedonia" (N° 16328/03)
DIMITRIEVSKI – the "former Yugoslav Republic of Macedonia" (N° 26602/02)
SAVOV and Others – the "former Yugoslav Republic of Macedonia" (N° 12582/03)
VELOVA – the "former Yugoslav Republic of Macedonia" (N° 29029/03)
ASSOCIATION AVENIR D'ALET – France (N° 13324/04)
LEROY – France (N° 36109/03)
PARAPONIARIS – Greece (N° 42132/06)
MRÚZ – Hungary (N° 3261/05)
CLEMENO and Others – Italy (N° 19537/03)
BODEVING – Luxembourg (N° 40761/05)
EDWARDS – Malta (N° 17647/04)
GUZIUK – Poland (N° 39469/02)
HELWIG – Poland (N° 33550/02)
JAGIEŁŁO – Poland (N° 8934/05)
KACHEL – Poland (N° 22930/05)
KALETA – Poland (N° 11375/02)
KLEWINOWSKI – Poland (N° 43161/04)
KRZEWSKI – Poland (N° 11700/04)
MUSZYŃSKI – Poland (N° 24613/04)
SKIBIŃSCY – Poland N° 52589/99)
BOGUMIL – Portugal (N° 35228/03)
APAHIDEANU – Romania (N° 19895/02)
DEAK – Romania (N° 42790/02)
DINU – Romania and France (N° 6152/02)
DRAGALINA – Romania (N° 17268/03)
DRĂGĂNESCU – Romania (N° 29301/03)
LAMARCHE – Romania (N° 21472/03)
MOROIANU – Romania (N° 16304/04)
NIŢĂ – Romania (N° 10778/02)
PETRE IONESCU – Romania (N° 12534/02)
PETRINA – Romania (N° 78060/01)
PINTILIE – Romania (N° 30680/03)
MARCEL ROŞCA – Romania (N° 1266/03)
S.C. COMPRIMEX S. A. – Romania (N° 32228/02)
VĂCĂRUŞ – Romania (N° 1012/02)
AKHMADOVY – Russia (N° 20755/04)
ALBEKOV and Others – Russia (N° 68216/01)
BELOUSOV – Russia (N° 1748/02)
GODLEVSKIY – Russia (N° 14888/03)
IGNATOVICH – Russia (N° 19813/03)
ISMAYILOV – Russia (N° 30352/03)
KHADZHIALIYEV and Others – Russia (N° 3013/04)

[1] The list of judgments having become final pursuant to Article 44(2)(b) of the Convention has been discontinued. Please refer to the Court's database HUDOC which will indicate when a given judgment has become final.

KHALIDOVA and Others – Russia (N° 22877/04)
LYANOVA and ALIYEVA – Russia (Nos. 12713/02 and 28440/03)
MAGOMADOVA and ISKHANOVA – Russia (N° 33185/04)
MAGOMED MUSAYEV and Others – Russia (N° 8979/02)
MEZHIDOV – Russia (N° 67326/01)
MOISEYEV – Russia (N° 62936/00)
NASUKHANOVA and Others – Russia (N° 5285/04)
OLEG NIKITIN – Russia (N° 36410/02)
RASAYEV and CHANKAYEVA – Russia (N° 38003/03)
SAMOYLOV – Russia (N° 64398/01)
SHAFRANOV – Russia (N° 24766/04)
TISHKEVICH – Russia (N° 2202/05)
TSUROVA and Others – Russia (N° 29958/04)
YUSUPOVA and ZAURBEKOV – Russia (N° 22057/02)
ZULPA AKHMATOVA and Others – Russia (Nos. 13569/02 and 13573/02)
STANKOVIĆ – Serbia (N° 29907/05)
KANALA – Slovakia (N° 57239/00)
ISELSTEN – Sweden (N° 11320/05)
GÜZEL ERDAGÖZ – Turkey (N° 37483/02)
MELEK SIMA YILMAZ – Turkey (N° 37829/05)
SENAŞ SERVIS ENDÜSTRISI A.Ş. – Turkey (N° 19520/02)
KRUTKO – Ukraine (no. 2) (N° 33930/05)
MIKHANIV – Ukraine (N° 75522/01)

Cases selected for publication[1]

The Publications Committee has selected the following cases for publication in *Reports of Judgments and Decisions* (where applicable, the three-digit number after each case-title indicates the issue of the Case-Law Information Note where the case was summarised):

Grand Chamber judgments

LEGER – France (striking out) (N° 19324/02) (117)
GOROU – Greece (N° 12686/03) (117)
ANDREJEVA – Latvia (N° 55707/00) (116)
PALADI – Moldova (N° 39806/05) (117)
BYKOV – Russia (N° 4378/02) (117)
SERGEY ZOLOTUKHIN – Russia (N° 14939/03) (116)
KOZACIOGLU – Turkey (N° 2334/03) (116)
A. and Others – United Kingdom (N° 3455/05) (116)

Chamber judgments

L'ERABLIERE A.S.B.L. – Belgium (N° 49230/07) (116)
TAXQUET – Belgium (extracts) (N° 926/05) (115)
ANAKOMBA YULA – Belgium (extracts) (N° 45413/07) (117)
SANDRA JANKOVIČ – Croatia (extracts) (N° 38478/05) (117)
BRANKO TOMASIC and Others – Croatia (extracts) (N° 46598/06) (115)
KREJČIŘ – Czech Republic (N° 39298/04 ; N° 8723/05) (117)
ASSOCIATION OF CITIZENS RADKO and PAUNKOVSKI – "the Former Yugoslav Republic of Macedonia" (extracts) (N° 74651/01) (115)
BARRACO – France (N° 31684/05) (117)
GRIFHORST – France (N° 28336/02) (116)
GIORGI NIKOLAISHVILI – Georgia (extracts) (N° 37048/04) (115)
REKLOS and DAVOURLIS – Greece (extracts) (N° 1234/05) (115)
BEN KHEMAIS – Italy (extracts) (N° 246/07) (116)
SIMALDONE – Italy (extracts) (N° 22644/03) (117)
SŁAWOMIR MUSIAŁ – Poland (extracts) (N° 28300/06) (115)
WOMEN ON WAVES and Others – Portugal (extracts) (N° 31276/05) (116)
BRÂNDUSE – Romania (extracts) (N° 6586/03) (118)
TATAR – Romania (extracts) (N° 67021/01) (115)
BURDOV – Russia (no. 2) (N° 33509/04) (115)
MEDOVA – Russia (extracts) (N° 25385/04) (115)
MANGOURAS – Spain (N° 12050/04) (115)
GÜVEÇ – Turkey (extracts) (N° 70337/01) (115)
ŞERIFE YIĞIT – Turkey (N° 3976/05) (115)
TEMEL and Others – Turkey (extracts) (N° 36458/02) (117)
TIMES NEWSPAPERS LTD. (Nos. 1 and 2) – United Kingdom (N° 3002/03; N° 23676/03) (117)

Decisions

OULD DAH – France (N° 31113/03) (117)
COOPERATIEVE PRODUCENTENORGANISATIE VAN DE NEDERLANDSE KOKKELVISSERIJ U.A. – The Netherlands (N° 13645/05) (115)

[1] For a list of previously selected cases please see Composition of Reports of Judgments and Decisions from 1999 at: http://www.echr.coe.int/NR/rdonlyres/F81AF3C4-F231-4E01-87E4-C54A3622B3E6/0/Publication_list.pdf

Press release issued by the Registrar

European Court of Human Rights launches special website for 50th anniversary

Strasbourg, 20.04.2009 - The fiftieth anniversary of the European Court of Human Rights is being celebrated throughout 2009 with a series of initiatives, including the launch today of a special event-oriented website that will be enhanced and up-dated in the course of the year.

The website is being launched today because it was exactly 50 years ago, on 20 April 1959, that the Court was inaugurated, on the tenth anniversary of the Council of Europe.

The website at http://www.echr.coe.int/50/en will be presenting all the events of the anniversary year such as the Open day on 20 September 2009 and a large number of documents on the Court's history and future and on the Member States of the Council of Europe.

- Via an **interactive map of the 47 member States** you will find basic information on each State such as the date it ratified the Convention, the judge elected in respect of that State, some major cases brought against it and the main statistics.

A virtual visit to the Court is also available and more interactive pages will soon be added, in a multimedia section containing videos, photos and podcasts.

- Original historical documents have been scanned and can be consulted on line, such as texts concerning the first case examined by the Court in 1960 (***Lawless v. Ireland***). Certain documents, such as the "Recommendation on the establishment of the Court" (1958), have been declassified by the Court's President, Jean-Paul Costa, so that they can be added to the site.

- An overview of 50 years of activity and developments can be gleaned from various reference documents including: preparatory work of the Convention, simplified version of the Convention, annual report on execution of judgments, case-law information, amendments to the Convention and Rules of Court, and reports on future reforms of the Court.

(...)

Future additions to the website will regularly be announced in the RSS feeds.

(...)