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

INFORMATION NOTE No. 39
on the case-law of the Court
February 2002

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

Statistical information[1]

Judgments delivered	February	2002
Grand Chamber	0	1
Section I	152	159
Section II	28	31
Section III	19(22)	20(23)
Section IV	72	73
Sections in former compositions	12	12
Total	**283(286)**	**296(299)**

Judgments delivered in February 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	8	0	0	0	8
former Section IV	3	0	1	0	4
Section I	140	12	0	0	152
Section II	27	1	0	0	28
Section III	14	4	1(4)	0	19(22)
Section IV	69	3	0	0	72
Total	**261**	**20**	**2(5)**	**0**	**283(286)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	8	0	0	0	8
former Section IV	3	0	1	0	4
Section I	146	13	0	0	159
Section II	29	2	0	0	31
Section III	15	4	1(4)	0	20(23)
Section IV	69	4	0	0	73
Total	**271**	**23**	**2(5)**	**0**	**296(299)**

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

[* = judgment not final]

Decisions adopted		**February**	**2002**
I. Applications declared admissible			
Grand Chamber		0	1
Section I		11(13)	33(35)
Section II		2	6
Section III		4	15
Section IV		6	12
Total		**23(25)**	**67(69)**
II. Applications declared inadmissible			
Section I	- Chamber	7	14(28)
	- Committee	275	709
Section II	- Chamber	8	24
	- Committee	164	509
Section III	- Chamber	3	16
	- Committee	140	462
Section IV	- Chamber	5(6)	32(33)
	- Committee	212	376
Total		**814(815)**	**2142(2157)**
III. Applications struck off			
Section I	- Chamber	1	3
	- Committee	2	10
Section II	- Chamber	0	2
	- Committee	4	5
Section III	- Chamber	14	14
	- Committee	1	5
Section IV	- Chamber	1	6
	- Committee	3	3
Total		**26**	**48**
Total number of decisions[1]		**863(866)**	**2257(2274)**

[1] Not including partial decisions.

Applications communicated	**February**	**2002**
Section I	21(22)	50(51)
Section II	17(18)	38(39)
Section III	13	38(39)
Section IV	8	22(35)
Total number of applications communicated	**59(61)**	**148(164)**

ARTICLE 2

Article 2(1)

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

ABDURRAHMAN ORAK - Turkey (N° 31889/96)
Judgment 14.2.2002 [Section I]

Facts: On 11 June 1993 the applicant's son, A.O., who was 23 years old and had three children, and one A.G. were arrested and taken to a gendarmerie station, before being transferred to a gendarmerie barracks, where they were detained. According to the Government, A.O. and A.G. tried to escape on 14 June 1993 while they were under surveillance in a corridor in the barracks. During the attempted escape a fight allegedly broke out with the gendarmes. According to the incident report, A.O. found himself trapped between a wall and a door which had been forced open by gendarmes who had been called in as reinforcements. He did not undergo any kind of medical examination after the fight. He subsequently went on hunger strike, during which he received only serotherapy. As his state of health was giving cause for concern, he was transferred to hospital on 20 June 1993. The doctors who examined him found that he had lost consciousness and had injuries all over his body. Following the examination, he was diagnosed as suffering from cranial trauma. On 23 June 1993 A.O. died. The following day an autopsy was carried out; it was again noted that A.O. had sustained injuries all over his body and the cause of his death was given as a stroke. On 6 July 1993 the applicant lodged a complaint with the public prosecutor's office against the gendarmes in whose custody his son had been placed. In the course of the investigation the public prosecutor took evidence from the gendarmes in question. At his request, a panel of four forensic medical experts drew up a report, concluding that the death had been caused by a traumatic shock to the cranium. In October 1993 the public prosecutor instituted proceedings against the gendarmes in the Assize Court, accusing them of causing death by excessive use of force during the attempted escape. Three of the persons charged and a number of other gendarmes who had been present at the time of the incident gave evidence. A.G.'s statement was obtained by means of a request for evidence on commission; he did not admit offering resistance to the gendarmes or attempting to escape, and maintained that he and A.O. had been tortured while in custody. At the public prosecutor's request, the criminal proceedings were stayed in accordance with a decree concerning the authority of the governor of the state-of-emergency region and the case was referred to the Administrative Council. On 17 August 1995 the Administrative Council decided not to bring criminal proceedings against the gendarmes in question, as there was insufficient evidence. That decision was quashed by the Supreme Administrative Court. On 25 November 1997 the Assize Court acquitted the gendarmes, holding that it was not possible on the basis of the evidence adduced before it to establish that the traumatic shock from which the applicant's son had died was attributable to them.
Law: Article 2 – It was not disputed that the applicant's son's death had been caused by a stroke resulting from traumatic shock. The point on which the parties disagreed concerned the origin of the injury. However, irrespective of the origin of the injury that had led to A.O.'s death, reliable and persuasive evidence that the death was imputable to the State had been adduced. Firstly, it was not disputed that A.O. had been in good health when he was arrested and had shown no signs of illness or previous injuries. Following his arrest he had been detained at two gendarmerie posts. Accordingly, the injuries noted during that period engaged, in principle, the responsibility of the State: on the one hand, a "negative"

responsibility, consisting in refraining from excessive use of force, even in circumstances covered by Article 2(2), sub-paragraphs (a), (b) and (c), and, on the other hand, a positive responsibility to protect the lives of persons deprived of their liberty. Although the applicant's son had injuries all over his body and was suffering from cranial trauma, he had not been transferred to hospital until six days after the alleged escape attempt; he had then fallen into a coma and died. In addition, the Government had not supplied any plausible explanation for the injuries or the cranial trauma which had apparently caused his death. Moreover, while in custody A.O. had merely received serotherapy, even though his injuries were serious. Accordingly, the State's responsibility for the applicant's son's death was engaged.
As regards the alleged inadequacy of the investigation, the fact that the authorities had been informed of A.O.'s death in custody in itself imposed a duty on them to conduct an effective investigation into the circumstances of his death. Following the applicant's complaint, the public prosecutor did not appear to have doubted the gendarmes' version of events since he had charged them with causing death through the excessive use of force during the alleged escape attempt. During the preliminary investigation he had neglected to question A.G., whose statements were nonetheless crucial in that he had been the only witness present, apart from the gendarmes, when the fight had broken out. Yet A.G.'s statements had not been obtained until 3 March 1994, by means of a request for evidence on commission. None of the investigating or trial judges in the case had questioned this key witness, who had denied that there had been an attempt to escape followed by a fight. The subsequent inquiry conducted by the administrative authorities had not remedied those shortcomings, since no proceedings had been brought against the gendarmes for want of sufficient evidence. Lastly, the Assize Court that had considered the case had acquitted the gendarmes in question. That conclusion, based solely on the evidence given by the accused and by other gendarmes who had been present when the incident occurred, could not be accepted, given the absence of any explanation for the radical difference between the gendarmes' and A.G.'s versions of events and the nature of A.O.'s injuries. Nor had it been established that an appeal on points of law – a remedy that had, in principle, been open to the applicant – would have made it possible to clarify or supplement the evidence available or been capable of altering to any significant extent the outcome of the criminal investigation or the trial. Accordingly, the applicant had complied with the requirement to exhaust domestic remedies. In conclusion, the authorities had not conducted an effective investigation into the circumstances surrounding the applicant's son's death, thereby rendering civil remedies likewise ineffective.
Conclusion: violation (unanimously).
Article 3 – The autopsy report stated that A.O. had injuries all over his body. That report, and the one subsequently drawn up by a panel of four forensic medical experts, confirmed the presence of traumatic lesions on the deceased's body. In the absence of any plausible explanation from the Government, it had been established that the injuries observed on A.O.'s body had been caused by treatment for which the State bore the responsibility.
Conclusion: violation (unanimously).
Articles 6 and 13 – On the basis of the evidence adduced before the Court the State had been held responsible for the applicant's son's death and for the ill-treatment to which he had been subjected while in custody; the applicant's complaints in that connection could therefore be described as "arguable" for the purposes of Article 13. The authorities had consequently been under an obligation to conduct an effective investigation into the circumstances surrounding the death. For the reasons set out above, the judicial investigation could not be regarded as effective within the meaning of Article 13, the requirements of which provision may be broader than the obligation under Article 2 to conduct an investigation. Accordingly, the applicant had been denied an effective remedy and had not had access to any other remedies that were available in theory, such as an action for damages.
Conclusion: violation (six votes to one).
Articles 5, 14 and 18 – These complaints concerned the same facts as those considered under Articles 2, 3 and 13. In view of the Court's conclusion as regards compliance with those provisions, it was not necessary to examine the complaints separately.
Conclusion: not necessary to examine separately (unanimously).

Article 41 – The Court awarded 45,000 euros (EUR) for pecuniary damage, to be held by the applicant for his son's heirs, and EUR 457 for funeral expenses. It also awarded EUR 22,500 for the non-pecuniary damage sustained by the applicant's son's heirs and EUR 4,000 for the non-pecuniary damage sustained by the applicant. Lastly, it awarded EUR 2,660 for costs and expenses, less 4,100 French francs paid by the Council of Europe in legal aid.

LIFE
Murder of journalist in the "TRNC" by unidentified perpetrators: *admissible*.

ADALI - Turkey (N° 38187/97)
Decision 31.1.2002 [Section I]

The applicant's husband, Kutlu Adalı, was a Turkish Cypriot writer and journalist, known for his articles in which he strongly criticised the policies and practices of the Turkish Government and the authorities of the "Turkish Republic of Northern Cyprus" (hereafter, the "TRNC"). He was in favour of a united democratic republic for Turkish and Greek Cypriots. On 6 July 1996, he was shot dead in front of his house in the "TRNC" by unidentified persons. The applicant alleges that her husband's murder was a manifestation of a continuing practice on the part of the authorities of the "TRNC" to try and silence voices of dissent by organising or encouraging the disappearance of those seen as opponents of the authorities. She claims that she could not get any assurances from the authorities that an effective investigation was being carried out into her husband's assassination, as she received no specific information whenever she contacted them. In that respect, she maintains that she could not attend the coroner's inquest as she had not been informed about it and that she was never sent a copy of its official outcome. In addition, she claims that she was denied effective access to court in order to have determined a right to compensation for his murder, which she alleged had been committed by agents of the "TRNC" or Turkey. The applicant also alleges that plain-clothed policemen followed her and that her telephone calls were tapped. She claims that she received several threatening telephone calls and that her telephone and fax were often being disconnected on purpose. She further submits that her correspondence was being controlled and refers to the small number of letters of condolences that she had received following her husband's death. She also claism she refused an invitation to receive an award in her husband's name in southern Cyprus after having received a telephone call of intimidation from a high-ranking official of the "TRNC" authorities. She and her daughter were later refused permission to go to southern Cyprus in order to attend a meeting to which they had been invited. On the anniversary of her husband's death, in 1997, she organised a ceremony to commemorate his death and inaugurate a foundation in his memory. On the day of the ceremony, municipal works started on the street where their house was. According to her, it was aimed at preventing people from attending the ceremony. She further complains that the "TRNC" refused to register the foundation in her late husband's name. Finally, she contends that the respondent Government tried to hinder the effective exercise of her right to apply to the Court. She states that on 4 December 1999 she met the former agent of Turkey in a meeting in Cyprus and that he allegedly questioned her about her application and threatened that if the Court found in her favour she would be assassinated and her daughter's scholarship would be cut.
Admissible under Articles 2, 3, 6, 8, 10, 11, 13, 14 and 34.

Article 2(2)(b)

EFFECT LAWFUL ARREST
Deserters shot dead by military police during attempted arrest: *admissible*.

NACHOVA and HRISTOVA - Bulgaria (N° 43577/98)
Decision 28.2.2002 [Section I]

Privates Angelov and Rangelov died in controversial circumstances during an attempted arrest by military police. The applications were lodged respectively by the daughter and partner of Private Angelov and the parents of Private Rangelov. In 1996, the soldiers were arrested for having been absent without leave during military service. They were sentenced to imprisonment for nine and five months respectively but escaped from the place where they were detained and sought refuge at the home of Private Angelov's grandmother. A warrant for their arrest was issued and sent to the military police. Following an anonymous message, the military police located them and sent four military policemen to the village where the grandmother lived. As the officers arrived in front of her house, the soldiers tried to escape. They were shot by the commanding officer and died on their way to hospital. A criminal investigation into their deaths was opened: the scene of the shooting was inspected by the military investigator and autopsies were carried out. The commanding officer, the other officers, the grandmother, the neighbours and relatives of the soldiers were heard by the investigator. A forensic examination of the blood stains found where the shooting had taken place was carried out; the blood appeared to match the soldiers' blood groups. Their families were given access to the investigation files but their request to have witnesses re-examined was rejected. The investigator, giving great weight to the commanding officer's statements, reported that the latter had warned the soldiers before shooting and had aimed at them only because they had not surrendered to his oral commands and warning shots in the air. Moreover, he had attempted to shoot at their legs in order to catch them alive and had thus acted in compliance with Regulation 45 of the Military Police Regulations, according to which military police officers may use firearms to arrest a person serving in the army who has committed or is about to commit an offence and does not surrender after having been warned. The Military Prosecutor, in view of the investigator's recommendation, closed the preliminary investigation into the deaths. The applicants' appeals to the Armed Forces Prosecutor's Offices and Investigation Review Department in the Armed Forces Prosecutor's Office were rejected.
Admissible under Articles 2(2)(b), 13 and 14.

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment by gendarmes during questioning lasting ten days: *communicated*.

KARAGÖZ - Turkey (N° 78027/01)
DÜŞÜN and YAŞAR - Turkey (N° 4080/02)
[Section III]

The first applicant, the second applicant's mother and the third applicant were arrested on 28 October, 29 October and 11 November 2001 respectively and taken into custody at the Diyarbakır gendarmerie command. They were subsequently brought before a National Security Court judge, who ordered their detention pending trial. They were then transferred to

prison. Following requests by the governor of the state-of-emergency region and the public prosecutor under Article 3(c) of Legislative Decree no. 430 on additional measures to be taken in connection with the state of emergency, the judge authorised the return of each of the three detainees to the gendarmerie post for questioning, for a period of no more than ten days. The order was renewed twice in respect of the first and third applicants, each time for ten days. One of the third applicant's legal representatives was permitted to see him on his return to prison after the first period of questioning at the gendarmerie post. The third applicant alleged that he had been subjected to ill-treatment while being questioned. In addition, the first applicant lodged a complaint with the public prosecutor against the gendarmes who had questioned him, accusing them of using ill-treatment to extract a confession. The public prosecutor declined jurisdiction and transmitted the file on the complaint to the Diyarbakır Public Prosecutor's Office. The first and third applicants and the second applicant's mother were unable to communicate with their relatives or lawyers while detained at the gendarmerie post and alleged that they had been subjected to ill-treatment while being questioned there.
Communicated under Articles 3, 5(1) and 18.

INHUMAN TREATMENT
Alleged repeated acts of intimidation by the authorities: *admissible*.

ADALI - Turkey (N° 38187/97)
Decision 31.1.2002 [Section I]
(see Article 2, above).

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Placement of elderly person in a foster home on account of serious neglect: *no violation*.

H.M. - Switzerland (Nº 39187/98)
Judgment 26.2.2002 [Section II]

Facts: The applicant is a pensioner, born in 1912. In 1996 the Association for House and Sick Visits wrote to the Guardianship Office to express its concern about the increasing difficulties it was encountering in providing care and treatment for the applicant. It referred in particular to the conditions in the house in which she was living with her son. As there was no improvement, the association stopped visiting the applicant. Subsequently, despite her objection, the District Government Office ordered that she be placed in a foster home for an unlimited period, on account of serious neglect. The applicant and her son appealed to the Cantonal Appeals Commission. Following a hearing at which the applicant stated that she had no reason to be unhappy with the foster home but that she wished to leave it, the Appeals Commission dismissed the appeals. It held that there were two grounds justifying withdrawal of the applicant's liberty on grounds of welfare assistance: firstly, neglect, and secondly, mental weakness (senile dementia), which it held would justify placement in a foster home even if the neglect was not sufficiently serious. It noted that the applicant's son was unable to provide sufficient care and added that the applicant hardly felt the deprivation of liberty, which was minimal and mainly affected her son. The applicant and her son unsuccessfully lodged a public law appeal to the Federal Court. The applicant later agreed to reside at the foster home and the placement order was duly lifted.

Law: Article 5(1) – The starting point in determining whether there has been a deprivation of liberty must be the specific situation of the individual and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measures in question. The distinction between a deprivation of and a restriction upon liberty is one of degree or intensity and not one of nature or substance. In the present case, the decision to place the applicant in a foster home was taken on the basis of the unacceptable conditions in which she was living. She was not placed in the closed ward of the foster home but enjoyed freedom of movement and was able to have social contacts with the outside world. Indeed, according to the Appeals Commission she hardly felt the effects of being in the foster home at all and it was rather her son who was affected. Moreover, the applicant herself was undecided as to which solution she preferred, having indicated that she had no reason to be unhappy with the foster home. In fact, she subsequently agreed to stay there. In the light of these elements and the fact that the placement was in the applicant's own interests, the placement did not amount to a deprivation of liberty within the meaning of Article 5(1) but was a responsible measure taken by the competent authorities in the applicant's interests. Consequently, Article 5 was not applicable.
Conclusion: no violation (6 votes to 1).

LAWFUL ARREST OR DETENTION
Arrest of applicants with a view to their expulsion after they had been summoned to complete their asylum requests: *violation*.

ČONKA - Belgium (N° 51564/99)
Judgment 5.2.2002 [Section III]

Facts: The applicants, who were Slovakian nationals of Romany origin, said that they had fled from Slovakia where they had been subjected to racist assaults with the police refusing to intervene. In November 1998 they arrived in Belgium, where they requested political asylum. On 3 March 1999 their applications for asylum were declared inadmissible. The decisions refusing them permission to remain were accompanied by other decisions refusing them permission to enter the territory and an order to leave the territory within five days. On 5 March 1999 the applicants lodged an appeal against those decisions with the Commissioner-General for Refugees and Stateless Persons under the urgent-applications procedure. On 18 June 1999 the Commissioner-General's Office upheld the decision refusing the applicants permission to remain and stated that time had begun to run again for the purposes of the five-day time-limit. On 28 October 1999 the applicants' applications for judicial review and a stay of execution of the decision of 18 June 1999 were struck out of the *Conseil d'État*'s list. At the end of September 1999 the Ghent police sent a notice to a large number of Slovakian Roma, including the four applicants, requiring them to attend the police station on 1 October 1999. The notice stated that their attendance was required to enable the files concerning their applications for asylum to be completed. At the police station the applicants were served with a fresh order to leave the territory dated 29 September 1999, accompanied by a decision for their removal to Slovakia and for their detention for that purpose. The document, which was in identical terms for everyone concerned, informed the recipients that they could apply to the *Conseil d'État* for judicial review of the deportation order and for a stay of execution and to the indictment division of the criminal court against the order for their detention. A Slovakian-speaking interpreter was present at the police station. A few hours later the applicants and other Romany families were taken to a closed transit centre. At 10.30 a.m. on 1 October 1999 the applicants' counsel was informed that his clients were in custody. He contacted the Aliens Office, requesting that no action be taken to deport them, as they had to take care of a member of their family who was in hospital. However, he did not appeal against the deportation or detention orders made in September 1999. On 5 October 1999 the families were taken to a military airport and put on an aircraft bound for Slovakia.

Law: Article 5(1) – The applicants had been arrested so that they could be deported from Belgium. Article 5(1)(f) was thus applicable in the case before the Court. All that was required under that sub-paragraph was that action was being taken with a view to deportation. Where the "lawfulness" of detention was in issue, including the question whether "a procedure prescribed by law" had been followed, the Convention referred essentially to the obligation to conform to the substantive and procedural rules of national law, but it required in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness. Although the Court by no means excluded its being legitimate for the police to use stratagems in order, for instance, to counter criminal activities more effectively, acts whereby the authorities sought to gain the trust of asylum seekers with a view to arresting and subsequently deporting them, as in the instant case, may be found to contravene the general principles stated or implicit in the Convention. While the wording of the notice was unfortunate, that had not been the result of inadvertence; on the contrary, it had been chosen deliberately in order to secure the compliance of the largest possible number of recipients. The Court reiterated that the list of exceptions to the right to liberty secured in Article 5(1) was an exhaustive one and only a narrow interpretation of those exceptions was consistent with the aim of that provision. That requirement had also to be reflected in the reliability of communications such as those sent to the applicants, irrespective of whether the recipients were lawfully present in the country or not. Even as regards overstayers, a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of aliens by misleading them about the purpose of a notice so as to make it easier to deprive them of their liberty was not compatible with Article 5. That factor had a bearing on the Government's preliminary objection, which had been joined to the merits. The applicants' lawyer had only been informed of the events in issue and of his clients' situation at 10.30 p.m. on Friday 1 October 1999, such that any appeal to the committals division would have been pointless because, had he lodged an appeal with the division on 4 October, the case could not have been heard until 6 October, a day after the applicants' expulsion on 5 October. However, the accessibility of a remedy within the meaning of Article 35(1) of the Convention implied that the circumstances voluntarily created by the authorities had to be such as to afford applicants a realistic possibility of using the remedy. That had not happened in the case before the Court and the preliminary objection had therefore to be dismissed.
Conclusion: violation (unanimously).
Article 5(2) – on their arrival at the police station the applicants had been served with the decision ordering their arrest. The document handed to them for that purpose had stated that their arrest had been ordered pursuant to the Aliens Act to prevent them from eluding deportation. On the applicants' arrest at the police station a Slovakian-speaking interpreter had been present for the purposes of informing the aliens of the content of the verbal and written communications which they had received, in particular, the document ordering their arrest. Even though those measures by themselves had not in practice been sufficient to allow the applicants to lodge an appeal with the committals division, the information thus furnished to them nonetheless satisfied the requirements of Article 5(2) of the Convention.
Conclusion: no violation (unanimously).
Article 5(4) – The Government's submissions were the same as those on which they had relied in support of their preliminary objection to the complaints under Articles 5(1), (2) and (4) of the Convention. Accordingly, the Court referred to its conclusion that it had been impossible for the applicants to make any meaningful appeal to the committals division of the criminal court. Consequently, it was unnecessary to decide whether the scope of the jurisdiction of the committals division satisfied the requirements of Article 5(4).
Conclusion: violation (unanimously).
Article 4 of Protocol No. 4 – collective expulsion, within the meaning of that Article, was to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure was taken on the basis of a reasonable and objective examination of the particular case of each individual alien in the group. That did not however mean that where the latter condition was satisfied, the background to the execution of the expulsion orders

played no further role in determining whether there had been compliance with Article 4 of Protocol No. 4. In the case before the Court, the applications for asylum made by the applicants had been rejected in decisions of March and June 1999, on the basis of the applicants' personal circumstances. The detention and deportation orders had been issued to enforce an order to leave the territory of September 1999; that order had been made solely on the basis of the Aliens Act, and the only reference to the applicants' personal circumstances had been to the fact that their stay in Belgium had exceeded three months. The document made no reference to their application for asylum or to the decisions of March and June 1999. While those decisions had also been accompanied by an order to leave the territory, that order did not permit the applicants' arrest. The applicants' arrest had therefore been ordered for the first time in September 1999 on a legal basis unrelated to their requests for asylum, but nonetheless sufficient to entail the implementation of the impugned measures. In the light of the foregoing and in view of the large number of persons of the same origin who had suffered the same fate as the applicants, the procedure followed did not enable the Court to eliminate all doubt that the expulsion might have been collective. That doubt had been reinforced by a series of factors, notably: prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation; all the aliens concerned had been required to attend the police station at the same time; the orders served on them requiring them to leave the territory and for their arrest had been couched in identical terms; it had been very difficult for the aliens to contact a lawyer; and, lastly, the asylum procedure had not been completed. Ultimately, at no stage in the period between the service of the notice on the aliens to attend the police station and their expulsion had the procedure afforded sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account.

Conclusion: violation (four votes to three).

Article 13 – the notion of an effective remedy under Article 13 required that the remedy could prevent the execution of measures that were contrary to the Convention and whose effects were potentially irreversible. Consequently, it was inconsistent with Article 13 for such measures to be executed before the national authorities had examined whether they were compatible with the Convention, although Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under that provision. In the instant case, the *Conseil d'État* had been called upon to examine the merits of the applicants' complaints in their application for judicial review. Having regard to the time which the examination of the case would take and the fact that they were under threat of expulsion, the applicants had also made an application for a stay of execution under the ordinary procedure, although the Government said that they should have used the extremely urgent procedure. An application for a stay of execution under the ordinary procedure was one of the remedies which, according to the document setting out the Commissioner-General's decision of June 1999, had been available to the applicants to challenge that decision. As, according to that decision, the applicants had only five days in which to leave the national territory, applications for a stay under the ordinary procedure did not of thelselves have suspensive effect and the *Conseil d'État* had forty-five days in which to decide such applications, the mere fact that that application had been mentioned as an available remedy had, to say the least, been liable to confuse the applicants. An application for a stay of execution under the extremely urgent procedure was not suspensive either. The Government stressed that the president of the division could at any time summons the parties to attend and, if appropriate, make an order for a stay of the deportation order before its execution, as the authorities were not legally bound to await the *Conseil d'État*'s decision before executing a deportation order. To compensate for that, the *Conseil d'État* had issued a practice direction requiring the registrar on an application for a stay under the extremely urgent procedure to contact the Aliens Office to establish the date scheduled for the repatriation and to make arrangements accordingly. Two remarks needed to be made about that system. Firstly, it was not possible to exclude the risk that in a system where stays of execution had to be applied for and were discretionary they might be refused wrongly, for instance if it was to transpire that a

deportation order was subsequently quashed for failure to comply with the Convention. In such cases, the remedy exercised by the applicant would not be sufficiently effective for the purposes of Article 13. Secondly, even if the risk of error was in practice negligible, it appeared that the authorities were not required to defer execution of the deportation order while an application under the extremely urgent procedure was pending, not even for a minimum reasonable period to enable the *Conseil d'État* to decide the application. Further, the onus was in practice on the *Conseil d'État* to ascertain the authorities' intentions regarding the proposed expulsions and to act accordingly, but there did not appear to be any obligation on it to do so. Lastly, it was merely on the basis of internal directions that the registrar of the *Conseil d'État* would contact the authorities for that purpose, and there was no indication of what the consequences might be should he omit to do so. Ultimately, the alien had no guarantee that the *Conseil d'État* and the authorities would comply in every case with that practice, that the *Conseil d'État* would deliver its decision, or even hear the case, before his expulsion, or that the authorities would allow a minimum reasonable period of grace. Each of those factors made the implementation of the remedy too uncertain to enable the requirements of Article 13 to be satisfied. As to the overloading of the *Conseil d'État*'s list and the risks of abuse of process, the Court considered that Article 13 imposed on the Contracting States the duty to organise their judicial systems in such a way that their courts could meet its requirements. In that connection, the importance of Article 13 for preserving the subsidiary nature of the Convention system had to be stressed. In conclusion, the applicants had not had a remedy available that satisfied the requirements of Article 13 and the objection to the complaint of a violation of Article 4 of Protocol No. 4 had to be dismissed.
Conclusion: violation (four votes to three).
Article 41 – The Court awarded 10,000 euros (EUR) for non-pecuniary damage and EUR 9,000 for costs and expenses.

LAWFUL DETENTION
Continued detention ordered by authorities of the Autonomous Republic of Ajaria despite pardon by the President of Georgia in a first case and acquittal by the Georgian central courts in a subsequent case: *communicated*.

ASSANIDZE - Georgia (N° 71503/01)
[Section II]

In November 1994 the applicant was sentenced to eight years' immediate imprisonment by the courts of the Autonomous Republic of Ajaria, a constituent entity of Georgia. In an order of October 1999 the President of Georgia pardoned the applicant, commuting the remaining two years of imprisonment to a suspended sentence. On 11 November 1999 the Supreme Court of the Autonomous Republic of Ajaria held that the President's order was unlawful. On 11 December 1999 the applicant, who was still in prison, was charged with participation in a criminal conspiracy and with a person's abduction. On 28 December 1999 a first-instance court of the Autonomous Republic of Ajaria formally ordered his detention pending trial. On 2 October 2000 he was convicted by the Supreme Court of the Autonomous Republic of Ajaria. He appealed on points of law to the Supreme Court of Georgia. The authorities took various steps to have him transferred from the Autonomous Republic of Ajaria, where he was imprisoned, to Tbilisi for the hearing, but to no avail. On 29 January 2001 the Supreme Court of Georgia, ruling in the applicant's absence, quashed the judgment of 2 October 2000, acquitted the applicant and ordered his release. The local authority of the Autonomous Republic of Ajaria has not enforced that decision.
Communicated under Article 5(1), (3) and (4) and Article 6(1).

Article 5(2)

INFORMATION ON REASONS FOR ARREST
Arrest of applicants with a view to their expulsion after being summoned to complete their asylum requests: *no violation*.

ČONKA - Belgium (N° 51564/99)
Judgment 5.2.2002 [Section III]
(see Article 5(1), above).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Review of lawfulness of continuation of psychiatric detention: *violation*.

MAGALHÃES PEREIRA - Portugal (N° 44872/98)
Judgment 26.2.2002 [Section IV (former composition)]

Facts: The applicant was placed in a secure psychiatric unit in December 1996 after it was found that he could not be held criminally responsible for an offence of fraud because of mental illness. In January 1997 a judge of the criminal court dealing with the case ordered that, pursuant to the relevant legislation, the mandatory periodic review of the applicant's detention should take place on 1 March 1998. In February 1997 the judge responsible for the execution of sentences assigned a lawyer to represent the applicant. On 2 July 1997 the applicant himself applied for release on the basis of a favourable medical report. On 4 July 1997 the judge marked the file "seen". In January 1998, in accordance with the relevant legislation, the judge requested the opinion of two medical institutions on the applicant's personal circumstances. The two institutions submitted their reports after examining the applicant in May 1998. One found that his circumstances indicated that he should be released, but the other was opposed to releasing him. In July 1998 the applicant, who had personally lodged a second application for release, was interviewed by the judge. As the applicant's officially assigned counsel was not available on that occasion, the judge appointed as his representative an official from the penal institution in which he was detained. The applicant subsequently lodged a third application for release, again on his own initiative. In April 1999 he absconded while on temporary release, only being recaptured in November 1999, at his home. In January 2000 the Execution of Sentences Court decided that the applicant's confinement should continue. The judge responsible for the execution of sentences based his decision on the medical report of May 1998 which had been opposed to the applicant's release, and on the fact that, in absconding, the applicant had shown that he could not be trusted. Lastly, the judge held that there was no need to consider the applications for release lodged by the applicant himself, in view of his mental illness. An appeal by the applicant against that decision was dismissed. In January 2001 the judge refused an application by State Counsel's Office for the applicant's release and decided to reassess the situation when the next periodic review (scheduled for the end of January 2002) was carried out. An appeal by State Counsel's Office against that decision was dismissed in June 2001.
Law: Article 5(4) – (1) In cases concerning the confinement of persons suffering from psychiatric disorders, the procedure prescribed by the relevant Portuguese legislation entailed the periodic and automatic review by a court of the grounds for confinement. Furthermore, patients were entitled to request the lifting of the confinement order, and their release, at any time. In the instant case, the fact that the judge responsible for the execution of sentences had marked the file concerning the first application for release as "seen" could not be regarded as

a decision regarding the validity of the grounds for confinement. Contrary to the order issued by the judge of the criminal court in January 1997, the first mandatory periodic review of the applicant's confinement had not taken place until 20 January 2000, more than two and a half years after his initial application for release. Whether or not the seven months during which the applicant was at large were taken into account, that period had to be regarded as excessive, and there were no special grounds on which it could be justified for the purposes of Article 5(4). That reason alone was sufficient to warrant the conclusion that there had been a violation of that provision. Furthermore, in deciding in January 2000 that the applicant's confinement should continue the Execution of Sentences Court had relied, *inter alia*, on a medical report drawn up in May 1998. It had therefore reached its decision on the basis of medical evidence that had been obtained a year and eight months previously and did not necessarily reflect the applicant's condition at the time of the decision. A delay of that length between the issue of the medical report and the subsequent decision was likely to conflict with the underlying principle of Article 5: the protection of individuals against arbitrariness when their liberty was at stake. Lastly, the Execution of Sentences Court had failed to comply with the procedural rules on the mandatory periodic review by a court of the grounds for confinement, as laid down in domestic legislation.
Conclusion: violation (unanimously).
(2) As regards the applicant's complaint that he did not receive adequate legal assistance, the Court ruled that where a person was confined in a psychiatric institution for having carried out acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he had, unless there were special circumstances, to receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his confinement. The importance of what was at stake for him – personal liberty – taken together with the very nature of his affliction – diminished mental capacity – compelled that conclusion. In the instant case the applicant was suffering from a mental disorder that prevented him from taking part unassisted in court proceedings, such as those concerning the periodic review of the lawfulness of his confinement. At the outset of the proceedings, in accordance with the law, the judge responsible for the execution of sentences had assigned a lawyer to represent the applicant. However, the lawyer had not taken part in the proceedings at any stage. As the Court had previously held in respect of Article 6(3)(c), assigning counsel did not in itself ensure the effectiveness of the assistance afforded the accused. In the instant case the lack of effective assistance had been glaringly apparent at the hearing in July 1998, when, in the absence of the officially assigned lawyer, the judge had appointed as the applicant's counsel an official from the penal institution in which he was confined. The Government had maintained that the judge had dispensed with the presence of the officially assigned lawyer in view of the fact that there were no legal issues to determine. That argument could not be accepted. Firstly, the purpose of the hearing in question had been to enable the judge to decide whether the applicant should be kept in confinement; it was self-evident that legal issues could be raised at such a hearing. Secondly, the judge had not decided that it was unnecessary for the applicant to be represented, since he had appointed the official from the penal institution to represent him. Even though that appointment appeared to be valid under domestic legislation and consistent with the Constitutional Court's case-law, it could not be regarded as adequate representation for the applicant. He had therefore not been granted adequate legal assistance.
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant 6,000 euros (EUR) for non-pecuniary damage and EUR 5,000, less EUR 1,779 already paid by the Council of Europe in legal aid, for costs and expenses.

REVIEW OF LAWFULNESS OF DETENTION
Applicants unable to make use of available remedies: *violation*.

ČONKA - Belgium (N° 51564/99)
Judgment 5.2.2002 [Section III]
(see Article 5(1), above).

PROCEDURAL GUARANTEES OF REVIEW
Lack of effective legal assistance for psychiatric detainee in proceedings concerning review of continuation of confinement: *violation*.

MAGALHÃES PEREIRA - Portugal (N° 44872/98)
Judgment 26.2.2002 [Section IV]
(see above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Access to profession of chartered accountant on the basis of professional experience refused by commission competent to examine the relevance of the candidate's experience: *Article 6 not applicable*.

SAN JUAN - France (N° 43956/98)
Decision 28.2.2002 [Section I]

The applicant has worked for various accountancy firms as an accountant since 1965. In 1995 he applied to be registered as a member of the Institute of Chartered Accountants on the basis of his professional experience, in accordance with a 1945 order on the profession of chartered accountant. Under the procedure laid down in the order, candidates may become chartered accountants on the basis of their professional experience if they have worked for fifteen years in the accounting or auditing field, including at least five years in posts or on assignments entailing substantial administrative, financial and accounting responsibilities. Applications are considered by a regional committee and unsuccessful candidates may lodge an appeal with a national committee. In 1996 the relevant regional committee rejected the applicant's application on the ground that he had not produced a certificate attesting that he had five years' experience in posts or assignments entailing substantial administrative, financial and accounting responsibilities. The applicant subsequently appealed against that decision to the national committee, which upheld the regional committee's decision. He then applied to the *Conseil d'Etat* for judicial review of the national committee's decision, arguing, in particular, that proceedings before the national committee did not satisfy the requirements of Article 6(1) of the Convention, on account of their secret and anonymous nature. The *Conseil d'Etat* dismissed his application, holding, firstly, that the national committee was not a court and, secondly, that he had not met the criterion of at least five years' experience in discharging duties specified in the 1945 order and other applicable provisions.
Inadmissible under Article 6(1): The applicant's complaint was essentially that the regional committee's assessment of his abilities had been incorrect. However, the national committee had carried out a thorough review of his application. Although there was a difference between the consideration of applications by the regional and national committees and the assessment,

by a panel, of examinations for admission to the various professional bodies, the relevant procedure nonetheless entailed an evaluation of candidates' knowledge and experience. An evaluation of that kind was akin to a school or university examination and was so far removed from the exercise of normal judicial functions that the safeguards provided by Article 6 could not be taken to cover disagreements on such matters. Accordingly, there was no "*contestation*" (dispute) within the meaning of Article 6, which was therefore not applicable: incompatible *ratione materiae*.

RIGHT TO A COURT
Quashing of final and binding judgment: *admissible*.

RYABYKH - Russia (N° 52854/99)
Decision 21.2.2002 [Section I]

The applicant instituted civil proceedings against a local branch of the State Savings Bank, the State Savings Bank of Russia itself and the State on the ground that the sum she had deposited in the bank had not been properly reassessed in order to compensate the effects of inflation resulting from economic reforms although such a reassessment was prescribed by law. The District Court found in her favour and awarded her the sum of 129,544,106 roubles, to be paid out of the State Treasury. The judgment became final. Nonetheless, the president of the Regional Court later initiated supervisory review proceedings before the latter court against the final legally binding judgment, which the Regional Court quashed, rejecting the applicant's claims without hearing her or even informing her that an application for supervisory review had been lodged. The enforcement proceedings were subsequently discontinued.
Admissible under Article 6(1) and Article 1 of Protocol No. 1.

ACCESS TO COURT
Refusal to grant legal aid in cassation proceedings due to lack of serious grounds for cassation appeal: *no violation*.

DEL SOL - France (N° 46800/99)
Judgment 26.2.2002 [Section III (former composition)]

Facts: Mr and Mrs Del Sol were granted a divorce by the *tribunal de grande instance*. The applicant, Mrs Del Sol, appealed against the divorce decree but the court of appeal dismissed her appeal and upheld the decree. She decided to appeal on points of law against the Court of Appeal's judgment and made an application to the Court of Cassation's legal aid office for legal aid. While acknowledging that the applicant's means were insufficient, the legal aid office rejected her application, stating that there was no serious ground for an appeal on points of law against the impugned judgment. She then appealed against that decision. The President of the Court of Cassation dismissed her appeal, holding that the legal aid office's assessment of the facts of the case was not subject to review and that there did not appear to be any serious grounds for an appeal on points of law.
Law: Article 6(1) – The ground on which the application for legal aid had been rejected was expressly laid down in the applicable legislation and was undoubtedly inspired by the legitimate concern that public money should only be used for legal-aid purposes for appellants to the Court of Cassation whose appeals had reasonable prospects of success. Admittedly, in the case of Aerts v. Belgium, which had concerned the refusal of an application for legal aid on the ground that the appeal had not at that time appeared to be well-founded, the Court had found a violation of Article 6(1). However, it was important to give practical consideration to the quality of a State's legal-aid system. The system established by the French legislature offered individuals substantive guarantees – both

through the composition of the legal aid office and by the fact that appeals could be lodged with the President of the Court of Cassation – to protect them from arbitrariness. Furthermore, the applicant had been able to have her case heard at first instance and on appeal. Consequently, the refusal to grant her legal aid for an appeal to the Court of Cassation had not impaired the very essence of her right of access to a court.
Conclusion: no violation (5 votes to 2).

ACCESS TO COURT
Refusal to grant legal aid in cassation proceedings due to lack of serious grounds for cassation appeal: *no violation*.

ESSAADI - France (Nº 49384/99)
Judgment 26.2.2002 [Section III (former composition)]

This case raises the same legal issue as the Del Sol case, above.

FAIR HEARING
Failure to summon to appear at hearing before *Conseil d'Etat* an unrepresented plaintiff who had no opportunity of seeing the submissions of *commissaire du Gouvernement*: *violation*.

FRETTE - France (N° 36515/97)
Judgment 26.2.2002 [Section III (former composition)]
(see Article 8, below).

FAIR HEARING
Alleged lack of reasons in decision of the *Conseil d'Etat* refusing leave to lodge a cassation appeal: *inadmissible*.

BUFFERNE - France (N° 54367/00)
Decision 26.2.2002 [Section II]

The applicant, who was an auxiliary secretary at the Paris Chamber of Commerce and Industry, informed her employer that she wished to resign on valid grounds. Her employer replied in a letter that he accepted her resignation but refused to acknowledge that the grounds were valid. As a result, she was unable to claim unemployment benefit. She subsequently applied to the administrative court for judicial review of the decision, but her application was dismissed. When an appeal likewise proved unsuccessful, she appealed on points of law to the *Conseil d'Etat*, which, after recapitulating the grounds of her appeal, stated that they were not "such as to warrant granting leave" to hear the appeal.
Inadmissible under Article 6(1): Section 11 of the Act of 31 December 1987 provided: "Appeals on points of law to the *Conseil d'Etat* shall be subject to a procedure for the granting of leave ... leave to appeal shall be refused by means of a judicial decision if the appeal is inadmissible or there are no genuine grounds for it". The *Conseil d'Etat* had refused the applicant leave to appeal in accordance with that provision and in view of the fact that none of the grounds of the appeal were "such as to warrant leave being granted". The procedure for granting leave to appeal on points of law to the *Conseil d'Etat*, as laid down in section 11 of the Act of 31 December 1987, was compatible with the Convention. Although the principle of fairness enshrined in Article 6(1) obliged courts to give sufficient reasons for their decisions, that obligation could not be understood as requiring a detailed answer to every argument. In the instant case the *Conseil d'Etat* had recapitulated the applicant's grounds of appeal and had stated that they were not "such as to warrant granting leave" to hear the appeal. It had therefore made clear that the applicant's grounds of appeal did not concern

points of pure law – the only valid grounds on which such an appeal could be lodged. The reasons given by the *Conseil d'Etat* for its decision concerning the applicant's appeal were sufficient to satisfy the requirements of Article 6(1): manifestly ill-founded.

Article 6(1) [criminal]

INDEPENDENT AND IMPARTIAL TRIBUNAL
Independence and impartiality of court martial: *violation*

MORRIS - United Kingdom (Nº 38784/97)
Judgment 26.2.2002 [Section III (former composition)]

Facts: The applicant, a soldier, was arrested in 1996 after going absent without leave. He was remanded for trial and his Commanding Officer appointed an army captain with no legal training as the "defending officer". The applicant applied for legal aid to enable him to be represented by a solicitor and was offered legal aid subject to a down-payment of £240. His solicitor requested that this condition be reconsidered but before a reply had been received the applicant declined the offer of legal aid and signed a document in which he stated that he wished to be represented only by the defending officer. The court martial took place in May 1997. The court was composed of a President (a Permanent President of Courts Martial, appointed in January 1997 and due to remain until his retirement in September 2001), two army captains and a legally qualified civilian judge advocate. The applicant pleaded guilty and was sentenced to nine months' detention and dismissal from the army. He then instructed a solicitor, who lodged a petition with the "reviewing authority". The petition was refused and a single judge of the Court Martial Appeal Court refused leave to appeal.
Law: Article 6(1) – This provision was clearly applicable, since the proceedings involved a determination of sentence following a plea of guilty; although the applicant was not charged with an ordinary criminal offence, in the light of the custodial sentence he received there was clearly a determination of a criminal charge. The concepts of independence and impartiality being closely linked, it was appropriate to consider them together. A military court can, in principle, constitute an independent and impartial tribunal, but only as long as sufficient safeguards are in place. In previous cases concerning courts martial in the United Kingdom concerns had centred around the multiple roles played by the "convening officer" and the changes introduced by the Armed Forces Act 1996 had gone a long way to meeting those concerns, the roles played by the "convening officer" and the "confirming officer" having been split, so that a separation now existed between prosecution and adjudication functions at a court martial. Moreover, advisory functions had also been reallocated and there were sufficient guarantees of independence in that respect. Consequently, the applicant's general complaint about the relationship between senior army command and those involved in the court martial proceedings did not in itself give rise to a violation of Article 6. However, the question remained whether the members of the court martial collectively constituted an independent and impartial tribunal. As to the manner of their appointment, the fact that the head of the office responsible for the selection of the officers who sat on the court martial was appointed by the Defence Council did not in itself give rise to doubt as to the independence of the court, because he was in any event adequately separated from those fulfilling prosecution and adjudication roles. While he appeared to have had no fixed term of appointment and there were no clear guarantees against interference by senior army command, there was no evidence of such interference in the present case. Consequently, the manner in which the court martial was appointed did not give rise to any lack of independence. With regard to the terms of office of the members and the existence of safeguards against outside pressures, it was necessary to examine the positions of the President and the two army officers. As far as the President was concerned, the absence of a formal recognition of the irremovability of a

judge does not in itself imply a lack of independence, provided it is recognised in fact and other guarantees are present. In the present case, the *de facto* security of tenure, together with the fact that the President had no apparent concerns as to future prospects in the army and was no longer subject to army reports, as well as his relative separation from the command structure, meant that he was in fact a significant guarantee of independence in an otherwise *ad hoc* tribunal. In contrast, the two army officers were not appointed for a fixed period but rather on an *ad hoc* basis, which made the need for safeguards against outside pressure all the more important. The presence of a legally qualified civilian judge advocate and of the Permanent President provided such guarantees, as did the rules on eligibility and the oath taken by members, but they were insufficient to exclude the risk of pressure being brought to bear on the two relatively junior officers, who had no legal training and remained subject to army discipline and reports. This was of particular importance in a case directly involving a breach of military discipline. Finally, the fact that the review was conducted by the "reviewing authority" was contrary to the principle that the binding decision of a "tribunal" should not be open to review by a non-judicial body. These fundamental flaws were not corrected by the appeal to the Court Martial Appeal Court, which refused leave to appeal without a hearing. In conclusion, the applicant's misgivings about the independence of the court martial and its status as a "tribunal" were objectively justified.
Conclusion: violation (unanimously).
Article 6(1) and (3)(c) – The terms of the legal aid offer were not arbitrary or unreasonable, bearing in mind the applicant's income, but he refused the offer before receiving a reply to the request for reconsideration of the condition imposed and indeed stated that he wished to be represented only by the defending officer. In these circumstances, there was no merit in his complaints about the independence of the defending officer or his handling of the case.
Conclusion: no violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfation in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

IMPARTIAL TRIBUNAL
Judge lodging appeal and then sitting as a member of the court deciding to grant leave to appeal: *communicated*.

MARKIN - Russia (N° 59502/00)
[Section I]

The applicant purchased an imported second-hand car. The Customs Board later found out that the customs clearance had been obtained improperly by the person who had sold the car to the applicant. The applicant's alleged offence was considered in domestic law as an administrative customs offence. The Board imposed a fine on him and ordered that the car be confiscated. The applicant challenged the Board's decision in the District Court, which dismissed his complaint in June 1997. However, a deputy president of the Supreme Court of Russia successfully lodged an appeal under the supervisory review procedure against the decision of June 1997. The case was re-examined by another District Court which found in favour of the applicant in March 1999, holding that he had not been aware, when buying the car, that the customs clearance had been obtained by fraud. Subsequently, the acting president of the Supreme Court of the Republic of Bashkortostan, Judge D., lodged an appeal under the supervisory review procedure against the judgment of March 1999. Leave to appeal was granted by the Presidium of the Supreme Court of the Republic of Bashkortostan. Judge D. was a member of the Presidium. In April 2000 Judge G. of the District Court to which the case was referred dismissed the applicant's claim. The latter appealed against that decision, alleging that the bench was unlawfully composed. In June 2000 the Supreme Court of the Republic of Bashkortostan rejected the appeal, holding that Judge G. had been appointed in accordance with the law of the Republic of Bashkortostan on the Judiciary. This procedure of

appointment allegedly does not follow the procedure set at the federal level by the Constitution.
Communicated under Article 6(1) (applicability, tribunal established by law, impartial tribunal) and Article 1 of Protocol No. 1.

TRIBUNAL ESTABLISHED BY LAW
Appointment of District Court judge of a member republic of the Russian Federation according to a procedure established by the republic and not according to the federal procedure: *communicated*.

MARKIN - Russia (N° 59502/00)
[Section I]
(see above).

Article 6(3)

DEFENCE RIGHTS
Obligation for applicant's lawyer to present defence in early morning, after 15-hour hearing before Assize Court: *communicated*.

MAKHFI - France (N° 59335/00)
[Section II]

The applicant, who had been charged with rape and theft as a member of a gang and had previous convictions for similar offences, was brought before an assize court. He submitted to the Public Prosecutor's Office a list of three witnesses whom he wished to attend the hearing at the prosecution's expense. The Principal Public Prosecutor refused his request, stating that since the three defendants had not submitted a joint list, he was only required to summon witnesses on the basis of the first list which had been submitted by one of the other defendants and which already contained five names – five being the statutory maximum number of witnesses who could be summoned to a hearing without the costs thus incurred having to be paid in advance. The defendants' lawyers gave their addresses after sitting through the hearing for fifteen hours and forty-five minutes, and the second day of the trial lasted seventeen hours and fifteen minutes. Counsel for the applicant was forced to give his address at 4.25 a.m., having been present at the hearing since 9 a.m. the previous day. Following the hearing, the applicant was found guilty and sentenced to eight years' imprisonment. The Court of Cassation subsequently dismissed the applicant's appeal on points of law in which he submitted, in particular, that his defence rights had been infringed. It held, *inter alia*, that his objection concerning the validity of the decision to refuse his request to have defence witnesses summoned had been lodged out of time; accordingly, he was unable to appeal against the assize court's judgment in that respect.
Communicated under Article 6(1) (fair trial), (3) and (3)(d) and Article 35(1) (exhaustion of domestic remedies).

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Adequacy of representation by army officer at court martial: *no violation*

MORRIS - United Kingdom (Nº 38784/97)
Judgment 26.2.2002 [Section III (former composition)]
(see Article 6(1) [criminal], above).

Article 6(3)(d)

EXAMIMATION OF WITNESSES
Use at trial of statements made by anonymous witness: *violation*.

VISSER - Netherlands (Nº 26668/95)
Judgment 14.2.2002 [Section III] (final judgment)

Facts: The applicant was convicted, on the prosecution's appeal, of having acted as an accomplice in an unlawful detention. In its judgment, the Court of Appeal referred, in particular, to the evidence of an anonymous witness who had identified the applicant from photographs. The conviction was quashed by the Supreme Court, on the ground that the conditions for using the statement of an anonymous witness had not been met. It referred the case to a different Court of Appeal, which instructed the investigating judge to hear the witness. The investigating judge considered that the desire of the witness to remain anonymous – based on fear of reprisals by the applicant's co-accused and the fact that the charge related to an act of revenge – was justified. Consequently, the applicant's lawyer remained in a separate room while the witness was questioned by the investigating judge, who included a number of questions submitted by the applicant's lawyer. The Court of Appeal subsequently convicted the applicant, relying on the statements made by the anonymous witness to the investigating judge as well as various reports and official records. The Supreme Court dismissed the applicant's further appeal on points of law, accepting the conclusion of the investigating judge that anonymity was justified.
Law: Article 6(3)(d) – The report of the investigating judge, who apparently took into account the reputation of the co-accused, did not indicate how he had assessed the reasonableness of the witness's fears, either at the time of the original interview by the police or when heard by the investigating judge a considerable time later. Moreover, the Court of Appeal did not carry out an examination of the seriousness and well-foundedness of the reasons for the witness remaining anonymous and in these circumstances the Court was not satisfied that the interest of the witness could justify limiting the rights of the defence to the extent to which they were limited. In that respect, legislation which came into force in 1994 provides for specific safeguards. In addition, the applicant's conviction was based on the evidence of the anonymous witness to a decisive extent. In the light of that conclusion, it was unnecessary to examine further whether the procedures put in place by the judicial authorities could have sufficiently counterbalanced the difficulties faced by the defence as a result of the anonymity of the witness.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant € 6,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

OBTAIN ATTENDANCE OF WITNESSES
Refusal to summon witnesses for the defence before Assize Court, the allowed number of witnesses called by the accused at the expense of the prosecution having already been reached: *communicated*.

MAKHFI - France (N° 59335/00)
[Section II]
(see above).

ARTICLE 8

PRIVATE LIFE
Adequacy of measures taken by courts to establish paternity: *violation*.

MIKULIĆ - Croatia (Nº 53176/99)
Judgment 7.2.2002 [Section I]

Facts: The applicant was born out of wedlock in 1996. In January 1997, she and her mother brought a paternity action and in June 1997 the court gave judgment against the defendant. However, on the defendant's appeal, the court annulled this judgment and in March 1999 it ordered him to undergo a DNA test. He failed to keep appointments for a test on six occasions and also failed to appear at several court hearings. In July 2000, the court gave a judgment in which it found his paternity to have been established, considering that his avoidance of a DNA test supported the applicant's claim. This judgment was quashed on appeal and the case was remitted for retrial. In November 2001, the first instance court again found paternity established on the basis that the defendant's avoidance of a DNA test corroborated the applicant's claim. The proceedings are pending on appeal.
Law: Article 6(1): The proceedings had lasted about five years, of which about four years and two months fell within the Court's jurisdiction *ratione temporis*. In view of what was at stake for the applicant, the authorities were required to act with particular diligence. While the defendant had failed to appear for several hearings and had failed to attend any of the appointments for a DNA test, it is for the State to organise its legal system so as to ensure that the reasonable time requirement is met. Having regard to all the circumstances, the length of the proceedings was not reasonable.
Conclusion: violation (unanimously).
Article 8: Although the Court has held that paternity proceedings may fall within the scope of this provision, in the present case no family ties had been established between the applicant and her alleged father. However, private life can sometimes embrace aspects of an individual's physical and social identity and respect for private life must also comprise to a certain degree the right to establish relationships with others. Moreover, there appeared to be no reason of principle for excluding from the notion of "private life" the determination of the legal relationship between a child born out of wedlock and the natural father. Respect for private life requires that everyone should be able to establish details of his or her identity as an individual and entitlement to such information is of importance because of its formative implications for one's personality. In the present case, the applicant sought to establish the identity of her natural father by means of court proceedings and there was a direct link between the establishment of paternity and her private life. The case therefore fell within the scope of Article 8.
It was necessary to examine whether the authorities, in handling the paternity claim, had breached their positive obligations under Article 8. Since the defendant denied paternity, the only way for the applicant to establish that he was her biological father was through civil

court proceedings. In that connection, a procedural provision of a general character, giving discretionary power to courts to assess evidence, was not in itself a sufficient and adequate means for establishing paternity where the putative father was avoiding a court order to undergo a DNA test. In addition, the first instance court had been ineffective in establishing paternity through the assessment of other relevant evidence and it appeared that it had been unable to find adequate procedural means to prevent the defendant from impeding the proceedings. The protection of third parties may preclude their being compelled to undergo medical testing of any kind and a system which has no means of compelling the alleged father to undergo a DNA test can in principle be considered compatible with the obligations deriving from Article 8. However, in such circumstances the interests of the person seeking to establish paternity must be secured and the principle of proportionality requires that alternative means be provided to enable the speedy determination of a paternity claim. In the present case, no such means were available to the applicant and the procedure available did not strike a fair balance between her right to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her alleged father not to undergo a DNA test. The authorities had therefore failed to secure "respect" for the applicant's private life.
Conclusion: violation (unanimously).
(3) Article 13: (a) The Court had already held that section 59(4) of the Constitutional Court Act does not represent an effective remedy in respect of the length of civil proceedings.
Conclusion: violation (unanimously).
(b) As to the absence of measures under domestic law to ensure the presence of the defendant in paternity proceedings, this had already been taken into account under Article 8 and it was not necessary to examine the same issue under Article 13.
Conclusion: not necessary to examine (unanimously).
Article 41: The Court made an award in respect of non-pecuniary damage.

PRIVATE LIFE
Refusal of application for prior approval as a prospective adopter presented by an unmarried homosexual man, on the ground of his "choice of lifestyle": *no violation*.

FRETTE - France (N° 36515/97)
Judgment 26.2.2002 [Section III (former composition)]

Facts: The applicant submitted a request for preliminary leave to adopt a child. Following the rejection of his request, he lodged an appeal which was dismissed on the grounds that his "choice of lifestyle" (as an unmarried homosexual) did not appear to be such as to provide sufficient guarantees that he would offer a child a suitable home. The administrative court set aside the decisions, holding that the relevant legislative provisions had been misinterpreted. The administrative authorities appealed against that judgment to the *Conseil d'Etat*. The Government Commissioner concluded that the authorities were justified in seeking to have the judgment quashed but stated that the applicant had been denied leave to adopt solely because he was homosexual and, as such, could not provide sufficient guarantees that he would offer a child a suitable home; a decision of that kind amounted to introducing a form of discrimination between prospective adopters which the legislature had not intended – discrimination on the grounds of choice of private lifestyle. The *Conseil d'Etat* quashed the judgment and, in a ruling on the merits, dismissed the applicant's request for preliminary leave to adopt. It held, in particular, that the applicant – despite his personal qualities and aptitude for bringing up children – could not provide sufficient guarantees that he would offer an adopted child a suitable home. The applicant, who had exercised his right under domestic law not to be represented by a lawyer, did not attend the hearing in the Court of Cassation, as he had not been summoned.
Law: Article 14 taken together with Article 8 – The rejection of the applicant's request for leave to adopt had not in itself interfered with his right to the free expression and development of his personality or the manner in which he led his sexual life. However,

domestic law authorised any unmarried person to apply to adopt. In refusing the applicant's request on the ground of his "choice of lifestyle", the national authorities had implicitly yet undeniably applied a criterion that related decisively to his homosexuality. There had therefore been a difference in treatment based on the applicant's sexual orientation, a concept which was covered by Article 14, in respect of the right which he had been granted and which fell within the scope of Article 8; accordingly, the two provisions taken together were applicable. The decisions to refuse preliminary leave to adopt had pursued a legitimate aim, namely protecting the health and rights of children who might be concerned by an adoption procedure. As to whether the difference in treatment was justified, there was little common ground between the legal systems of the Contracting States in that regard; accordingly, a broad margin of appreciation had to be left to each State. In the instant case the national authorities could legitimately and reasonably have considered that the right to be able to adopt asserted by the applicant was circumscribed by the interests of adoptable children. The justification advanced therefore appeared objective and reasonable and there had been no discrimination within the meaning of the Convention.
Conclusion: no violation (four votes to three).
Article 6(1) – Since the applicant had exercised his right under domestic law not to be represented by a lawyer, he had not been summoned to and had consequently not attended the hearing before the *Conseil d'Etat* . Requiring the applicant to pay regular visits to the registry of the *Conseil d'Etat* to check the notice boards to see whether his case was listed for hearing ran counter to the obligation on States to secure the effective enjoyment of the rights guaranteed by Article 6. In the instant case the applicant had not been able to apprise himself of the Government Commissioner's submissions as he had not been summoned to the hearing. Nor, since he was unrepresented, had he been able to establish the general tenor of the submissions before the hearing; as a result, he had been denied, in breach of the adversarial principle, an opportunity to reply to them in the form of a note to the court at the deliberations stage.
Article 41 – The Court awarded the applicant EUR 3,500 for costs and expenses.

FAMILY LIFE
Separation of children from their parents and restrictions on contacts, on account of the latter's alleged lack of intelllectual capacity to bring up their children properly: *violation*.

KUTZNER - Germany (N° 46544/99)
Judgment 21.2.2002 [Section IV (former composition)]

Facts: The two applicants have two daughters who were born in 1991 and 1993. The District Youth Office applied to the Guardianship Court for an order withdrawing their parental rights over their daughters after a report had concluded that owing in particular to their impaired mental development they were incapable of bringing up their children. The Guardianship Court appointed an expert in psychology to draw up a report. It made a provisional order withdrawing the applicants' rights to make decisions as to where the children should live or what medical care they should receive, primarily on the ground that they did not have the necessary intellectual capacity to bring up their daughters. The children were placed in a children's home. The director of the home expressed the opinion that the applicants should no longer have custody of the children. The expert concluded in the report that the applicants were not fit to bring up their children as they did not possess the necessary intellectual capacity. On the basis of that report and after hearing the applicants, the Guardianship Court made an order withdrawing their parental rights over the two girls, who were then placed in separate, unidentified foster homes. The applicants lodged an appeal with the Regional Court against the decision of the Guardianship Court. The Regional Court appointed a second expert in psychology who also submitted a report that was unfavourable to the applicants. The Regional Court dismissed the appeal. An appeal by the applicants against that decision was dismissed by the Court of Appeal, and the Federal Constitutional Court dismissed a

subsequent appeal. However, a number of expert witnesses instructed privately by an association that defended children's rights proved favourable to the applicants and expressed the view that the children should be returned to their family and that social services should provide additional educational support. Owing to the fact that that their daughters had been placed in unidentified foster homes, the applicants were unable to see them during the first six months of their placement. At that point the Regional Court, on an appeal by the applicants, made an order granting them visiting rights of one hour monthly. Contrary to the Regional Court's order, a number of people other than the applicants and their children were present during the visits. The applicants obtained permission from the Guardianship Court to accompany their eldest daughter on her return to school at the start of the school year but were refused a two-hour visit at Christmas.
Law: Article 8 – The continued placement of the applicants' children in foster homes and the restrictions on contact between the parents and their children amounted to an interference with the applicants' right to respect for their family life. The measures in question were, however, prescribed by law and pursued the legitimate aims of protecting health and morals and the children's "rights and freedoms". As to whether the measures were necessary in a democratic society, both the order for the children's placement and the implementation of such a radical measure separating them from their parents had been inappropriate. The children had been given educational support at their parents' request; the experts in psychology appointed by the courts had expressed contradictory opinions; the psychologists instructed privately, as well as a number of family doctors, had urged that the children be returned to their family of origin and had advocated additional educational support; lastly, it had not been alleged that the children had been neglected or ill-treated by the applicants. Accordingly, the national authorities and courts had not given sufficient consideration to the implementation of additional or alternative measures that were less radical than separation. Furthermore, the children's best interests had to be taken into account. In the instant case the children, without being interviewed by a judge, had been completely separated from their family and from each other for a long period as they had been placed in separate, unidentified, foster homes. The parents' applications to the courts for visiting rights had been systematically refused and, once granted, had been extremely limited in scope. Severing contact in that way and imposing such restrictions on visiting children of such a tender age could only lead to increased alienation of the children from their parents and from each other. Accordingly, although the reasons given by the national authorities to justify such a serious interference were relevant, they were not sufficient.
Conclusion: violation (unanimously).
Article 41 – The Court held that the applicants had sustained indisputable non-pecuniary damage as a result of their separation from their two daughters and the restrictions on their visiting rights, and awarded them jointly the sum of EUR 15,000 and a specified sum for costs and expenses.

FAMILY LIFE
Expulsion from Latvia of former USSR national having lived there almost thirty years with her son: *admissible*.

SHEVANOVA - Latvia (N° 58822/00)
Decision 28.2.2002 [Section I]

The applicant, a former national of the Soviet Union who currently has Russian nationality, settled in Latvia in 1970, where she married and had a child in 1973 before divorcing. In 1981, thinking that she had lost her Soviet passport, she obtained a new one. In 1989 she found the missing passport but did not surrender it to the relevant authorities. In 1991, after the break-up of the Soviet Union, she became stateless and was entered in the Latvian registers as a permanent resident. Her son subsequently obtained the status of a "permanent resident without citizenship". In 1994 a Latvian firm offered her a job in Russia, near

Chechnya. The firm advised her to acquire Russian nationality and to register officially as a Russian resident in order to facilitate the checks carried out by the Russian authorities in the areas where she would have to work. She forged a stamp on her old passport attesting that her name had been removed from the register of Latvian residents. She was subsequently registered as a Russian resident, acquiring Russian nationality in 1994. In 1998 she applied to the Latvian Interior Ministry's Directorate for Nationality and Migration Affairs ("the Directorate") for a passport as a "permanent resident without citizenship", enclosing her second passport. While processing her application, the Directorate discovered that she had been registered as a Russian resident and had carried out various formalities using her old passport. In April 1998 the Directorate removed her name from the register of residents. She was served with a deportation order enjoining her to leave Latvia by June 1998, and was barred from entering Latvian territory for five years. The applicant applied to the courts to have the deportation order set aside and to be granted a permanent residence permit. Her application was dismissed, as were a subsequent appeal and an appeal on points of law. In 2000 the applicant and her son twice applied to the head of the Directorate to have the deportation order set aside and to be granted a permanent residence permit. They submitted that they had no family ties outside Latvia, where they had lived together for 26 years, and that the applicant's deportation would constitute a serious interference with her right to respect for her family life, as enshrined in Article 8 of the Convention. Both applications were likewise refused. The applicant applied anew to the courts to have the order set aside, but her application was once again declared inadmissible. A subsequent appeal and an appeal on points of law were likewise dismissed. In February 2001 she was arrested and taken to the detention centre for illegal immigrants, where a warrant of execution of the deportation order was served on her. Owing to the fact that she had been admitted to hospital, execution of the warrant was stayed in late February 2001 by the head of the Directorate, who requested the immigration police to order her release from the detention centre.
Admissible under Article 8.

FAMILY LIFE
Expulsion from Latvia of family of former USSR nationals: *admissible*.

SISOJEVA and others - Latvia (N° 60654/00)
Decision 28.2.2002 [Section I]

The first two applicants are married and the third and fourth applicants are their daughters. The first and second applicants arrived in Latvia in the late 1960s. The second applicant was stationed there as a member of the Soviet army until he was demobilised in 1989. The third and fourth applicants were born in Latvia. In 1991, after the Soviet Union had broken up and Latvia gained its independence, they became stateless. In 1993 the first three applicants applied to the Latvian Interior Ministry's Nationality and Immigration Department ("the Department") to obtain permanent resident status and to be entered in the register of residents. As they were only issued with temporary residence permits, they applied to the courts and obtained a ruling authorising their names to be entered in the register as permanent residents. However, in 1995 the Department discovered that the first three applicants had each been issued with two former Soviet passports in 1992 and were therefore registered as being resident in Russia as well as in Latvia. The Department imposed an administrative fine and applied to have the proceedings reopened, on the ground that the applicants had acted fraudulently. In 1996 the court dealing with the case ordered the removal of their names from the register of residents. On an appeal by the first three applicants the order was set aside and the case remitted to the trial court. In the same year the second and fourth applicants obtained Russian nationality. In 1998 the joint committee for the implementation of the Agreement between the Latvian and Russian Governments on the Social Protection of Retired Members of the Russian Armed Forces and their Families who were resident in Latvia requested the Directorate for Nationality and Migration Affairs ("the Directorate"), which had in the

meantime replaced the Department, to issue the applicants with permanent residence permits, pursuant to the agreement. The first-instance court held that the first and third applicants were entitled to apply for passports as "permanent residents without citizenship" and that the second and fourth applicants were entitled to permanent residence permits. An appeal by the Directorate was dismissed; the Directorate subsequently appealed on points of law to the Supreme Court, which quashed the appellate court's judgment. The court to which the case was referred dismissed the applicants' applications. They appealed on points of law, but the appeal was dismissed in April 2000 and the Directorate wrote to inform the first, second and fourth applicants that they were required to leave Latvia. As regards the third applicant, who had married a Latvian national in 1993 and had two children of Latvian nationality, the Directorate ruled that she was entitled to apply for a temporary residence permit and stated in July 2001 that she would be issued with a permanent residence permit if she produced the relevant documents; she has refused to do so.
Inadmissible under Article 8 in respect of the third applicant: The third applicant was currently not at any risk of being deported. The Directorate had informed her that it would grant her a permanent residence permit provided she furnished certain documents. She had refused to follow the Directorate's instructions on the ground that she did not have all the documents requested. There was nothing to suggest that the Directorate would not have exempted her from having to furnish documents which she could not, from an objective viewpoint, have had in her possession. There had been no real justification for her decision to refuse to apply to the Directorate for a residence permit. Having refused of her own free will to follow a course of action which had been suggested by the relevant national authority and would have been likely to redress her complaint, she could not claim to be a victim of a violation of her right to respect for her private and family life. With regard to her complaint concerning the Directorate's refusal to grant her the status of a "permanent resident without citizenship", the Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of its provisions. The scope of Article 8 does not extend to affording applicants the right to a particular type of residence permit, provided that the solution proposed by the authorities enables them to exercise, without any interference, their right to respect for their private and family life. In the instant case, a permanent residence permit would have allowed the third applicant to live with her family in Latvia indefinitely and would therefore provide an adequate safeguard of her rights under Article 8: manifestly ill-founded.
Admissible under Article 8 in respect of the first, second and fourth applicants.

ARTICLE 10

FREEDOM OF EXPRESSION
Injuction on repeating statements: *violation*.

DICHAND and others - Austria (Nº 29271/95)
Judgment 26.2.2002 [Section III (former composition)]

Facts: The first applicant is chief editor and publisher of the newspaper "Neue Kronen-Zeitung"; the second applicant, a limited partnership, is the newspaper's owner and the third applicant, a limited company, is the general partner of the second applicant. The first applicant published an article in which he criticised the Chairman of Parliament's Legislative Committee, Mr Graff, a lawyer who had also represented the applicants' competitor in unfair competition proceedings against companies belonging to the applicants' media group. The article, referring to the example of a French Minister of Foreign Affairs, criticised Mr Graff for not giving up his law practice; it further stated that when Mr Graff was presiding the Legislative Committee an amendment benefitting the publishers whom he represented had

been adopted; finally, the article referred to the presentation of Mr Graff's "disreputable attitude" on television. Mr Graff brought injunction proceedings, requesting that the applicants be prohibited from making or repeating these statements and that the statements be retracted. The Commercial Court granted an injunction. It considered that the statements amounted to an insult and that they were statements of fact which the applicants had failed to prove. The applicants' appeal was dismissed by the Court of Appeal and their extraordinary appeal on points of law was rejected as inadmissible by the Supreme Court.
Law: Article 10 – The interference was prescribed by law and pursued the legitimate aim of protecting the reputation and rights of others. As to the necessity of the interference, there were three elements on which the injunction was based. The first paragraph illustrated a general moral principle with a concrete example, adding that Mr Graff did not intend to comply with that principle; the following paragraph described in detail and accurately, with reference to his public function, the factual background for that remark. It was not explicitly stated that the Mr Graff was a member of the Government. In these circumstances, the Austrian courts' conclusion that the injunction was justified because an incorrect statement of fact had been published – namely, the allegation that Mr Graff was a member of the Government – could not be endorsed. As to the second element, the statement concerning the legislative amendment did not imply that it served the interests of Mr Graff's clients exclusively, only that it brought them considerable advantages. In these circumstances, there was sufficient factual basis for the value-judgment, which represented a fair comment on an issue of general public interest. The same applied to the third element. In any event, the restriction on the applicants' freedom of expression was not necessary in a democratic society. Mr Graff was an important politician and the fact that a politician is in a situation where his business and political activities overlap may give rise to public discussion. While the applicants published harsh criticism in strong, polemical language, on a slim factual basis, Aricle 10 protects information or ideas that offend, shock or disturb, and on balance the courts overstepped the margin of appreciation.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicants the amount of the costs awarded to Mr Graff in the domestic proceedings, together with interest from the date of the Court of Appeal's judgment. It also made an award in respect of the costs of the Convention proceedings.

FREEDOM OF EXPRESSION
Injunction on repeating statements alleging politician racist: *violation*.

UNABHÄNGIGE INITIATIVE INFORMATIONSVIELFALT - Austria (Nº 28525/96)
Judgment 26.2.2002 [Section III (former composition)]

Facts: The applicant association publishes a periodical entitled "TATBlatt". In 1992 it published a leaflet inviting readers to send the Austrian Freedom Party "small gifts in response to their racist agitation". It mentioned in particular Jörg Haider, leader of the party and at the time a Member of Parliament, and gave a list of the addresses and telephone numbers of party members. Mr Haider sought an injunction prohibiting the applicant from repeating the statement and the Commercial Court granted the injunction, finding that the statement about racist agitation was a statement of fact rather than a value-judgment. The applicant's appeal was dismissed and an extraordinary appeal on points of law was declared inadmissible by the Supreme Court.
Law: Article 10 – The interference was prescribed by law and pursued the legitimate aim of protecting the reputation and rights of others. As to the necessity of the interference, the impugned statement ought to be seen in the political context in which it was made, namely as a reaction to an opinion poll initiated by Mr Haider and the Austrian Freedom Party against "immigration without control". The Government's argument that the allegation of racist agitation was a particularly serious one, as it amounted to a reproach of criminal behaviour, could be accepted in principle in the light of the duties and responsibilities of journalists, but

in the circumstances of the case there was no indication of deliberate carelessness on the part of the applicant. Rather, it appeared that the statement did not constitute a gratuitous personal attack, as it was made in a particular political situation in which it contributed to a discussion on a matter of general interest. In so far as the Government maintained that the statement was one of fact and could therefore be proved, since proof of "incitement to hatred" could be established in criminal proceedings, the degree of precision for establishing the well-foundedness of a criminal charge could hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern, in particular in the form of a value-judgment. The applicant published what might be considered as fair comment on a matter of public interest, that is a value-judgment, and the Court disagreed with the qualification given to the statement by the Austrian courts. While such an opinion may be excessive, in particular in the absence of any factual basis, that was not so in the present case. The Austrian courts had therefore overstepped the margin of appreciation.
Conclusion: violation (unanimously).
Article 41 – The Court made awards in respect of pecuniary damage and costs and expenses.

FREEDOM OF EXPRESSION
Injunction of publishing photograph of politician: *violation*.

KRONE VERLAG GmbH & Co. KG - Austria (Nº 34315/96)
Judgment 26.2.2002 [Section III (former composition)]

Facts: The applicant company publishes a newspaper. It published in its Carinthian regional edition a series of articles on the financial situation of Mr Posch, a local politician who was a member of both the national and the European parliaments. The articles were accompanied by photographs of him. He applied for and was granted an injunction prohibiting publication of his photograph in connection with such articles. The court considered that, as his face was not generally known, his legitimate interests were infringed by creating the possibility of identifying him. It added that the photographs had no information value. The applicant's appeal was dismissed and an extraordinary appeal on points of law was declared inadmissible by the Supreme Court.
Law: Article 10 – The interference was prescribed by law and pursued the legitimate aim of protecting the reputation and rights of others. As to the necessity of the interference, the subject matter of the articles dealt with a matter of public concern which did not wholly fall within the Mr Posch's private sphere and the Austrian courts failed to take into account the essential function the press fulfils and its duty to impart information and ideas on all matters of public interest. It is of little importance whether a person or his or her picture is actually known to the public: what counts is whether the person has entered the public arena. In this case, there was no doubt that as a politician Mr Posch had done so and had to bear the consequences. Thus, there was no valid reason why the applicant should be prevented from publishing his picture. Particular importance may be attached to the fact that there was no disclosure of details about his private life. Moreover, Mr Posch's curriculum vitae and photograph appear on the Austrian Parliament's internet site. Even within the scope delimited by the terms of the injunction, the measure did not correspond to a pressing social need.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant the amount of the costs awarded to Mr Posch in the domestic proceedings. With regard to non-pecuniary damage, it considered that the finding of a violation in itself constituted sufficient just satisfaction. It made an award in respect of costs and expenses.

ARTICLE 34

VICTIM
Permanent exclusion order changed into ten-year exclusion order following Court's judgment and leave to remain granted on the basis of six-monthly residence permits prior to expiry of the order: *admissible*.

MEHEMI - France (N° 53470/99)
Decision 28.2.2002 [Section III]

The applicant is an Algerian national born in France, where he lived, with all the rest of his family, from his birth in 1962 until the enforcement in February 1995 of an order excluding him from French territory. In 1986 he married an Italian national, who has apparently since acquired French nationality, with whom he had three children who are French nationals. In 1991 he was sentenced to six years' imprisonment for drug trafficking. The Court of Appeal upheld that sentence and in addition ordered his permanent exclusion from French territory. A request by the applicant for that order to be rescinded was dismissed by the Court of Appeal and the Court of Cassation. The exclusion order was enforced in February 1995. Following an application by the applicant to the Strasbourg institutions, the Court held in a judgment of 26 September 1997 that there had been a violation of Article 8 in that the permanent exclusion order constituted a disproportionate measure in relation to the aims sought to be achieved. In October 1997 the applicant lodged a request for the exclusion order to be rescinded, relying on the Court's judgment. In March 1998 the Court of Appeal commuted the permanent exclusion order to a 10-year exclusion order. The applicant appealed on points of law, without receiving legal aid. In May 1999 the Court of Cassation dismissed his appeal. Both parties agreed that the exclusion order, thus limited, had expired in July 2001. In the meantime, in October 1997, the applicant sought a pardon, which was in the end refused. His lawyer then wrote to the Minister of Foreign Affairs asking him what action he intended to take in response to the Court's judgment of 26 September 1997. In November 1997 the Minister replied that the Government were prepared to allow the applicant to return to France immediately. He further informed the applicant that he would be subject to a compulsory residence order until he obtained either the lifting of the exclusion order or a pardon. The applicant received a special visa in February 1998 and returned to France. He was required to reside within the administrative district of Lyon and ordered to report twice a month to the police station at Villeurbanne, where he lived. In April 1998 he was issued with a temporary residence permit valid for six months. This permit mentioned that he was authorised to carry on an occupation and required to reside in the *département* of Rhône. Since then it has been renewed each time it has expired.
Admissible under Article 8 and Article 2 of Protocol No. 4: The Government had submitted that the residence permits awarded since the beginning of 1998 had made the 10-year exclusion order inoperative, so that the applicant could no longer claim to be a victim within the meaning of Article 34. His situation could not be compared to the normal situation of an alien in his host country in view of the specific links which bound him to France and which had justified the Court's finding of a violation of Article 8 in its judgment of 26 September 1997. However, the applicant had not been able to return to France until five months after delivery of the above judgment, during which time he had continued to suffer the interferences in his private and family life found by the Court in its judgment. He had not been able to re-establish his family life in France except on the basis of residence permits valid for only six months accompanied by compulsory residence orders. With regard to his right to respect for his private life, his situation was therefore markedly different from that which he had enjoyed before the first exclusion order, which had brought about the situation criticised by the Court in the judgment of 26 September 1997, was imposed. Whereas all the

evidence showed that before 1991 the applicant had had a long-term residence permit, not restricted in any way, from February 1998 to July 2001 he had had only short-term residence permits, accompanied by measures restricting his freedom of movement. Consequently, the Government's submissions could not be accepted and the applicant could claim to be a victim within the meaning of Article 34. Moreover, the facts of the case could not be likened to those of the Benamar v. France case, as the Government had submitted, not only because of the facts noted above but also because the decision given in that case on 14 November 2000 had concerned a deportation order made by the executive branch, the effects of which had been nullified by a compulsory residence order, not an exclusion order imposed by a criminal court. In the light of the applicant's arguments, his complaint required to be examined under Article 2 of Protocol No. 4 also.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 36):

A.V. - Italy (Nº 44390/98)
Judgment 6.11.2001 [Section I]

LAUMONT - France (Nº 43626/98)
Judgment 8.11.2001 [Section II]

FRANCISCO - France (Nº 38945/97)
DURAND - France (no. 1) (Nº 41449/98)
DURAND - France (no. 2) (Nº 42038/98)
ŠLEŽEVIČIUS - Lithuania (Nº 55479/00)
Judgments 13.11.2001 [Section III]

NEMEC and others - Slovakia (Nº 48672/99)
Judgment 15.11.2001 [Section II]

OLSTOWSKI - Poland (Nº 34052/96)
CERIN - Croatia (Nº 54727/00)
IWAŃCZUK - Poland (Nº 25196/94)
Judgments 15.11.2001 [Section IV]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Alleged detrimental effects of a change in the law, depriving barristers of their exclusive rights of audience before courts of appeal: *communicated*.

WENDENBURG and others - Germany (N° 71630/01)
[Section III]

According to section 25 of the Federal Barristers Act 1959, the applicants, barristers of profession, enjoyed an exclusive right of representation before courts of appeal. In December 2000, the Federal Constitutional Court found section 25 to be unconstitutional. The court held that, as from January 2002, barristers who had up to then benefited from an exclusive right of representation before appellate courts could obtain the right of representing a client before district and regional courts having jurisdiction where their practice was situated, while barristers of lower instances would be able to obtain the right to represent a client before courts of appeal as from July 2002. The applicants argued that following the judgment of the Federal Constitutional Court clients wishing to lodge an appeal would no longer bring their cases to barristers specialised in appeal matters, such as themselves, and would rely on the legal counsel who had already represented them in courts of lower instance. They claimed that they were liable to lose from 80 to 90% of their yearly income as a result of this change of the Federal Barristers Act 1959. They complained in particular about the short period of transition.
Communicated under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
National minority having to share previously exclusive right to fish on State-owned water-areas: *communicated*.

JOHTTI SAPMELACCAT r.y. and others - Finland (N° 42969/98)
[Section IV]

The first applicant is an association promoting Saami culture and the other applicants are Finnish nationals of Saami origin. The Saamis are a national minority of Finland recognised by the Constitution, which guarantees them a right to maintain and develop their own culture, including traditional fishing. In Finland, fishing rights can be either a private right connected to land ownership, in which case it enjoys the constitutional protection of property, or a public right related to a public community such as a municipality, which does not enjoy protection of the Constitution. However, in the municipalities of the district where the Saamis live, there was no public right to fish. By contrast, in this district, from time immemorial, those of the Saamis who do not own any land are entitled to a right, which was exclusive before 1998, to fish in the State-owned water areas of their municipalities; this right is based on civil law and enjoys constitutional protection of property. Following the Fishing Act as amended in 1997, which entered into force in 1998, the public right to fish, as it existed in the rest of Finland, was extended to the municipalities of the district where the Saamis live. As a consequence, people living permanently in these municipalities, whether they belong to the Saami minority or not, now enjoy the right to fish in the State-owned water areas.
Communicated under Article 34 (status of victim of the applicant association), Article 1 of Protocol N° 1 and Article 8.

DEPRIVATION OF PROPERTY
Quashing of final judgment ordering return of savings placed in bank: *admissible*.

RYABYKH - Russia (N° 52854/99)
Decision 21.2.2002 [Section I]
(see Article 6(1) [civil], above).

ARTICLE 4 OF PROTOCOL No. 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Failure to examine the specific situation of each individual prior to expulsion: *violation*.

ČONKA - Belgium (N° 51564/99)
Judgment 5.2.2002 [Section III]
(see Article 5(1), above).

RATIONE TEMPORIS

RATIONE TEMPORIS
Final decision issued after entry into force of Convention closely bound up with facts having occurred before its entry into force: *inadmissible*.

JOVANOVIĆ - Croatia (N° 59109/00)
Decision 28.2.2002 [Section I]

The applicant worked in a prison as an agricultural mechanic. In 1992 he was dismissed due to his alleged participation in the "referendum" for Serbian autonomy in Croatia in August 1990. His appeal to the Disciplinary Board of the prison was unsuccessful. He lodged a civil complaint with the Municipal Court, which rejected it, and his appeal was dismissed by the County Court. His subsequent request for revision was rejected by the Supreme Court. He lodged a constitutional complaint in which he challenged the constitutionality of these decisions. In October 1999 the Constitutional Court rejected his complaint.
Inadmissible under Article 10: It had to be ascertained whether and to what extent the Court was competent *ratione temporis* to examine the application. The Convention entered into force in respect of Croatia on 5 November 1997 and the Court was thus not competent in the present case as regards the facts having occurred before that date. While the applicant was dismissed from work in January 1992, the Constitutional Court's decision of October 1999 was the final decision. The issue before the Constitutional Court was in substance the same as the one before the Court, i.e. the applicant's freedom of expression. However, dissociating the Constitutional Court's decision from the events which were at the root of the proceedings would be tantamount to giving a retroactive effect to the Convention. It would also render Croatia's declaration recognising the Court's competence to receive individual applications nugatory. Moreover, the applicant's dismissal was an instantaneous act, which did not give rise to a continuous situation. As to the constitutional proceedings, in so far as they fell within the competence of the Court *ratione temporis*, the applicant did not make any separate complaints: incompatible *ratione temporis*.

Other judgments delivered in February 2002

Article 3 and Article 5(3)

YILMAZ and Others - Turkey (Nº 26309/95, 26310/95, 26311/95 and 26313/95)
Judgment 21.02.2002 [Section III]

This case concerns alleged ill-treatment and failure to bring promptly before a judge – striking out.

Articles 3, 6(1), 8, 13 and 34, and Article 1 of Protocol No. 1

MATYAR - Turkey (Nº 23423/94)
Judgment 21.2.2002 [Section III]

This case concerns the alleged destruction of a house and property by village guards – no violation.

Articles 5(1) and 8

MEIER - France (Nº 33023/96)
Judgment 7.2.2002 [Section I]

This case concerns the lawfulness of detention pending extradition and the alleged interference with a detainee's correspondence – friendly settlement.

Article 5(3)

KAPLAN - Turkey (Nº 24932/94)
Judgment 26.2.2002 [Section II]

The case concerns alleged failure to bring a detainee promptly before a judge – friendly settlement.

Article 5(3) and Article 6(3)(c)

YOLCU - Turkey (Nº 34684/97)
Judgment 5.2.2002 [Section IV]

This case concerns the alleged failure to bring a detainee promptly before a judge and the denial of access to a lawyer – friendly settlement.

Article 6(1)

ZIEGLER - Switzerland (Nº 33499/96)
Judgment 21.02.2002 [Section IV (former composition)]

This case concerns the refusal of the Federal Court to allow appellants to reply to observations submitted by a lower court and by the opposing party – violation.

MATTHIES-LENZEN - Luxembourg (Nº 45165/99)
Judgment 5.2.2002 [Section IV]

LANGLOIS - France (Nº 39278/98)
L.L. - France (Nº 41943/98)
H.L. - France (Nº 42189/98)
Judgments 7.2.2002 [Section I]

TOURTIER - Portugal (Nº 44298/98)
Judgment 14.2.2002 [Section III]

ZAHEG - France (Nº 46708/99)
BOISEAU - France (Nº 53118/99)
Judgments 19.2.2002 [Section II]

226 applications against Italy
(see appendix)

These cases concerns the length of civil or administrative proceedings – violation.

MARKS & ORDINATEUR EXPRESS - France (Nº 47575/99)
Judgment 21.2.2002 [Section III]

This case concerns the length of proceedings in the commercial courts – violation.

GAWRACZ - Turkey (Nº 32055/96)
Judgment 12.2.2002 [Section IV]

AMARAL DE SOUSA - Portugal (Nº 45566/99)
CALDEIRA AND GOMES FARIA - Portugal (Nº 45648/99)
SOCIEDAD PANIFICADORA BOMBARRALENSES Lda. - Portugal (Nº 46143/99)
Judgments 14.2.2002 [Section III]

MELEDDU - Italy (Nº 54307/00)
Judgment 21.2.2002 [Section III]

These cases concern the length of civil proceedings – friendly settlement.

VICTORINO D'ALMEIDA - Portugal (Nº 43487/98)
Judgment 21.2.2002 [former/ancienne Section IV]

This case concerns the length of administrative proceedings – striking out.

UYGUR - Turkey (Nº 29911/96)
DINLETEN - Turkey (Nº 29699/96)
METINOĞLU - Turkey (Nº 29700/96)
ÖZCAN - Turkey (Nº 28701/96)
SARITAÇ - Turkey (Nº 29702/96)
ZÜLAL - Turkey (Nº 29703/96)
ÇILENGIR - Turkey (Nº 29912/96)
BINBIR - Turkey (Nº 29913/96)
Judgments 7.2.2002 [Section III]

BELJANSKI - France (Nº 44070/98)
Judgment 7.2.2002 [Section I]

This case concerns the length of criminal proceedings – violation.

JENSEN - Denmark (Nº 48470/99)
Judgment 14.2.2002 [Section I]

This case concerns the length of criminal proceedings – friendly settlement.

Articles 6(1), 7 and 10

E.K. - Turkey (Nº 28496/95)
Judgment 7.2.2002 [Section III]

This case concerns the absence of clear legal basis for imposing a sentence of imprisonment, a conviction for making separatist propaganda, and the independence and impartiality of a National Security Court – violation.

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

LAMPERI BALENCI - Italy (Nº 31260/96)
GUGLIELMI - Italy (no. 2) (Nº 31480/96)
PEZZA - Italy (Nº 31525/96)
COLUCCI - Italy (Nº 31605/96)
CELONA - Italy (Nº 32541/96)
B. and F. - Italy (Nº 32671/96)
DE FILIPPIS - Italy (Nº 33967/96)
PANE - Italy (Nº 37509/97)
TIBERIO - Italy (Nº 38656/97)
STOPPINI - Italy (Nº 39716/98)
Judgments 21.2.2002 [Section I]

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

Article 6(3)(a) and (b)

SIPAVIČIUS - Lithuania (Nº 49093/99)
Judgment 21.2.2002 [Section III]

This case concerns the reclassification of charge by trial court – no violation.

Article 1 of Protocol No. 1

GHIDOTTI - Italy (Nº 28272/95)
Judgment 21.2.2002 [Section I]

This case concerns the staggering of the granting of police assistance to enforce eviction orders – violation.

APPENDIX

V.P. and F.D.R. v. Italy (Nº 44333/98), 12 February 2002 [Section IV]
Ital Union Servizi S.a.s. v. Italy (no. 1) (Nº 44396/98), 12 February 2002 [Section IV]
Ed.M. v. Italy (Nº 44519/98), 12 February 2002 [Section IV]
Ital Union Servizi S.a.s. v. Italy (no. 2) (Nº 44913/98), 12 February 2002 [Section IV]
Ital Union Servizi S.a.s. v. Italy (no. 3) (Nº 44914/98), 12 February 2002 [Section IV]
Rapisarda v. Italy (Nº 52913/00), 12 February 2002 [Section IV]
Bruno v. Italy (Nº 52914/99), 12 February 2002 [Section IV]
Cazzato v. Italy (Nº 52915/99), 12 February 2002 [Section IV]
Ferrara v. Italy (Nº 52916/99), 12 February 2002 [Section IV]
Serino v. Italy (Nº 52917/99), 12 February 2002 [Section IV]
Scinto v. Italy (Nº 52918/99), 12 February 2002 [Section IV]
Luciani v. Italy (Nº 52919/99), 12 February 2002 [Section IV]
De Rosa v. Italy (Nº 52920/99), 12 February 2002 [Section IV]
Damiano v. Italy (Nº 52921/99), 12 February 2002 [Section IV]
Vincenzina Tommaso v. Italy (Nº 52922/99), 12 February 2002 [Section IV]
Giuseppe de Santis v. Italy (Nº 52923/99), 12 February 2002 [Section IV]
Frattini and others v. Italy (Nº52924/99), 12 February 2002 [Section IV]
D'Alfonso v. Italy (Nº 52925/99), 12 February 2002 [Section IV]
Mostacciuolo v. Italy (Nº 52926/99), 12 February 2002 [Section IV]
I.P.A. s.r.l. v. Italy (Nº 52957/99), 12 February 2002 [Section IV]
Francesco Lombardo v. Italy (Nº 52958/99), 12 February 2002 [Section IV]
Sessa v. Italy (Nº 52959/99), 12 February 2002 [Section IV]
Ventrone v. Italy (Nº 52960/99), 12 February 2002 [Section IV]
Raffio v. Italy (Nº 52962/99), 12 February 2002 [Section IV]
Zotti and Ferrara v. Italy (no. 1) (Nº 52963/99), 12 February 2002 [Section IV]
Zotti and Ferrara v. Italy (no. 2) (Nº 52964/99), 12 February 2002 [Section IV]
Vetrone v. Italy (Nº 52965/99), 12 February 2002 [Section IV]
Zotti v. Italy (Nº 52966/99), 12 February 2002 [Section IV]
Vaccarella v. Italy (Nº 52967/99), 12 February 2002 [Section IV]
Del Bono and others v. Italy (Nº 52968/99), 12 February 2002 [Section IV]
Almanio Antonio Romano v. Italy (Nº 52969/99), 12 February 2002 [Section IV]
Ciancetta and Mancini v. Italy (Nº 52970/99), 12 February 2002 [Section IV]
R.O.L. v. Italy (Nº 52971/99), 12 February 2002 [Section IV]
Carmine Falzarano v. Italy (Nº 52972/99), 12 February 2002 [Section IV]
Mattaliano v. Italy (Nº 52973/99), 12 February 2002 [Section IV]
Beneventano v. Italy (Nº 52974/99), 12 February 2002 [Section IV]
Gucci v. Italy (Nº 52975/99), 12 February 2002 [Section IV]
Policriti and Gioffrè v. Italy (Nº 52976/99), 12 February 2002 [Section IV]
Savona v. Italy (no. 2) (Nº 52977/99), 12 February 2002 [Section IV]
Di Niso v. Italy (Nº 52978/99), 12 February 2002 [Section IV]
An.M. v. Italy (Nº 52979/99), 12 February 2002 [Section IV]
Sciacchitano and Lo Sciuto v. Italy (Nº 52982/99), 12 February 2002 [Section IV]
Seccia v. Italy (Nº 52983/99), 12 February 2002 [Section IV]
Ge.Im.A. s.a.s. v. Italy (Nº 52984/99), 12 February 2002 [Section IV]
L.S. v. Italy (Nº 52986/99), 12 February 2002 [Section IV]
Barone v. Italy (Nº 52987/99), 12 February 2002 [Section IV]
Maria Giovanna Rossi v. Italy (Nº 52988/99), 12 February 2002 [Section IV]
Sirufo v. Italy (Nº 52989/99), 12 February 2002 [Section IV]
Stabile v. Italy (Nº 52990/99), 12 February 2002 [Section IV]
Cristina v. Italy (Nº 56085/00), 12 February 2002 [Section IV]

Vazzana v. Italy (Nº 56086/00), 12 February 2002 [Section IV]
Lu.B. v. Italy (Nº 56087/00), 12 February 2002 [Section IV]
It.R. v. Italy (Nº 56088/00), 12 February 2002 [Section IV]
Murru v. Italy (no. 5) (Nº 56089/00), 12 February 2002 [Section IV]
Bernardini v. Italy (Nº 56091/00), 12 February 2002 [Section IV]
Calvagni and Formiconi v. Italy (Nº 56092/00), 12 February 2002 [Section IV]
Società Croce Gialla Romana s.a.s. v. Italy (Nº 56093/00), 12 February 2002 [Section IV]
Sposito v. Italy (Nº 56094/00), 12 February 2002 [Section IV]
Colasanti v. Italy (Nº 56095/00), 12 February 2002 [Section IV]
Regina Venturin v. Italy (Nº 56096/00), 12 February 2002 [Section IV]
Pelagatti v. Italy (Nº 56098/00), 12 February 2002 [Section IV]
Genovesi v. Italy (Nº 56099/00), 12 February 2002 [Section IV]
Tor di Valle Costruzioni S.p.a. v. Italy (no. 8) (Nº 56100/00), 12 February 2002 [Section IV]
Mesiti v. Italy (Nº 56101/00), 12 February 2002 [Section IV]
Ciampaglia v. Italy (Nº 56102/00), 12 February 2002 [Section IV]
Giovanni Bevilacqua v. Italy (Nº 56103/00), 12 February 2002 [Section IV]
Cullari v. Italy (Nº 56104/00), 12 February 2002 [Section IV]
Irene Spinelli v. Italy (Nº 56105/00), 12 February 2002 [Section IV]
Dell'Aquila v. Italy (Nº 56106/00), 12 February 2002 [Section IV]
Rodolfi v. Italy (Nº 51664/99), 19 February 2002 [Section II]
Sardo v. Italy (Nº 56201/00), 19 February 2002 [Section II]
Cornia v. Italy (Nº 56202/00), 19 February 2002 [Section II]
Ginocchio v. Italy (Nº 56203/00), 19 February 2002 [Section II]
Limatola v. Italy (Nº 56204/00), 19 February 2002 [Section II]
Dente v. Italy (Nº 56205/00), 19 February 2002 [Section II]
Colonnello and others v. Italy (Nº 56206/00), 19 February 2002 [Section II]
Lugnan in Basile v. Italy (Nº 56207/00), 19 February 2002 [Section II]
Conte and others v. Italy (Nº 56208/00), 19 February 2002 [Section II]
Giuseppe Napolitano v. Italy (Nº 56211/00), 19 February 2002 [Section II]
Folletti v. Italy (Nº 56212/00), 19 February 2002 [Section II]
Piacenti v. Italy (Nº 56213/00), 19 February 2002 [Section II]
Ripoli v. Italy (no. 1) (Nº 56214/00), 19 February 2002 [Section II]
Ripoli v. Italy (no. 2) (Nº 56215/00), 19 February 2002 [Section II]
De Cesaris v. Italy (Nº 56217/00), 19 February 2002 [Section II]
Stabile v. Italy (Nº 56218/00), 19 February 2002 [Section II]
Presel v. Italy (Nº 56219/00), 19 February 2002 [Section II]
Mastropasqua v. Italy (Nº 56220/00), 19 February 2002 [Section II]
Donato v. Italy (Nº 56221/00), 19 February 2002 [Section II]
Centis v. Italy (Nº 56222/00), 19 February 2002 [Section II]
Polcari v. Italy (Nº 56223/00), 19 February 2002 [Section II]
D'Amore v. Italy (Nº 56224/00), 19 February 2002 [Section II]
Di Pede v. Italy (no. 2) (Nº 56225/00), 19 February 2002 [Section II]
Abate and Ferdinandi v. Italy (Nº 56226/00), 19 February 2002 [Section II]
Angelo Giuseppe Guerrera v. Italy (Nº 44413/98), 28 February 2002 [Section I]
Gentile v. Italy (Nº 47186/99), 28 February 2002 [Section I]
La Torella v. Italy (Nº 51021/99), 28 February 2002 [Section I]
Mario Francesco Palmieri v. Italy (Nº 51022/99), 28 February 2002 [Section I]
Maddalena Palmieri v. Italy (Nº 51023/99), 28 February 2002 [Section I]
Porto v. Italy (Nº 51024/99), 28 February 2002 [Section I]
Petrillo v. Italy (Nº 51025/99), 28 February 2002 [Section I]
Uzzo v. Italy (Nº 51026/99), 28 February 2002 [Section I]
Del Vecchio v. Italy (Nº 51027/99), 28 February 2002 [Section I]
Vitelli v. Italy (Nº 51028/99), 28 February 2002 [Section I]
Ocone v. Italy (Nº 51029/99), 28 February 2002 [Section I]
Biondo v. Italy (Nº 51030/99), 28 February 2002 [Section I]

Aceto and others v. Italy (Nº 51031/99), 28 February 2002 [Section I]
Francesco Armellino v. Italy (Nº 51089/99), 28 February 2002 [Section I]
Scaccianemici v. Italy (Nº 51090/99), 28 February 2002 [Section I]
Clementina Ferrara v. Italy (Nº 51091/99), 28 February 2002 [Section I]
Di Mezza v. Italy (Nº 51092/99), 28 February 2002 [Section I]
Lucia Armellino v. Italy (Nº 51093/99), 28 February 2002 [Section I]
Iacobucci and Lavorgna v. Italy (Nº 51094/99), 28 February 2002 [Section I]
Riccardi v. Italy (Nº 51095/99), 28 February 2002 [Section I]
Riccio and others v. Italy (Nº 51096/99), 28 February 2002 [Section I]
Uccellini and others v. Italy (Nº 51097/99), 28 February 2002 [Section I]
Giovanna da Rosa v. Italy (Nº 51098/99), 28 February 2002 [Section I]
Di Meo v. Italy (Nº 51099/99), 28 February 2002 [Section I]
Gaetana Lombardi v. Italy (Nº 51100/99), 28 February 2002 [Section I]
Maturo and Vegliante v. Italy (Nº 51101/99), 28 February 2002 [Section I]
Iesce and others v. Italy (Nº 51102/99), 28 February 2002 [Section I]
Gattone and others v. Italy (Nº 51103/99), 28 February 2002 [Section I]
Pacifico v. Italy (Nº 51105/99), 28 February 2002 [Section I]
Rinaldi v. Italy (Nº 51108/99), 28 February 2002 [Section I]
Restuccio v. Italy (Nº 51109/99), 28 February 2002 [Section I]
Salvatore Patuto v. Italy (Nº 5111199), 28 February 2002 [Section I]
Maria Antonia Circelli v. Italy (Nº 51112/99), 28 February 2002 [Section I]
Concetta Pelosi v. Italy (Nº 51113/99), 28 February 2002 [Section I]
Paduano v. Italy (Nº 51114/99), 28 February 2002 [Section I]
Spagnoletti v. Italy (Nº 51115/99), 28 February 2002 [Section I]
Colella v. Italy (Nº 5116/99), 28 February 2002 [Section I]
Mellilo v. Italy (Nº 51118/99), 28 February 2002 [Section I]
Lucia Esposito v. Italy (Nº 5119/99), 28 February 2002 [Section I]
Antonio Izzo v. Italy (Nº 51120/99), 28 February 2002 [Section I]
Pasquale Falzarano v. Italy (Nº 51121/99), 28 February 2002 [Section I]
Tarantino v. Italy (Nº 51122/99), 28 February 2002 [Section I]
Natalina de Rosa v. Italy (Nº 51123/99), 28 February 2002 [Section I]
Tudisco v. Italy (Nº 51124/99), 28 February 2002 [Section I]
De Filippo v. Italy (Nº 51125/99), 28 February 2002 [Section I]
Emilia Raccio v. Italy (Nº 51126/99), 28 February 2002 [Section I]
Carolla v. Italy (Nº 51127/99), 28 February 2002 [Section I]
Serafina Ferrara v. Italy (Nº 51128/99), 28 February 2002 [Section I]
Di Dio v. Italy (Nº 51129/99), 28 February 2002 [Section I]
Mazzone and others v. Italy (Nº 51130/99), 28 February 2002 [Section I]
Di Maria v. Italy (Nº 51131/99), 28 February 2002 [Section I]
Zeolla v. Italy (Nº 51132/99), 28 February 2002 [Section I]
Moffa v. Italy (Nº 51133/99), 28 February 2002 [Section I]
Cristina Cardo v. Italy (Nº 51134/99), 28 February 2002 [Section I]
Gaudino v. Italy (Nº 51135/99), 28 February 2002 [Section I]
Nazzaro v. Italy (Nº 51136/99), 28 February 2002 [Section I]
Nicola del Grosso v. Italy (Nº 5113799), 28 February 2002 [Section I]
Arturo Marotta v. Italy (Nº 51138/99), 28 February 2002 [Section I]
Pilla v. Italy (Nº 51139/99), 28 February 2002 [Section I]
Emma Lombardi v. Italy (Nº 51140/99), 28 February 2002 [Section I]
Maria de Rosa v. Italy (Nº 51141/99), 28 February 2002 [Section I]
Formato v. Italy (Nº 51142/99), 28 February 2002 [Section I]
Donato Pepe v. Italy (Nº 51143/99), 28 February 2002 [Section I]
Carmine Fiorenza v. Italy (Nº 51144/99), 28 February 2002 [Section I]
Falluto v. Italy (Nº 51145/99), 28 February 2002 [Section I]
Elisa Giuseppina Cardo v. Italy (Nº 51146/99), 28 February 2002 [Section I]
Crisci v. Italy (Nº 51147/99), 28 February 2002 [Section I]

Gisondi v. Italy (Nº 51148/99), 28 February 2002 [Section I]
Cuozzo v. Italy (Nº 51149/99), 28 February 2002 [Section I]
Calabrese v. Italy (Nº 51150/99), 28 February 2002 [Section I]
Ruggiero v. Italy (Nº 51151/99), 28 February 2002 [Section I]
Tretola v. Italy (Nº 51152/99), 28 February 2002 [Section I]
Antonietta Iannotta v. Italy (Nº 51153/99), 28 February 2002 [Section I]
Francesco Cuozzo v. Italy (Nº 51154/99), 28 February 2002 [Section I]
Della Ratta v. Italy (Nº 51155/99), 28 February 2002 [Section I]
Fasulo v. Italy (Nº 51156/99), 28 February 2002 [Section I]
Di Resta v. Italy (Nº 51157/99), 28 February 2002 [Section I]
Meccariello v. Italy (Nº 51158/99), 28 February 2002 [Section I]
Alfonsina Grasso v. Italy (Nº 51159/99), 28 February 2002 [Section I]
Del Re v. Italy (Nº 51160/99), 28 February 2002 [Section I]
Gagliardi v. Italy (Nº 51161/99), 28 February 2002 [Section I]
Pengue v. Italy (Nº 51162/99), 28 February 2002 [Section I]
Michele d'Angelo v. Italy (Nº 51163/99), 28 February 2002 [Section I]
Crovella v. Italy (Nº 51164/99), 28 February 2002 [Section I]
Santina Pelosi v. Italy (Nº 51165/99), 28 February 2002 [Section I]
Truocchio v. Italy (Nº 51166/99), 28 February 2002 [Section I]
Tommasina Matera v. Italy (Nº 51167/99), 28 February 2002 [Section I]
Martino v. Italy (Nº 51168/99), 28 February 2002 [Section I]
Alberto Marotta v. Italy (Nº 51169/99), 28 February 2002 [Section I]
Giovanni Izzo v. Italy (Nº 51170/99), 28 February 2002 [Section I]
Zuotto v. Italy (Nº 52800/99), 28 February 2002 [Section I]
Ciarmoli v. Italy (Nº 52801/99), 28 February 2002 [Section I]
Lagozzino v. Italy (Nº 52802/99), 28 February 2002 [Section I]
Pellegrino Bianco v. Italy (Nº 52804/99), 28 February 2002 [Section I]
Ciullo v. Italy (Nº 52807/99), 28 February 2002 [Section I]
Giuseppina Perna v. Italy (Nº 52808/99), 28 February 2002 [Section I]
Edmondo Truocchio v. Italy (Nº 52809/99), 28 February 2002 [Section I]
Tazza v. Italy (Nº 52810/99), 28 February 2002 [Section I]
Villari v. Italy (Nº 52811/99), 28 February 2002 [Section I]
Lavorgna and Iorio v. Italy (Nº 52812/99), 28 February 2002 [Section I]
Di Meo and Masotta v. Italy (Nº 52813/99), 28 February 2002 [Section I]
Zoccolillo and others v. Italy (Nº 52814/99), 28 February 2002 [Section I]
Cimmino and others v. Italy (Nº 52815/99), 28 February 2002 [Section I]
Biondi and others v. Italy (Nº 52816/99), 28 February 2002 [Section I]
Urbano and others v. Italy (Nº 52817/99), 28 February 2002 [Section I]
Meola v. Italy (Nº 52818/99), 28 February 2002 [Section I]
Mancino v. Italy (Nº 52819/99), 28 February 2002 [Section I]
Riccardi v. Italy (Nº 52820/99), 28 February 2002 [Section I]
Domenico Colangelo v. Italy (Nº 52821/99), 28 February 2002 [Section I]
Macolino v. Italy (Nº 52822/99), 28 February 2002 [Section I]
Romano and others v. Italy (Nº 52823/99), 28 February 2002 [Section I]
Belviso and others v. Italy (Nº 52824/99), 28 February 2002 [Section I]
Pucella and others v. Italy (Nº 52825/99), 28 February 2002 [Section I]
Pascale v. Italy (Nº 52826/99), 28 February 2002 [Section I]
Mastrocinque v. Italy (Nº 52827/99), 28 February 2002 [Section I]
Petrillo and Petrucci v. Italy (Nº 52828/99), 28 February 2002 [Section I]
Pallotta v. Italy (Nº 52829/99), 28 February 2002 [Section I]
Giannotta and Iannella v. Italy (Nº 52830/99), 28 February 2002 [Section I]
Simone and Pontillo v. Italy (Nº 52831/99), 28 February 2002 [Section I]
Nero and others v. Italy (Nº 52832/99), 28 February 2002 [Section I]
Santagata v. Italy (Nº 52833/99), 28 February 2002 [Section I]
Cerbo and others v. Italy (Nº 52835/99), 28 February 2002 [Section I]

Tazza and Zullo v. Italy (Nº 52836/99), 28 February 2002 [Section I]
Pascale and others v. Italy (Nº 52837/99), 28 February 2002 [Section I]
Tanzillo v. Italy (Nº 52839/99), 28 February 2002 [Section I]
Mario Mongillo v. Italy (Nº 52840/99), 28 February 2002 [Section I]
Panza v. Italy (Nº 52841/99), 28 February 2002 [Section I]
Elda Pascale v. Italy (Nº 52842/99), 28 February 2002 [Section I]
Franco and Basile v. Italy (Nº 52843/99), 28 February 2002 [Section I]
Rosa Romano v. Italy (Nº 52844/99), 28 February 2002 [Section I]
Mazzarelli v. Italy (Nº 52845/99), 28 February 2002 [Section I]
Antonio di Meo v. Italy (Nº 52846/99), 28 February 2002 [Section I]
Viscuso v. Italy (Nº 52847/99), 28 February 2002 [Section I]

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. 2

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