CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 48
on the case-law of the Court
December 2002

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

Statistical information[1]

Judgments delivered	**December**	**2002**
Grand Chamber	1	12(14)
Section I	20	324(329)
Section II	17	159(168)
Section III	11	169(176)
Section IV	3	141(159)
Sections in former compositions	1	39(40)
Total	**53**	**844(886)**

Judgments delivered in December 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	1	1
former Section IV	0	0	0	0	0
Section I	18	2	0	0	20
Section II	17	0	0	0	17
Section III	5	6	0	0	11
Section IV	3	0	0	0	3
Total	**44**	**8**	**0**	**1**	**53**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9(11)	0	1	2[2]	12(14)
former Section I	10	1	0	1[2]	12
former Section II	0	0	0	4[4]	4
former Section III	11	1	0	1[3]	13
former Section IV	8(9)	1	1	0	10(11)
Section I	254(258)	62(63)	3	5[5]	324(329)
Section II	137(143)	18(21)	3	1[2]	159(168)
Section III	117(119)	50(52)	2(5)	0	169(176)
Section IV	119(137)	18	2	2[3]	141(159)
Total	**665(698)**	**151(157)**	**12(15)**	**16**	**844(886)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Just satisfaction/Satisfaction équitable.
3. Revision/Révision.
4. Three just satisfaction judgments and one revision judgment.
5. Four revision judgments and one just satisfaction judgment.

Decisions adopted		December	2002
I. Applications declared admissible			
Grand Chamber		1	2
Section I		10(13)	217(233)
Section II		7(8)	116(124)
Section III		6(7)	112(117)
Section IV		8	100(101)
Total		**32(37)**	**547(577)**
II. Applications declared inadmissible			
Grand Chamber		0	3
Section I	- Chamber	9(11)	302(330)
	- Committee	108	3987
Section II	- Chamber	17(19)	103(135)
	- Committee	356	4705
Section III	- Chamber	7	83(89)
	- Committee	184	2968(2969)
Section IV	- Chamber	13	134(516)
	- Committee	557	3880
Total		**1251(1255)**	**16165(16614)**
III. Applications struck off			
Section I	- Chamber	2	81(105)
	- Committee	1	76
Section II	- Chamber	0	23(24)
	- Committee	4	52
Section III	- Chamber	2	173(178)
	- Committee	2	29
Section IV	- Chamber	2(3)	27(30)
	- Committee	11	36
Total		**24(25)**	**487(530)**
Total number of decisions[1]			**17202(17721)**

1. Not including partial decisions.

Applications communicated	December	2002
Section I	31(38)	398(413)
Section II	21	273(284)
Section III	14(19)	435(443)
Section IV	33	384(524)
Total number of applications communicated	**99(111)**	**1490(1664)**

ARTICLE 2

USE OF FORCE
Bombing of convoy by Russian military jets during Chechen war, with loss of civilian life: *admissible*.

ISAYEVA, YUSUPOVA and BAZAYEVA - Russia (Nos. 57947-49/00)
Decision 19.12.2002 [Section I]

Facts: The three applicants were part of a large convoy of vehicles that was trying to travel from Grozny to Ingushetia in October 1999, at a time of intense military operations in Chechnya. The road was blocked by the Russian military at the border between Chechnya and Ingushetia. After several hours it was announced that no passage would be permitted that day. The large convoy began to turn around. Shortly afterwards, two Russian military aircraft flew over the column and dropped bombs. The vehicle carrying the first applicant and her relatives stopped. Her two children and her daughter-in-law were the first to get out and were killed by a bomb blast. The first applicant was injured and lost consciousness. She was treated at a local hospital, which sent her home for lack of space. The second applicant was wounded in the same attack and witnessed the death of the first applicant's relatives. The third applicant was travelling in another vehicle. After the attack, she saw many dead and seriously injured persons at the scene. Along with her husband and a friend, she helped transport some of the wounded to hospital. The applicants have submitted videotaped testimony from others who were at the scene. They maintain that they saw only civilians in the convoy. The Government indicate that the two aircraft were flying reconnaissance when they were attacked by large calibre infantry firearms that were fired from a KAMAZ truck in the convoy. The pilots were granted authorisation to attack. They fired rockets, destroying the truck and several other vehicles. One of these was a Red Cross car that, according to the Government, was not properly marked. The Government state that in addition to two Red Cross representatives, eight other civilians were killed, including the first applicant's three relatives. The International Committee of the Red Cross issued a statement next day indicating that its vehicles had been clearly marked and that the attack had cost 25 civilian lives and injured over 70 persons.
A criminal investigation into the attack was commenced in May 2000 by the military prosecutor of the Northern Caucasus military circuit. The investigation included examination of the scene, interviewing witnesses and review of medical documents. According to the Government, forensic examination of the remains of the victims is hampered by the objections of their next of kin. In September 2001, the investigation into the pilots' actions was closed, since it was found that they had been authorised to attack and could not have foreseen civilian casualties. The applicants state that they are unaware of any adequate steps taken by the authorities to investigate.
Admissible under Articles 2, 3 and 13 and Article 1 of Protocol No. 1.

USE OF FORCE
Killing of civilians in Chechen war: *admissible*.

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Decision 19.12.2002 [Section I]

Each applicant was a resident of Grozny up to the time of the military operations there towards the end of 1999. With the outbreak of hostilities, the applicants took the decision to leave their home and move to Ingushetia. In each case, they entrusted their homes to relatives (the first applicant's brother and sister as well as the latter's two adult sons, the second applicant's brother), who remained in the city. At the end of January 2000, the applicants learned of the deaths of their relatives. They returned to Grozny and found the bodies lying in the yard of a house and in a nearby garage. All bodies bore multiple gunshot and stab wounds. There was also bruising and, in some cases, broken bones and mutiliation. The applicants brought the bodies back to Ingushetia for burial. On a subsequent trip to Grozny, the second applicant visited the scene of the killings and found spent machine gun cartridges and her brother's hat. In a nearby house she saw five bodies, all of which bore gunshot wounds. Having learned that a sixth victim had survived, the second applicant managed to trace her in Ingushetia and was told that the victims had been shot at by Russian troops. Forensic examinations were carried out in Ingushetia on the bodies of the first applicant's brother and nephew. Death certificates were issued by the Malgobek Town Court in respect of all the deceased.
Certain facts are in dispute between the parties. The applicants maintain that their relatives were killed by Russian troops. The Government acknowledge that there are implications of unlawful actions on the part of federal forces, but contend that the circumstances of the killings are unclear. In the absence of witnesses, the Government suggest that the killings could have been perpetrated by Chechen fighters, possibly masquerading as Russian soldiers, or by robbers, or that the deceased could have actively resisted the Russian advance into the city. The Government also maintain that the scene of the killings was not within Russian control at the time of the shootings. The applicants refute all of these suggestions. In particular, they submit that Russian forces were in control of the area when their relatives died.
The applicants had contacts with various civil and military authorities during 2000 regarding the possibility of criminal proceedings being taken against their relatives' killers. The first applicant was informed by the military prosecutor that no action would be taken in view of the lack of *corpus delicti* on the part of the federal servicemen. The Chief Military Prosecutor subsequently informed Human Rights Watch that military investigators were only pursuing one case, which had no connection to the applicants. Criminal proceedings were initiated by civilian prosecutors in Ingushetia and Grozny. The latter proceedings, of which the applicants say they were unaware, have been suspended and resumed on several occasions and has, to date, made little progress in identifying the killers. The applicants indicate that they have in their possession certain items that could serve as evidence but these have never been collected by investigators. Nor have they been asked for permission to exhume the remains of the three victims that were not subject to forensic testing.
Admissible under Articles 2, 3, and 13.

USE OF FORCE
Civilian casualties in air attack on convoy: *admissible*.

ISAYEVA - Russia (Nº 57950/00)
Decision 19.12.2002 [Section I]

The applicant, currently resident in Ingushetia, was previously a resident of the village of Katyr-Yurt in Chechnya. Following the take-over of Grozny by Russian forces in February 2000, a significant group of Chechen fighters entered her village. At that time, the population of the village had swelled to some 25,000 persons, including many who were displaced from other parts of the country. The applicant states that the Chechen fighters arrived without any warning and that villagers were forced to take shelter from the heavy Russian bombardment that commenced shortly afterwards. When the shelling ceased the next day, the applicant and her family, along with other villagers, tried to flee. She indicates that no safe exit routes were provided for civilians. As their vehicles left the village, they were attacked from the air. The applicant's son was fatally wounded. Three other persons travelling in the same vehicle were also wounded. The applicant also lost three young nieces in the attack, and her nephew was left disabled as a result of his injuries. She states that she lost her house, her possessions and her car.
The Government state that the military operation against Katyr-Yurt was ordered after the village had been taken by an estimated 850-1000 Chechen fighters. Although the security forces offered safe passage to civilian residents, these were prevented from leaving by their captors. The Government indicate that the military operation lasted four days and took a heavy toll among Russian forces and the Chechen fighters. The Government acknowledge that the van in which the applicant and her relatives were travelling was hit by a rocket, causing loss of life and injury.
Death certificates were issued in respect of the applicant's relatives. The Government indicate that the law enforcement agencies were unaware of the killings until the matter was brought before the Court. Subsequently, local prosecutors opened criminal investigations and instituted criminal proceedings. As part of this process, evidence was gathered and testimony taken. According to the Government, forensic examination of the remains was not possible due to the objection of the family to exhumation. The criminal investigation was closed in March 2002, having reached the conclusion that the actions of the Russian forces had been absolutely necessary. The applicant states that she is not aware of any effective steps taken by the authorities to investigate the deaths of her relatives.
Admissible under Articles 2 and 13.

ARTICLE 3

TORTURE
Alleged torture of civilians during Chechen war: *admissible*.

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Decision 19.12.2002 [Section I]
(see Article 2, above).

DEGRADING TREATMENT
Imposition of additional days of detention on account of failure, for medical reasons, to provide urine sample to prison authorities: *communicated*.

YOUNG - United Kingdom (No. 60682/00)
[Section IV]
(see Article 6(1) [criminal], below).

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Confinement, pending deportation, to premises of airport border police: *admissible*.

SHAMSA (Abdel Salam) - Poland (N° 45355/99)
SHAMSA (Anwar) - Poland (N° 45357/99)
Decisions 5.12.2002 [Section III]

In May 1997, the two applicants, who are brothers and Libyan nationals, were detained during a check on identity papers and residence permits. The prefect made a deportation order against them, to be enforced within 90 days. Between 24 August 1997, the final day of their detention and of the statutory period for deportation, and 11 September 1997, the authorities made three unsuccessful attempts to deport them to Libya. As there were no direct flights, the applicants were placed on flights changing in Prague, Cairo and Tunis, but were returned each time by the authorities of the country of transit because they refused to continue the journey. Between these attempts to deport them, and following their return from Tunis, the applicants, who were regarded as undesirables on Polish territory, were held by the immigration authorities at Warsaw airport. On 3 October 1997, the applicants, who had been admitted to hospital following a hunger strike, left it by their own means without any intervention by the authorities. In the meantime the prefect's decision was confirmed. The applicants had appealed against that decision and in September 1997 the Supreme Administrative Court had stayed enforcement of the deportation procedure. In September 1998, the Supreme Court held that the second applicant must be regarded as lawfully residing on Polish territory. In January 1998, the district prosecutor terminated the proceedings following a complaint by the applicants concerning their detention by the immigration authorities between 25 August and 3 October 1997. He considered that the regulations governing the immigration authorities at Warsaw airport constituted the legal basis for their detention. According to those regulations, travellers are placed in the premises of the immigration authorities for the purposes of deportation until they are handed over to a third party for the journey. The prosecutor further observed that an attempt to enforce the prefect's deportation order had been made on the final day of the statutory period but had been unsuccessful because the applicants had resisted. On appeal by the applicants, the regional prosecutor annulled that decision and referred the case back for reconsideration. However, the district prosecutor terminated the proceedings. He stated that each international airport had an area set aside for persons who were not authorised to enter the national territory. That area was no longer regarded as a place of detention for the purposes of deportation since persons who had been placed there were regarded as having been deported from the country. He concluded that the applicants had chosen of their own free will to remain at the immigration authorities' premises, which were not suitable for a long-term stay, being normally used as transit rooms, by refusing to be deported to Libya.

That decision was upheld at last instance on the ground that the applicants had never been deprived of their freedom and that immigration officers had placed them in the premises at the airport in order to protect the national border. The applicants were still residing on Polish territory on the date on which the Court adopted its decision.
Admissible under Article 5(1).

Article 5(1)(a)

COMPETENT COURT
Imposition of addition days of imprisonment by prison governor on account of failure to provide urine sample: *communicated*.

YOUNG - United Kingdom (Nº 60682/00)
[Section IV]
(see Article 6(1) [criminal], below).

Article 5(1)(b)

SECURE FULFILMENT OF OBLIGATION
Detention for purpose of psychiatric examination in context of private prosecution for defamation: *violation*.

NOWICKA - Poland (Nº 30218/96)
Arrêt 3.12.2002 [Section II]

Facts: A private prosecution was brought against the applicant for defamation. The court ordered that she undergo a psychiatric examination and, when she failed to comply, issued an arrest warrant. The applicant was arrested on 25 October 1994 and was released on 3 November 1994, the day after her examination. The court then ordered a further examination. The applicant again failed to comply and was arrested on 23 March 1995. She was examined between 19 April and 26 May and released on 3 June 1995. During her detention, visits from family members were restricted to one per month.
Law: Article 5(1)(b) – While the applicant's detention was "lawful", the psychiatric examinations were preceded by eight and twenty seven days' detention respectively, which could not be reconciled with the authorities' desire to secure the immediate fulfilment of the applicant's obligation to undergo the examinations. The authorities thus failed to draw an appropriate balance. Moreover, the continued detention of the applicant after completion of the examinations had no basis under Article 5(1)(b).
Conclusion: violation (unanimously).
Article 8 – Although the detention itself could be considered to pursue the legitimate aims of the prevention of crime and the protection of health and rights of others, the restriction of the applicant's visiting rights did not pursue, and was not proportionate to, any legitimate aim. The applicant was held in detention for a total of eighty three days in a case in which she did not contest the private prosecutor's submissions on the facts of the case against her and the Government had not shown that the restriction was justified as a normal consequence of prison life and discipline during detention.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 10,000 € in respect of non-pecuniary damage.

Article 5(1)(e)

PREVENTION OF SPREADING OF INFECTIOUS DISEASES
Detention of man infected with HIV: *admissible*.

ENHORN - Sweden (Nº 56529/00)
Decision 10.12.2002 [Section IV]

The applicant was diagnosed as being infected with the HIV virus in 1994. He transmitted the virus to a young man with whom he had had sexual contact some years earlier. In accordance with the Infectious Diseases Act, 1998, a county medical officer issued a series of instructions to the applicant on a number of points: sexual behaviour, alcohol consumption, donation of blood, organs or sperm, regular consultation of a physician. In the period September-November 1994, the applicant kept a number of appointments with his doctor, but failed to turn up on five other occasions. In February 1995, the county medical officer petitioned the County Administrative Court to order the compulsory isolation of the applicant in a hospital for up to three months as provided for in the 1998 Act. The applicant stated before the court that he was exercising caution in his sexual behaviour. He intended to pay monthly visits to his physician, but did not wish to visit the county medical officer or, as had been suggested, a psychiatrist. The county medical officer submitted that the applicant was prone to irresponsible sexual behaviour and refused to face the reality of his condition and, for these reasons, should consult a psychiatrist. This consultation took place shortly afterwards. The psychiatrist formed the view that the applicant's high intake of alcohol and his lack of social contacts could increase the risk of destructive sexual relations. The court granted the order sought. As the applicant failed to report to the hospital, he was finally taken there by the police in March 1995. During the next four years, the further orders were made to extend the applicant's compulsory isolation by six months at a time. The applicant absconded from the hospital on four occasions, for periods ranging from 10 days to two years on the fourth occasion. Following his return, he was detained in his room for five days. In April 1999, the county medical officer again sought to have the court order extended. The applicant stated to the court that during the period 1997-1999 he had been sexually inactive. He accepted his responsibility for infecting his young partner some years earlier and regretted it. He had moderated his use of alcohol and stated that he would comply with the instructions of the county medical officer. Furthermore, he was in contact with a psychiatrist who was not connected with the hospital. The court also heard from the hospital psychiatrist, who made a very negative assessment of the applicant, considering that he had not progressed at all and still constituted a real risk to society. The court granted the order sought. The applicant absconded again in June 1999 and his whereabouts since then are unknown. Before doing so, he filed an appeal against the court order. His psychiatrist stated that the applicant had a paranoid personality disorder, but was not mentally ill. He suffered from alcohol misuse, but not alcohol dependency. One could only speculate as to the likelihood of him transmitting the disease in future. The appeal was dismissed, and leave to appeal to the Supreme Administrative Court was refused.
Admissible under Article 5(1)(e).

Article 5(5)

COMPENSATION
Absence of right to compensation in respect of allegedly unlawful detention: *no violation*.

N.C. - Italy (Nº 24952/94)
Judgment 18.12.2002 [Grand Chamber]

Facts: The applicant, technical director of a company, was arrested pursuant to a warrant issued by an investigating judge on the ground that there was substantial evidence that he was guilty of abuse of power and corruption. The applicant lodged a request for release with the District Court, submitting that there was no substantial evidence of guilt, as required by Article 273 of the Code of Criminal Procedure. The court dismissed the request, finding that there was sustantial evidence of guilt and a danger of the applicant committing further offences. However, it placed the applicant under house arrest rather than in detention. The applicant applied to the investigating judge to have this order revoked, as he had resigned from his post as technical director with the company. The judge rejected the request. On appeal, however, the District Court ordered the applicant's release, holding that in view of his resignation, the time which had elapsed and his character there were no longer any grounds for keeping him under house arrest. The applicant was subsequently acquitted on the ground that the alleged facts had never occurred.
Law: Government's preliminary objection (non-exhaustion) – As to the failure of the applicant to apply for compensation, Article 314 of the Code of Criminal Procedure provides for compensation when an accused is acquitted because the alleged facts never occurred. The Court's decision on admissibility was adopted in 1998, before the applicant's acquittal and these circumstances did not allow the Government to comply with the obligation to raise pleas of inadmissibility at the admissibility stage. However, over two years elapsed between the time the Government could have become aware of the acquittal and the raising of the objection. Such a delay was unreasonably long and no explanation had been provided. The Government were therefore estopped from raising a preliminary objection.
Article 5(5) – The Italian authorities did not hold that the applicant's pre-trial detention had been unlawful or contrary to Article 5 of the Convention but it was unnecessary to examine whether there had been a breach of Article 5(1)(c) or Article 5(3). Article 314 of the Code of Criminal Procedure provided a right to compensation for anyone acquitted on the ground, *inter alia*, that the alleged facts had never occurred. The applicant was acquitted on that ground and could then have claimed compensation. The Italian legal system thus afforded him, with a sufficient degree of certainty, the right to compensation in respect of his pre-trial detention. While that right arose as a result of his acquittal and would apparently not have arisen had he been convicted, in the circumstances of the case he had the possibility of applying for compensation, without having to prove that his detention had been unlawful, since pre-trial detention could have been considered "unjust" for the purposes of Italian law, independent of any consideration of lawfulness. In these circumstances, the compensation was indissociable from any compensation to which the applicant might have been entitled under Article 5(5) of the Convention.
Conclusion: no violation (unanimously).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Parliamentary immunity attaching to allegedly defamatory statements made by a Member of Parliament during a parliamentary speech: *no violation*.

A. - United Kingdom (Nº 35373/97)
Judgment 17.12.2002 [Section II]

Facts: During a parliamentary debate on municipal housing policy, the Member of Parliament for the constituency in which the applicant lived mentioned her several times, giving her name and address. He referred to her as an example of "neighbours from hell" and indicated that she and her children were involved in various types of anti-social behaviour. The following day, two newspapers published articles based on a press release issued by the MP, the contents of which were substantially the same as those of his speech. The applicant, who denied the allegations, had to be re-housed after receiving hate mail and being subjected to abuse. Her solicitors wrote to the MP to outline her complaints but were informed that his remarks were protected by absolute parliamentary privilege.
Law: Article 6(1) – It was unnecessary to settle the precise nature of the privilege, since the central issues of legitimate aim and proportionality which arose in relation to the applicant's procedural complaint under Article 6 were the same as those arising in relation to her substantive complaint under Article 8 (respect for private life). The Court therefore proceeded on the basis that Article 6 was applicable. The parliamentary immunity enjoyed by the MP pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers. As to proportionality, while the broader an immunity the more compelling must be its justification, the fact that an immunity is absolute was not decisive. Freedom of expression is especially important for elected representatives and very weighty reasons must be advanced to justify interfering with that freedom. Most, if not all, signatory States to the Convention (including the eight States who made third party interventions) have some form of parliamentary immunity and privileges and immunities are also granted to members of the Parliamentary Assembly of the Council of Europe and the European Parliament. In the light thereof, a rule of parliamentary immunity could not in principle be regarded as imposing a disproportionate restriction on the right of access to court. Furthermore, the immunity enjoyed by MPs in the United Kingdom was in several respects narrower than that applicable in other States, in particular as it attached only to statements made in the course of parliamentary debates. The absolute immunity was designed to protect the interests of Parliament as a whole rather than those of individual MPs. Moreover, victims of defamatory statements were not entirely without means of redress, since they could seek through another MP to secure a retraction, while in extreme cases deliberately misleading statements might be punishable by Parliament as a contempt. In all the circumstances, the application of a rule of absolute privilege could not be said to exceed the margin of appreciation. While the allegations about the applicant were extremely serious and clearly unnecessary and the consequences were entirely foreseeable, these factors could not alter the conclusion as to the proportionality of parliamentary immunity.
Conclusion: no violation (6 votes to 1).
Article 6(1) – As to the unavailability of legal aid for defamation actions, since the MP's parliamentary statements were covered by absolute privilege and the press reports were covered by qualified privilege, any legal proceedings in relation to them would have had no prospects of success. The Court therefore restricted its analysis to the unprivileged press release issued by

the MP. The applicant was entitled to two hours' free legal advice under the "Green Form" scheme and, after July 1998, could have engaged a solicitor under a conditional fee arrangement. While she would have remained exposed to a potential costs order if unsuccessful in legal proceedings, she would have been able to evaluate the risks in an informed manner if she had taken advantage of the "Green Form" scheme. In the circumstances, the unavailability of legal aid did not prevent her from having access to court.
Conclusion: no violation (6 votes to 1).
Article 8 – As the central issues were the same as those examined under Article 6, there had been no violation of this provision.
Conclusion: no violation (6 votes to 1).
Article 14 in conjunction with Article 6(1) – The complaints under Article 14 were identical to those already examined under Article 6. In any event, no analogy could be drawn between what was said in parliamentary debates and what was said in ordinary speech.
Conclusion: no violation (unanimously).
Article 13 – The Court was satisfied that the applicant had an arguable claim that Articles 6(1), 8 and 14 had been violated, but recalled that Article 13 does not guarantee a remedy allowing primary legislation to be challenged.
Conclusion: no violation (6 votes to 1).

ACCESS TO COURT
Immunity of foreign State: *inadmissible*.

KALOGEROPOULOU and 256 others - Germany and Greece (N° 59021/00)
Decision 12.12.2002 [Section I]

The application was introduced by 257 Greek nationals who are relatives of victims of the massacre by the Nazi occupation forces at Distomo in 1944. By decision of October 1997, a Greek regional court allowed the applicants' claim that Germany should be ordered to pay them various sums by way of compensation for the pecuniary and non-pecuniary damage sustained. When that decision became final, the applicants initiated the procedure provided for in the Greek Code of Civil Procedure to recover the amounts owed and served a copy of the decision delivered in their favour on the German authorities, together with a demand for payment of the amounts due. Germany refused to comply with the decision and the applicants stated their desire to seize certain German property in Greece. They applied to the Greek Minister of Justice for prior authorisation to enforce the decision against the German State, which is a mandatory requirement before a decision against a foreign State can be enforced. Although the Minister refused to give his consent, the applicants undertook enforcement proceedings. The German State opposed the enforcement and applied for suspension of the procedure. The Athens Court of First Instance stayed the enforcement procedure but then eventually dismissed the objection. However, the Athens Court of Appeal upheld the objection by the German State. The applicants appealed on a point of law, but without success. The case was examined by the Full Court of the Court of Cassation, the president of which had previously considered the case in the course of the action for damages.
Inadmissible under Article 6(1) (access to a tribunal/complaint directed against Greece): the refusal by the Greek State to allow the applicants to enforce the decision which they had been given awarding them damages against their opponent constitutes a restriction on their right of access to a tribunal. Grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of observing international law in the interests of courtesy and good relations between States through respect for another State's sovereignty. As regards proportionality, the Convention must be interpreted in such a way as to reconcile it with the other rules of international law of which it forms an integral part, including those relating to the immunity granted to States. Accordingly, measures taken by a High Contracting Party which reflect generally recognised rules of international law on State immunity cannot be generally regarded as a disproportionate restriction on the right of access to a tribunal such as that laid

down in Article 6(1). Thus, the fact that the Greek courts ordered the German State to pay damages to the applicants does not necessarily entail that the Greek State is required to ensure that the applicants can recover their debt by means of an enforcement procedure on Greek soil. Furthermore, the Greek Government cannot be required to infringe against its will the rule on State immunity. Accordingly, the refusal by the Greek Minister of Justice to authorise the applicants to seize certain German assets in Greece cannot be construed as an unjustified restriction of the applicants' right of access to a tribunal: manifestly ill-founded.

Inadmissible under Article 1 of Protocol No. 1 (complaint directed against Greece): the applicants obtained a final claim against the German State, which constitutes an "asset". The fact that they are at present unable to obtain payment of the sums due constitutes an interference with their right to the peaceable enjoyment of their assets. This interference was provided for by law. The refusal to authorise the seizure of certain German property in Greece was "in the public interest", namely that of avoiding disruption of relations between Greece and Germany. The Greek Government cannot be required to infringe against its will the principle of State immunity and to jeopardise its good international relations in order to allow the applicants to enforce a judicial decision delivered following civil proceedings. In having recourse to the enforcement procedure, the applicants must have been fully aware that in the absence of the prior consent of the Minister of Justice their action would very probably fail; the situation cannot therefore have reasonably led them to entertain a justified hope that they would be able to obtain payment of their claim. Last, the applicants have not lost their claim against the German State; it cannot be ruled out that enforcement will take place at some future time. The courts' refusal to authorise the enforcement procedure did not therefore upset the balance which must exist between the rights of individuals and the general interest: manifestly ill-founded.

Application inadmissible in so far as it is directed against Germany: it is necessary to determine whether the procedure at issue is imputable to Germany despite not taking place on German territory. Under public international law, a State's jurisdiction is principally territorial. Only exceptionally does the Court accept that a contracting State has engaged in extraterritorial exercise of its jurisdiction. It has held that a State's participation as respondent in proceedings brought against it in another State does not in itself entail extraterritorial exercise of its jurisdiction. In this case, the proceedings took place exclusively on Greek soil and the Greek courts were the only ones to exercise sovereign power *vis-à-vis* the applicants; the German courts therefore had no power of control whatsoever, either direct or indirect, over the decisions and judgments delivered by Greece. Furthermore, the fact that the German Government raised before the Greek courts an objection based on its sovereign immunity in proceedings instigated by the applicants does not suffice to bring the applicants within Germany's jurisdiction for purposes of Article 1 of the Convention. Accordingly, the refusal to authorise enforcement cannot be imputed to Germany: that State was the applicants' opponent in a civil matter examined by the Greek courts; as party to the proceedings it was akin to a private individual. The applicants have therefore failed to show that they can be regarded as coming "within the jurisdiction" of the German State by virtue of the proceedings at issue: incompatibility with the provisions of the Convention.

Inadmissible under Article 6(1) (impartial tribunal): there is no evidence before the Court to support the applicants' allegations regarding lack of impartiality on the part of the president of the Court of Cassation, which they base on mere speculation. The applicants' fears as regards the participation of the president of the Court of Cassation in both the proceedings for damages and the enforcement proceedings are not objectively justified: the mere fact of his having to preside, in his capacity as president of the Court of Cassation, during the proceedings on the merits and then during the enforcement proceedings did not make the court less impartial, particularly as, although the two matters with which the Court of Cassation dealt had a common material core, they were none the less quite different: civil proceedings for damages and enforcement proceedings. Furthermore, the case was never dealt with by the president alone, but by the plenary formation of the Court of Cassation: manifestly ill-founded.

ACCESS TO COURT
Conditions of admissibility of appeal on points of law by civil party to criminal proceedings in absence of appeal by prosecution: *no violation*.

BERGER - France (N° 48221/99)
Judgment 3.12.2002 [Section II]

Facts: The applicant lodged a complaint, together with a claim for civil damages, for fraud, theft and fraudulent breach of trust. The investigating judge made an order terminating the proceedings, in the absence of criminal classifications of the facts reported. The Indictments Chamber of the Court of Appeal upheld the order. The applicant, represented by counsel, appealed on a point of law. The two parts of the judge-rapporteur's report (the first containing an account of the facts, the procedure and the grounds of the appeal on a point of law and the second a legal analysis of the case and an opinion on the merits of the appeal) were transmitted to the *avocat général* before the hearing. The applicant was not given a copy of the *avocat général*'s submissions. The Court of Cassation declared the appeal inadmissible.
Law: Article 6(1) (access to a tribunal) – As the prosecution did not appeal on a point of law, the applicant had to show that the judgment under appeal corresponded to one of the seven cases provided for in Article 575 of the Code of Criminal Procedure. The applicant's appeal was declared inadmissible on the ground that the pleas put forward did not correspond with any of the cases set out in that article. From that article it was possible for the applicant to be aware of her obligations when lodging the appeal and it was therefore possible for her to foresee that the appeal would be declared inadmissible. An appeal on a point of law is a special remedy. Although the admissibility of an appeal by a party claiming civil damages depends - except in a number of cases listed restrictively - on an appeal being lodged by the prosecution, that restriction results from the nature of the judgments delivered by the Indictments Chambers and from the role accorded to civil actions within criminal trials. The civil party cannot have an unlimited right to appeal on a point of law against judgments terminating the proceedings. In addition, the proceedings before the Court of Cassation followed an examination of the applicant's case by the investigating judge and then by the Indictments Chamber. Further, while declaring the applicant's appeal on a point of law inadmissible, the Court of Cassation examined it in order to ensure that the contested decision was lawful. Last, the applicant had the possibility of bringing proceedings in the civil courts against the company against which she had lodged the complaint, a remedy which she used. In conclusion, she did not suffer any impediment to her right of access to a court, as guaranteed by Article 6(1), as a result of the conditions governing the admissibility of her appeal on a point of law.
Conclusion : no violation (unanimously).
Article 6(1) (failure to communicate the two parts of the judge-rapporteur's report to the applicant's counsel) – The principles of adversarial proceedings and of equality of arms were thus not observed, because the two parts of the judge-rapporteur's report were not communicated to the applicant's counsel before the hearing, whereas the entire file was communicated to the *avocat général*.
Conclusion : violation (unanimously).
Article 41 – The Court awards the sum of € 300 in respect of costs and expenses.

FAIR HEARING
Failure to notify party of appeal against cost order: *communicated*.

LAMPRECHT - Austria (Nº 71888/01)
[Section III]

The applicant introduced proceedings for the preservation of evidence (*Beweissicherungs-verfahren*) against a building company. In February 2000 the District Court ordered the applicant to pay part of the defendant's costs relating to the preservation of evidence (ATS 7,416.96). The defendant appealed against the costs order (*Kostenrekurs*). This appeal was not transmitted to the applicant. In December 2000 the Regional Court, sitting *in camera*, partly granted the defendant's appeal and ordered the applicant to pay to the company a total of ATS 8,459.64.
Communicated under Article 6(1).

IMPARTIAL TRIBUNAL
Statement by association of judges about a matter subsequently decided by some of its members sitting in the Council of State: *inadmissible*.

SOFIANOPOULOS, SPAÏDIOTIS, METALLINOS and KONTOGIANNIS - Greece
(N^{os} 1988/02, 1997/02 and 1977/02)
Decision 12.12.2002 [Section I]
(see Article 9, below).

IMPARTIAL TRIBUNAL
Participation of the president of the Court of Cassation enforcement proceedings after previous involvement in damages action: *inadmissible*.

KALOGEROPOULOU and 256 others - Germany and Greece (N° 59021/00)
Decision 12.12.2002 [Section I]
(see above).

Article 6(1) [criminal]

APPLICABILITY
Relief granted in the course of tax proceedings from penalties imposed for bad faith: *Article 6 not applicable*.

MIEG DE BOOFZHEIM - France (N° 52938/99)
Decision 3.12.2002 [Section II]

In the context of revised tax assessments, the applicants were required to pay arrears of income tax, plus interest, and also a penalty of 40% for bad faith. They lodged a complaint and in January 1995 brought proceedings before the Administrative Court, seeking to have the additional income tax and the associated penalties annulled. By decision of June 1995 of the Director of Fiscal Services, the applicants were granted exemption from interest and penalties. In 1996 and 1997, the authorities ordered exemption from the penalties initially applied in respect of bad faith on the amounts still in issue and a further exemption from

penalties. The administrative court reached a decision in May 2000. Before the Court, the applicants complained of the length of the proceedings.
Article 6(1): the revised tax assessments made in respect of the applicants were accompanied by penalties for bad faith having a criminal character for the purposes of Article 1. However, that "criminal aspect" did not affect the proceedings taken as a whole, since the applicants subsequently obtained exemptions recognising their good faith, the most significant of which was granted almost six months after the application initiating the proceedings before the administrative court. These exemptions were of such a kind as to render the criminal aspect of Article 6(1) inapplicable. Since the dispute was not criminal in nature and tax proceedings do not fall within the scope of civil rights and obligations, as held in *Ferranzi v. Italy* (ECHR 2001-VII), Article 6(1) of the Convention is not applicable in this case: incompatibility *ratione materiae*.

FAIR HEARING
Effect of press campaign on judges in trial of politician: *no violation*.

CRAXI - Italy (N° 34896/97)
Judgment 5.12.2002 [Section I]
(see Article 6(3)(d), below).

FAIR HEARING
Refusal to allow plea of defence of reasonable conduct, on account of breach of injunction: *inadmissible*.

SELVANAYAGAM - United Kingdom (Nº 57981/00)
Decision 12.12.2002 [Section III]

Facts: The applicant was a participant in peaceful protests outside a mink farm. In September 1997, the High Court granted an injunction to the farm owners, prior to the issue of civil proceedings and in the absence of the applicant, restraining the applicant from harassing them by, *inter alia*, communicating with them or approaching the farm. The injunction order specifically informed the applicant that she could apply to the High Court at any time to vary or discharge the order. The applicant states that she served in time her defence and a notice of application to have the injunction varied or discharged on both the High Court and the farm owners' solicitors. However, no listing or hearing of her application had taken place prior to the applicant's arrest for the offence of harassment in March 1998. Subsequent enquiries revealed that the High Court was not in possession of the application filed by the applicant. In March 1998, the applicant was arrested and charged with the criminal offence of harassment under the Protection from Harassment Act 1997. At her trial, the magistrate found as a fact that the applicant had requested the removal of the injunction and was still awaiting an opportunity to challenge the injunction by the time of her trial. The applicant's conduct was found to be reasonable within the meaning of the Act and she was acquitted on that basis. The prosecution appealed to the Divisional Court, which held that behaviour which breached an injunction could not be considered reasonable for the purpose of the 1997 Act. Leave to appeal was refused. The applicant was advised by counsel that there was no prospect of the House of Lords allowing a petition of appeal and did not pursue the matter. In September 1999, following the Divisional Court's direction to the Magistrates' Court that it was to proceed in the light of its judgment, the applicant was convicted by the magistrate. A restraining order was imposed, which ordered her, *inter alia*, not to communicate with, harass or interfere with the farm owners or their staff or customers. The applicant sought leave to appeal, which was refused by the Crown Court as she was out of time. She succeeded in obtaining judicial review of this decision and was granted permission to appeal against her conviction on the basis that her defence had not been fully considered. She had sought to rely

on another ground permitted under the 1997 Act, namely that her actions were for the purpose of preventing or detecting crime. Arrangements were made to hear her appeal in the Crown Court in July 2001, but the applicant decided at the end of June to abandon the appeal for medical reasons.

Inadmissible under Article 6(1): The applicant's complaint related not to the granting of the injunction against her in 1997 but to its effect on her in subsequent criminal proceedings. The Court observed that the applicant chose to continue to engage in acts that were specifically prohibited in the injunction although she knew that she had never obtained any variation or discharge of its terms. Had her application to vary or discharge the injunction been heard in the High Court, it would have been open to her to argue that her behaviour was reasonable as this defence applied to both criminal and civil proceedings. Had she succeeded at this stage, criminal proceedings would never have come about. Alternatively, she could have continued her protests in a manner that was not incompatible with the injunction. The applicant had not done all that a reasonable person would have done to seek to have the injunction varied or discharged. She had merely filed her application with the High Court and there was no evidence to indicate that she had made any further enquiry about it. Her contention that, had there been a hearing before the High Court, she may not have been able to call oral testimony was no more than speculation. Moreover, at her trial, which had been in accordance with the requirements of Article 6, the prosecution had had to prove beyond reasonable doubt that the offence of harassment had been committed and that the applicant's behaviour breached the injunction. Accordingly, the Divisional Court's ruling that the defence of reasonable conduct was not open to her in circumstances where she had breached an injunction did not cause her to suffer any procedural unfairness: *manifestly ill-founded.*

Inadmissible under Article 6(2): The applicant had been presumed innocent until the prosecution proved beyond reasonable doubt that she had committed the offence of harassment. The Court stressed the importance of compliance with properly obtained injunctions. It had been open to the applicant to challenge the injunction before the High Court. Any presumption of law that arose out of the Divisional Court's ruling regarding the defence of reasonable conduct was within reasonable limits, took account of the importance of what was at stake and maintained the rights of the defence: *manifestly ill-founded.*

Inadmissible under Article 6(3)(d): On foot of the Divisional Court ruling that the defence of reasonable conduct was not open to the applicant, the trial court was entitled to treat any evidence relating to this defence as irrelevant: *manifestly ill-founded.*

Inadmissible under Articles 10 and 11: There was an interference with the applicant's freedom of expression and freedom of assembly, which was prescribed by law and pursued a legitimate aim. The interference was also necessary in a democratic society and not disproportionate. The applicant had knowingly breached a properly obtained injunction instead of challenging it before the High Court. She had offered no excuse to the national courts for breaching the injunction: *manifestly ill-founded.*

ADVERSARIAL PROCEDURE

Non-disclosure to party's lawyer of report of judge rapporteur at the Court of Cassation: *violation*.

BERGER - France (N° 48221/99)
Judgment 3.12.2002 [Section II]
(see above).

COMPETENT COURT
Imposition of additional days of detention by prison governor on account of failure to provide urine sample: *communicated*.

YOUNG - United Kingdom (Nº 60682/00)
[Section IV]

The applicant, who suffers from cerebral palsy, was sentenced to six months' imprisonment in 1999. The physical consequences of her condition include an inability to walk more than a few steps, leaving her largely confined to a wheelchair, and lack of control over her bladder. In addition, her ability to process information is diminished. In January 2000, the applicant was requested to provide a urine sample immediately to the prison authorities for the purpose of mandatory drug testing. She indicated that she was unable to comply with the request straightaway. She declined the offer of a cup of water since the difficulty lay not in the volume of urine she could produce but in the lack of motor control over her bladder. She was taken to her cell and a female prison officer waited there with her for the sample. When none was forthcoming, the prison officer indicated that this would be treated as a refusal and could result in additional days of detention. It is not clear whether the applicant explained to the prison officers the reason for her failure to provide a urine sample. Although the prison service was aware of her condition, the applicant did not volunteer information regarding her lack of bladder control, being too embarrassed to do so. Her embarrassment was compounded by the fact that, on that day, she was menstruating. In the days that followed, the applicant was brought before the prison governor on two occasions. He found that she had disobeyed a lawful order and sentenced her to 14 days' additional detention. She indicates that the governor did not consider her disability. The applicant then made her case more fully in writing, explaining her physical difficulties and indicating her distress at having her bodily functions discussed publicly. The governor reduced the sanction to three days' additional detention. The applicant's lawyers made representations on her behalf to the prison area manager, who responded that he considered the governor's decision was correct and that due allowance had been made for the applicant's disability by reducing the sentence. The applicant's release date was accordingly deferred by three days to Friday 26 January 2000. However, due to internal administrative reasons, she was not in fact released until the following Monday morning.
Communicated under Articles 3, 5, 6, 8, 13 and 14.

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Holding of hearings in different proceedings close together: *no violation*.

CRAXI - Italy (N° 34896/97)
Judgment 5.12.2002 [Section I]
(see Article 6(3)(d), below).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Impossibility of examining prosecution witnesses who had died or had invoked their right to remain silent: *violation*.

CRAXI - Italy (N° 34896/97)
Judgment 5.12.2002 [Section I]

Facts: Numerous criminal proceedings were initiated against the applicant for breach of the legislation on the financing of political parties. They were widely covered by the media. The present judgment concerns one set of criminal proceedings initiated against the applicant for corruption in the *Eni-Sai* case. While that case was being investigated, certain of the applicant's co-accused were questioned. In January 1994, the applicant and nine other persons were sent for trial before the Milan District Court. Between April and December 1994, fifty-five hearings were held. At the hearings, the court granted leave to read out the incriminating statements made to the prosecution during the investigation by a co-accused who had committed suicide four days after making them. Three of the applicant's other co-accused relied on their right to remain silent and the court allowed the statements which they had made during the preliminary investigation to be read out. These statements, which tended to incriminate the applicant, were subsequently placed in the case-file and used in deciding the merits of the charge against the applicant. The record of the examination of another accused in related proceedings, Mr Battaglia, was placed in the case-file since, in spite of searches carried out in Italy and Switzerland, Mr Battaglia could not be traced. By judgment of December 1994, the Milan District Court sentenced the applicant (who in the meantime had settled in Tunisia) *in absentia* to a term of imprisonment of five years and six months. The Court of Appeal upheld the judgment at first instance in respect of the applicant. The Court of Cassation dismissed the applicant's appeal on a point of law.
Law: Articles 6(1) and 6(3)(b) – At first instance, the applicant's lawyers were required to take part in a very large number of hearings within a short time. However, there is nothing in the case-file to indicate that the defence which they provided was wanting or in any way ineffective. On the contrary, the witnesses for the prosecution who agreed to give evidence were cross-examined at the public hearings by the applicant's lawyers, who, moreover, at the various stages of the proceedings, submitted arguments based on fact and on law to challenge the credibility of the prosecution witnesses. Nor have the applicant's lawyers provided the Court with any proper explanation why they failed at the appropriate time to draw the national authorities' attention to the difficulties which they encountered in preparing the defence. Furthermore, as regards the proceedings on appeal, the applicant's lawyers have not indicated that the dates of the hearings were so very close together as possibly to have an adverse effect on the rights of the defence.
Conclusion: no violation (unanimously).
Articles 6(1) and 6(3)(d) – a. Mr Battaglia's statements did not form part of the basis on which the applicant was convicted and, accordingly, the fact that he could not be produced in court did not infringe the applicant's right to examine or have examined the witnesses for the prosecution. Furthermore, in so far as the applicant claims that Mr Battaglia was a witness for the defence, he has not shown that the production of that witness was necessary to establish the truth or that the refusal to examine him infringed the rights of the defence. The Court was not therefore required to adjudicate on whether it was in fact impossible to find Mr Battaglia or whether he could easily have been found.
b. As regards the impossibility of cross-examining certain of the applicant's co-accused who had made statements during the investigation, the law of the respondent State allowed the court, in deciding the merits of the charges, to use statements made before the hearing by co-

accused who now relied on the right to remain silent or by persons who had died before they could give evidence. However, that fact cannot deprive the accused of his right under Article 6(3)(d) to examine or have examined any substantial incriminating evidence. The national courts convicted the applicant on the sole basis of the statements made before the trial by co-accused who refused to give evidence and by a person who had subsequently died. Neither the applicant nor his legal representative had an opportunity at any stage in the proceedings to examine those persons who, having made statements used as evidence by the Italian courts, had to be regarded as "witnesses" for the purposes of Article 6(3)(d) of the Convention. The applicant was therefore not given a proper and sufficient opportunity to challenge the statements forming the legal basis of his conviction.

c. During the hearings before the Milan District Court, the applicant's lawyers did not raise any objections as to the illegality or inappropriateness of placing statements in the case-file which had been made by other accused whom they had been unable to examine. However, those statements were placed in the case-file in accordance with the relevant domestic law, which required the court to order the statements in question to be read out and placed in the case-file when they could not be repeated or when the person who had made the statement exercised the right to remain silent. Accordingly, any objection which the applicant might have made would have had little prospect of success and the fact that no formal objection was made during the hearing before the court cannot be interpreted as a tacit waiver of the right to examine or have examined the witnesses against the applicant. That conclusion finds further support in the fact that the applicant complained in his appeal and in his appeal on a point of law of the use of statements by persons to whom he had not had the opportunity to put questions, thus demonstrating his desire to assert, at domestic level, the right recognised by Article (3)(d) of the Convention.

Conclusion : violation (unanimously).

Article 6 (fair hearing) – It is inevitable in a democratic society that the press should express what are sometimes harsh comments on a sensitive case which, like the applicant's, called in question the morality of senior officials and the relations between politics and business. Furthermore, the courts dealing with the matter were composed entirely of professional judges, who, unlike the members of a jury, have the experience and training to disregard any suggestion extraneous to the proceedings. In addition, the applicant's conviction was pronounced after adversarial procedure. The Court has, it is true, found that that procedure entailed a violation of Article 6(1) and (3)(d) of the Convention; however, in the present case such a breach of the requirements of a fair trial was due to the courts' applying legislative provisions of general scope applicable to all those appearing before them. There is nothing in the case-file to indicate that, in interpreting national law or in assessing the parties' arguments and the evidence against the applicant, the judges who adjudicated on the merits were influenced by what was said in the press. Nor has the applicant adduced any evidence implicating the prosecution officials or suggesting that they neglected their duty with the purpose of harming the applicant's public image.

Conclusion : no violation (unanimously).

Article 41 – The Court considers that the finding of a violation constitutes in itself adequate just satisfaction for any pecuniary or non-pecuniary damage suffered by the applicant.

ARTICLE 7

HEAVIER PENALTY
Imposition of custodial sentence on youth having reached the age of 15 between time of offence and conviction: *inadmissible*.

TAYLOR - United Kingdom (Nº 48864/99)
Decision 3.12.2002 [Section III]

The applicant and another youth were arrested in March 1997 in connection with a violent assault on a boy aged 11 and the theft of a ring. At that time, the applicant was aged 14 years and 24 days. In April 1997, the applicant was charged with robbery. The first hearing took place before the Youth Court in May 1997. In July 1997, the prosecution decided to press the lesser charges of theft and occasioning actual bodily harm instead. The applicant pleaded not guilty. The trial was scheduled to take place in November 1997, but the applicant failed to show up on the first day, having made a mistake as to the date. In consequence, the trial was rescheduled for the next available dates, which were in March 1998, by which time the applicant had just turned 15. The Youth Court convicted the applicant and committed him to the Crown Court for sentencing, since it lacked the power to impose a sentence appropriate to the severity of the crime. The applicant was subsequently sentenced, in August 1998, to 18 months' detention in a Young Offenders' institution. He appealed to the Court of Appeal, arguing unsuccessfully that the sentence was unlawful since he was 14 at the date of the commission of the offences of which he was convicted and for that reason a custodial sentence could not be imposed.
Inadmissible under Article 7: The relevant statutory provisions at the time were clear both as regards the offences and the sentencing powers of the courts with respect to young offenders. Long before the offences were committed, the domestic courts had established that the age for determining sentence was the age at the date of conviction. The applicant therefore could not complain that a heavier penalty was imposed on him than the one applicable at the date of commission of the offence. Moreover, it was for the applicant's lawyers to advise him on the relevant domestic case-law. There was no guarantee that the proceedings would be completed before the applicant's 15th birthday. The applicant had no legitimate expectation that, in the event of conviction, he would be exempt from a custodial sentence and there was no indication that the prosecution has deliberately delayed the proceedings so as to secure his conviction after the applicant had turned 15: *manifestly ill-founded*.
Inadmissible under Article 6(1): As to the length of the proceedings, the relevant period was from the date the offence was committed to the date of sentence. The case was not complex, but neither the prosecution nor the courts were responsible for any unnecessary delay in the proceedings. Indeed, both wished to proceed with the trial in November 1997. They were prevented from doing so by the applicant's mistake as to the date initially fixed for the trial. Although this error might be attributable to the applicant's youth, it engaged his and his lawyer's responsibility for the fact that the trial had to be adjourned until after his 15th birthday: *manifestly ill-founded*.

ARTICLE 8

PRIVATE LIFE
Obligation of prisoner to provide urine sample: *communicated*.

YOUNG - United Kingdom (Nº 60682/00)
[Section IV]

FAMILY LIFE
Making of provisional care order without providing parents with opportunity to contest: *violation*.

VENEMA - Netherlands (Nº 35731/97)
Judgment 17.12.2002 [Section II]

Facts: In July and August 1994 the third applicant, K. (the daughter of the first two applicants), was hospitalised twice. Nothing physically wrong was found but doctors suspected that her mother might be suffering from Münchhausen syndrome by proxy, a psychological condition in which a parent seeks superfluous medical assistance for a child and may even cause the symptoms of a disease, thus putting the child at risk. The doctors informed the Child Welfare Board but did not act on the Board's advice to discuss their concerns with the parents. In December 1994, after K. had again been hospitalised, it was decided that a report should be submitted to the Board by the hospital and a children's psychiatric clinic. The applicants were not involved or informed. The report expressed the view that K.'s life at risk and that it was not possible to discuss this with the parents, who might react in an unpredictable way. On 4 January 1995 the Juvenile Judge, on the application of the Child Welfare Board and without hearing the applicants, issued a provisional supervision order. The parents claim that they only learned of this order on 6 January when they went to the hospital to take K. home. On the same day, the judge ordered that K. be taken to an undisclosed foster home. On 10 January, after hearing the parents, the judge extended the provisional order pending two further psychiatric reports. The first report concluded that there was no evidence of risk to K. Nevertheless, the parents' appeal against the placement order was dismissed by the Court of Appeal on 15 March and the Juvenile Judge subsequently decided to prolong the placement. The second psychiatric report, submitted on 19 May, concluded without reservation that K. should be returned to her parents and the judge consequently rescinded the provisional supervision order and the placement order.
Law: Article 8 – It was not disputed that the separation of K. from her parents constituted an interference with the right to respect for family life or that the interference was in accordance with the law and pursued the legitimate aim of protecting her rights. As to the necessity of the measures, the essence of the applicants' complaints was that they had at no stage prior to the making of the provisional supervision order been consulted or given an opportunity to contest the reliability, relevance and sufficiency of the information on which it was based. The Court accepted that when urgent action to protect a child is required it is not always possible to involve parents in the decision-making process and it may not even be desirable if they are seen as the source of an immediate threat. However, in the present case the Child Welfare Board's advice to the doctors to discuss their concerns with the parents was not followed and the decision to issue a provisional supervision order was based on the report obtained from the hospital and the clinic. At no stage were the applicants asked to comment on the concerns about them or in any other way involved in the proceedings. It had not been satisfactorily explained why the doctors or the Board could not have made arrangements to discuss the

concerns with the applicants and give them an opportunity to dispel them. The possibility of an unpredictable reaction was not sufficient to exclude the applicants from a procedure which was of immense importance to them, in particular as K. was safe in hospital immediately before the provisional order was made. The parents were able to express their views only six days after that order was made and four days after K. had been placed in a foster home. These were measures which were difficult to redress and it was crucial for the parents to be able to put forward their point of view at some stage before the making of the provisional order. They had thus been denied the requisite protection of their interests.
Conclusion: violation (unanimously).
Article 6(1) – The applicants' complaints under this provision largely coincided with their complaints under Article 8.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court awarded the applicants 15,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

FAMILY LIFE
Restrictions on family visits to detainee: *violation*.

NOWICKA - Poland (Nº 30218/96)
Judgment 3.12.2002 [Section II]
(see Article 5(1)(b), above).

ARTICLE 9

FREEDOM OF RELIGION
Placement under the administration of a trust, following the reunification of Germany, of a gift made to a religious association: *inadmissible*.

ISLAMISCHE RELIGIONSGEMEINSCHAFT e.V.- Germany (N° 53871/00)
Decision 5.12.2002 [Section III]
(see Article 1 of Protocol No. 1, below).

MANIFEST RELIGION
Dropping of mention of religion on identity cards: *inadmissible*.

SOFIANOPOULOS, SPAÏDIOTIS, METALLINOS and KONTOGIANNIS - Greece
(N^{os} 1988/02, 1997/02 and 1977/02)
Decision 12.12.2002 [Section I]

In order to facilitate identity checks, Greek legislation had made it compulsory for identity cards to indicate the holder's religion. In a decision of May 2000, the Personal Data Protection Authority held that, for the purpose of checking identity, it was unnecessary for identity cards to contain certain information, including details of holders' religion. An association, the Society of Judges for Democracy and Freedom, stated in the press that "even the optional mention of religion on identity cards is contrary to the fundamental provisions of the Constitution, which guarantee religious freedom". By a joint decision of July 2000, the Minister of the Economy and the Minister of Public Order defined the new identity card of Greek citizens and the information to be stated thereon, which no longer included religion. The applicants brought an action before the Council of State for annulment of that decision. They requested that those of the judges who, as members of the Society of Judges for Democracy and Freedom, had expressed their views in public about specification of religion

on the identity card should withdraw from the case. Nine judges stated that the belonged to the association. The Council of State, in a plenary sitting, dismissed the applicants' application that those judges withdraw but decided that the president of the association, who was a member of the Council of State, should take no part in the hearing. As to the substance of the case, the Council of State held that, whether optional or compulsory, specification of religion on the identity card infringed the right to freedom of religion guaranteed by the Constitution.

Inadmissible under Article 9: identity cards cannot be regarded as a means of securing the right of members of a religion or faith to practise or manifest that religion or faith. When a State chooses to introduce a system of identity cards, these are merely official documents identifying and distinguishing the individual in his or her capacity as a citizen and in relation to the national legal order. Religious conviction is not a datum relevant to the individual citizen's dealings with the State. Furthermore, an identity card is an official document whose content cannot be determined according to the individual's wishes. The fact that Orthodoxy is the predominant religion in Greece and that official ceremonies contain an element of religious ceremony cannot justify specifying religion on identity cards. The purpose of an identity card is in any case neither to reinforce the bearer's religious beliefs nor to reflect the religion of a given society at a given time. Accordingly, there has been no breach of the applicants' right to manifest their religion: manifestly ill-founded.

Inadmissible under Article 6(1) (impartial tribunal): the statement in the press of which the applicants complain was made by an association made up of a large number of judges from all the courts. The members of the Council of State challenged by the applicants had not expressed individual views on the question of the inclusion of religion on identity cards. The statement in issue had been published during the judicial vacation and the judges concerned had not had any prior knowledge of it. For the Council of State to grant the application that they withdraw from the case would have been to give a degree of priority to formal considerations which not only could not be justified in the circumstances of the present case but which would also have paralysed the system, since the case had to be resolved by the plenary formation of the Council of State. In addition, the Council of State granted the application that the member of the Council of State who was at the same time president of the association should stand down: manifestly ill-founded.

ARTICLE 10

FREEDOM TO IMPART INFORMATION

Conviction for infringement of privacy of parliamentarian by publishing information on spouse's conviction for public order offences: *communicated*.

KARHUVAARA and ILTALEHTI - Finland (Nº 53678/00)
[Section IV]

The first applicant is the editor-in-chief of the second applicant, a publishing company in Helsinki. In October 1996, the company's newspaper, which has a circulation of around 120,000 copies, reported on the trial of a lawyer on charges of being drunk and disorderly and assaulting a police officer. Two further articles were published in November and December 1996 reporting the verdict and sentence. The information that the person convicted was the husband of a Member of Parliament, Mrs. A., was included in the reports. Her husband's conviction was widely publicised and Mrs A. was the subject of a satirical television programme. She brought legal proceedings for libel and infringement of privacy and claimed non-pecuniary damages. She invoked Section 15 of the Parliament Act, which lays down special protection for Members of Parliament and parliamentary officials. Criminal offences against the persons so protected are considered to be in particularly aggravating

circumstances. Mrs A. argued that this provision should also apply to the calculation of damages. The applicants countered the case against them by arguing that they had merely stated that the person convicted was Mrs. A.'s husband, that the details of the case had already appeared in the local media and that a politician must tolerate greater media attention than an average citizen. The applicants were convicted of infringement of privacy in particularly aggravating circumstances and fined. They were also ordered to pay the amount of damages claimed by Mrs A. (29,400 EUR). The action for libel was dismissed. The court considered that the fact that the details of the case were known locally was irrelevant to the liability of the applicants. They had committed the offence by bringing the case to national attention. As for the amount of compensation, the court considered that, being a doctor, Mrs. A. had the expertise to assess the harm done to her by the reports. The applicants appealed unsuccessfully.
Communicated under Article 10.

FREEDOM OF EXPRESSION
Injunction restraining from demonstrating over animal welfare: *inadmissible*.

SELVANAYAGAM - United Kingdom (Nº 57981/00)
Decision 12.12.2002 [Section III]
(see Article 6(1), above).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Injunction restraining from demonstrating over animal welfare: *inadmissible*.

SELVANAYAGAM - United Kingdom (No. 57981/00)
Decision 12.12.2002 [Section III]
(see Article 6(1) [criminal], above).

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of constitutional appeal as remedy in respect of excessive length of pending civil proceedings: *communicated*.

SÜRMELI - Germany (N° 75529/01)
[Section III]

This case concerns civil proceedings in an action for damages brought by the applicant after an accident of which he was the victim. The proceedings have been pending before the Hanover regional court since 1989. In 1991, the court delivered an interim judgment in which it awarded the applicant damages for the consequences of the accident at the rate of 80%. This judgment was upheld by the Federal Court of Justice in December 1993. Since then, the proceedings have been pending before the court for determination of the quantum of damages. In 2001 and 2002, the constitutional appeals lodged by the applicant in respect of the length of the proceedings were dismissed, the first in a decision which did not state reasons.
Communicated under Articles 6(1) (reasonable time) and 13.

ARTICLE 35

ADMISSIBILITY
Late raising of inadmissibility: *estoppel*.

N.C. - Italy (Nº 24952/94)
Judgment 18.12.2002 [Grand Chamber]
(see Article 5(5), above).

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Ukraine)
Expiry of six month period notwithstanding recourse to new cassation procedure: *inadmissible*.

PRYSTAVSKA - Ukraine (Nº 21287/02)
Decision 17.12.2002 [Section II]

In December 1998, the applicant instituted legal proceedings in the District Court against the local accommodation office and the local authority seeking an order for repairs to her apartment. She also sought damages over her unsatisfactory living conditions. Her claims were allowed in part, but her claim for damages was rejected. She appealed to the Regional Court, which dismissed her appeal in March 2001. Following the enactment of the Law of 21 June 2001 on the Introduction of Changes to the Code of Civil Procedure, the applicant lodged a complaint with the Supreme Court on 16 July 2001. Her application was rejected by a panel of three judges in November 2001.
Inadmissible: The pursuit of inadequate or ineffective remedies will have consequences for determining the final decision for the purpose of applying the six-month rule. There was no reason to doubt that the new procedure established by the Law of 21 June 2001 was an effective remedy with regard to judgments handed down after its entry into force (29 June 2001). However, for previous judgments, the new procedure did not constitute a domestic remedy within the meaning of Article 35(1), since such judgments were *res judicata*. Therefore, an application to Supreme Court was akin to a request to re-open proceedings, a right not guaranteed by the Convention. In consequence, the six-month period began to run on the date of the decision of the Regional Court (March 2001) and the application, which was introduced in April 2002, was therefore out of time.

EFFECTIVE DOMESTIC REMEDY (Ukraine)
Failure to use new cassation remedy: *inadmissible.*

VOROBYEVA - Ukraine (Nº 27517/02)
Decision 17.12.2002 [Section II]

The applicant instituted civil proceedings against her former employer in May 2001 seeking reinstatement, unpaid wages and compensation. Her claims were upheld at first instance, but dismissed on appeal, in January 2002. The applicant did not appeal in cassation to the Supreme Court of Ukraine.

Inadmissible: The procedure established by the Law of 21 June 2001 on the Introduction of Changes to the Code of Civil Procedure, allowing for cassation appeals to the Supreme Court against decisions of courts of first instance and appellate courts, can be considered an effective domestic remedy. The applicant must have been aware of it, was entitled to use it and should have done so: non-exhaustion.

Article 35(3)

RATIONE TEMPORIS
Recourse to new cassation procedure not reviving impugned decision of 1986: *inadmissible*.

KOZAK - Ukraine (Nº 21291/02)
Decision 17.12.2002 [Section II]

In 1986, the applicant's local authority instituted proceedings for the withdrawal of the applicant's title to a plot of land and the house built upon it without authorisation. The District Court granted the order sought. In 1998, the applicant requested the Regional Court to initiate supervisory review proceedings and to seek annulment of the 1986 decision on the ground that she, as owner, had not participated in those proceedings. The applicant's request was rejected, leading her to request supervisory review of her case from the Supreme Court in February 1999. The following month, the Supreme Court ordered the Regional Court to review the applicant's complaints and to inform her of the outcome. This did not take place because the case-file had been destroyed. In February 2001, the applicant instituted proceedings in the District Court to have the case-file reconstructed. When this was done, she applied to the Regional Court to annul the 1986 decision. On 30 May 2001, the Regional Court rejected her application. In September 2001, the applicant lodged an application with the Supreme Court in accordance with the procedure established by the Law of 21 June 2001 on the Introduction of Changes to the Code of Civil Procedure. Her application was rejected by a panel of three judges in December 2001.
Inadmissible under Article 1 of Protocol No. 1: The applicant complains of events that took place more than 10 years before the Convention entered into force for Ukraine: incompatible *ratione temporis*.
Inadmissible under Article 6: As to the requests to have the 1986 decision reviewed, this was in effect a request to reopen proceedings, which is not a right guaranteed by the Convention: incompatible *ratione materiae*. As for the right to a court, the application to the Supreme Court in September 2001 and its rejection in December 2001 did not revive the 1986 decision: incompatible *ratione temporis*.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 45):

NERVA and others - United Kingdom (Nº 42295/98)
Judgment 24.9.2002 [Section II]

M.G. - United Kingdom (Nº 39393/98)
Judgment 24.9.2002 [Section II]

GRISEZ - Belgium (Nº 35776/97)
Judgment 26.9.2002 [Section I]

BENJAMIN and WILSON - United Kingdom (Nº 28212/95)
Judgment 26.9.2002 [Section III]

BECKER - Germany (Nº 45448/99)
Judgment 26.9.2002 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Absence of right to restitution of property in the GDR after reopening of the border: *no violation*.

WITTEK - Germany (N° 37290/97)
Judgment 12.12.2002 [Section III]

Facts: In 1986 the applicants bought a dwelling house in the German Democratic Republic (GDR); the house was on land belonging to the State in respect of which they obtained a usufruct. In October 1989, the applicants applied to leave the GDR and were told that to obtain permission to do so they would have to transfer their property by sale or gift. On 8 December 1989 (after the border between the two German States had been opened and before the date on which reunification became effective), the applicants officially made a gift and received from the donee an unofficial payment of 55,000 Deutsch Mark (DM). After the reunification of Germany, the applicants attempted to recover their house and their usufruct of the land. The civil courts dismissed their actions. Like the ordinary courts, the Federal Court of Justice held that both the gift and the sale were void. However, it stated that in cases such as this, where the applicants had concluded a fictitious gift in order to mitigate the obligation imposed on them to sell their property before leaving the GDR, it was the law of property that was to apply and the interpretation of that law was a matter for the administrative courts. The applicants lodged an administrative action under the law of property. The administrative court held that they were not entitled to restitution, in the absence of unfair conduct or fraud within the meaning of the law. After opening of the border on 9 November 1989, any citizen

of the GDR had been free to leave the country and under the order of 11 November 1989 on the regulation of property matters citizens were no longer required to transfer their property before leaving the GDR. The applicants had signed the contract of transfer on 8 December 1989. The actions which the applicants brought before the Federal Administrative Court of Justice and then the Federal Constitutional Court were unsuccessful.
Law: Article 1 of Protocol No. 1 – The applicants had a right of ownership in respect of their house, together with a right of personal usufruct over the land on which the house was built and which belonged to the State. The dispute must therefore be examined from the standpoint of their right to the peaceful enjoyment of their assets. The Federal Court of Justice held that the applicants' transfer of their property at the time of the GDR was void, but the applicants were subsequently unable to rely on a right to restitution before any of the courts seised of the matter. There was therefore an interference with the applicants' right to the peaceful enjoyment of their property. As to the legality of the interference, the measure in question was based on the provisions of the law of property, which are precise and accessible to all. Furthermore, the national courts established the criteria for applying the law to disputes about deprivation of property in the GDR and their interpretation was not arbitrary. As regards the purpose of the interference, the law in question, which was intended to regulate property disputes following German reunification by striking a socially acceptable balance between the conflicting interests, pursued an aim in the general interest. As to the proportionality of the measure, the administrative court's analysis which led it to conclude, in the absence of either compulsion or fraud, that there had not been any fraudulent manoeuvres within the meaning of the abovementioned law appears well founded, even though one might take the view that the period between opening up the border between the two German States and the entry into force of German reunification was marked by great uncertainty, particularly at the legal level. Independently of that aspect, in law the applicants had only a right of usufruct over their land; even if they had moved elsewhere in the GDR, they would therefore have been unable to keep their property. Also decisive is the fact that the applicants had acquired the house in 1986 against payment of the sum of 56,000 GDR Marks; however, when the fictitious gift was made in December 1989, the acquirers paid them a sum which, at the rate then in force for transactions between private persons, was equivalent to 220,000 GDR Marks. Accordingly, even if the value of the asset subsequently appreciated, the applicants did not have to bear a "disproportionate burden". Having regard in particular to the exceptional circumstances associated with German reunification, the State did not exceed its margin of appreciation and did not fail to strike a "just balance" between the applicants' interests and the general interest of German society.
Conclusion: no violation (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal to autorise enforcement proceedings against a foreign State with a view to recovering a debt recognised by the courts: *inadmissible*.

KALOGEROPOULOU and 256 others - Germany and Greece (N° 59021/00)
Decision 12.12.2002 [Section I]
(see Article 6(1) [civil], above).

CONTROL THE USE OF PROPERTY
Placement under the administration of a trust, after reunification, of a gift made by a political party in the GDR: *inadmissible*.

ISLAMISCHE RELIGIONSGEMEINSCHAFT e.V.- Germany (N° 53871/00)
Decision 5.12.2002 [Section III]

The applicant is a religious association formed in the German Democratic Republic (GDR) in February 1990. In June 1990, it received a gift of 75 million GDR Marks from the Democratic Socialism Party (DSP). After reunification, the independent commission for the investigation of the assets of parties and mass organisations in the GDR found that the gift in question constituted an asset covered by the law on parties in the version of 31 May 1990 and for that reason came under the Trustee Agency (Treuhandanstalt). In 1992, the Federal Office for Special Tasks connected with German reunification decided that, under that act, the applicant could use the sum in question, which was in its bank account, only with the Agency's consent. The applicant brought proceedings against that decision. The Berlin Administrative Court annulled the contested decision on the ground that it had no legal basis. The judgment was upheld by the Berlin Administrative Court of Appeal. However, the Federal Administrative Court allowed the appeal by the Federal Office and set aside the judgment of the Administrative Court of Appeal, taking the view that the Federal Office's decision was valid. The Constitutional Court refused to examine the applicant's appeal.
Inadmissible under Article 1 of Protocol No. 1: placing under the Trustee Agency the gift which the applicant had received from the SDP constituted an interference in the enjoyment of its right to the peaceful enjoyment of its possessions. The seizure of the applicant's assets did indeed entail a deprivation of property, but this deprivation fell within the general regulations introduced in the GDR during the period preceding reunification in order to ascertain the source of assets belonging to political parties and related organisations. The interference in issue may therefore be treated as a measure regulating the use of assets. The interference was based on the GDR law on parties, which entered into force on 1 June 1990. The Federal Administrative Court's interpretation of that law in the present case was not arbitrary. The interference pursued an aim in the general interest, namely verification, by the legislature in the GDR after the democratic elections and by the courts of the FGR after reunification, of the origin of political parties' assets and their placement where appropriate under the Trustee Agency. As regards proportionality, the Federal Administrative Court's reasoning concerning the sovereign powers conferred on the Trustee Agency in the light of the GDR law on parties appears to be well founded. The aim of the law was to ensure that political-party assets of questionable origin were not wasted but entrusted to the Agency so that they could be restored to those formerly entitled to them for the purpose of reparation or – should that prove impossible – to be used for purposes in the public interest. Having regard, in particular, to the exceptional circumstances associated with German reunification, the State did not exceed its margin of appreciation and did not fail to strike a "fair balance" between the applicants' interest and the general interest of German society: manifestly ill-founded.
Inadmissible under Article 9: the decision in issue came within the general regulations introduced in the GDR during the period preceding reunification in order to verify the origin of assets belonging to political parties and related organisations, irrespective of who the recipients of those funds might be. In the absence of a deliberate intention to interfere with the applicant's religious activities, it is doubtful that that decision constitutes an "interference" with the exercise of religion. In any event, the decision in issue was prescribed by law (the GDR law on parties), it pursued the legitimate aims of protecting public morals and the rights and freedoms of others and it was not disproportionate to the legitimate aims pursued: manifestly ill-founded.

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Double prosecution: *inadmissible*.

ZIGARELLA - Italy (N° 48154/99)
Decision 3.10.2002 [Section I]

The applicant was prosecuted for offences against the town-planning laws. He subsequently put his situation in order and the court held that there was no need to proceed with the prosecution on the ground that the offences no longer existed. More than three months later, the applicant received a summons to appear in a second prosecution against him for the same offence. When he informed the court that he had already been prosecuted for the same facts, the court decided that the prosecution could not continue because there had already been a previous court decision, which in the meantime had become final.
Inadmissible under Article 4 of Protocol No. 7: that article is concerned not just with cases of double conviction but also with cases of double proceedings and it applies even where the proceedings did not end in conviction, the principle *non bis in idem* being valid in criminal matters whether the accused is convicted or not. In the present case, the applicant was prosecuted twice for the same offence involving the same act. However, the second proceedings were opened in error and terminated as soon as the court became aware that that was so. The question is therefore whether Article 4 of Protocol No. 7 is concerned with all double proceedings for one and the same offence, whether or not they are initiated with knowledge of the facts, or only double prosecutions initiated knowingly. In the absence of any indication in the explanatory report on Protocol No. 7, the Court considers that, rather than confine itself to a literal interpretation of the term, it must give a teleological interpretation. The object and aim of the rule in question demand, in the absence of any harm shown by the applicant, that only further proceedings opened intentionally infringe Article 4 of Protocol No. 7. In the present case, however, there was no intentionality: when informed that there had been a breach of the principle *non bis in idem*, the Italian court immediately closed the proceedings. In any event, the applicant did not have the capacity of victim since the courts, in substance, recognised the violation and put it right at domestic level: manifestly ill-founded.

Other judgments delivered in December 2002

Article 2

ADALI - Turkey (Nº 31137/96)
ŞAZIMENT YALÇIN - Turkey (Nº 31152/96)
SOĞUKPINAR - Turkey (Nº 31153/96)
FILIYET ŞEN - Turkey (Nº 31154/96)
Judgments 12.12.2002 [Section III]

shooting of applicants' sons (or husband) during attempted arrest in 1988 – friendly settlement (statement of regret, acknowledgement that use of force such as claimed constitutes violation, *ex gratia* payment).

Articles 2 and 13

MAHMUT DEMIR - Turkey (Nº 22280/93)
Judgment 5.12.2002 [Section I]

death of applicant's nieces and serious injury of his father in explosion of grenades thrown into his house by security forces during operation in 1992 – friendly settlement (*ex gratia* payment, statement of regret and acknowledgement of violation).

Article 5(1), (4) and 5

WAITE - United Kingdom (Nº 53236/99)
Judgment 10.12.2002 [Section IV]

lawfulness of detention following revocation of life licence, lack of oral hearing in proceedings for review of lawfulness of detention and absence of a right to compensation – no violation of Article 5(1), violation of Article 5(4) and (5).

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

DALKILIÇ - Turkey (Nº 25756/94)
Judgment 5.12.2002 [Section III]

alleged failure to bring detainee promptly before a judge, lack of remedy for unlawful detention and absence of right to compensation – violation.

Article 5(3) and (4), Article 6 and Article 8

SAŁAPA - Poland (Nº 35489/97)
Judgment 19.12.2002 [Section III]

ordering of detention on remand by prosecutor, absence of right for detainee to attend hearings on detention on remand and non-communication of prosecutor's submissions, and opening of detainee's correspondence – violation; length of criminal proceedings – no violation.

Article 6 § 1

L. and P. - Italy (Nº 33696/96)
FIORANI - Italy (Nº 33909/96)
Judgments 19.12.2002 [Section I]

prolonged non-enforcement of judicial decision due to prefectoral decisions staggering granting of police assistance – violation.

COSTE - France (Nº 50528/99)
Judgment 17.12.2002 [Section II]

non-examination of appeal on points of law on account of appellant's failure to surrender into custody prior to appeal hearing – violation (cf. *Khalfaoui* judgment of 14 December 1999).

RAGAS - Italy (Nº 44524/98)
Judgment 17.12.2002 [Section III (former composition)]

revision

MITCHELL and HOLLOWAY - United Kingdom (Nº 44808/98)
Judgment 17.12.2002 [Section II]

ČULJAK and others - Croatia (Nº 58115/00)
Judgment 19.12.2002 [Section I]

length of civil proceedings – violation.

TRAORE - France (Nº 48954/99)
Judgment 17.12.2002 [Section II]

length of administrative proceedings – violation.

HEIDECKER-CARPENTIER - France (Nº 50368/99)
Judgment 17.12.2002 [Section II]

length of proceedings relating to dispute over contractual employment by the State – violation.

FAIVRE - France (Nº 46215/99)
Judgment 17.12.2002 [Section II]

length of administrative proceedings concerning tax penalties – violation.

LÓGICA - MÓVEIS DE ORGANIZAÇÃO, Lda. - Portugal (Nº 54483/00)
Judgment 19.12.2002 [Section III]

length of criminal proceedings which the applicant had joined as a party seeking damages – friendly settlement.

DEBBASCH - France (Nº 49392/99)
Judgment 3.12.2002 [Section II]

length of criminal proceedings – no violation.

STEPHEN JORDAN - United Kingdom (no. 2) (Nº 49771/99)
Judgment 10.12.2002 [Section IV]

length of court martial proceedings – violation.

Articles 6(1) and 8

HOPPE - Germany (Nº 28422/95)
Judgment (final) 5.12.2002 [Section III]

refusal to grant joint parental authority over child, and imposition of restrictions on father's right of access and lack of oral hearing in appeal proceedings – no violation.

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

SMOLEANU - Romania (Nº 30324/96)
LINDNER and HAMMERMAYER - Romania (Nº 35671/97)
Judgments 3.12.2002 [Section II]

exclusion of courts' jurisdiction with regard to nationalisation, refusal of courts to examine claim and alleged deprivation of property – violation of Article 6, no violation of Article 1 of Protocol No. 1.

GOLEA - Romania (Nº 29973/96)
GHEORGIOU - Romania (Nº 31678/96)
SEGAL - Romania (Nº 32927/96)
BOC - Romania (Nº 33353/96)
SAVULESCU - Romania (Nº 33631/96)
Judgments 17.12.2002 [Section II]

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

PAULA ESPOSITO - Italy (Nº 30883/96)
SAVIO - Italy (Nº 31012/96)
GIAGNONI and FINOTELLO - Italy (Nº 31663/96)
M.P. - Italy (Nº 31923/96)
GUIDI - Italy (Nº 32374/96)
M.C. - Italy (Nº 32391/96)
SANELLA - Italy (Nº 32644/96)
GENI s.r.l. - Italy (Nº 32662/96)
IMMOBILIARE SOLE s.r.l. - Italy (Nº 32766/96)
SCURCI CHIMENTI - Italy (Nº 33227/96)
FOLLIERO - Italy (Nº 33376/96)
FLERES - Italy (Nº 34454/97)
ZAZZERI - Italy (Nº 35006/97)
AUDITORE - Italy (Nº 35550/97)
Judgments 19.12.2002 [Section I]

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

FIORENTINI VIZZINI - Italy (Nº 39451/98)
Judgment 19.12.2002 [Section I]

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

Article 10

KÜÇÜK - Turkey (Nº 28493/95)
Judgment 5.12.2002 [Section III]

conviction for making separatist propaganda – violation.

Article 11

PARTI DE LA DEMOCRATIE/DEMOCRACY PARTY (DEP) - Turkey (Nº 25141/94)
Judgment 10.12.2002 [Section IV]

dissolution of political party by the Constitutional Court – violation.

Article 1 of Protocol No. 1

ÇALLI - Turkey (Nº 26543/95)
Judgment 12.12.2002 [Section III]

delays in payment of compensation for expropriation – friendly settlement.

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