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

# INFORMATION NOTE No. 92
**on the case-law of the Court**
**December 2006**

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

## CONTENTS


### ARTICLE 1

*Judgment*

"Jurisdictional link" existed between foreign plaintiffs and the respondent State, even when the proceedings concerned events in the plaintiffs' country of origin: *Government's preliminary objections dismissed* (Markovic and Others v. Italy) ........ p. 9

*Inadmissible*

No jurisdictional link between Denmark and Moroccan nationals complaining about the publication in a Danish newspaper of caricatures of the prophet Muhammad (Ben El Mahi and Others v. Denmark) ........ p. 9

### ARTICLE 2

*Judgments*

Inadequate medical care leading to prisoner's bleeding to death, and failure to conduct an effective investigation: *violation* (Tarariyeva v. Russia) ........ p. 10

Insufficient security measures around an area mined by the military and used by villagers as pasture land: *violation* (Paşa and Erkan Erol v. Turkey) ........ p. 11

*Inadmissible*

Deaths resulting from flooding of campsite opened with official authorisation and effectiveness of the subsequent criminal investigation (Murillo Saldias and Others v. Spain) ........ p. 12

### ARTICLE 3

*Judgments*

Torture in police custody: *violation* (Sheydayev v. Russia) ........ p. 12

Use of a teargas, known as "pepper spray", to break up demonstrators: *no violation* (Oya Ataman v. Turkey) ........ p. 13

Handcuffing of prisoner recuperating from internal surgery, and transport in standard prison van two days thereafter: *violation* (Tarariyeva v. Russia) ........ p. 13

Alleged ill-treatment during detention in a psychiatric hospital and failure to conduct a thorough and effective investigation in this regard: *no violation/violation* (Filip v. Romania) ........ p. 13

*Communicated*

Refusal to return bodies of alleged terrorists for burial (Sabanchiyeva and Others v. Russia) ........ p. 14

Former civil servant's impending extradition to Belarus (Kamyshev v. Ukraine) ........ p. 15

Impending extradition to Uzbekistan (Ismoilov and Others v. Russia) ........ p. 15

## ARTICLE 5

*Judgments*

Unjustified committal to a psychiatric hospital in violation of domestic legislation: *violation* (Filip v. Romania) ..... p. 16

Pre-trial detention lasting five years in proceedings concerning import and trafficking of drugs by an organised criminal group: *violation* (Adamiak v. Poland) ..... p. 17

Absence of speedy judicial review of the lawfulness of the applicant's committal to a psychiatric hospital: *violation* (Filip v. Romania) ..... p. 17

*Communicated*

Detention having lasted already one and a half years with a view to the applicants being extradited to Uzbekistan (Ismoilov and Others v. Russia) ..... p. 16

Impossibility of challenging, in substance before a court, the duration of detention pending extradition (Ismoilov and Others v. Russia) ..... p. 17

## ARTICLE 6

*Judgments*

Jurisdiction declined as the impugned NATO air strike had to be considered an act of war and as there was no express right to claim reparation from the State for damage sustained as a result of a violation of the rules of international law: *no violation* (Markovic and Others v. Italy) ..... p. 18

Lack of access to a court on account of a rule requiring the agreement of all joint owners in order to bring an action for recovery of a property held in common: *violation* (Lupas and Others v. Romania) .. p. 19

Non-enforcement of final judgment and abusive quashing thereof: *violation* (Oferta Plus SRL v. Moldova) ..... p. 20

Reclassification by the appellate court of an offence as complicity in that offence at the stage of delivering judgment: *violation* (Mattei v. France) ..... pp. 20 and 23

Applicant's sentence increased by an appeal court sitting *in camera* without his presence or that of his lawyer: *violation* (Csikós v. Hungary) ..... p. 22

*Inadmissible*

Life sentence following a conviction *in absentia* (Battisti v. France) ..... p. 21

Rebuttable presumption of guilt and refusal of additional investigations in respect of person charged with customs offences (Vos v. France) ..... p. 22

*Communicated*

Refusal of temporary release by Parole Board (Boulois v. Luxembourg) ..... p. 19

Alleged risk of flagrant denial of a fair trial should the applicants be extradited to their native Uzbekistan (Ismoilov and Others v. Russia) ..... p. 21

Statements of suspects' guilt pronounced by the prosecutor processing a request for their extradition (Ismoilov and Others v. Russia)........................................................................................... p. 23

Refusal to return bodies of alleged terrorists for burial (Sabanchiyeva and Others v. Russia)........ p. 23

**ARTICLE 7**

*Inadmissible*

Taking of DNA sample from convicted person and storage of his DNA profile in national database for thirty years: *Article 7 not applicable* (Van der Velden v. the Netherlands).................................... p. 23

**ARTICLE 8**

*Judgments*

Applicant banned from entering country in which proceedings leading to deprivation of his parental rights ended without his having been heard: *violation* (Hunt v. Ukraine) ................................................ p. 26

No specific remedy for preventing or punishing child abduction from the territory of the respondent State, resulting in non-enforcement of custody award: *violation* (Bajrami v. Albania) ............................ p. 26

*Admissible*

Deportation to Algeria, pursuant to a temporary exclusion order imposed for large scale drug-trafficking, of a man who had been living in France for thirty-five years and is the father of two children (Sayoud v. France) ......................................................................................................................... p. 27

*Inadmissible*

Taking of a DNA sample from a convicted person and storage of his DNA profile in national database for thirty years (Van der Velden v. the Netherlands) ........................................................................... p. 24

Decision ordering the return of the applicant's daughter with her father living abroad, pursuant to the Hague Convention (Mattenklott v. Germany) .................................................................................. p. 25

Inadvertent opening by prison authorities of letter from the Court to a prisoner (Sayoud v. France) ......................................................................................................................................... p. 28

*Communicated*

Refusal to return bodies of alleged terrorists for burial (Sabanchiyeva and Others v. Russia)........ p. 25

**ARTICLE 9**

*Communicated*

Refusal to return bodies of alleged terrorists for burial (Sabanchiyeva and Others v. Russia)........ p. 28

**ARTICLE 10**

*Judgments*

Editor-in-chief convicted of defamation for having written and published an article labelling an anti-Semitist as a “local neo-fascist”: *violation* (Karman v. Russia) .............................................. p. 28

Absolute prohibition on publishing photograph of a business magnate alongside newspaper reports on investigations into his suspected tax evasion: *violation* (Verlagsgruppe News GmbH v. Austria (no. 2)) ........................................................................................................................................ p. 29

Journalist convicted of defamation for having reported and commented on a mayor's criminal conviction: *violation* (Dabrowski v. Poland) ......................................................................................... p. 31

Injunction prohibiting broadcaster from showing the picture of a convicted neo-Nazi once he had been released on parole: *violation* (Österreichischer Rundfunk v. Austria)............................................ p. 32

Radio station ordered to pay damages and costs and to issue an apology for having broadcast an unlawfully obtained telephone conversation between government officials: *violation* (Radio Twist, A.S. v. Slovakia) .......................................................................................................................... p. 33

*Communicated*

Civil-law defamation for publication of incorrect information about a bank, resulting in important financial losses (Zao “Kommersant. Publishing House” and Vasilyev v. Russia) .......................... p. 33

**ARTICLE 11**

*Judgments*

Forceful breaking up by police of a peaceful demonstration, held in a park during a busy period without submission of mandatory prior notification: *violation* (Oya Ataman v. Turkey) ............................ p. 34

Refusal to register a political party on the ground that one of its aims was anti-constitutional: *violation* (Linkov v. the Czech Republic) ......................................................................................... p. 35

*Admissible*

Belated quashing of a refusal by a municipal authority to allow a march and assemblies (Bączkowski and Others v. Poland) ........................................................................................................... p. 35

*Inadmissible*

Refusal to register as a political party an association openly declaring affiliation with a certain ethnic group (Artyomov v. Russia) .......................................................................................... p. 36

Ban on an association whose object was the restoration of the caliphate and the creation of an Islamic State founded on Sharia Law (Kalifatstaat v. Germany) ................................................................ p. 37

**ARTICLE 14**

*Judgment*

Alleged discrimination against unmarried cohabiting family members in light of their future liability for inheritance tax, in comparison with survivors of a marriage or a civil partnership: *no violation* (Burden and Burden v. the United Kingdom)........................................................................................ p. 38

*Admissible*

Refusal by a municipal authority to allow a march or assemblies to be held, allegedly because of the sexual orientation of the organisers (Bączkowski and Others v. Poland)......................................... p. 38

*Inadmissible*

Taking of a DNA sample from a person convicted of a more serious offence, with a view to storing his DNA profile in national database (Van der Velden v. the Netherlands)......................................... p. 38

*Communicated*

Withdrawal of the operating licences of an Internet provider (Megadat.com SRL v. Moldova) .... p. 40

Croatian citizen unable to use foreign-currency savings deposited with a Serbian bank (Pavković v. Serbia) ........................................................................................................................ p. 40

**ARTICLE 34**

*Judgments*

Complaint by mayor that the authorities had not taken the necessary security measures in his village to protect his son's life, although his administrative and parental responsibility was engaged in the accident in question: *victim status rejected* (Paşa and Erkan Erol v. Turkey) .............................................. p. 40

Applicants could claim to be directly affected by an inheritance law, given their advanced age and the very high probability that one of them would be liable to pay inheritance tax upon the death of the other: *victim status accepted* (Burden and Burden v. the United Kingdom)............................................. p. 41

Criminal proceedings initiated against chief executive officer and his detention ordered with the aim to discourage his company from pursuing its application before the Court: *violation* (Oferta Plus SRL v. Moldova)........................................................................................................................ p. 42

Refusal to allow the applicant company's counsel to confer with its chief executive officer in a detention facility without being separated by a glass partition: *violation* (Oferta Plus SRL v. Moldova) ...... p. 42

Public broadcaster qualifies as a "non-governmental organisation" in light of its editorial independence and institutional autonomy: *victim status accepted* (Österreichischer Rundfunk v. Austria) .......... p. 43

*Admissible*

Annulment of an exclusion order accompanying a prison sentence following the applicant's deportation and residence abroad for a lengthy period: *preliminary objection dismissed* (Sayoud v. France)... p. 40

*Inadmissible*

Administrative proceedings provided adequate compensation for the deaths of relatives in the flooding of a campsite which had been officially authorised to open (Murillo Saldias and Others v. Spain).... p. 41

**ARTICLE 35**

*Judgments*

Constitutional complaint not an effective remedy as the impugned criminal appellate proceedings could not be reopened in consequence: *preliminary objection dismissed* (Csikós v. Hungary)................ p. 43

Declaration of incompatibility under section 4 of the 1998 Human Rights Act possibly to become an "effective" remedy in light of future evidence of a long-standing and established practice of ministers giving effect to the courts' declarations of incompatibility (Burden and Burden v. the United Kingdom) ........................................................................................................................................ p. 44

*Inadmissible*

Failure to use administrative law remedy for injuries sustained in the flooding of a campsite which had been officially authorised to open (Murillo Saldias and Others v. Spain) ...................................... p. 44

**ARTICLE 41**

*Judgment*

Applicant hindered from returning to her home and property in northern Cyprus not required, once the Court had already decided on the merits of her case, to apply to new domestic Commission in order to seek reparation for damages (Xenides-Arestis v. Turkey)............................................................... p. 44

**ARTICLE 1 of PROTOCOL No. 1**

*Communicated*

Withdrawal of the operating licences of an Internet provider (Megadat.com SRL v. Moldova) .... p. 45

Statutory impossibility to use foreign-currency savings failing an agreement between the successor States of the former Socialist Federal Republic of Yugoslavia (Pavković v. Serbia) ............................... p. 46

**ARTICLE 2 of PROTOCOL No. 4**

*Judgment*

Absolute prohibition on a person having had access to "State secrets" to travel abroad for a long period: *violation* (Bartik v. Russia)............................................................................................................ p. 46

**Other judgments delivered in December** .......... p. 48

**Referral to the Grand Chamber** .......... p. 52

**Judgments which have become final** .......... p. 53

**Statistical information** .......... p. 56

## ARTICLE 1

**RESPONSIBILITY OF STATES**
"Jurisdictional link" existed between foreign plaintiffs and the respondent State, even when the proceedings concerned events in the plaintiffs' country of origin: *Government's preliminary objections dismissed*.

**MARKOVIC and Others - Italy** (N° 1398/03)
Judgment 14.12.2006 [GC]

(see Article 6(1) [civil], "Access to court" below).

---

**RESPONSIBILITY OF STATES**
No jurisdictional link between Denmark and Moroccan nationals complaining about the publication in a Danish newspaper of caricatures of the prophet Muhammad: *inadmissible*.

**BEN EL MAHI and Others - Denmark** (N° 5853/06)
Decision 11.12.2006 [Section V]

The applicants are a Moroccan national living in Morocco and two Moroccan associations operating in that country. In September 2005 a Danish newspaper, referring to freedom of expression and alleging that there was increasing self-censorship in society with regard to Islamic issues, published twelve different cartoons, most of which were caricatures of the Islamic prophet Muhammad. The most controversial of the cartoons showed Muhammad with a bomb in his turban. The Danish Government refused to intervene in the conflict. Likewise, in March 2006, the Director of Public Prosecution decided not to initiate criminal proceedings against the newspaper and rejected the relevant complaint of several Muslim organisations based in Denmark. Subsequently, those organisations brought civil proceedings against the newspaper, to no avail. In the meantime, the publication of the cartoons (and their reprinting in some other countries) caused international controversy, protests, demonstrations and consumer boycotts, notably in the Muslim world.
According to the established case-law the concept of "jurisdiction" for the purposes of Article 1 of the Convention must reflect the term's meaning in public international law which assumes that a State's jurisdictional competence is primarily territorial and also that jurisdiction is presumed to be exercised normally throughout the State's territory. Only in exceptional circumstances may the acts of Contracting States performed outside their territory or which produce effects there (an "extra-territorial act") amount to an exercise by them of their jurisdiction within the meaning of Article 1. For instance, a State's responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – that State in practice exercises effective control of an area situated outside its national territory. A State may also be held accountable for violation of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State's authority and control through its agents operating, whether lawfully or unlawfully, in the latter State. Accountability in such situations stems from the fact that Article 1 cannot be interpreted so as to allow a State Party to perpetrate violations of the Convention on the territory of another State which it would not be permitted to perpetrate on its own territory.
Such exceptions were not at issue in the present case. Here, the applicants were, respectively, a Moroccan national, resident in Morocco, and two Moroccan associations which were based and operated in that country. The Court found no jurisdictional link between any of the applicants and the respondent State, nor could the applicants come within the jurisdiction of Denmark on account of any extra-territorial act. Accordingly, the Court had no competence to examine the applicants' substantive complaints: *inadmissible*.

## ARTICLE 2

**LIFE**
Inadequate medical care leading to prisoner's bleeding to death, and failure to conduct an effective investigation: *violation*.

**TARARIYEVA - Russia** (N° 4353/03)
Judgment 14.12.2006 [Section I]

*Facts*: The applicant's son, Mr Tarariyev, was born in 1976 and died in 2002. In 2000 he was convicted of grievous bodily harm and sentenced to six years' imprisonment. In 2001 he fell ill and was diagnosed with an acute ulcer and prescribed medicines. He was later taken to a prison hospital, where he received treatment. On his return to the Khadyzhensk prison colony he was examined and diagnosed with chronic gastroduodenitis. Certain medicines were prescribed.
Following a new round of criminal proceedings, in April 2002 Mr Tarariyev was sentenced to six years' imprisonment and sent back to the prison colony. According to the applicant, upon his arrival all medicines were taken away from him and no medical assistance was provided. In August 2002, after complaining about acute pain, he was diagnosed as having a perforated duodenal ulcer and peritonitis and was operated on at the Apsheronsk public hospital. The applicant maintained that her son's left hand had been shackled with handcuffs to the hospital bed when she had visited him. In support of her statements she produced a written affidavit by a friend of hers, who had also visited the hospital.
Later in August 2002 Mr Tarariyev was diagnosed with a breakdown of sutures in the duodenum, duodenal fistula and peritonitis. He was discharged from the hospital and transported by prison van to a prison hospital, 120 km away. After undergoing further surgery he died there. An autopsy established that the death had been caused by acute blood loss provoked by massive gastrointestinal haemorrhaging. Charges were brought against medical staff at the two hospitals for negligent manslaughter resulting from incompetent performance of their duties. The case against the doctors of the prison hospital was subsequently referred to the regional prosecutor and then abandoned for want of indications of a criminal offence. The head of the surgery department of the Apsheronsk hospital was put on trial but a district court acquitted him for lack of evidence. The judgment said nothing about the applicant's civil claim. The prosecutor office later informed the applicant that an additional inquiry into the actions of the staff of the prison hospital had been carried out but that no negligence on their part could be established.

*Law*: Article 2 – *Failure to protect the right to life*: For more than two years preceding his death Mr Tarariyev had been in detention and the custodial authorities had been fully aware of his health problems. There was no consistency in his medical records, most of which were either mislaid or incomplete. At the correctional facility he was not properly examined and did not receive any medical treatment. Although he was promptly transferred to a public hospital, the surgery performed was defective. The doctors of the Apsheronsk hospital authorised his discharge to the prison hospital in full knowledge of the post-operative complications requiring immediate further surgery. They also withheld crucial details of his surgery and developing complications. The prison hospital staff treated him as an ordinary post-operative patient rather than as an emergency case with the consequence that surgery was performed too late. Furthermore, the prison hospital was not adequately equipped for dealing with massive blood loss. The existence of a causal link between the defective medical assistance administered to Mr Tarariyev and his death was confirmed by the domestic medical experts and was not disputed by the Russian Government.
*Conclusion*: violation (unanimously).

Article 2 – *Adequacy of the investigation*: The criminal investigation was slow and its scope was restricted, leaving out many crucial aspects of the events. The applicant's right to effective participation in the investigation was not secured because she was not properly informed about the procedural decisions taken in the case. The prosecution had prepared the evidentiary basis for the trial in a poor manner, which ended in the acquittal of the suspect. Following the failure of the criminal proceedings the applicant did not have at her disposal an accessible and effective civil-law remedy, either because a civil claim was

barred by operation of law or because it had no chances of success in the light of the existing judicial practice. In sum, the Russian authorities failed to discharge their positive obligation to determine, in an adequate and comprehensive manner, the cause of death of Mr Tarariyev and to bring those responsible to account.
*Conclusion*: violation (unanimously).

Article 3 – *Handcuffing at the civilian hospital*: It was not in dispute that Mr Tarariyev had not presented any danger of absconding or causing self-harm or injury to others. He was attached to the bed on the day after a complex internal surgery. He was on a drip and could not stand up unaided. It also appeared from a witness's detailed deposition that a police officer armed with a submachine gun was present in Mr Tarariyev's room and two other officers remained on guard outside the room. In those circumstances, the use of handcuffs was disproportionate to the needs of security. Having regard to his state of health, to the absence of any cause to fear that he represented a security risk and to the constant supervision by armed police officers, the use of restraints in those conditions amounted to inhuman treatment.
*Conclusion*: violation (unanimously).

Article 3 – *Conditions of Mr Tarariyev's transport to the prison hospital*: The vehicle at issue was designed for the transport of detainees rather than post-operative patients. A stretcher on wheels was used to bring Mr Tarariyev to the vehicle, and inside the vehicle he was placed on padded mattresses. The distance between the civilian and prison hospitals being more than one hundred kilometres, Mr Tarariyev was transported for more than two hours in those conditions. He had had internal surgery merely two days beforehand and on the day of transport he was diagnosed with a breakdown of sutures, a condition requiring further surgical intervention. As the medical experts subsequently found, Mr Tarariyev had been “unfit for transport”. In those circumstances, the presence of a medical nurse could not compensate for the inadequate transport conditions. Having regard to Mr Tarariyev's serious condition, the duration of the journey and the detrimental impact on his state of health, his transport in a standard-issue prison van must have considerably contributed to his suffering and therefore amounted to inhuman treatment.
*Conclusion*: violation (unanimously).

Article 41 – EUR 25,000 for non-pecuniary damage.

---

**POSITIVE OBLIGATIONS**
Insufficient security measures around an area mined by the military and used by villagers as pasture land: *violation*.

**PAŞA and ERKAN EROL - Turkey** (N° 51358/99)
Judgment 12.12.2006 [Section II]

*Facts*: The authorities laid anti-personnel mines in order to protect the local gendarmerie close to a village. The area was surrounded by two rows of barbed wire at waist height and warning signs were erected at twenty-metre intervals. The villagers were informed of the danger in writing and then orally. The area in question was used as grazing land by the villagers. Nine-year-old Erkan Erol was tending sheep nearby and went after some sheep which had breached the barbed-wire fence to graze in the mined area; a mine exploded and he lost a leg. According to witnesses, Paşa Erol, the victim's father and mayor of the village, used to enter the area with his animals without considering the consequences. Paşa Erol brought an action for damages against the State, alleging failure to take adequate safety measures around the military area. The action was dismissed on the ground that safety measures had been taken around the mined area and that the villagers, including the mayor, had been informed of the danger orally and in writing. According to the court, both the victim and his father had been responsible for the accident: the former, because he had entered a prohibited area and the latter through his own negligence.

*Law: Preliminary objection (lack of victim status of the first applicant) allowed*. The first applicant, who was mayor of the village at the material time, should – given the nature of his duties and responsibilities – have warned the gendarmerie that the measures in place were inadequate and demanded that further

protective measures be taken. However, he had not drawn the attention of the military authorities to the matters he later complained of before the Court. Moreover, he himself had behaved irresponsibly by entering the mined area prior to his son's accident. Given his administrative and parental responsibility in relation to his son's accident, he could not claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of Article 2.

*Positive obligation on States to take all necessary measures to protect the lives of others*: By laying mines on land used regularly as pasture land by the inhabitants of a village, where young children had gone regularly to graze their animals, and by simply surrounding the area with two rows of barbed wire which were too far apart to prevent children gaining access, the authorities had not taken the safety measures required to ensure protection from the risk of death or injury.
*Conclusion*: violation (unanimously).

Article 41 – EUR 30,505 for the damage sustained.

For further details see press release no. 776.

---

**POSITIVE OBLIGATIONS**
Deaths resulting from flooding of campsite opened with official authorisation and effectiveness of the subsequent criminal investigation: *inadmissible (lack of victim status, non-exhaustion of domestic remedies)*.

**MURILLO SALDIAS and Others - Spain** (N° 76973/01)
Decision 28.11.2006 [Section IV]

(see Article 34 below).

## ARTICLE 3

**TORTURE**
Torture in police custody: *violation*.

**SHEYDAYEV - Russia** (N° 65859/01)
Judgment 7.12.2006 [Section I]

*Facts*: The applicant, who was about 20 years old, was taken to a police station for questioning as witness to an incident involving violent hooliganism. During his four days' stay in the police station, he was allegedly beaten by up to five police officers who were trying to coerce him to confess to having committed the offence and who threatened him with physical abuse. The applicant maintained that his confession had been made under duress. The medical report drawn up two hours after his release stated the presence of various injuries on his head and chest. These findings were confirmed the next day. The police officers present at the time when the applicant wrote his confession denied using physical force against the applicant. Some witnesses submitted that the applicant had had injuries and that he had told them about having been ill-treated in police custody. The authorities accepted the validity of the medical report but rejected the applicant's allegations of ill-treatment, either with reference to the lack of causal link between his injuries and the actions of the policemen or for lack of further evidence implicating the policemen. The applicant was convicted of hooliganism.

*Law*: The validity of the medical report stating the existence of the applicant's injuries had not been disputed before the Court or by the domestic authorities. The report was drawn up by a doctor only two hours after the applicant's release and there was nothing in the case file or the parties' submissions to suggest that the injuries described in the report had been inflicted either before the applicant's arrest or

after his release. Neither the authorities at the domestic level, nor the Government in the proceedings before the Strasbourg Court, had advanced any convincing explanation for the applicant's injuries. Therefore the Government had not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment he underwent while in police custody. The acts complained of were such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance and were inflicted intentionally. Having regard to the duration of the treatment, its physical or mental effects, the sex, age and state of health of the victim, the ill-treatment amounted to torture.
*Conclusion*: violation (unanimously).

Article 41 – EUR 20,000 for non-pecuniary damage.

---

**INHUMAN OR DEGRADING TREATMENT**
Use of a teargas, known as "pepper spray", to break up demonstrators: *no violation*.

**OYA ATAMAN - Turkey** (N° 74552/01)
Judgment 5.12.2006 [Section II]

(see Article 11 below).

---

**INHUMAN OR DEGRADING TREATMENT / TRAITEMENT INHUMAIN OU DÉGRADANT**
Handcuffing of prisoner recuperating from internal surgery, and transport in standard prison van two days thereafter: *violation*.

**TARARIYEVA - Russia** (N° 4353/03)
Judgment 14.12.2006 [Section I]

(see Article 2 above).

---

**INHUMAN OR DEGRADING TREATMENT**
Alleged ill-treatment during detention in a psychiatric hospital and failure to conduct a thorough and effective investigation in this regard: *no violation/violation*.

**FILIP - Romania** (N° 41124/02)
Judgment 14.12.2006 [Section III]

*Facts*: In October 2000 the applicant lodged a criminal complaint against his former wife and his son, accusing them of preventing him from recovering furniture from his former wife's flat. In the course of the related proceedings the applicant accused the prosecutor and the judge of various offences, and was therefore placed under investigation for contempt of court. At the request of the public prosecutor's office the applicant was arrested on 8 November 2002 and detained for an indefinite period in a psychiatric hospital so that his state of mind could be assessed. The doctor who examined him reported that he was suffering from "paranoid disorders". The applicant lodged a number of complaints against his committal and the conditions in which he was being detained. On 12 December 2002 the public prosecutor requested a committee to prepare a forensic medical report on the applicant. On 22 January 2003 the committee submitted its report, recommending that the applicant undergo compulsory psychiatric treatment. The hospital order was lifted on 28 January 2003 and the applicant was released two days later. The Romanian courts subsequently ordered the treatment recommended by the committee to be carried out.

*Law*: Article 3 – Ill-treatment: With regard to the applicant's complaints that he had not received appropriate treatment for his cardio-vascular illness and his locomotor disability and that he had been

strapped to his bed and released from restraint only once every 24 hours, to go to the toilet, the Court, having regard to the information in its possession, considered that the facts were not sufficiently well established for it to be able to find a violation of Article 3 on account of the alleged ill-treatment and the lack of medical treatment.
*Conclusion*: no violation (unanimously).

Article 3 – Lack of an investigation: The applicant had complained about the conditions in which he was detained. However, the Romanian Government had not supplied any information to show that a criminal investigation had been opened or that the prosecution service had reached any finding on the applicant's complaints. There had therefore not been a thorough and effective investigation into the applicant's allegation of ill-treatment in the psychiatric hospital.
*Conclusion*: violation (unanimously).

Article 5(1) – The applicant had been committed for an indefinite period on the basis of a decision by the public prosecutor's office which had been taken before an opinion was obtained from a medical expert. Accordingly, the applicant's detention over an 84-day period could not be regarded as the "lawful detention of [a] person of unsound mind" within the meaning of Article 5(1)(e), as the applicant had not been reliably shown to be of unsound mind. Moreover, the prosecution service had not consulted the relevant medical committee until over a month after the applicant's committal, after the applicant had lodged a complaint alleging that his detention was unlawful, rather than doing so immediately as required by the domestic legislation. Consequently, the deprivation of the applicant's liberty had not been "lawful".
*Conclusion*: violation (unanimously).

Article 5(4) – The relevant court had not ruled on the applicant's complaint, but had simply forwarded it to the public prosecutor's office, which had waited until the hospital order was lifted before ruling on the applicant's complaint, which it then found to be devoid of purpose. That being the case, there had been no review of the lawfulness of the applicant's detention. Furthermore, in view of the fact that the committee had submitted its report more than two months after the applicant had been detained, the latter could not be said to have obtained a speedy judicial determination of the lawfulness of his detention.
*Conclusion*: violation (unanimously).

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

---

**INHUMAN OR DEGRADING TREATMENT**
Refusal to return bodies of alleged terrorists for burial: *communicated*.

**SABANCHIYEVA and Others - Russia** (N° 38450/05)
[Section I]

Early in the morning of 13 October 2005 the law-enforcement agencies of the town of Nalchik were attacked by armed insurgents. The fighting continued into the following day and left more than a 100 dead, the majority from the ranks of the assailants. The applicants are relatives of some of the deceased. They allege that the bodies were kept in appalling conditions (piled up, naked and decomposing for want of adequate refrigeration) and that the authorities had refused to respond to their requests for their return for burial until an investigation into the case was completed. Under legislation introduced in Russia following the terrorist attack on the Nord-Ost Theatre in Moscow in October 2002 the bodies of terrorists are not handed over to their relatives and the place of burial is not disclosed.
*Communicated* under Articles 3, 6, 8, 9 and 13. *Priority treatment*.

---

**EXTRADITION**
Former civil servant's impending extradition to Belarus: *communicated*.

**KAMYSHEV - Ukraine** (3990/06)
[Section V]

In 2003 the authorities of Belarus arrested Mr. D., a former Deputy President of the Belarus Customs' Committee for neglect of his official duties. In 2004 the investigating authorities allegedly put pressure on the applicant to testify against D. or else he would be taken into detention. Later in 2004 the applicant left for Ukraine and in the beginning of 2005 he obtained a residence permit from the Ukrainian authorities. In June 2005 the Belarusian authorities instituted criminal proceedings against him, suspecting him of neglect of his official duties. They also issued an international arrest warrant authorising his detention. In September 2005 a court in Ukraine allowed the applicant's appeal against the Prosecutor-General's decision to extradite him. The court noted, *inter alia*, that the applicant's state of health had seriously deteriorated and that the decision to extradite him had been made by the Deputy Prosecutor-General and not by the Prosecutor-General himself, as required by Ukrainian law. In September 2005 the applicant was released as the one-month detention period authorised by a prior resolution of August 2005 had expired. He failed to appear for medical treatment later that year and his current whereabouts are not known to the Ukrainian authorities.
The applicant complains under Article 3 that he was detained in conditions contrary to this provision and would risk ill-treatment in the event of his extradition to Belarus. He also alleges violations of Articles 5 (1)(f), 5(4) and 5(5) as well as Article 13 of the Convention.

*Communicated, priority granted*. The Court has indicated to the respondent Government, pursuant to *Rule 39* of the Rules of Court, that the applicant should not be extradited until further notice.

---

**EXTRADITION**
Impending extradition to Uzbekistan: *communicated*.

**ISMOILOV and Others - Russia** (N° 2947/06)
[Section I]

The thirteen Uzbek applicants are detained in Russia with a view to their extradition to their native country. They are all Muslims but claim not to belong to any political or religious organisations. One of the applicants was arrested in Uzbekistan in 2000. National security agents allegedly tortured him, threatened to rape his wife and urged him to confess to planning a violent overthrow of the State. He was subsequently convicted for distribution of Islamic leaflets. Most of the applicants left for Russia before the demonstrations in Andijan (Uzbekistan) in May 2005 and all of them claim they were not involved in those events. In February 2005 the Uzbek prosecution authorities charged one applicant with criminal conspiracy, an attempt to overthrow the constitutional order of Uzbekistan, membership of an illegal organisation and possession and distribution of subversive literature. After the Andijan events the Uzbek prosecution authorities charged the other applicants with membership of extremist organisations, such as Akramia, Hizb-ut-Tahrir and the Islamic Movement of Turkestan, financing terrorist activities, attempting to violently overthrow the constitutional order of Uzbekistan, aggravated murders, and organising the mass disorders in Andijan. Some of the applicants were also charged with involvement in subversive activities, illegal possession of arms, and dissemination of materials containing threat to public security and public order.
In June 2005 the applicants were arrested in Russia and questioned by Uzbek national security agents. In July 2005 the Prosecutor-General of Uzbekistan requested their extradition, guaranteeing that without Russia's consent they would not be extradited to a third State, nor prosecuted or punished for any offences committed before extradition and which were not mentioned in the extradition request. According to later assurances, the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment. Their right of defence would be respected and they would be provided with counsel. The Uzbek authorities had no intention of persecuting the applicants out of

political motives, for their race, ethnic origin, religious or political beliefs. Their intention was solely to prosecute the applicants for commission of particularly serious crimes.
The local Russian prosecutor carried out an inquiry and established that except for one of the applicants, none of them had left Russia in May 2005. In July 2005 Russian district courts ordered the applicants' detention pending extradition on the basis of Articles 108 and 466 of the Russian Code of Criminal Procedure. The courts held that it was not possible to apply a more lenient preventive measure and set no time-limit for the applicants' detention. In August 2005 the applicants applied for refugee status in Russia, maintaining that the accusations against them in Uzbekistan were groundless and that their prosecution was arbitrary and politically motivated. In January 2006 the United Nations High Commissioner for Refugees ("the UNHCR") intervened in support of their applications which were nevertheless rejected. In June 2006 a district court upheld the refusals but in July 2006 the UNHCR granted the applicants mandate refugee status. In August 2006 the applicants were ordered to be extradited. A regional court confirmed the extradition decisions but the applicants' appeals remain pending.
The applicants complain under Article 3 and 6(1) that they would be subjected to ill-treatment as well as face a flagrantly unfair trial, if extradited to their country of origin. Individuals charged in connection with the Andijan events in 2005 are allegedly at an increased risk of ill-treatment.
The applicants also complain under Articles 5(1) and 5(4) as well as Article 13 about their allegedly unlawful detention and lack of judicial review of that detention. They have been detained pending extradition on the basis of orders issued in July 2005 which did not set a time-limit for detention. The domestic courts have refused to examine their complaints on this point, having formed the view that the Russian Code of Criminal Procedure does not limit the duration of detention pending extradition.
The applicants further complain under Article 6(2) about statements by the Russian Deputy Prosecutor-General who ordered their extradition. In his decisions this prosecutor stated that the applicants had committed certain offences in Uzbekistan.

*Communicated, priority granted*. The Court has indicated to the respondent Government, pursuant to *Rule 39* of the Rules of Court, that the applicants should not be extradited until further notice.

## ARTICLE 5

### Article 5(1)

**LAWFUL ARREST OR DETENTION**
Unjustified committal to a psychiatric hospital in violation of domestic legislation: *violation*.

**FILIP - Romania** (N° 41124/02)
Judgment 14.12.2006 [Section III]

(see Article 3 above).

---

### Article 5(1)(f)

**PREVENT UNAUTHORISED ENTRY INTO COUNTRY**
Detention having lasted already one and a half years with a view to the applicants being extradited to Uzbekistan: *communicated*.

**ISMOILOV and Others - Russia** (N° 2947/06)
[Section I]

(see Article 3 above, under "Extradition").

---

**Article 5(3)**

**LENGTH OF PRE-TRIAL DETENTION**
Pre-trial detention lasting five years in proceedings concerning import and trafficking of drugs by an organised criminal group: *violation*.

**ADAMIAK - Poland** (N° 20758/03)
Judgment 19.12.2006 [Section IV]

*Facts:* The applicant was detained pending trial for approximately five years in connection with proceedings concerning drug smuggling and trafficking by a large criminal organisation. He was sentenced to nine years' imprisonment for conspiracy to traffic drugs.

*Law*: The Government contended in particular that the offence in question – drug trafficking – required thorough investigation and involved the production of complex evidence. The Court considered that the reasons given by the domestic courts to justify extending the applicant's detention – the nature of the offence, the heavy sentence which it carried, the complexity of the case and the risk that the applicant might abscond and obstruct the course of justice – had been insufficient with the passage of time to justify depriving him of his liberty for such a long period. The fact that the criminal proceedings related to an organised criminal group was not sufficient reason for a period of pre-trial detention lasting five years.
*Conclusion*: violation (unanimously).

See *Chraidi v. Germany* (no. 65655/01), judgment of 26 October 2006, Information Note No. 90.

Article 41 – EUR 1,500 for non-pecuniary damage.

---

**Article 5(4)**

**TAKE PROCEEDINGS**
Impossibility of challenging, in substance before a court, the duration of detention pending extradition: *communicated*.

**ISMOILOV and Others - Russia** (N° 2947/06)
[Section I]

(see Article 3 above, under “Extradition”).

---

**SPEEDINESS OF REVIEW**
Absence of speedy judicial review of the lawfulness of the applicant's committal to a psychiatric hospital: *violation*.

**FILIP - Romania** (N° 41124/02)
Judgment 14.12.2006 [Section III]

(see Article 3 above).

## ARTICLE 6

### Article 6(1) [civil]

**ACCESS TO COURT**
Jurisdiction declined as the impugned NATO air strike had to be considered an act of war and as there was no express right to claim reparation from the State for damage sustained as a result of a violation of the rules of international law: *no violation*.

**MARKOVIC and Others - Italy** (N° 1398/03)
Judgment 14.12.2006 [GC]

*Facts*: The ten applicants are all nationals of the former Serbia and Montenegro and close relatives of persons killed during a NATO air strike on the headquarters of *Radio Televizije Srbije* (*RTS*) in Belgrade in April 1999. The applicants brought an action in damages in the Italian courts in respect of the deaths of their relatives. The applicants considered that Italy's involvement in the relevant military operations had been more extensive than that of the other NATO members in that Italy had provided major political and logistical support, such as the use of its air bases. The defendants to the action were the Prime Minister's Office, the Italian Ministry of Defence and the NATO Allied Forces Southern Europe Command. The Prime Minister's Office and the Italian Ministry of Defence applied to the Court of Cassation for a preliminary ruling on the issue of jurisdiction. In 2002 it held that the Italian courts had no jurisdiction because Italy's decision to take part in the air strikes had been a political one and could not, therefore, be reviewed by the courts. Moreover, the legislation that gave effect to the instruments of international law which the applicants relied on did not expressly afford injured parties a right to claim reparation from the State for damage sustained as a result of a violation of the rules of international law.

*Law*: *Exhaustion of domestic remedies* – The respondent Government had argued that the applicants had not exhausted domestic remedies as they had failed to resume proceedings against NATO. The Court found no concrete example of a civil action having been successfully brought against NATO and was not convinced by the Government's argument that the proceedings against NATO would have offered better prospects of success than those against the Italian State.

*Whether the applicants came within the "jurisdiction" of the respondent State within the meaning of Article 1 of the Convention* – Once the applicants had brought a civil action in the Italian courts, there was an indisputable "jurisdictional link" between them and the Italian State for the purposes of Article 1.

Article 6 – The Court of Cassation's ruling did not amount to recognition of immunity, but was merely indicative of the extent of the courts' powers of review of acts of foreign policy such as acts of war. The applicants' inability to sue the State was the result not of immunity but of the principles governing the substantive right of action in domestic law. At the relevant time, the position under the domestic case-law was such as to exclude in this type of case any possibility of the State being held liable. Consequently, the applicants' claims had been fairly examined in the light of the Italian legal principles applicable to the law of tort. The applicants had been afforded access to a court, but that access had been limited in scope, as it did not enable them to secure a decision on the merits.
*Conclusion*: no violation (ten votes to seven).

---

**ACCESS TO COURT**
Lack of access to a court on account of a rule requiring the agreement of all joint owners in order to bring an action for recovery of a property held in common: *violation*.

**LUPAS and Others - Romania** ($N^{os}$ 1434/02, 35370/02 and 1385/03)
Judgment 14.12.2006 [Section III]

*Facts*: The 19 applicants are the descendants of the joint owners of land on the Black Sea coast measuring about 50 hectares in area, which was expropriated in 1950 for the construction of a military base. In 1998 and 1999 three actions for recovery of the property were brought by some of the applicants, without the agreement of the heirs of two former co-owners. All three actions were dismissed at final instance by the Court of Cassation pursuant to the unanimity rule, which barred joint owners from seeking recovery of an undivided property without the consent of the other joint owners.

*Law*: Article 6(1) – The unanimity rule applied in the present case was adhered to by most of the domestic courts. The Court could therefore accept that it had satisfied the criteria of accessibility and foreseeability. In addition, it had pursued the legitimate aim of protecting the rights of all the heirs of the former joint owners of the property. However, it had prevented the applicants from having their actions determined on the merits by the courts, and also represented an insurmountable obstacle to any future attempts to recover possession of the undivided property. Consequently, regard being had to the fact that any Convention provision had to be construed in a manner that guaranteed rights that were practical and effective, the strict application of the rule had imposed a disproportionate burden on the applicants and had deprived them of any clear and practical possibility of obtaining from the courts a determination of their applications for recovery of the land, in breach of their right of access to a court.
*Conclusion*: violation (unanimously).

Article 41 – EUR 1,000 to each applicant for non-pecuniary damage.

---

**ACCESS TO COURT**
Refusal of temporary release by Parole Board: *communicated*.

**BOULOIS - Luxembourg** ($N^{o}$ 37575/04)
[Section I]

The applicant is a French national who is currently in prison in Luxembourg. The criminal division of the court of appeal sentenced him to 15 years' imprisonment, of which three years were suspended, for assault, rape and false imprisonment with torture. Two years after his conviction he made two requests to the public prosecutor for prison leave, which were refused on the ground that the applicant might be deported and might abscond. He then applied to the administrative court to have the decisions rejecting his requests set aside. The administrative court found that it did not have jurisdiction to examine the application, taking the view that decisions aimed at amending the nature or scope of a sentence handed down by the judicial authorities were a matter for the ordinary courts. The applicant appealed against this judgment, which was upheld by the administrative court of appeal. The applicant also produced further decisions from the parole board rejecting his requests for prison leave and release on licence. The requests had been refused on the grounds that the applicant had made no real effort to compensate the victim, had not given any reasons for the requests or demonstrated a real commitment to readjusting to society such as to warrant his release on licence; the parole board had also cited the risk that the applicant might abscond, and the fact that no new arguments had been adduced in his defence. The applicant alleged that he had not had access to a court in order to complain of the board's decisions refusing his requests for prison leave. He contended that he had been deprived of his right to make representations before the courts concerning his civil rights and obligations.
*Communicated* under Article 6.

---

**FAIR HEARING**
Non-enforcement of final judgment and abusive quashing thereof: *violation*.

**OFERTA PLUS SRL - Moldova** (N° 14385/04)
Judgment 19.12.2006 [Section IV]

(see Article 34 below).

---

**Article 6(1) [criminal]**

**FAIR HEARING**
Reclassification by the appellate court of an offence as complicity in that offence at the stage of delivering judgment: *violation*.

**MATTEI - France** (N° 34043/02)
Judgment 19.12.2006 [Section II]

*Facts*: At the material time the applicant was the girlfriend of Corsican nationalist leader François Santoni. Following an attack carried out in December 1996 she was placed under investigation for "conspiracy to commit terrorist acts, reconstituting a dissolved organisation and attempted extortion, all related directly or indirectly to a terrorist undertaking". In March 2000 the applicant and Mr Santoni were sentenced to four years' imprisonment for conspiring to commit terrorist acts and attempted extortion in connection with a terrorist undertaking. On appeal, the applicant was convicted of aiding and abetting attempted extortion and conspiring to commit terrorist acts and was sentenced to three years' imprisonment, one year of which was suspended. She lodged an appeal on points of law, contending among other arguments that, because on appeal the attempted extortion charges had been reclassified as aiding and abetting attempted extortion, she had been unable to submit a defence. The appeal was dismissed on 6 March 2002.

*Law*: Article 6(3)(a) and (b) – The reclassification of the offence from attempted extortion to aiding and abetting attempted extortion had occurred during the deliberations of the Court of Appeal; this in itself could raise doubts as to whether the guarantees laid down in Article 6 had been complied with. That said, in the earlier stages of the proceedings, and in particular in the first-instance judgment, the question whether the terms aiding and abetting applied to the applicant's conduct had been raised and even discussed. However, the first-instance judgment had also referred to the applicant's active involvement in the planned terrorist operation, and the notion of complicity as such did not feature in the earlier stages of the proceedings. Accordingly, it was not established that the applicant had been aware that the offence might be reclassified as aiding and abetting attempted extortion. In view of the "the need for special attention to be paid to the notification of the 'accusation' to the defendant" and of the decisive role played by the bill of indictment in criminal proceedings, the provisions of Article 6(3) had not been complied with. Furthermore, in the instant case the Court of Cassation had taken the view that "the reclassification of the offence from attempted extortion to aiding and abetting attempted extortion did not alter the nature and substance of the charge, of which the defendants had been fully informed when they appeared before the criminal court". It could not be argued that aiding and abetting merely represented a degree of involvement in the offence; likewise, the principle that criminal statutes must be strictly construed meant that it was not possible to avoid having to make out the specific elements of aiding and abetting. As in *Pélissier and Sassi v. France*, it was therefore plausible to argue that the defences the applicant could have relied on would have been different from the defence to the substantive charge. It could not be argued that reclassification had had no effect on the sentence imposed on the applicant, as one could only speculate as to the sentence she might have received had she been able to prepare an effective defence against the reformulated charge. Admittedly, the sentence passed by the court of appeal following reclassification had been more lenient than that handed down by the criminal court; however, the Court emphasised that the reasons given for the sentence imposed on appeal had been the applicant's state of

health at the time and the fact that she had not been convicted of any offences in the previous five years. Accordingly, there had been interference with the applicant's right to be informed in detail of the nature and cause of the accusation against her, and with her right to have adequate time and facilities for the preparation of her defence. There had therefore been a violation of Article 6(3) (a) and (b) of the Convention taken in conjunction with Article 6(1).
*Conclusion*: violation (unanimously).

*Inadmissible* under Article 13, as the applicant could have raised her complaint concerning reclassification of the offence at the appeal stage before the Court of Cassation, which had examined her appeal on the merits.

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

---

**FAIR HEARING**
Life sentence following a conviction *in absentia*: *inadmissible*.

**BATTISTI - France** (N° 28796/05)
Decision 12.12.2006 [Section II]

The applicant, a member of an Italian extreme left-wing organisation, was arrested in Italy and received two prison sentences. He escaped from prison and fled to Mexico. While he was in Mexico, proceedings were brought against him on the basis of disclosures made by a former member of the organisation, and three arrest warrants were issued against him. The applicant subsequently moved to France; as a result, the arrest warrants were not served on him. The Milan Assize Court sentenced him to life imprisonment *in absentia* and the Assize Court of Appeal upheld his conviction. The Court of Cassation dismissed an appeal by the applicant on points of law. On the basis of the arrest warrants, the Italian authorities made a request to the French authorities for his extradition. The Indictment Division of the Paris Court of Appeal issued an unfavourable opinion on the extradition request, whereupon the Italian authorities submitted a fresh request. The applicant was arrested and the Paris public prosecutor ordered his detention with a view to extradition. In a judgment given after the applicant's release, the Investigation Division of the Paris Appeal Court ruled in favour of his extradition. The Court of Cassation dismissed the applicant's appeal on points of law and an order was made for his extradition. The applicant applied unsuccessfully to the *Conseil d'Etat* to have the extradition order set aside. He is now on the run.

*Inadmissible*: The applicant had patently been informed of the accusation against him and of the progress of the proceedings before the Italian courts, notwithstanding the fact that he had absconded. Furthermore, the applicant, who had deliberately chosen to remain on the run after escaping from prison, had received effective assistance during the proceedings from several lawyers specially appointed by him. Hence, the Italian and subsequently the French authorities had been entitled to conclude that the applicant had unequivocally waived his right to appear and be tried in person. The French authorities had therefore taken due account of all the circumstances of the case and of the Court's case-law in granting the extradition request made by the Italian authorities: *manifestly ill-founded*.

---

**FAIR HEARING**
Alleged risk of flagrant denial of a fair trial should the applicants be extradited to their native Uzbekistan: *communicated*.

**ISMOILOV and Others - Russia** (N° 2947/06)
[Section I]

(see Article 3 above, under “Extradition”).

---

**PUBLIC HEARING**
Applicant's sentence increased by an appeal court sitting *in camera* without his presence or that of his lawyer: *violation*.

**CSIKÓS - Hungary** (N° 37251/04)
Judgment 5.12.2006 [Section II]

(see Article 35(1) below).

---

## Article 6(2)

**PRESUMPTION OF INNOCENCE**
Rebuttable presumption of guilt and refusal of additional investigations in respect of person charged with customs offences: *inadmissible*.

**VOS - France** (N° 10039/03)
Decision 5.12.2006 [Section II]

The applicant is a Dutch lorry driver. He was arrested by customs officials who found 14,244 bottles of brandy and vodka in his lorry during an inspection. The applicant was unable to provide any documents attesting to the origin of the goods. He was summoned to appear before the criminal court and was sentenced following adversarial proceedings to two months' imprisonment and a one-million franc customs fine. The applicant and the public prosecutor appealed against this judgment. The applicant said he had been unaware of the nature of the consignment, but admitted that the situation had been unclear when the lorry was loaded and that he had taken charge of the consignment in doubtful circumstances. He also claimed that the smuggling was part of a full-scale organised trafficking operation. Lastly, he requested that a confrontation be held and further investigation ordered. He argued that his trial at first instance had not been fair and that the appeal proceedings would also be unfair unless instructions were issued for evidence to be heard from witnesses on his behalf. In a judgment given following adversarial proceedings the court of appeal gave the applicant a suspended term of six months' imprisonment and upheld the customs fine. The Court of Cassation dismissed an appeal on points of law by the applicant.

*Inadmissible* under Article 6(2) – Presumptions of fact or law had to be confined within reasonable limits which took into account the importance of what was at stake and maintained the rights of the defence. Furthermore, the person in possession of contraband goods was not left entirely without a means of defence, given that the competent court could accord him the benefit of extenuating circumstances and had to acquit him if he succeeded in establishing a case of force majeure. The circumstances of the case had disclosed a certain “element of intent”, although this had not been necessary in order for the court to convict the applicant. The trial and appeal courts had been careful to avoid resorting automatically to the rebuttable presumption of liability on the part of the person accused of smuggling, laid down by the Customs Code; they had not applied the Customs Code in a way which conflicted with the presumption of innocence: *manifestly ill-founded*.

*Inadmissible* under Article 6(3)(d) – A decision not to hear evidence from witnesses for the defence could infringe the rights of the defence. However, with regard to the applicant's request for further investigation to be carried out, the witness examinations he requested would have had no bearing on the material facts of the offence, but would have been aimed at establishing that he had acted in good faith. The applicant had not demonstrated that taking evidence as he requested could have added new information relevant to his defence: *manifestly ill-founded*.

---

**PRESUMPTION OF INNOCENCE**
Statements of suspects' guilt pronounced by the prosecutor processing a request for their extradition: *communicated*.

**ISMOILOV and Others - Russia** (N° 2947/06)
[Section I]

(see Article 3 above, under "Extradition").

---

**PRESUMPTION OF INNOCENCE**
Refusal to return bodies of alleged terrorists for burial: *communicated*.

**SABANCHIYEVA and Others - Russia** (N° 38450/05)
[Section I]

(see Article 3 above).

---

**Article 6(3)(a)**

**INFORMATION ON NATURE AND CAUSE OF ACCUSATION**
Reclassification by the appellate court of an offence as complicity in that offence at the stage of delivering judgment: *violation*.

**MATTEI - France** (N° 34043/02)
Judgment 19.12.2006 [Section II]

(see Article 6(1) above).

---

**Article 6(3)(b)**

**ADEQUATE TIME AND FACILITIES**
Reclassification by the appellate court of an offence as complicity in that offence at the stage of delivering judgment: *violation*.

**MATTEI - France** (N° 34043/02)
Judgment 19.12.2006 [Section II]

(see Article 6(1) above).

## ARTICLE 7

**APPLICABILITY**
Taking of DNA sample from convicted person and storage of his DNA profile in national DNA database for thirty years: *Article 7 not applicable*.

**VAN DER VELDEN - Netherlands** (N° 29514/05)
Decision 7.12.2006 [Section III]

(see Article 8 below).

## ARTICLE 8

**PRIVATE LIFE**
Taking of a DNA sample from a convicted person and storage of his DNA profile in national database for thirty years: *inadmissible*.

**VAN DER VELDEN - Netherlands** (N° 29514/05)
Decision 7.12.2006 [Section III]

The applicant was convicted and sentenced to imprisonment for several robberies and car thefts. In accordance with the DNA Testing (Convicted Persons) Act, a sample of cellular material was taken from him in prison, *via* a mouth swab, in order for his DNA profile to be determined. DNA profiles which are legally authorised are entered into the national DNA database (with the aim of tracing perpetrators of criminal offences more quickly) and are only to be processed for the purpose of the prevention, detection, prosecution and trial of criminal offences that the convicted person has previously committed or may commit in the future. The duration of the storage of a DNA profile and cellular material depends on the offence for which the individual concerned has been convicted. A statutory maximum prison sentence of at least four years is required for the taking of a sample. The data of persons convicted of an offence carrying a statutory sentence of six years, as in the applicant's case, is stored for thirty years. The applicant unsuccessfully objected to having his DNA profile determined and entered into the national database. The domestic court was of the opinion that the obligation to provide cellular material did not constitute a punishment. Nor did the impugned measure breach Article 8 since, by helping to solve more crimes and to prevent recidivism as much as possible, it was necessary in the interest of public safety, the prevention of criminal offences and the protection of the rights and freedoms of others.

*Inadmissible* under Article 7 – The order given by the public prosecutor to take a sample of cellular material from the applicant and the compilation and storage of the applicant's DNA profile, based on the DNA Testing (Convicted Persons) Act which entered into force in 2005, did not amount to a “penalty” within the meaning of Article 7: *incompatible ratione materiae*.

*Inadmissible* under Article 8 – The taking of a mouth swab in order to obtain cellular material from the applicant, the systematic retention of that material and the compiled DNA profile constituted an interference with his right to respect for private life. It served the legitimate aims of the prevention of crime and the protection of the rights and freedoms of others, even if DNA played no role in the investigation and trial of the offences committed by the applicant. The obligation on all persons who have been convicted of offences of a certain seriousness to undergo DNA testing is not unreasonable. The measures can be said to be “necessary in a democratic society”, considering the substantial contribution which DNA records have made to law enforcement in recent years and because the applicant may also reap a certain benefit from the inclusion of his DNA profile in the national database in that he may thereby be rapidly eliminated from the list of persons suspected of crimes in the investigation of which material containing DNA has been found: *manifestly ill-founded*.

*Inadmissible* under Article 14 – The applicant complained that the measure at issue constituted discrimination in that there was no good reason why he should be treated differently from other persons in the Netherlands who were not obliged to have their DNA profile determined and included in the national database. *Manifestly ill-founded*, regard being had, in particular, to the aim of the DNA testing of a specific category of convicted person as described by domestic law.

---

**PRIVATE AND FAMILY LIFE**
Decision ordering the return of the applicant's daughter with her father living abroad, pursuant to the Hague Convention: *inadmissible*.

**MATTENKLOTT - Germany** (N° 41092/06)
Decision 11.12.2006 [Section V]

While the applicant stayed in the United States, she had an affair with a US citizen. After the affair had ended, the applicant gave birth to a daughter in April 2004. Her former partner was registered in the birth certificate as the child's legitimate father. In September 2004, she returned to Germany with her daughter and reconciled with her German husband. They now live together. The German authorities issued a German birth certificate for the child in which the applicant's husband was registered as the legitimate father. The applicant's former partner underwent a DNA-test which confirmed his fatherhood. Upon his application, a competent district court in the USA confirmed his parenthood and provisionally granted him custody of the child. The court also issued a certificate stating that the removal of the child had been "wrongful" under the Hague Convention on the Civil Aspects of International Child Abduction. Subsequently, he instituted proceedings in Germany seeking the return of the child to the USA. The court of appeal ordered the applicant to return her daughter to the USA, or, should she fail to do so, to hand her over in order to ensure her immediate return. The court also ruled that the execution of the order should not take place until the applicant's former partner had paid alimony to her for a period of four months. Moreover, the court ordered him to rent an apartment in the United States for the applicant and their daughter for a period of two months. Should the applicant refuse to comply with the order to return the child, the court authorised the bailiff to return the child to the USA by use of force, if necessary.
The order to return the child had amounted to an interference with the applicant's rights to respect for her family life. The impugned measure had been based on the Hague Convention and the German court of appeal, by applying its provisions, had acted in what it considered to be the child's best interest. The interference had pursued a legitimate aim of protecting the rights and freedoms of others. The German court had been empowered to rely on the certificate of wrongness issued by the American court, as the Hague Convention allows the courts to rely on foreign decisions. The German court had taken possible hardships into account when ordering that the applicant's former partner had to pay alimony and rent an apartment for the applicant and their child. Moreover, the applicant had legal remedies at her disposal in the USA to ensure the defence of her interests and of those of her child. The decision to return the child to the USA under the Hague Convention had not anticipated or prejudiced the decision as to who would obtain the sole custody. The argument that there would be a certain danger that the US courts would find against the applicant in the pending custody proceedings could not be used to undermine the basic premise of the Hague Convention. Although coercive measures against children are not desirable in such sensitive situations, the use of sanctions must not be ruled out in the event of unlawful behaviour by the parent with whom the children live. Having regard to all the circumstances, the Court could not find that the German court of appeal's assessment had been arbitrary or that it had not adequately taken the child's interest into account. In particular, having regard to the domestic courts' margin of appreciation in the matter, the interference complained of had not been disproportionate to the legitimate aim pursued. The applicant, who had been represented by her lawyer throughout the proceedings before the German courts, had been sufficiently involved in the decision-making process: *manifestly ill-founded*.

---

**PRIVATE AND FAMILY LIFE**
Refusal to return bodies of alleged terrorists for burial: *communicated*.

**SABANCHIYEVA and Others - Russia** (N° 38450/05)
[Section I]

(see Article 3 above).

---

**FAMILY LIFE**
Applicant banned from entering country in which proceedings leading to deprivation of his parental rights ended without his having been heard: *violation*.

**HUNT - Ukraine** (N° 31111/04)
Judgment 7.12.2006 [Section V]

*Facts*: The applicant, an American national, got married and resided in Ukraine with his son before he left the country and got divorced (when his child was three years old). The applicant was prohibited from re-entering Ukraine after his ex-wife filed a complaint against him. She then began proceedings to deprive him of his parental rights with respect to their son. Due to the prohibition on re-entry the applicant was unable to take part in the proceedings and was eventually deprived of his parental rights. His representative appealed unsuccessfully.

*Law*: The proceedings concerning parental rights had to be based on an assessment of the applicant's personal character and his behaviour. Such an assessment could not be undertaken without having heard the applicant in person or at least, in the circumstances of the present case, having sought to obtain first-hand information from the applicant as to the events and his relations with his son and ex-wife, via international legal assistance instruments. This was not done in the instant case. Further, the domestic courts disregarded the fact that the applicant had attempted to see his son, they failed to call a witness proposed by the applicant, and the respective higher courts did not answer the applicant's complaints about these failures. Moreover, the fact that the applicant contested the request for deprivation of his parental rights could also be seen as evidence of his interest in his son. In sum, the applicant was not involved in the decision-making process to an extent necessary to protect his interests.
*Conclusion*: violation (unanimously) and no need to examine the facts also under Article 6(1) (fair hearing).

Article 41 – EUR 10,000 in respect of non-pecuniary damage.

---

**FAMILY LIFE**
No specific remedy for preventing or punishing child abduction from the territory of the respondent State, resulting in non-enforcement of custody award: *violation*.

**BAJRAMI - Albania** (N° 35853/04)
Judgment 12.12.2006 [Section IV

*Facts*: In 1998 the applicant and his wife separated and his wife moved out with their daughter to live with her parents. The applicant only managed to see his daughter once after the separation as his ex-wife and her parents refused to give him access to her. In 2003 he brought divorce proceedings, at the same time requesting the police to cancel his daughter's passport in view of the fact that his wife was planning to take her to Greece without his consent. Despite that request the applicant's wife managed to take her daughter to Greece. Later the applicant was awarded custody of the child but the judgment was not enforced.

*Law*: The custody judgment had remained unenforced for approximately two years for which no blame could be attributed to the applicant, who regularly took steps to secure the return of his daughter. Under Albanian law there was no specific remedy to prevent or punish cases of abduction of children from the territory of that country. In particular, Albania is not a State Party to the Hague Convention and has not yet implemented the UN Convention on the Rights of the Child, whereas the European Convention on Human Rights requires States to take all necessary measures to secure the reunion of parents with their children in accordance with a final judgment of a domestic court. The Albanian legal system did not provide any alternative framework affording the applicant the practical and effective protection that was required by the State's positive obligation enshrined in Article 8.
*Conclusion*: violation (unanimously).

Article 41 – EUR 15,000 for non-pecuniary damage.

---

**EXPULSION**
Deportation to Algeria, pursuant to a temporary exclusion order imposed for large scale drug-trafficking, of a man who had been living in France for thirty-five years and is the father of two children: *admissible*.

**SAYOUD - France** (N° 70456/01)
Decision 7.12.2006 [Section I]

The applicant was found guilty of drug trafficking in a case concerning several dozen kilos of cannabis resin, and was sentenced to a customs fine, a six-year term of imprisonment and a five-year exclusion order.
The applicant was born in Algeria and had arrived in France at the age of fifteen. At the time his sentence was handed down he had been living there for thirty-five years and had two children born in France.
The applicant was deported to Algeria in November 2002 under the temporary exclusion order. Before it was due to expire, the exclusion order was rescinded as of right under the 2003 Immigration Control, Residence of Aliens and Nationality Act. The relevant decision was taken in January 2005; in May 2006 the applicant was finally given permission to return to France. In October 2006 the French authorities issued him with a national identity card based on a "certificate of French nationality" stating that he had automatically retained French nationality when Algeria, the country where he had lived prior to his arrival in France, had gained independence in 1962.
In his application lodged with the Court in 2000, before his deportation, the applicant complained that the temporary exclusion order imposed on him infringed his right to respect for his private and family life.

*Admissible* under Article 8 (private and family life) in respect of the applicant's deportation to Algeria under the temporary exclusion order, after the Government's preliminary objections had been dismissed.

Article 35(1) – The applicant had exhausted domestic remedies, as he had lodged an appeal on points of law with the Court of Cassation against his conviction and had complained of a violation of Article 8 of the Convention on account of the exclusion order imposed on him.

Article 34 – In the French Government's view, the applicant could no longer claim to be a victim of a violation of Article 8, as the exclusion order of which he had complained had been rescinded as of right. The Court stressed that the order excluding the applicant from French territory had been enforced and that the applicant had been prohibited from re-entering the country for approximately three years and four months. After the order had been rescinded, the applicant had experienced great difficulty in returning to France; despite his repeated requests to that effect, he had been issued with a visa only one year and three months after the decision rescinding the exclusion order. On his return to France he had obtained only a temporary residence permit, whereas he had previously held a ten-year renewable permit. The Government had not adduced any evidence to demonstrate that the applicant's residence status in France was no longer uncertain. Above all, the applicant had been barred from re-entering the country for a long time.
In short, the fact that the exclusion order imposed on the applicant had been rescinded as of right amounted to an acknowledgment in substance by the respondent State that there had been a violation of Article 8. The applicant's residence status in France had now been resolved as he held a "certificate of nationality" and a national identity card. However, in the absence of any compensation for the damage sustained by the applicant on account of his exclusion from France for over three years, he had not obtained full "redress" for the violation.
See *Achour v. France*, no. 67335/01, decision of 1 March 2004, Information Note No. 64.

*Inadmissible* under Article 8 (respect for correspondence): Only one of the letters sent by the Court to the applicant while he was in prison had been opened, in error, by the prison authorities. There had been no deliberate intent on the part of the authorities to infringe the applicant's right to respect for his

correspondence nor had there been any recurrences suggestive of a malfunctioning of the postal service that could indisputably be said to constitute an interference: *manifestly ill-founded*.
See *Touroude v. France*, no. 35502/97, decision of 3 October 2000, Information Note No. 23.

---

**CORRESPONDENCE**
Inadvertent opening by prison authorities of letter from the Court to a prisoner: *inadmissible*.

**SAYOUD - France** (N° 70456/01)
Decision 7.12.2006 [Section I]

(see above).

## ARTICLE 9

**MANIFEST RELIGION OR BELIEF**
Refusal to return bodies of alleged terrorists for burial: *communicated*.

**SABANCHIYEVA and Others - Russia** (N° 38450/05)
[Section I]

(see Article 3 above).

## ARTICLE 10

**FREEDOM OF EXPRESSION**
Editor-in-chief convicted of defamation for having written and published an article labelling an anti-Semitist as a "local neo-fascist": *violation*.

**KARMAN - Russia** (N° 29372/02)
Judgment 14.12.2006 [Section V]

*Facts*: The applicant is the director-general and editor-in-chief of the newspaper *Gorodskiye Vesti*. In 1994 he published an article with his personal account of talking to a partisan of the Russian National Unity movement, whom he had heard recite a verse mocking Jewish last names at a meeting organised by Mr Terentyev, described as "the local neo-fascist". The partisan was aggrieved by her precarious living conditions, resulting from the profound social and economic changes in Russia, and blamed the worsening of her situation on Jews. She confessed to being an avid reader of Mr Terentyev's newspaper, *Kolokol*, also criticised in the piece. The article concluded with the applicant's analysis of the current political situation, critical of social parasitism and witch-hunting.
Mr Terentyev successfully brought proceedings for defamation against the applicant and his newspaper concerning the description of him as a "neo-fascist". The applicant appealed, supported by the district prosecutor who submitted, in particular, that the regional prosecutor had opened a criminal investigation on charges of incitement to ethnic hatred by the *Kolokol* newspaper. The applicant also asked the court to examine ten issues of *Kolokol* and to obtain an expert report and requested that the proceedings be adjourned pending investigation of the criminal case against Mr Terentyev. His request was refused, the court having found that an expertise was not necessary and having preferred to rely on the expert reports made during the criminal proceedings against Mr Terentyev. Those proceedings were later discontinued as Mr Terentyev's actions were found to have lacked the constituent elements of a criminal offence. Later the court, in a new judgment, found that being designated a "neo-fascist" had defamed Mr Terentyev as a public figure and the son of the Second World War veteran. As Mr Terentyev was not a member of any neo-fascist party and the criminal charge of incitement to ethnic hatred had not been maintained against

him, the court held the applicant responsible for having failed to prove the truthfulness of that expression. It awarded Mr Terentyev RUR 30,000 against the applicant and RUR 15,000 against his newspaper. The applicant was also order to bear the court fees. On appeal those awards were reduced to RUR 5,000 and RUR 10,000 respectively.

*Law*: The subject-matter of the article at issue was part of a political debate on a matter of general and public concern, and very pressing reasons would need to be given to justify any restriction. The Court could not subscribe to the narrow definition of the term “neo-fascist” adopted by the Russian courts, as solely designating membership of a neo-fascist party. According to the regional prosecutor, the publications in Mr Terentyev's newspaper targeted the Jewish religion and symbols, describing them in an inimical way, and propagated fallacious stories about the “world Jewish masonry”. Against that background, the Court considered that the term “local neo-fascist”, should be understood in the sense given to it by the applicant, namely describing a general political affiliation with the ideology of racial distinctions and anti-Semitism. Contrary to the view of the Russian courts, the Court considered that the term “local neo-fascist” was to be regarded as a value-judgment rather than a statement of fact. The requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself. Nevertheless, even a value-judgment without any factual basis to support it might be excessive. The Court noted however that the applicant had offered documentary evidence, including the past issues of the *Kolokol* newspaper and several reports by independent experts. Having examined those publications, the experts had found that they were anti-Semitic in nature and that their ideals were similar to those of National Socialism. In the Court's view, that material might have been relevant when proving that the value-judgment expressed by the applicant had been an acceptable comment. Apart from that documentary evidence, the applicant also had proposed that a further expert opinion be sought. The domestic courts, however, had refused to consider that evidence and had relied instead on a study carried out in the criminal proceedings against Mr Terentyev on the charge of incitement to ethnic hatred. The Court was struck by the inconsistent approach of the Russian courts, on the one hand, requiring proof of a statement, and, on the other hand, refusing to consider the readily available evidence. The degree of precision for establishing the well-founded character of a criminal charge by a competent court could hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, for the standards applied when assessing someone's political opinions in terms of morality were quite different from those required for establishing an offence under criminal law. In sum, the use of the term “local neo-fascist” to describe Mr Terentyev's political leaning did not exceed the acceptable limits of criticism. The standards applied by the Russian courts were not compatible with the principles embodied in Article 10 since they did not adduce “sufficient” reasons justifying the interference at issue. Accordingly, the interference was disproportionate to the aim pursued and was not “necessary in a democratic society”.
*Conclusion*: violation (unanimously).

Article 41 – EUR 1,000 for non-pecuniary damage.

---

**FREEDOM OF EXPRESSION**
Absolute prohibition on publishing photograph of a business magnate alongside newspaper reports on investigations into his suspected tax evasion: *violation*.

**VERLAGSGRUPPE NEWS GMBH - Austria (no. 2)** (No 10520/02)
Judgment 14.12.2006 [Section I]

*Facts*: The applicant company owns and publishes a widely-read weekly magazine. An article appeared about pending investigations on suspicions of large scale tax evasion against the managing director of a well-known enterprise, market leader in equipping police forces with pistols. His photograph was printed with the article. The article stated that he was suspected of having failed to pay taxes of up to more than 36 million euros, and that the magazine was in the possession of numerous documents concerning this suspicion which it claimed to have obtained through its own in-depth research. The most important documents were letters from the managing director's lawyers from which it followed that an attempt to

murder him had taken place in Luxembourg, which had not come to the attention of the Austrian authorities or of the media at the time. The article suggested that the attempt might have been made at the instigation of one of his business partners and assumed further that the attempt was somehow linked to his network of companies which had been scrutinised by the tax authorities.
The business leader brought proceedings against the applicant company, requesting a ban on publishing his picture in connection with reports, both on the pending tax evasion proceedings against him and in relation to the attempted murder. A preliminary injunction was issued against the applicant company prohibiting it from publishing a picture of the claimant in the context of reports on charges of tax evasion against him, in so far as he was not described as a suspect, but as having committed the offence, until a final decision had been taken in the main injunction proceedings. The request was dismissed for the remainder (attempted murder issue). The Supreme Court widened the scope of the preliminary injunction to the extent that the applicant company was prohibited from publishing any pictures of the claimant in the context of reports on the tax evasion proceedings pending against him, irrespective of the accompanying text. The Supreme Court took arguments that tax evasion was a lesser indictable offence than a crime and that tax investigations were covered by the fiscal secret.

*Law*: The applicant, the owner and publisher of a widely-read weekly, has the duty to impart – in a manner consistent with its obligations and responsibilities and in respect of the reputation or the rights of others – information and ideas on all matters of public interest. The claimant – a business magnate owning and managing one of the country's most prestigious enterprises – is by his very position a public figure. Further, the article reported on a matter of public interest, namely on pending investigations on suspicion of tax evasion, informing on the recent search of his premises and giving some information on the network of his companies and the alleged practices of tax evasion. It also indicated that there could be a link between this business network and an attempted murder which had taken place the year before. Articles of this kind are capable of contributing to a public debate on the integrity of business leaders, on illegal business practices and the functioning of the justice system in respect of economic offences.
Besides, the Court is not convinced by the Supreme Court's approach to the nature of the offence and considers, on the contrary, that the offence at stake, tax evasion of a very substantial amount, is of a serious nature. The Supreme Court's approach excluded any weighing of interests between the public interest to have the information on the proceedings for tax evasion pending against the business leader accompanied by his picture against the latter's interest to have his identity protected. However, the Court stressed that there is little scope for an absolute prohibition to publish a public person's picture in an article contributing to a public debate. Neither is the Court convinced by the Supreme Court's argument relating to the secrecy of the investigations for tax evasion: the applicant remained free to publish reports on the investigations pending despite their secret nature and to publish the impugned picture when reporting on the attempted murder issue. Therefore, the reasons adduced by the Supreme Court though being "relevant" were not "sufficient". Thus, the absolute prohibition to publish the picture of the claimant, alongside the article reporting on the pending investigations against him, was not proportionate to the legitimate aim pursued, namely the protection of his reputation and rights.
*Conclusion*: violation (six votes to one).

Article 41 – EUR 1,720 for pecuniary damage, corresponding to the costs which the applicant company was ordered to pay in the domestic proceedings.

---

**FREEDOM OF EXPRESSION**
Journalist convicted of defamation for having reported and commented on a mayor's criminal conviction: *violation*.

**DABROWSKI - Poland** (N° 18235/02)
Judgment 19.12.2006 [Section IV]

*Facts*: The applicant is a journalist. The case concerned three articles written by him and which appeared in a daily newspaper in 1998. The articles commented on the criminal proceedings against the Deputy Mayor of Ostóda, Mr Lubaczewski, who was found guilty of the burglary of a private company. The last article – headlined "The end of a career of a mayor-burglar?" – stated, in particular, that the mayor had been found guilty of an attempt by local government officials to take over a private company. Mr Lubaczewski lodged a private bill of indictment, charging the applicant with defamation. He submitted that the applicant's articles contained a number of false allegations. The applicant was convicted of defamation on the ground that he had not shown in a convincing manner that the allegations made by him were true. The criminal proceedings against him were then conditionally discontinued and he was ordered to pay a minor amount to a charity and to reimburse the prosecutor's costs. The applicant appealed unsuccessfully.

*Law*: The articles had dealt with issues of public interest of importance for the local community, namely, criminal proceedings against a local politician. The content and the tone of the articles were fairly balanced on the whole. For example, the applicant called Mr Lubaczewski a "mayor- burglar" only after the trial court had found him guilty of burglary. The applicant did not claim that that judgment was final and noted that the appeal court might give a different ruling. Some of the applicant's statements were value judgments on a matter of public interest which could not be said to have been devoid of any factual basis. Moreover, the applicant's statements were not a gratuitous personal attack on a politician. Neither could it be said that the purpose of the statements in question was to offend or to humiliate the criticised person. The reasons given by the domestic courts failed to have regard to the fact that the applicant, as a journalist, had a duty to impart information and ideas on political questions and on other matters of public interest and in so doing had possible recourse to a degree of exaggeration. The domestic courts did not take into account the fact that Mr Lubaczewski, being a politician, should have shown a greater degree of tolerance in the face of criticism. In sum, the reasons adduced by them could not be regarded as relevant and sufficient to justify the interference at issue. While the penalty imposed on the applicant was relatively light, and, although the proceedings against him were conditionally discontinued, the domestic courts found that he had committed the criminal offence of defamation. As a consequence, the applicant had a criminal record. Moreover, it remained open to the courts to resume the proceedings at any time during the period of his probation. Furthermore, while the penalty had not prevented the applicant from expressing himself, his conviction nonetheless amounted to a kind of censorship which was likely to discourage him from making criticisms of that kind again in the future. Such a conviction was likely to deter journalists from contributing to public discussion of issues affecting the life of the community and hamper the press in the performance of its task of purveyor of information and public watchdog. In sum, the applicant's conviction was disproportionate to the legitimate aim pursued, given the need in a democratic society to ensure and maintain the freedom of the press.
*Conclusion*: violation (unanimously).

Article 41 – EUR 350 for pecuniary and EUR 5,000 for non-pecuniary damage.

---

**FREEDOM OF EXPRESSION**
Injunction prohibiting broadcaster from showing the picture of a convicted neo-Nazi once he had been released on parole: *violation*.

**ÖSTERREICHISCHER RUNDFUNK - Austria** (N° 35841/02)
Judgment 7.12.2006 [Section I]

*Facts*: In 1999 the applicant (the Austrian Broadcasting Corporation) broadcast information about the release on parole of the head of a neo-Nazi organisation called "Extra-Parliamentary Opposition True to the People" (*Volkstreue Ausserparlamentarische Opposition - VAPO*), Mr K., who had been sentenced under the National Socialist Prohibition Act. That news item also mentioned his deputy Mr S., who had previously been convicted under the Act and had been released on parole five weeks earlier. During the broadcast, a picture of the deputy at his trial was shown briefly. The deputy successfully brought proceedings under the Copyright Act and the applicant's rights to publish his picture were restricted. The injunction granted by the domestic courts prohibited the applicant from showing Mr S.'s picture in connection with any text mentioning his conviction under the Prohibition Act once the sentence has been executed or once he had been released on parole.

*Law*: Article 34 – The Government had argued the applicant was a governmental rather than a non-governmental organisation and therefore had no standing before the Court. The Court assessed this question in the light of the provisions contained in the 2001 Act on the Austrian Broadcasting and observed that the applicant does not exercise governmental powers. It provides a public service and it therefore remained to be examined whether it does so under government control. Its capital, though stemming from public means, is no longer held by the State. The applicant finances its activities from programme fees which it can fix itself. Its Foundation Council monitors the management and appoints the Director General for a period of five years. The latter is responsible for running the applicant's activities and can only be removed by the Foundation Council acting with a two-thirds majority. The applicant's mandate as laid down in the 2001 Act obliges it to observe the requirements of objectivity and diversity of reporting and to preserve its independence *inter alia* from the State and the parties. The members of the Foundation Council and the Director General are only bound by law in the exercise of their functions and do not receive any instructions. A number of provisions of the said Act guarantee the editorial and journalistic independence of the applicant's staff members. Finally, the Federal Communication Panel which monitors the applicant's compliance with the 2001 Act is an independent body consisting of a majority of judges. Having regard to all these elements, the Court was not convinced that the applicant is placed under "government control". Moreover, the Austrian Broadcasting does not hold a broadcasting monopoly, but operates in a sector open to competition. Private broadcasters can obtain licences under the Private Radio Act and the Private Television Act. As to the Government's argument that the applicant could rely on a method of financing which was not at the disposal of private broadcasters and was subject to the financial control of the Audit Office, the Court recalled that, even where a public broadcaster is largely dependent on public resources for the financing of its activities this it not considered to be a decisive criterion, while the fact that a public broadcaster is placed in a competitive environment is an important factor. In view of the legislative framework which ensures the applicant's editorial independence and its institutional autonomy, it qualifies as a "non-governmental organisation" within the meaning of Article 34.

Article 10 – The applicant being the Austrian public broadcaster, the 2001 Act obliges it to cover any major new item in the field of politics. The press and more generally the media have a duty to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest. Mr S., who brought the proceedings at issue, is a well-known member of the neo-Nazi scene in Austria and the Court had already held in a similar case that a person expressing extremist views lays himself open to public scrutiny. Moreover, Mr. S. was convicted of crimes under the Prohibition Act in 1995 and was sentenced to a lengthy prison term for being a leading member of VAPO, an organisation aimed at destroying the Austrian constitutional order. In the domestic courts' assessment the proceedings against Mr S. were among the most important ones under the Prohibition Act. At the time of his trial his picture was widely published. The news item broadcast by the applicant in 1999 was a brief report dealing

mainly with the release on parole of Mr. K. Mr S. was mentioned as another convicted member of VAPO who had also been released on parole a few weeks earlier. The Court had to exercise caution when the measures taken by the national authorities are such as to dissuade the media from taking part in the discussion of matters of public interest. The injunction granted by the domestic courts was phrased in broad terms. While there may be good reasons to prohibit the publication of a picture of a convicted person after his release on parole, a number of elements are to be taken into account when weighing the individual's interest not to have his physical appearance disclosed against the public's interest in the publication of his picture. Elements that will be relevant are the degree of notoriety of the person concerned, the lapse of time since the conviction and the release, the nature of the crime, the connection between the contents of the report and the picture shown and the completeness and correctness of the accompanying text. The domestic courts attached great weight to the time-element, in particular to the long lapse of time since Mr S.'s conviction, but paid no particular attention to the fact that only a few weeks had elapsed since his release. They did not take into account his notoriety and the political nature of the crime of which he had been convicted. Nor did they have regard to other important elements, namely that the facts mentioned in the news items were correct and complete and that the picture shown was related to the content of the report. Another element of relevance was that the other media had remained free to publish Mr S.'s picture in the said context. In sum, the reasons adduced by the domestic courts were not "relevant and sufficient" to justify the interference which was not "necessary in a democratic society".
*Conclusion*: violation (unanimously).

Article 41 – EUR 6,711 in compensation for pecuniary damage (i.e. the costs which the courts had ordered the applicant company to reimburse to Mr S.).

---

**FREEDOM OF EXPRESSION**
Civil-law defamation for publication of incorrect information about a bank, resulting in important financial losses: *communicated*.

**<u>ZAO "KOMMERSANT. PUBLISHING HOUSE" and VASILYEV - Russia</u>** (N° 35662/05)
[Section I]

Between May and August 2004 a massive crisis of trust of bank depositors broke out with the result that the total volume of deposits in all Russian banks decreased by some ten percent. In July 2004 the first applicant, a nation-wide newspaper, published an article stating that Alfa-Bank had been experiencing serious problems and that hundreds of its clients had unsuccessfully been trying to withdraw money from its cash-machines. Alfa-Bank filed a claim for protection of its business reputation, arguing that the publication of the article had led to massive withdrawals by its clients, causing the bank considerable financial losses. A commercial court held that the impugned statements had been factually erroneous and had damaged the reputation of Alfa-Bank. The applicant newspaper was ordered to pay the bank over one million euros in damages and to refute the article as not corresponding to reality and as having defamed the business reputation of Alfa-bank. The second applicant is the editor-in-chief of the newspaper.
*Communicated* under Articles 6(1) and 10 of the Convention.

---

**FREEDOM TO IMPART INFORMATION**
Radio station ordered to pay damages and costs and to issue an apology for having broadcast an unlawfully obtained telephone conversation between government officials: *violation*.

**<u>RADIO TWIST, A.S. - Slovakia</u>** (N° 62202/00)
Judgment 19.12.2006 [Section IV]

*Facts*: At the relevant time the applicant company was broadcasting on five frequencies in Slovakia and had a daily audience of more than 400,000 listeners. In 1996 it broadcast, in the news programme "Journal", the recording of a telephone conversation between the State Secretary at the Ministry of Justice

and the Deputy Prime Minister which the station had received from an unknown source. The recording was accompanied by a commentary by the applicant company's journalist. The dialogue related to the recent power struggle between two political groups with an interest in the privatisation of a major national insurance provider. The State Secretary subsequently filed a civil action against the applicant company for protection of his personal integrity. A district court ordered the company to offer the plaintiff a written apology and to broadcast that apology within 15 days. The company was further ordered to pay compensation for damage of a non-pecuniary nature as well as to reimburse the plaintiff's legal costs. A regional court upheld that judgment.

*Law*: There is little scope in the Convention for restrictions on political speech or on debate on questions of public interest. Moreover, the limits of acceptable criticism are wider as regards a public figure, such as a politician, than as regards a private individual. The Court could not accept the domestic courts' argument that the telephone conversation was private in nature and, therefore could not be broadcast. The telephone conversation in question was between two high- ranking government officials and its context and content were clearly political. Questions concerning management and privatisation of State-owned enterprises undoubtedly and by definition represented a matter of general interest, even more so in periods of political and economic transition. The domestic courts had attached decisive importance to the fact that the recording had been obtained by unlawful means. They had concluded that the fact that such a recording had been broadcast had constituted of itself a violation of the plaintiff's right to protection of his personal integrity. The Court noted however that at no stage was it alleged that the applicant company or its employees or agents had been in any way liable for the recording or that its journalists had transgressed the criminal law when obtaining or broadcasting it. No investigation into the circumstances of the making of the impugned audio recording had been carried out at the domestic level. Moreover, it was not established before the domestic courts that the recording had contained any untrue or distorted information or that the information and ideas expressed in connection with it by the applicant company's commentator had occasioned any particular harm to the plaintiff's personal integrity and reputation. Neither was the Court convinced that the mere fact that the recording had been obtained by a third person contrary to law could deprive the broadcasting company of its protection under Article 10. Finally, there was no indication that the journalists of the applicant company had acted in bad faith or that they had pursued any objective other than reporting on matters which they felt obliged to make available to the public. The interference with the applicant company's right to impart information therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. It thus was not “necessary in a democratic society”.
*Conclusion*: violation (unanimously).

## ARTICLE 11

**FREEDOM OF PEACEFUL ASSEMBLY**
Forceful breaking up by police of a peaceful demonstration, held in a park during a busy period without submission of mandatory prior notification: *violation*.

**OYA ATAMAN - Turkey** (N° 74552/01)
Judgment 5.12.2006 [Section II]

*Facts*: The applicant, president of the Istanbul Human Rights Association, organised a demonstration in Sultanahmet Square in Istanbul in the form of a march followed by a statement to the press. The police requested the group of 40-50 people, who were demonstrating by waving placards, to break up, telling them that the demonstration was unlawful as no prior notification had been given, and that they would be disturbing public order at a busy time of day. The demonstrators refused to comply and attempted to force their way through. The police used a kind of tear gas known as “pepper spray” to disperse them.

*Law*: Article 3 – “Pepper spray” was not among the toxic gases listed in the applicable international legislation. While its use could cause physical discomfort, the applicant had not submitted any medical

report demonstrating that she had suffered ill-effects after being exposed to the gas, nor had she asked for a medical examination.
*Conclusion*: no violation (unanimously).

Article 11 – The group of demonstrators – some fifty persons who had wished to draw public attention to a topical issue – had not represented any danger to public order, apart from possibly disrupting traffic. The rally had begun at around midday and had ended within half an hour with the police intervention. The Court was struck by the authorities' impatience in seeking to end the demonstration, which had been organised under the auspices of the Human Rights Association. Where demonstrators did not engage in acts of violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. The forceful intervention of the police had been disproportionate and had not been necessary for the prevention of disorder.
*Conclusion*: violation (unanimously).

Article 41 – Non-pecuniary damage: finding of a violation sufficient.

For further details see press release no. 753.

---

**FREEDOM OF PEACEFUL ASSEMBLY**
Belated quashing of a refusal by a municipal authority to allow a march and assemblies: *admissible*.

**BĄCKOWSKI and Others - Poland** (N° 1543/06)
Decision 5.12.2006 [Section IV]

The applicants – a group of individuals and an association, the Foundation for Equality – sought permission from the Warsaw municipal authorities for a planned march through the city and the holding of a series of assemblies intended to alert public opinion to the issue of discrimination against various minority groups (including homosexuals) and women. Citing road traffic regulations and the risk of violent clashes with other demonstrators, the authorities refused to grant permission for the march and for some of the assemblies. Relying on an interview given by the Mayor of Warsaw to a Polish newspaper shortly before the date scheduled for the demonstrations, the applicants allege that the real reason permission was refused was homophobia on the part of the municipal authorities. The applicants went ahead with their planned march despite the refusal and demonstrations and assemblies organised by various other groups were allowed to proceed. Although the applicants subsequently succeeded in having the municipal authorities' decisions quashed on appeal, they argue that this remedy came too late as the dates planned for the demonstrations had already passed. Parts of the legislation on which the municipal authorities had relied were later repealed after being ruled unconstitutional by the Constitutional Court.
*Admissible* under Article 11, taken alone and together with Article 13 or Article 14.

---

**FREEDOM OF ASSOCIATION**
Refusal to register a political party on the ground that one of its aims was anti-constitutional: *violation*.

**LINKOV - Czech Republic** (N° 10504/03)
Judgment 7.12.2006 [Section V]

*Facts*: In July 2000 the preparatory committee of a political party (the Liberal Party – "the PL"), of which the applicant was a member, applied to the Ministry of the Interior to register as a political party. The Ministry refused the application on the ground that the party's constitution was in breach of the Political Parties Act, taken together with the Czech Constitution and the Charter of Fundamental Rights and Freedoms. It considered in particular that the party's goal of "breaking the legal continuity with totalitarian regimes" was unconstitutional. On an appeal by the preparatory committee, the Supreme Court upheld the Ministry's decision to refuse to register the party and fully endorsed its opinion concerning the political goal of "breaking the legal continuity with totalitarian regimes", finding that such a goal was

designed to destroy the democratic foundations of the State. Furthermore, the Constitutional Court declared an appeal by the applicant and the preparatory committee manifestly ill-founded on the ground that the decisions appealed against had not infringed their constitutional rights.

*Law*: The refusal to register the PL amounted to interference with the applicant's right to freedom of association. The interference was prescribed by the Political Parties Act and the Charter of Fundamental Rights and Freedoms and had pursued a legitimate aim for the purposes of the Convention. As to whether the interference met a pressing social need, the PL's constitution had advocated a policy of breaking the legal continuity with totalitarian regimes. In the applicant's view, that goal should have been achieved by ending the "impunity in relation to certain offences" committed by representatives of the communist regime, an act that would not have been in breach of the Constitution. The Court considered it necessary to take into account the historical and political background to the applicant's case. Following the change of regime in 1989, the Czech legislature had passed two laws declaring that the communist regime had consistently and systematically breached human rights, the fundamental principles of a democratic State, international treaties and its own laws, and that it had pursued its ends by committing offences and persecuting citizens. In addition, one of these laws stipulated that, as regards limitation-periods for offences that had remained unpunished for political reasons, the running of time was suspended between 25 February 1948 and 29 December 1989. In view of the age of the perpetrators, that amounted to removing the possibility of limitation for such offences – the goal for which the PL had sought to campaign. Hence, there was no evidence that the PL had not sought to pursue its aims by lawful and democratic means, or that its proposed change of the law had been incompatible with fundamental democratic principles, especially as the party's registration had been refused before it had even had time to carry out any activities. The Court reiterated in that connection that the refusal to register a party was a drastic measure that could be applied only in the most serious cases. As the PL had not advocated any policy that could have undermined the democratic regime in the country and had not urged or sought to justify the use of force for political ends, the refusal to register it had not been necessary in a democratic society.
*Conclusion*: violation (unanimously).

Article 41 – Non-pecuniary damage: finding of a violation sufficient.

---

**FREEDOM OF ASSOCIATION**
Refusal to register as a political party an association openly declaring affiliation with a certain ethnic group: *inadmissible*.

**ARTYOMOV - Russia** (No 17582/05)
Decision 7.12.2006 [Section I]

The applicant is the leader of the public movement "Russian All-Nation Union". Three years after its registration as a public association, members thereof decided to re-organise the movement into a political party bearing the same name. The application for the party's registration was refused as the Political Parties Act prohibits the establishment of political parties based, in particular, on religious or ethnic affiliation. Taking into account the name of the party, domestic courts considered that it was founded on the basis of ethnic affiliation, in breach of the aforementioned Act, even though the party's articles of association and programme did not indicate protection of the interests of the Russians as its main objective. The applicant unsuccessfully challenged the constitutionality of the Political Parties Act. For the Russian Constitutional Court, the establishment of parties based on ethnic or religious affiliation would imperil the peaceful co-existence of nations and religions in the Russian Federation and would undermine the principles of a secular state and equality before the law.

*Inadmissible*: The impugned decision directly affected the political party into which the public movement of the same name had decided to re-organise itself, rather than the applicant himself as an individual. The Court nevertheless assumed that the refusal to register the political party amounted to an interference with the applicant's right to freedom of association.

The applicant did not contest that the name of his political party advocated the promotion of the interests of a particular ethnic group, the Russians.
The Russian Constitutional Court noted the special role of Russian political parties as the only actors in the political process capable of nominating candidates for election at all levels. Having regard to the importance of that role, the legislature banned discrimination in access to the membership of political parties, including, specifically, discrimination on the ground of race, religion and ethnic origin. When considering the legal consequences of registering political parties openly declaring their affiliation with a certain ethnic group or religion, the Constitutional Court evidently proceeded from the assumption that the establishment of such parties would be incompatible with the non-discrimination clause of the Political Parties Act. Indeed, it is hardly conceivable that a party standing for the furtherance of the interests of one ethnic group or religious denomination would be able to ensure the fair and proper representation of members of other ethnic groups or adherents of other faiths. Thus, the impugned measure, read together with the non-discrimination clause, served to implement the guarantee of equality enshrined in Article 19 of the Russian Constitution, as well as to ensure the fair treatment of minorities in the political process. Recalling that discrimination on account of one's ethnic origin or religion is a form of racial discrimination which requires from the authorities special vigilance and a vigorous reaction, the Court accepts that the impugned measure was adopted in pursuance of "pressing social need".
The legal status or activities of the public movement "Russian All-National Union" have not been affected by the refusal to register that party. It has lawfully existed since 1998 and its activities or membership have not been restricted in any way. The prohibition against explicit ethnic or religious affiliation was of a limited remit: it applied solely to political parties but to no other type of public association. The applicant's ability to lead a public association, even based on ethnic affiliation, has been unhampered. Thus, the applicant's freedom of association was not *per se* restricted by the State, only its ability to nominate candidates in elections. States have considerable latitude to establish the criteria for participation in elections. The Russian Constitutional Court expounded on the reasons which led it to conclude that in modern-day Russia it would be perilous to foster electoral competition between political parties based on ethnic or religious affiliation. Regard being had to the principle of respect for national specificity in electoral matters, the Court does not find these reasons arbitrary or unreasonable. The interference was therefore proportionate to the legitimate aims pursued: *manifestly ill-founded*.
See *Gorzelik v. Poland*, [GC], judgment 17 February 2004, Information Note N° 61.

---

**FREEDOM OF ASSOCIATION**
Ban on an association whose object was the restoration of the caliphate and the creation of an Islamic state founded on Sharia Law: *inadmissible*.

**KALIFATSTAAT - Germany** (N° 13828/04)
Decision 11.12.2006 [Section V]

The aim of the applicant association was the restoration of the caliphate and the creation of an Islamic State founded on sharia law. An appeal court sentenced its leader, who had been declared caliph, to a four-year term of imprisonment for having twice called for the murder of his political rival, who had also declared himself caliph. Subsequently, the former section 2(2), point 3 of the Associations Act, which had stipulated that religious communities were not associations, implying that they could not be prohibited under the terms of that Act, was repealed. The Federal Interior Ministry issued an order banning the association on the grounds that it was hostile to the constitutional order and to the idea of international understanding, and that it represented a threat to national security and other interests of the State, in particular its relations with Turkey. The association considered democracy to be harmful and incompatible with Islam, and had openly advocated the use of violence in order to achieve its goals. The Federal Interior Ministry also ordered the attachment of the association's property. The applicant association appealed against this order to the Federal Administrative Court, which dismissed the appeal. The association then lodged a constitutional complaint, arguing in particular that the repeal of section 2(2) of the Associations Act had been a retrospective measure which infringed its right to freedom of religion. The Federal Constitutional Court refused to entertain the complaint.

*Inadmissible*: The banning of the applicant association amounted to interference with the exercise of its right to freedom of association. As to the lawfulness of the interference, the measure complained of had been based on domestic legislation which satisfied the requirements of clarity, accessibility and foreseeability. The measure had not been taken retrospectively, as the Associations Act had been amended before publication of the order in question. As to the aims pursued, the ban had pursued a number of legitimate aims under Article 11, in particular the interests of national security and public safety, the prevention of disorder and/or the prevention of crime, and the protection of the rights and freedoms of others. Finally, as to whether the interference had been proportionate, the courts had subjected the reasons given for banning the applicant association to detailed and rigorous scrutiny. The applicant association had acknowledged seeking to establish a worldwide Islamic regime based on sharia law which was incompatible with the fundamental democratic principles articulated in the Convention. The statements and conduct of the members of the association, and in particular of its leader, had been attributable to the association and had demonstrated that the latter did not rule out the use of force in order to attain its objectives. In the Court's view, it had been established convincingly that less stringent measures would not have sufficed to contain the real threat posed by the applicant to the State political system of the Federal Republic of Germany. Having regard to all these considerations, and taking the view that the aims of the applicant association had been contrary to the idea of a "democratic society", the Court found that the penalty imposed on the applicant had been proportionate to the legitimate aims pursued: *manifestly ill-founded*.

## ARTICLE 14

**DISCRIMINATION (Article 8)**
Taking of a DNA sample from a person convicted of a more serious offence, with a view to storing his DNA profile in a national database: *inadmissible*.

**VAN DER VELDEN - Netherlands** (N° 29514/05)
Decision 7.12.2006 [Section III]

(see Article 8 above).

---

**DISCRIMINATION (Article 11)**
Refusal by a municipal authority to allow a march or assemblies to be held, allegedly because of the sexual orientation of the organisers: *admissible*.

**BĄCKOWSKI and Others - Poland** (N° 1543/06)
Decision 5.12.2006 [Section IV]

(see Article 11 above).

---

**DISCRIMINATION (Article 1 of Protocol No. 1)**
Alleged discrimination against unmarried cohabiting family members in light of their future liability for inheritance tax, in comparison with survivors of a marriage or a civil partnership: *no violation*.

**BURDEN and BURDEN - United Kingdom** (N° 13378/05)
Judgment 12.12.2006 [Section IV]

*Facts*: The applicants, both in their eighties, are unmarried sisters and have been living together all their lives, for the last 30 years in a house built on land they inherited from their parents. Each sister has made a will leaving all her property to the other sister. They are concerned that, when one of them dies, the other will be forced to sell the house to pay inheritance tax. Under the 1984 Inheritance Tax Act, inheritance tax

is charged at 40% on the value of a person's property. That rate applies to any amount in excess of GBP 285,000 (about EUR 421,000) for transfers during the tax year 2006-2007 and GBP 300,000 (about EUR 443,000) for 2007-2008. Property passing from the deceased to his or her spouse or “civil partner” (a category introduced under the 2004 Civil Partnership Act for same-sex couples, which does not cover family members living together) is currently exempt from charge.

*Law*: *Admissibility*: In the light of the applicants' advanced age and the very high probability that one of them would be liable to pay inheritance tax upon the death of the other, they could claim to be directly affected by the inheritance law in question. The Court did not consider that the applicants could have been expected to have brought a claim for a declaration of incompatibility under section 4 of the 1998 Human Rights Act before bringing their application to the Court. That domestic remedy was dependent on the discretion of the executive and the Court had previously found it to be ineffective on that ground. It was possible however that, at some future date, evidence of a long-standing and established practice of ministers giving effect to the courts' declarations of incompatibility might be sufficient to persuade the Court of the effectiveness of the procedure. Given that the applicants had been directly affected by a provision of domestic law and since there was no domestic remedy which they could be required to exhaust, the six-month time-limit prescribed by Article 35(1) did not apply.

*Applicability of Article 14* – The Court found it highly probable that the surviving sister would be required to pay tax on property the applicants owned jointly. Since the duty to pay tax on existing property fell within the scope of Article 1 of Protocol No. 1, Article 14 was applicable.

*Compliance*: The applicants had claimed to be in a similar or analogous position to co-habiting married and civil partnership couples for the purposes of inheritance tax. The Government had argued that there was no true analogy because the applicants were connected by birth rather than by a decision to enter into a formal relationship recognised by law. The Court held that, even assuming that the applicants could be compared to co-habiting married and civil partnership couples for the purposes of inheritance, the difference in treatment was not inconsistent with Article 14. The difference of treatment, for the purposes of the grant of social security benefits, between an unmarried applicant who had a long-term relationship with the deceased, and a widow in the same situation, was justified, marriage remaining an institution that was widely accepted as conferring a particular status on those who entered it. The Court accepted the Government's submission that the inheritance tax exemption for married and civil partnership couples pursued a legitimate aim, namely to promote stable, committed heterosexual and homosexual relationships by providing the survivor with a measure of financial security after the death of the spouse or partner. The Convention explicitly protected the right to marry in Article 12. Moreover, the Court had held on many occasions that sexual orientation was a concept covered by Article 14 and that differences based on sexual orientation required particularly serious reasons by way of justification. The State could not be criticised for pursuing, through its taxation system, policies designed to promote marriage; nor could it be criticised for making available the fiscal advantages attendant on marriage to committed homosexual couples.
In assessing whether the means used were proportionate to the aim pursued, and in particular whether it was objectively and reasonably justifiable to deny co-habiting siblings the inheritance tax exemption which was allowed to survivors of marriages and civil partnerships, the Court was mindful both of the legitimacy of the social policy aims underlying the exemption, and the wide margin of appreciation that applied in the field. Any system of taxation, to be workable, had to use broad categorisations to distinguish between different groups of tax payers. The implementation of any such scheme had, inevitably, to create marginal situations and individual cases of apparent hardship or injustice, and it was primarily for the State to decide how best to strike the balance between raising revenue and pursuing social objectives. The central question under the Convention was not whether different criteria could have been chosen for the grant of an inheritance tax exemption, but whether the scheme actually chosen by the legislature, to treat differently for tax purposes those who were married or who were parties to a civil partnership from other persons living together, even in a long-term settled relationship, exceeded any acceptable margin of appreciation. In the circumstances of the case, the United Kingdom could not be said to have exceeded the wide margin of appreciation afforded to it. Hence the difference of treatment for the

purposes of the grant of inheritance tax exemptions was reasonably and objectively justified for the purposes of Article 14.
*Conclusion*: no violation (four votes to three).

For further details, see Press Release no. 777.

---

**DISCRIMINATION (Article 1 of Protocol No. 1)**
Withdrawal of the operating licences of an Internet provider: *communicated*.

**MEGADAT.COM SRL - Moldova** (N° 21151/04)
[Section IV]

(see Article 1 of Protocol No. 1 below).

---

**DISCRIMINATION (Article 1 of Protocol 1)**
Croatian citizen unable to use foreign-currency savings deposited with a Serbian bank: *communicated*.

**PAVKOVIĆ - Serbia** (N° 45204/04)
[Section II]

(see Article 1 of Protocol No.1 below).

## ARTICLE 34

**VICTIM**
Complaint by mayor that the authorities had not taken the necessary security measures in his village to protect his son's life, although his administrative and parental responsibility was engaged in the accident in question: *victim status rejected*.

**PAŞA and ERKAN EROL - Turkey** (N° 51358/99)
Judgment 12.12.2006 [Section II]

(see Article 2 above).

---

**VICTIM**
Annulment of an exclusion order accompanying a prison sentence following the applicant's deportation and residence abroad for a lengthy period: *preliminary objection dismissed*.

**SAYOUD - France** (N° 70456/01)
Decision 7.12.2006 [Section I]

(see Article 8 above).

---

**VICTIM**
Administrative proceedings provided adequate compensation for the deaths of relatives in the flooding of a campsite which had been officially authorised to open: *inadmissible*.

**<u>MURILLO SALDIAS and Others - Spain</u>** (N° 76973/01)
Decision 28.11.2006 [Section IV]

The case concerns the disaster at the Biescas camp site (Spanish Pyrenees) in 1996 when flooding caused by torrential rain left 87 people dead and dozens more injured. The first applicant lost his parents and brother and sister in the catastrophe while the other applicants all received injuries. The campsite had been developed by a private individual on public land belonging to the local authority. Prior administrative approval to develop the site had been given following an administrative procedure involving various municipal and regional authorities. During the course of that procedure one of the experts consulted expressed reservations about the location of the site and the soundness of corrective works that had been carried out to prevent flooding. Following the accident, a criminal investigation was started and the applicants joined the proceedings as civil parties. However, the investigating judge ruled that there was no case to answer, as the constituent elements of the alleged offences had not been made out. An appeal by the applicants against that decision was dismissed and an application for *amparo* relief in the Constitutional Court was declared inadmissible as being unfounded. However, the first applicant successfully brought administrative proceedings against the central and regional authorities in the *Audiencia Nacional* on the grounds of strict liability. In 2005 he was also awarded substantial damages (in excess of EUR 200,000 for the deaths of each of his relatives). He lodged an appeal on points of law which is still pending before the Supreme Court.
The applicants complained under Article 2 that the authorities had not taken adequate preventive measures to protect users of the campsite and had granted permission to use the land despite being aware of the potential dangers. They also complained under Article 6(1) of procedural unfairness, in the form of bias on the part of the investigating judges and the Spanish courts. Lastly, they complained under Article 13 that the authorities had not conducted a proper, in-depth judicial investigation in order to identify those responsible for the catastrophe.

*Inadmissible*: The first applicant had been awarded compensation for the deaths of his relatives in administrative proceedings. The amount could not be regarded as unreasonable and was likely to be confirmed or even increased on appeal. Accordingly, he could no longer claim to be the "victim" within the meaning of Article 34 of a violation of his rights under Article 2. The same applied to Articles 6 and 13, as his complaints under those provisions were closely linked to the procedural aspect of Article 2: *lack of "victim" status*.

The remaining applicants had merely joined the criminal proceedings as civil parties and had declined to bring administrative proceedings against the authorities before lodging their application with the Court: *failure to exhaust domestic remedies*.

For further details, see Press Release no. 808.

---

**VICTIM**
Applicants could claim to be directly affected by an inheritance law, given their advanced age and the very high probability that one of them would be liable to pay inheritance tax upon the death of the other: *victim status accepted.*

**<u>BURDEN and BURDEN - United Kingdom</u>** (N° 13378/05)
Judgment 12.12.2006 [Section IV]

(see Article 14 above).

---

**HINDER THE EXERCISE OF THE RIGHT OF PETITION**
Criminal proceedings initiated against chief executive officer and his detention ordered with the aim to discourage his company from pursuing its application before the Court: *violation*.

Refusal to allow the applicant company's counsel to confer with its chief executive officer in a detention facility without being separated by a glass partition: *violation*.

**OFERTA PLUS SRL - Moldova** (N° 14385/04)
Judgment 19.12.2006 [Section IV]

*Facts*: The applicant company initiated proceedings against the Ministry of Finance when it refused to pay on a treasury bond issued in its favour. In 1999 a court found in favour of the applicant company and confirmed its right to be paid MDL 20 million. Despite enforcement proceedings the applicant company only received MDL 5 million in 2004. In April that year the applicant company informed the Government Agent about its application to the Court. In June the Ministry of Finance initiated revision proceedings against the 1999 judgment. The Supreme Court eventually quashed it and the re-opened proceedings ended with a judgment in favour of the Government. Later in 2004 criminal proceedings were initiated against the applicant company's chief executive officer ("the CEO") on charges of alleged embezzlement, but these were discontinued one year later.
In February 2006 the Court communicated the applicant company's case to the respondent Government. In April 2006 the criminal proceedings against the CEO were re-opened and he was formally indicted for alleged misappropriation of MDL 5 million and for alleged attempted misappropriation of a further MDL 15 million. He was arrested and placed in custody in August 2006. He appealed against his detention, claiming that the criminal proceedings against him were a means of pressuring the company to abandon its application before the Court. His appeal was dismissed.
In the meantime, the applicant company's counsel before the Court applied to the Centre for Fighting Economic Crimes and Corruption ("CFECC") to visit the CEO in detention. He asked that the meeting between them take place without a glass partition separating them and submitted that both he and the CEO had reasons to believe that conversations through that partition in the CFECC meeting room were being intercepted. The request having been refused, the CEO declined to discuss any matters relating to pecuniary damage and asked his lawyer to do likewise because their conversation would have related to the whereabouts of the company's accounting documents which he had refused to disclose to the investigators.

*Law*: Article 6 – The non-enforcement together with the subsequent abusive quashing of the judgment of 1999 meant that the applicant company was deprived of most of the benefits of a judgment which had been enforceable for a period of almost four years. The proceedings failed to meet the requirement of a fair trial.
*Conclusion*: violation (unanimously).

Article 1 of Protocol No. 1 – The impossibility for the applicant company to obtain execution of the judgment and the subsequent abusive quashing of that judgment constituted an interference with the company's right to the peaceful enjoyment of its possessions and no fair balance was struck between the applicant's interests and the other interests involved.
*Conclusion*: violation (unanimously).

Article 34 – The criminal charges against the applicant company's CEO appeared to be inconsistent with previous factual findings of civil courts. He had been charged for the first time after the Government had been informed about the application to the Court and for the second time after the applicant's case had been communicated to the Government. Based on the materials before the Court, there were sufficiently strong grounds to infer that those criminal proceedings had been aimed at discouraging the company from pursuing its case before the Court.
*Conclusion*: violation (unanimously).

Article 34 – The alleged lack of confidentiality of lawyer-client communications in the CFECC detention centre had been a matter of serious concern for the entire community of lawyers in Moldova for a long time. The applicant company's CEO and its counsel before the Court could reasonably have had grounds to fear that their conversation in the CFECC lawyer-client meeting room was not confidential. There was no aperture in the glass partition separating the CEO from the lawyer and therefore they had not been able to exchange documents in confidence. In sum, the impossibility for the CEO to discuss with the company's lawyer issues concerning the company's application before the Court, without being separated by a glass partition, affected the applicant's right to petition.
*Conclusion*: violation (unanimously).

Article 41 – Reserved. According to the applicant company, communication between its CEO and counsel before the Court was hampered to such an extent that the company was unable so far to communicate its claims for pecuniary damage.

---

**NON-GOVERNMENTAL ORGANISATION**
Public broadcaster qualifies as a "non-governmental organisation" in light of its editorial independence and institutional autonomy: *victim status accepted*.

**ÖSTERREICHISCHER RUNDFUNK - Austria** (N° 35841/02)
Judgment 7.12.2006 [Section I]

(see Article 10 above).

## ARTICLE 35

### Article 35(1)

**EFFECTIVE DOMESTIC REMEDY (Hungary)**
Constitutional complaint not an effective remedy as the impugned criminal appellate proceedings could not be reopened in consequence: *preliminary objection dismissed*.

**CSIKÓS - Hungary** (N° 37251/04)
Judgment 5.12.2006 [Section II]

*Facts*: A first-instance court found the applicant guilty of aggravated extortion and sentenced him to three and a half years' imprisonment. He appealed. After deliberations held in camera, in the absence of both the applicant and his lawyer, the conviction was upheld and the sentence increased to four years' imprisonment. The applicant complained that his conviction had been confirmed and the sanction imposed on him increased by the appellate court sitting in camera without his or his lawyer's attendance, in violation of his defence rights guaranteed by Article 6.

*Law*: *Preliminary objection of non-exhaustion of domestic remedies dismissed*: The Government contended that the applicant should have filed a constitutional complaint under section 48 of the Constitutional Court Act. The Constitutional Court had the power, under section 43(3) of that Act, to order the review of criminal proceedings concluded in application of unconstitutional legal provisions. In addition to establishing a violation of the applicant's rights under the Constitution, that court could have provided him with a remedy leading to complete reparation of the situation caused by the violation, namely, by allowing for the reopening of the case in review proceedings. Ten individuals, in situations identical to that of the applicant, had successfully done so, as demonstrated by Constitutional Court decision no. 20 of 26 May 2005.
The Court noted that the Constitutional Court had not ordered, in the above-mentioned decision, a review of the criminal proceedings in the cases of the successful complainants. The Government had not

explained why that court would have ordered such a review in the applicant's case had he lodged a constitutional complaint. The Court was not convinced that the conditions required for a review to be ordered were met in a case like the applicant's.
In sum, section 43 of the Constitutional Court Act, read in conjunction with section 416 of the New Code of Criminal Procedure, does not provide a guarantee for successful complainants, in a situation like that of the applicant, to have the appellate proceedings repeated and thereby to obtain redress for the violation of their Convention rights. In these circumstances, the Court was not satisfied that a constitutional complaint was an effective remedy in the applicant's case.

*Absence of public hearing*: The applicant's sentence should not have been increased, as a matter of fair trial, without him or his lawyer having been present.
*Conclusion*: violation of Article 6(1) read in conjunction with Article 6(3)(c) (unanimously).

Article 41 – Where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial, a reopening or a review of the case, if requested, represents in principle an appropriate way of redressing the violation.

---

**EFFECTIVE DOMESTIC REMEDY (Spain)**
Failure to use administrative law remedy for injuries sustained in the flooding of a campsite which had been officially authorised to open: *inadmissible*.

**MURILLO SALDIAS and Others - Spain** (N° 76973/01)
Decision 28.11.2006 [Section IV]

(see Article 34 above).

---

**EFFECTIVE DOMESTIC REMEDY (United Kingdom)**
Declaration of incompatibility under section 4 of the 1998 Human Rights Act possibly to become an "effective" remedy in light of future evidence of a long-standing and established practice of ministers giving effect to the courts' declarations of incompatibility.

**BURDEN and BURDEN - United Kingdom** (N° 13378/05)
Judgment 12.12.2006 [Section IV]

(see Article 14 above).

## ARTICLE 41

**JUST SATISFACTION**
Applicant hindered from returning to her home and property in northern Cyprus not required, once the Court had already decided on the merits of her case, to apply to new domestic Commission in order to seek reparation for damages.

**XENIDES-ARESTIS - Turkey** (N° 46347/99)
Judgment 7.12.2006 [Former Section III]

*Facts*: The applicant, a Cypriot national of Greek-Cypriot origin, owns half a share in a plot of land in Famagusta (northern Cyprus). One of the houses on the land was her home, where she lived with her husband and children, and the rest of the property was either used by members of the family or rented out. She also owns part of a plot of land with an orchard. The applicant has been prevented from living in her

home or using her property since 1974, as a result of the continuing division of Cyprus since the conduct of military operations in northern Cyprus by Turkey that year.
In 2003 the "Parliament of the Turkish Republic of Northern Cyprus" enacted the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus". A commission was set up with a mandate to deal with compensation claims.
It its decision on admissibility of 14 March 2005 the Court found that the remedy proposed under the preceding compensation law, "Law no. 49/2003" could not be regarded as an "effective" or "adequate" means for redressing the applicant's complaints. The Court delivered its principal judgment in the case on 22 December 2005 (see Case-Law Report/Information Note N° 81), finding continuing violations of Article 8 of the Convention and Article 1 of Protocol No. 1. It further ordered, under Article 46 of the Convention, that Turkey should introduce a remedy, within three months, which should secure, in respect of the Convention violations identified in the judgment, genuinely effective redress for the applicant as well as in relation to all similar applications pending before the Court, in accordance with the principles for the protection of the rights laid down in Article 8 and Article 1 of Protocol No. 1. Such a remedy should be available within three months and redress should occur three months after that. Pending the implementation of general measures, the Court adjourned its consideration of all similar applications.
On the day of the delivery of the Court's principal judgment the "TRNC" authorities enacted the "Law for the Compensation, Exchange and Restitution of Immovable Properties" (Law no. 67/2005). The authorities subsequently enacted a By-Law under Law no. 67/2005, which entered into force on 20 March 2006. A commission (the "Immovable Property Commission") was set up under Law no. 67/2005 to examine applications under that law and decide on the restitution, exchange of properties or payment of compensation. There is a right of appeal to the "TRNC" High Administrative Court.

*Law*: In its judgment with regard to Article 41 the Court welcomed the steps taken by the Turkish Government in an effort to provide redress for the violations of the applicant's Convention rights as well as in respect of all similar applications pending before it. The Court noted that the new compensation and restitution mechanism, in principle, had taken care of the requirements stated in its decision on admissibility and its principal judgment. The Court noted however that the parties in the present case had failed to reach an agreement on the issue of just satisfaction, where it would have been possible for the Court to address all the relevant issues concerning the effectiveness of the remedy in detail. The Court could not accept the Government's argument that the applicant should now be required, when the Court had already decided on the merits, to apply to the new Commission in order to seek reparation for damages. It therefore proceeded to determine the compensation to which the applicant was entitled in respect of losses emanating from the denial of access and loss of control, use, and enjoyment of her property and to grant her EUR 800,000 euros in respect of pecuniary damage, EUR 50,000 in respect of non-pecuniary damage as well as costs and expenses.

## ARTICLE 1 OF PROTOCOL No. 1

### PEACEFUL ENJOYMENT OF POSSESSIONS

Withdrawal of the operating licences of an Internet provider: *communicated*.

**MEGADAT.COM SRL - Moldova** (N° 21151/04)
[Section IV]

The applicant company, a privately owned corporation and the largest internet provider in Moldova at the time, was one of a number of companies operating in the telecommunications field that received a letter from the national regulatory authority requiring it to remedy various breaches of the regulations or risk having its operating licence suspended. The alleged breaches in the applicant company's case were that it had failed to give formal notification to the regulatory authority after moving its headquarters and had not paid the requisite fee. Although the applicant company subsequently attempted to rectify these omissions, the regulatory authority queried the information it had supplied and declared its licences invalid without waiting for its response. An amendment made to the regulations shortly afterwards meant that the

applicant company was precluded from applying for a new licence for a period of six months. It was unsuccessful in a challenge to the regulatory authority's decision in the courts.
The applicant company complains that the withdrawal of its licences and the amendment to the regulations violated its right to the peaceful enjoyment of its possessions and that it was discriminated against in that other companies in a similar position only had their licences suspended, not revoked.
*Communicated* under Article 1 of Protocol No. 1 and Article 14, taken together with Article 1 of Protocol No. 1.

---

**PEACEFUL ENJOYMENT OF POSSESSIONS**
Statutory impossibility to use foreign-currency savings failing an agreement between the successor States of the former Socialist Federal Republic of Yugoslavia: *communicated*.

**PAVKOVIĆ - Serbia** (N° 45204/04)
[Section II]

In 1990 the applicant opened foreign-currency savings accounts with a bank based in Belgrade. In the 1990s financial collapse of numerous banks in Serbia occurred. Following legislation enacted in 1998 and 2002, the authorities accepted to convert foreign currency deposits into a "public debt" and then went on to set out the time-frame and the amounts to be paid back to the banks' former clients over a number of years (initially by 2012 and then by 2016). As a Croatian citizen the applicant was unable to benefit from the above legislation, the 2002 Act having excluded citizens of former Yugoslav Republics. As of July 2002 such citizens, now nationals of new independent States, other than the Republic of Serbia and the Republic of Montenegro, who had deposited their foreign currency savings with "authorised banks" based in Serbia may only obtain their money in a manner yet to be agreed upon among the successor States of the former Socialist Federal Republic of Yugoslavia through negotiations which are still not comprehensively concluded.
*Communicated* under Article 1 of Protocol no.1 and Article 14 read in conjunction with Article 1 of Protocol No.1.

## ARTICLE 2 OF PROTOCOL No. 4

### Article 2(1)

**FREEDOM TO CHOOSE RESIDENCE**
Absolute prohibition on a person having had access to "State secrets" to travel abroad for a long period: *violation*.

**BARTIK - Russia** (N° 55565/00)
Judgment 21.12.2006 [Section I]

*Facts*: In 1977 the applicant started working for the State-owned company, Raduga, which developed equipment for the aerospace industry. While working for Raduga, the applicant signed various undertakings not to disclose classified information. His employment contract of 16 May 1989 also included the statement: "I have been informed of the prohibition on travel abroad, except as permitted by the relevant laws and regulations...". However, the last contract he signed, on 31 January 1994, did not include any statement about prohibitions on foreign travel. On 20 August 1996 the applicant resigned, leaving all the classified documents which had been in his possession with Raduga. In early 1997 the applicant's father, who lived in Germany, fell ill. Wishing to visit his father, the applicant applied to the Passports and Visas Service of the Department of the Interior of Dubna for a "foreign travel passport". The Passports and Visas Service told the applicant that his request could not be granted until 2001. The applicant applied to the Moscow City Court, which observed that he had signed several undertakings not to disclose State secrets and that the undertaking he had signed in 1989 also contained a clause restricting

his right to leave the country. Having examined a report on the applicant's knowledge of State secrets, the court noted that the applicant had in the past had access to top-secret documents. It concluded that the restriction on the applicant's right to leave Russia until 14 August 2001 had been lawful and justified. That decision was upheld on appeal. On 25 October 2001 the applicant was issued with a foreign travel passport and subsequently moved to the United States.

*Law*: The applicant's right to leave his own country had been restricted in a manner which amounted to interference within the meaning of Article 2 of Protocol No. 4. The restriction had been imposed in accordance with the law. As to the necessity of the interference, the Court observed that the applicant had surrendered all classified material to his employer on termination of his contract, before applying for a passport to travel abroad. Moreover, the purpose of the applicant's planned trip abroad had been purely private – he wished to visit his father, who was ill – and was unrelated to his previous work. Russian legislation on international travel by persons with knowledge of State secrets imposed an unqualified restriction on their right to leave Russia, irrespective of the purpose or duration of the visit. Accordingly, the scope of review by the domestic authorities had been confined to an examination of whether the information to which the applicant had once had access was still sensitive. None of the authorities had considered whether the restriction on the applicant's right to travel abroad for private purposes was still necessary or whether a less restrictive measure could have been applied. Furthermore, the Government had not indicated how the unqualified restriction on the applicant's ability to travel abroad served the interests of national security. It had to be borne in mind that at the time the restriction was conceived, the State had been able to control the transmission of information to the outside world, using a combination of restrictions on outgoing and incoming correspondence, a ban on international travel and emigration and a ban on unsupervised contacts with foreign nationals within the country. However, once the ban on personal contacts with foreign nationals had been removed and correspondence was no longer subject to censorship, the need to impose restrictions on international travel for private purposes became less obvious. In those circumstances, in so far as the ban on international travel for private reasons purported to prevent the applicant from communicating information to foreign nationals, such a restriction, in the context of a contemporary democratic society, failed to achieve the protective function previously assigned to it. Furthermore, the fact that the Parliamentary Assembly, in its opinion on Russian accession, had made express reference to Russia's undertaking to end that restriction, suggested that the Assembly considered it to be incompatible with membership of the Council of Europe. However, the Russian undertaking to abolish the restriction had not been implemented and the relevant provisions of domestic law had remained in force. In that connection, most of the member States had never provided for a comparable restriction in their legislation, and many more had abolished it as part of the democratic reform process. Lastly, the Court observed that the restriction on the applicant's right to leave the country had been imposed for a considerable length of time – five years following the termination of his employment contract – notwithstanding the fact that the restriction had not been explicitly mentioned in the undertaking he had given in 1994. The consequences of the measure had been particularly serious for the applicant, who had been unable to travel abroad for a total of 24 years after taking up his job in 1977. The restriction on the applicant's right to leave his own country had therefore not been "necessary in a democratic society".
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 3,000 in respect of non-pecuniary damage.

**Other judgments delivered in December**

**Yazıcı v. Turkey** (Nº 48884/99), 5 December 2006 [Section IV]
**Namlı and Others v. Turkey** (Nº 51963/99), 5 December 2006 [Section IV]
**Durmaz v. Turkey** (Nº 55913/00), 5 December 2006 [Section IV]
**Aslan and Şancı v. Turkey** (Nº 58055/00), 5 December 2006 [Section IV]
**Skurčák v. Slovakia** (Nº 58708/00), 5 December 2006 [Section IV]
**Borak v. Turkey** (Nº 60132/00), 5 December 2006 [Section IV]
**Emirhan Yıldız and Others v. Turkey** (Nº 61898/00), 5 December 2006 [Section II]
**Yener and Others v. Turkey** (Nº 62633/00, Nº 62634/00 and Nº 62636/00), 5 December 2006 [Section II]
**Åkerblom v. Poland** (Nº 64974/01), 5 December 2006 [Section IV]
**Zygmunt v. Poland** (Nº 69128/01), 5 December 2006 [Section IV]
**Kalem v. Turkey** (Nº 70145/01), 5 December 2006 [Section IV]
**Akagün v. Turkey** (Nº 71901/01), 5 December 2006 [Section II]
**Güzel (Zeybek) v. Turkey** (Nº 71908/01), 5 December 2006 [Section II]
**Topkaya and Others v. Turkey** (Nº 72317/01, Nº 72322/01, Nº 72327/01, Nº 72330/01, Nº 72332/01, Nº 72335/01, Nº 72340/01, Nº 72342/01, Nº 72347/01, Nº 72348/01, Nº 72349/01, Nº 72351/01, Nº 72357/01, Nº 72358/01, Nº 72362/01, Nº 72366/01 and Nº 72372/01), 5 December 2006 [Section II]
**Zdeb v. Poland** (Nº 72998/01), 5 December 2006 [Section IV]
**Tanyar and Küçükergin v. Turkey** (Nº 74242/01), 5 December 2006 [Section II]
**Resul Sadak and Others v. Turkey** (Nº 74318/01), 5 December 2006 [Section IV]
**Baştimar and Others v. Turkey** (Nº 74337/01), 5 December 2006 [Section IV]
**Sar and Others v. Turkey** (Nº 74347/01), 5 December 2006 [Section IV]
**Wróblewski v. Poland** (Nº 76299/01), 5 December 2006 [Section IV]
**Solárová and Others v. Slovakia** (Nº 77690/01), 5 December 2006 [Section IV]
**Fazıl Ahmet Tamer v. Turkey** (Nº 6289/02), 5 December 2006 [Section II]
**Wiercigroch v. Poland** (Nº 14580/02), 5 December 2006 [Section IV]
**Boszko v. Poland** (Nº 4054/03), 5 December 2006 [Section IV]
**Lachowski v. Poland** (Nº 27556/03), 5 December 2006 [Section IV]
**Tomláková v. Slovakia** (Nº 17709/04), 5 December 2006 [Section IV]

**Ban v. Romania** (Nº 46639/99), 7 December 2006 [Section III]
**Yosifov v. Bulgaria** (Nº 47279/99), 7 December 2006 [Section V]
**Hristova v. Bulgaria** (Nº 60859/00), 7 December 2006 [Section V]
**Čop v. Slovenia** (Nº 6539/02), 7 December 2006 [Section III]
**Virjent v. Slovenia** (Nº 6841/02), 7 December 2006 [Section III]
**Ivanov v. Ukraine** (Nº 15007/02), 7 December 2006 [Section V]
**Čakš v. Slovenia** (Nº 33024/02), 7 December 2006 [Section III]
**Lakota v. Slovenia** (Nº 33488/02), 7 December 2006 [Section III]
**Raisa Ilyinichna Tarasenko v. Ukraine** (Nº 43485/02), 7 December 2006 [Section V]
**Rogozhinskaya v. Ukraine** (Nº 2279/03), 7 December 2006 [Section V]
**Spas and Voyna v. Ukraine** (Nº 5019/03), 7 December 2006 [Section V]
**Shevtsov v. Ukraine** (Nº 16985/03), 7 December 2006 [Section V]
**Kononenko v. Ukraine** (Nº 33851/03), 7 December 2006 [Section V]
**Hauser-Sporn v. Austria** (Nº 37301/03), 7 December 2006 [Section I]
**Tarasenko v. Ukraine** (Nº 38762/03), 7 December 2006 [Section V]
**Nogolica v. Croatia (no. 3)** (Nº 9204/04), 7 December 2006 [Section I]
**Šamija v. Croatia** (Nº 14898/04), 7 December 2006 [Section I]
**Vilikanov v. Ukraine** (Nº 19189/04), 7 December 2006 [Section V]
**Kozachek v. Ukraine** (Nº 29508/04), 7 December 2006 [Section V]
**Mačinković v. Croatia** (Nº 29759/04), 7 December 2006 [Section I]

**Kravchuk v. Ukraine** (Nº 42475/04), 7 December 2006 [Section V]
**Mirvoda v. Ukraine** (Nº 42478/04), 7 December 2006 [Section V]
**Serikova v. Ukraine** (Nº 43108/04), 7 December 2006 [Section V]
**Ivashchishina v. Ukraine** (Nº 43116/04), 7 December 2006 [Section V]

**Siffre, Ecoffet and Bernardini v. France** (Nº 49699/99, Nº 49700/99 and Nº 49701/99), 12 December 2006 [Section II]
**Preložník v. Slovakia** (Nº 54330/00), 12 December 2006 [Section IV]
**Depa v. Poland** (Nº 62324/00), 12 December 2006 [Section IV]
**Wojtunik v. Poland** (Nº 64212/01), 12 December 2006 [Section IV]
**Dobál v. Slovakia** (Nº 65422/01), 12 December 2006 [Section IV]
**Dombek v. Poland** (Nº 75107/01), 12 December 2006 [Section IV]
**Dildar v. Turkey** (Nº 77361/01), 12 December 2006 [Section II]
**Tuncay v. Turkey** (Nº 1250/02), 12 December 2006 [Section II]
**Stasiów v. Poland** (Nº 6880/02), 12 December 2006 [Section IV]
**Kırkazak v. Turkey** (Nº 20265/02), 12 December 2006 [Section II]
**Kamil Öcalan v. Turkey** (Nº 20648/02), 12 December 2006 [Section II]
**Šnegoň v. Slovakia** (Nº 23865/02), 12 December 2006 [Section IV]
**Ahmet Mete v. Turkey (no. 2)** (Nº 30465/02), 12 December 2006 [Section II]
**Ertuğrul Kılıç v. Turkey** (Nº 38667/02), 12 December 2006 [Section II]
**Selek v. Turkey** (Nº 43379/02), 12 December 2006 [Section II]
**Nistas GmbH v. Moldova** (Nº 30303/03), 12 December 2006 [Section IV]

**Ionescu and Mihaila v. Romania** (Nº 36782/97), 14 December 2006 [Section III]
**Zamfirescu v. Romania** (Nº 46596/99), 14 December 2006 [Section III]
**Bogdanovski v. Italy** (Nº 72177/01), 14 December 2006 [Section III]
**Verlagsgruppe News GmbH v. Austria** (Nº 76918/01), 14 December 2006 [Section I]
**Zouboulidis v. Greece** (Nº 77574/01), 14 December 2006 [Section I]
**Shabanov and Tren v. Russia** (Nº 5433/02), 14 December 2006 [Section V]
**Shcheglyuk v. Russia** (Nº 7649/02), 14 December 2006 [Section V]
**Becker v. Germany** (Nº 8722/02), 14 December 2006 [Section V]
**Popescu v. Romania** (Nº 21397/02), 14 December 2006 [Section III]
**Lositskiy v. Russia** (Nº 24395/02), 14 December 2006 [Section V]
**Jazbec v. Slovenia** (Nº 31489/02), 14 December 2006 [Section III]
**Ivanov v. Ukraine** (Nº 40132/02), 14 December 2006 [Section V]
**Maksimikha v. Ukraine** (Nº 43483/02), 14 December 2006 [Section V]
**Papakokkinou v. Cyprus** (Nº 4403/03), 14 December 2006 [Section I]
**Simion v. Romania** (Nº 13028/03), 14 December 2006 [Section III]
**Iuliano and Others v. Italy** (Nº 13396/03), 14 December 2006 [Section III]
**Tikhonchuk v. Ukraine** (Nº 16571/03), 14 December 2006 [Section V]
**Popov v. Ukraine** (Nº 23892/03), 14 December 2006 [Section V]
**N.T. Giannousis and Kliafas Brothers S.A. v. Greece** (Nº 2898/03), 14 December 2006 [Section I]
**Martynov v. Ukraine** (Nº 36202/03), 14 December 2006 [Section V]
**Yeremenko v. Ukraine** (Nº 1179/04), 14 December 2006 [Section V]
**Vnuchko v. Ukraine** (Nº 1198/04), 14 December 2006 [Section V]
**Tarbuc v. Romania** (Nº 2122/04), 14 December 2006 [Section III]
**Solovyev v. Ukraine** (Nº 4878/04), 14 December 2006 [Section V]
**Mironov v. Ukraine** (Nº 19916/04), 14 December 2006 [Section V]
**Ivashchenko v. Ukraine** (Nº 22215/04), 14 December 2006 [Section V]
**Lyakhovetskaya v. Ukraine** (Nº 22539/04), 14 December 2006 [Section V]
**Vidrascu v. Romania** (Nº 23576/04), 14 December 2006 [Section III]
**Ali v. Italy** (Nº 24691/04), 14 December 2006 [Section III]
**Aggelakou-Svarna v. Greece** (Nº 28760/04), 14 December 2006 [Section I]
**Luganskaya v. Ukraine** (Nº 29435/04), 14 December 2006 [Section V]
**Sarafanov and Others v. Ukraine** (Nº 32166/04), 14 December 2006 [Section V]

**Gurska v. Ukraine** (Nº 35185/04), 14 December 2006 [Section V]
**Yeremeyev v. Ukraine** (Nº 42473/04), 14 December 2006 [Section V]
**Tsaruk v. Ukraine** (Nº 42476/04), 14 December 2006 [Section V]
**Kucherenko v. Ukraine** (Nº 45092/04), 14 December 2006 [Section V]

**Türkmen v. Turkey** (Nº 43124/98), 19 December 2006 [Section II]
**Anter and Others v. Turkey** (Nº 55983/00), 19 December 2006 [Section IV]
**Yarar v. Turkey** (Nº 57258/00), 19 December 2006 [Section IV]
**Güvenç and Others v. Turkey** (22 expropriation cases) (Nº 61736/00, Nº 61738/00, Nº 61741/00, Nº 61742/00, Nº 61743/00, Nº 61744/00, Nº 61748/00, Nº 61751/00, Nº 61752/00, Nº 61758/00, Nº 61763/00, Nº 72375/01, Nº 72383/01, Nº 72396/01, Nº 72406/01, Nº 72411/01, Nº 72418/01, Nº 72422/01, Nº 72425/01, Nº 72430/01, Nº 72437/01 and Nº 72442/01), 19 December 2006 [Section II]
**Adem Arslan v. Turkey** (Nº 75836/01), 19 December 2006 [Section II]
**Maksym v. Poland** (Nº 14450/02), 19 December 2006 [Section IV]
**Duda v. Poland** (Nº 67016/01), 19 December 2006 [Section IV]
**Šedý v. Slovakia** (Nº 72237/01), 19 December 2006 [Section IV]
**Klemeco Nord AB v. Sweden** (Nº 73841/01), 19 December 2006 [Section II]
**Yıldız and Taş v. Turkey (no. 1)** (Nº 77641/01), 19 December 2006 [Section II]
**Yıldız and Taş v. Turkey (no. 2)** (Nº 77642/01), 19 December 2006 [Section II]
**Erdal Taş v. Turkey** (Nº 77650/01), 19 December 2006 [Section II]
**Pamuk v. Turkey** (Nº 131/02), 19 December 2006 [Section II]
**Yıldız and Taş v. Turkey (no. 3)** (Nº 477/02), 19 December 2006 [Section II]
**Yıldız and Taş v. Turkey (no. 4)** (Nº 3847/02), 19 December 2006 [Section II]
**Osman v. Turkey** (Nº 4415/02), 19 December 2006 [Section II]
**Dolasiński v. Poland** (Nº 6334/02), 19 December 2006 [Section IV]
**Le Calvez v. France (no. 2)** (Nº 18836/02), 19 December 2006 [Section II]
**Companhia Agrícola de Penha Garcia, S.A. and Others v. Portugal** (17 agrarian reform cases) (Nº 21240/02, Nº 15843/03, Nº 15504/03, Nº 15508/03, Nº 15326/03, Nº 15490/03, Nº 15512/03, Nº 23256/03, Nº 23659/03, Nº 36438/03, Nº 36445/03, Nº 36434/03, Nº 37729/03, Nº 1999/04, Nº 27609/04, Nº 41904/04 and Nº 44323/04), 19 December 2006 [Section II]
**Bitton v. France (no. 1)** (Nº 22992/02), 19 December 2006 [Section II]
**Piotr Kuc v. Poland** (Nº 37766/02), 19 December 2006 [Section IV]
**Yavuz and Osman v. Turkey** (Nº 39863/02), 19 December 2006 [Section II]
**Falakaoğlu and Saygılı v. Turkey** (Nº 11461/03), 19 December 2006 [Section II]
**Moisei v. Moldova** (Nº 14914/03), 19 December 2006 [Section IV]
**Mourgues v. France** (Nº 18592/03), 19 December 2006 [Section II]

**Gömi and Others v. Turkey** (Nº 35962/97), 21 December 2006 [Section III]
**Zich and Others v. Czech Republic** (Nº 48548/99), 21 December 2006 [Section II (former)] (just satisfaction – friendly settlement)
**Müslüm Özbey v. Turkey** (Nº 50087/99), 21 December 2006 [Section III]
**Güler and Çalişkan v. Turkey** (Nº 52746/99), 21 December 2006 [Section III]
**Borisova v. Bulgaria** (Nº 56891/00), 21 December 2006 [Section V]
**Petar Vasilev v. Bulgaria** (Nº 62544/00), 21 December 2006 [Section V]
**Žehelj v. Slovenia** (Nº 67447/01), 21 December 2006 [Section III]
**Güzel Şahin and Others v. Turkey** (Nº 68263/01), 21 December 2006 [Section III]
**De Angelis and Others v. Italy** (Nº 68852/01), 21 December 2006 [Section III]
**Göcekli v. Turkey** (Nº 71813/01), 21 December 2006 [Section III]
**Teliga v. Ukraine** (Nº 72551/01), 21 December 2006 [Section V]
**Okay v. Turkey** (Nº 6283/02), 21 December 2006 [Section III]
**Gençer and Others v. Turkey** (Nº 6291/02), 21 December 2006 [Section III]
**Petrov v. Russia** (Nº 7061/02), 21 December 2006 [Section I]
**Radanović v. Croatia** (Nº 9056/02), 21 December 2006 [Section I]
**Nose v. Slovenia** (Nº 21675/02), 21 December 2006 [Section III]

**Popova v. Russia** (Nº 23697/02), 21 December 2006 [Section I]
**Koçak, Yavas and Özyurda v. Turkey** (Nº 23720/02, Nº 23735/02 and Nº 23736/02), 21 December 2006 [Section III]
**Vrečko v. Slovenia** (Nº 25616/02), 21 December 2006 [Section III]
**Židov v. Slovenia** (Nº 27701/02), 21 December 2006 [Section III]
**Movsesyan v. Ukraine** (Nº 31088/02), 21 December 2006 [Section V]
**Herič v. Slovenia** (Nº 33595/02), 21 December 2006 [Section III]
**Oruç v. Turkey** (Nº 33620/02), 21 December 2006 [Section III]
**Kaya v. Turkey** (Nº 33696/02), 21 December 2006 [Section III]
**Marič v. Slovenia** (Nº 35489/02), 21 December 2006 [Section III]
**Moroz and Others v. Ukraine** (Nº 36545/02), 21 December 2006 [Section V]
**Pop v. Romania** (Nº 7234/03), 21 December 2006 [Section III]
**Slukvina v. Ukraine** (Nº 9023/03), 21 December 2006 [Section V]
**Sıracattin Şen v. Turkey** (Nº 9577/03), 21 December 2006 [Section III]
**Gluhar v. Slovenia** (Nº 14852/03), 21 December 2006 [Section III]
**Sokhoy v. Ukraine** (Nº 18860/03), 21 December 2006 [Section V]
**Oleg Semenov v. Ukraine** (Nº 25464/03), 21 December 2006 [Section V]
**Čuden and Others v. Slovenia** (Nº 38597/03), 21 December 2006 [Section III]
**Pais v. Romania** (Nº 4738/04), 21 December 2006 [Section III]
**Ldokova v. Ukraine** (Nº 17133/04), 21 December 2006 [Section V]
**Zozulya v. Ukraine** (Nº 17466/04), 21 December 2006 [Section V]
**Shcherbinin and Zharikov v. Ukraine** (Nº 42480/04 and Nº 43141/04), 21 December 2006 [Section V]
**Zunic v. Italy** (Nº 14405/05), 21 December 2006 [Section III]

## **Referral to the Grand Chamber**

### **Article 43(2)**

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

**Saadi v. the United Kingdom** (13229/03) –Section IV, judgment of 11 July 2006

**Judgments which have become final**

**Article 44(2)(b)**

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Note No. 89):

**Sultan Karabulut - Turkey** (Nº 45784/99)
**Çetin Ağdaş - Turkey** (Nº 77331/01)
**White - Sweden** (Nº 42435/02)
**Matijašević - Serbia** (Nº 23037/04)
**Vuillemin - France** (Nº 3211/05)
Judgments 19.9.2006 [Section II]

**Halit Dinç and Others - Turkey** (Nº 32597/96)
**Süleyman Erdem - Turkey** (Nº 49574/99)
**Kabasakal and Atar - Turkey** (Nº 70084/01 and Nº 70085/01)
**Lubina - Slovakia** (Nº 77688/01)
Judgments 19.9.2006 [Section IV]

**Maszni - Romania** (Nº 59892/00)
**Uglanova - Russia** (Nº 3852/02)
**Moser - Austria** (Nº 12643/02)
**Dalidis - Greece** (Nº 26763/04)
Judgments 21.9.2006 [Section I]

**Söylemez - Turkey** (Nº 46661/99)
**McHugo - Switzerland** (Nº 55705/00)
**Eroğlu - Turkey** (Nº 59769/00)
**Mehmet Güneş - Turkey** (Nº 61908/00)
**Araç - Turkey** (Nº 69037/01)
**Monnat - Switzerland** (Nº 73604/01)
**Croci and Others - Italy** (Nº 14828/02)
**Dedda and Fragassi - Italy** (Nº 19403/03)
Judgments 21.9.2006 [Section III]

**Grabchuk - Ukraine** (Nº 8599/02)
**Geco A.S. - Czech Republic** (Nº 4401/03)
Judgments 21.9.2006 [Section V]

**Société de Gestion du Port de Campoloro and Société Fermière de Campoloro – France** (Nº 57516/00)
**Labergere - France** (Nº 16846/02)
**Bassien-Capsa - France** (Nº 25456/02)
**Gérard Bernard - France** (Nº 27678/02)
Judgments 26.9.2006 [Section II]

**H.K. - Finland** (Nº 36065/97)
**Šidlová - Slovakia** (Nº 50224/99)
**Niewiadomski - Poland** (Nº 64218/01)
**Blake - United Kingdom** (Nº 68890/01)
**Wainwright - United Kingdom** (Nº 12350/04)

**Elo - Finland** (Nº 30742/02)
**Ghigo - Malta** (Nº 31122/05) )
**Fleri Soler and Camilleri - Malta** (Nº 35349/05)
Judgments 26.9.2006 [Section IV]

**Chernyshov - Russia** (Nº 10415/02)
**Kornev - Russia** (Nº 26089/02)
**Silchenko - Russia** (Nº 32786/03)
**Prisyazhnikova - Russia** (Nº 24247/04)
Judgments 28.9.2006 [Section I]

**Andandonskiy - Russia** (Nº 24015/02)
**Reiz - Romania** (Nº 37292/02)
**Hu - Italy** (Nº 5941/04)
Judgments 28.9.2006 [Section III]

**Vatevi - Bulgaria** (Nº 55956/00)
**Kayadjieva - Bulgaria** (Nº 56272/00)
**Karacheva and Shtarbova - Bulgaria** (Nº 60939/00)
**Iversen - Denmark** (Nº 5989/03)
Judgments 28.9.2006 [Section V]

**Article 44(2)(c)**

On 11 December 2006 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

**Adelfoi I.O. Verri A.E. Choirotrofiki Epicheirisi v. Greece** (2544/04) - Section I, judgment of 27 July 2006
**Bazorkina v. Russia** (69481/01) - Section I, judgment of 27 July 2006
**Belyatskaya v. Russia** (40250/02) - Section I, judgment of 27 July 2006
**Bova v. Italy** (25513/02) - Section III, judgment of 24 May 2006
**Božić v. Croatia** (22457/02) - Section I, judgment of 29 June 2006
**Calicchio and Uriolabeitia v. Italy** (17175/02) - Section III, judgment of 29 June 2006
**Caracas v. Romania** (78037/01) - Section III, judgment of 29 June 2006
**Cennet Ayhan and Mehmet Salih Ayhan v. Turkey** (41964/98) - Section IV, judgment of 27 June 2006
**Chiumento v. Italy** (3649/02) - Section III, judgment of 29 June 2006
**Ciaramella v. Italy** (6597/03) - Section III, judgment of 6 July 2006
**Coorplan-Jenni GmbH and Hascic v. Austria** (10523/02) - Section I, judgment of 27 July 2006
**Efimenko v. Ukraine** (55870/00) - former Section II, judgment of 18 July 2006
**Efstathiou and Others v. Greece** (36998/02) - Section I, judgment of 27 July 2006
**Fiala v. the Czech Republic** (26141/03) - former Section II, judgment of 18 July 2006
**Francesca Carmine v. Italy** (3643/02) - Section III, judgment of 24 May 2006
**Francesca Cosimo v. Italy** (3647/02) - Section III, judgment of 24 May 2006
**Hostein v. France** (76450/01) - Section II, judgment of 18 July 2006
**Housing Association of War Disabled and Victims of War of Attica and Others v. Greece** (35859/02) - Section I, judgment of 13 July 2006
**Iosub Caras v. Romania** (7198/04) - Section III, judgment of 27 July 2006
**Jurisic and Collegium Mehrerau v. Austria** (62539/00) - Section I, judgment of 27 July 2006
**Kořineck and Others v. the Czech Republic** (77530/01) - Section II, judgment of 11 April 2006
**Kortessi v. Greece** (31259/04) - Section I, judgment of 13 July 2006
**La Frazia v. Italy** (3653/02) - Section III, judgment of 29 June 2006

**Lacarcel Menendez v. Spain** (41745/02) - Section V, judgment of 15 June 2006
**Lazaridi v. Greece** (31282/04) - Section I, judgment of 13 July 2006
**Marrone v. Italy** (3656/02) - Section III, judgment of 24 May 2006
**Minicozzi v. Italy** (7774/02) - Section III, judgment of 24 May 2006
**Moretti Francesco v. Italy** (10399/02) - Section III, judgment of 24 May 2006
**Nedzela v. France** (73695/01) - Section II, judgment of 27 July 2006
**Nicolas v. France** (2021/03) - Section II, judgment of 27 June 2006
**Nikas and Nika v. Greece** (31273/04) - Section I, judgment of 13 July 2006
**Nold v. Germany** (27250/02) - Section III, judgment of 29 June 2006
**Olaechea Cahuas v. Spain** (24668/03) - Section V, judgment of 10 August 2006
**Pantuso v. Italy** (21120/02) - Section III, judgment of 24 May 2006
**Pearson v. the United Kingdom** (8374/03) - Section IV, judgment of 22 August 2006
**Pedović v. the Czech Republic** (27145/03) - former Section II, judgment of 18 July 2006
**Pernici v. Italy** (20662/02) - Section III, judgment of 24 May 2006
**Plantarič v. Slovenia** (54503/00) - Section III, judgment of 29 June 2006
**Popov v. Russia** (26853/04) - Section I, judgment of 13 July 2006
**Rylski v. Poland** (24706/02) - Section IV, judgment of 4 July 2006
**Šimonová v. the Czech Republic** (73516/01) - former Section II, judgment of 18 July 2006
**Sokurenko and Strygun v. Ukraine** (29458/04 and 29465/04) - Section V, judgment of 20 July 2006
**Tamer and Others v. Turkey** (235/02) - Section III, judgment of 22 June 2006
**Vajagić v. Croatia** (30431/03) - Section I, judgment of 20 July 2006
**Vertucci v. Italy** (29871/02) - Section III, judgment of 29 June 2006
**Von Hoffen v. Liechtenstein** (5010/04) - Section III, judgment of 27 July 2006
**Zaharakis v. Greece** (17305/02) - Section I, judgment of 13 July 2006
**Zhigalev v. Russia** (54891/00) - Section I, judgment of 6 July 2006

**Statistical information**[1]

| **Judgments delivered** | **December** | **2006** |
|---|---|---|
| Grand Chamber | 1 | 30(32) |
| Section I | 16 | 253(263) |
| Section II | 36(93) | 360(447) |
| Section III | 40(44) | 444(469) |
| Section IV | 41 | 291(316) |
| Section V | 51 | 164(173) |
| former Sections | 2 | 18(20) |
| **Total** | **187(248)** | **1560(1720)** |

| **Judgments delivered in December 2006** | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 1 | 0 | 0 | 0 | 1 |
| Section I | 16 | 0 | 0 | 0 | 16 |
| Section II | 36(93) | 0 | 0 | 0 | 36(93) |
| Section III | 40(44) | 0 | 0 | 0 | 40(44) |
| Section IV | 41 | 0 | 0 | 0 | 41 |
| Section V | 50 | 1 | 0 | 0 | 51 |
| former Section I | 0 | 0 | 0 | 0 | 0 |
| former Section II | 0 | 0 | 0 | 1 | 1 |
| former Section III | 0 | 0 | 0 | 1 | 1 |
| former SectionIV | 0 | 0 | 0 | 0 | 0 |
| **Total** | **184(245)** | **1** | **0** | **2** | **187(248)** |

| **Judgments delivered in 2006** | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 25(27) | 3 | 0 | 2 | 30(32) |
| Section I | 248(258) | 3 | 2 | 0 | 253(263) |
| Section II | 351(438) | 4 | 3 | 2 | 360(447) |
| Section III | 430(441) | 10 | 1 | 3(17) | 444(469) |
| Section IV | 279(303) | 7(8) | 0 | 5 | 291(316) |
| Section V | 163(172) | 1 | 0 | 0 | 164(173) |
| former Section I | 0 | 0 | 0 | 1 | 1 |
| former Section II | 12 | 0 | 0 | 1 | 13 |
| former Section III | 0 | 0 | 1(3) | 1 | 2(4) |
| former SectionIV | 2 | 0 | 0 | 0 | 2 |
| **Total** | **1510(1653)** | **28(29)** | **7(9)** | **15(29)** | **1560(1720)** |

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

| Decisions adopted | | December | 2006 |
|---|---|---|---|
| **I. Applications declared admissible** | | | |
| Grand Chamber | | 0 | 0 |
| Section I | | 3 | 130(136) |
| Section II | | 0 | 28(31) |
| Section III | | 1 | 30(33) |
| Section IV | | 3 | 48(50) |
| Section V | | 0 | 17(19) |
| **Total** | | **7** | **253(269)** |
| | | | |
| **II. Applications declared inadmissible** | | | |
| Grand Chamber | | 0 | 0 |
| Section I | - Chamber | 3 | 56 |
| | - Committee | 379 | 5947 |
| Section II | - Chamber | 37(38) | 98(128) |
| | - Committee | 181 | 4477 |
| Section III | - Chamber | 3 | 703(725) |
| | - Committee | 287 | 4752 |
| Section IV | - Chamber | 4 | 145(146) |
| | - Committee | 612 | 7431 |
| Section V | - Chamber | 6 | 71(72) |
| | - Committee | 400 | 3509 |
| **Total** | | **1912(1913)** | **27189(27243)** |
| | | | |
| **III. Applications struck off** | | | |
| Grand Chamber | | 0 | 1 |
| Section I | - Chamber | 1 | 106 |
| | - Committee | 6 | 58 |
| Section II | - Chamber | 3 | 131(133) |
| | - Committee | 6 | 94 |
| Section III | - Chamber | 11(18) | 79(103) |
| | - Committee | 7 | 86 |
| Section IV | - Chamber | 7 | 87(88) |
| | - Committee | 5 | 115 |
| Section V | - Chamber | 10 | 81(82) |
| | - Committee | 5 | 41 |
| **Total** | | **61(68)** | **879(907)** |
| **Total number of decisions**[1] | | **1980(1988)** | **28321(28419)** |

[1] Not including partial decisions.

| Applications communicated | December | 2006 |
|---|---|---|
| Section I | 25 | 694 |
| Section II | 33 | 632(641) |
| Section III | 86 | 873 |
| Section IV | 40 | 539 |
| Section V | 33 | 453 |
| **Total number of applications communicated** | **217** | **3191(3200)** |

## 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 |