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EUROPEAN COURT OF HUMAN RIGHTS

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ARTICLE 2

LIFE
Death of suspect held at police station and failure to conduct an effective investigation: *violation*.

OGNYANOVA and CHOBAN – Bulgaria (N° 46317/99)
Judgment 23.2.2006 [Section I]

Facts: The applicants, of Roma ethnic origin, are the late Mr. Stefanov's common-law spouse and his mother. In 1993 Mr Stefanov was arrested on suspicion of having taken part in numerous thefts and burglaries. The next day, while he was being questioned he fell from a third-floor window of the police station where he was being detained. He was taken to hospital but died the following day. The only three eyewitnesses to the event were Lieutenant I.C., in whose office Mr. Stefanov had been questioned, a chief sergeant and a further suspect. According to their statements, Mr. Stefanov, who had been handcuffed at the time, had jumped out of the window in an effort to escape. Numerous injuries were found on his Mr. Stefanov's body during his autopsy. The ensuing investigation concluded that he had voluntarily jumped out of the window and that all his injuries had been the result of his fall. The applicants contested these conclusions.

Article 2 – Mr. Stefanov's death: It was unclear whether Mr. Stefanov had jumped from the window of his own accord, whether he had been deliberately pushed or forced into a situation where he had had no other option but to jump. It was highly improbable however that he had tried to escape, given that the window had been over 9 metres above ground level, that the ground had been covered with concrete and iron grills, and that he had been handcuffed at the time. Furthermore, there was no reason to believe that he would have committed an unprovoked suicide, or that he had been drunk. The Court noted inconsistencies in the authorities' version of the events and questioned their conclusion that all the injuries Mr. Stefanov had sustained had been caused exclusively by his fall, without the authorities having explored other hypotheses as to their possible source. In these circumstances the Government had not fully accounted for Mr. Stefanov's death and injuries during his detention.
Conclusion: violation (unanimously).

Article 2 – Alleged inadequacy of the investigation: The Court expressed reservations about the credibility of the witness statements. In particular, the authorities had never asked Lieutenant I.C. to clarify the inconsistencies in his different accounts. The Court also noted serious omissions in the investigation. In particular, the site of the incident had not been preserved in its original state prior to its inspection. The authorities had made no effort to explore other hypotheses as to the possible source of Mr. Stefanov's injuries. Lieutenant I.C. had been questioned for the first time over a year after the incident and other police officers had been questioned some three years later. The investigation has suffered from lengthy periods of inactivity. In sum, it had lacked the requisite objectivity and thoroughness, a fact which had undermined its ability to establish the cause of Mr. Stefanov's death and injuries. It followed that the authorities had failed to conduct an effective investigation into his death.
Conclusion: violation (unanimously).

Article 3 – The Court found it unlikely that all of Mr. Stefanov's injuries, spread about his trunk, limbs and head, could have been solely the product of a fall. Furthermore, they had not been properly accounted for in the expert medical reports. In sum, the Government had not provided a plausible explanation for Mr Stefanov's injuries which had been indicative of inhuman treatment.
Conclusion: violation (unanimously).

Article 5(1) – Since the domestic investigation had not established the facts relating to Mr. Stefanov's detention and had not gathered any documents in this respect, it was not clear on the basis of which provisions of domestic law, if any, he had been taken into custody. In such circumstances, his deprivation of liberty had been unlawful.
Conclusion: violation (unanimously).

Article 13 – Since there had been no effective criminal investigation, the applicants had been denied any effective remedy that might have led to the identification and punishment of those responsible for Mr. Stefanov's ill-treatment and death, and consequently any award of compensation that might have existed.
Conclusion: violation (unanimously).

Article 14 – The materials in the case file contained no concrete indication that racist attitudes had played a role in the events at issue. Nor had the applicants pointed to any such facts. Therefore, unlike the situation obtaining in *Nachova and Others v. Bulgaria* (Grand Chamber judgment of 6 July 2005; see CLR 77-A), the authorities had not had before them any concrete element capable of suggesting that the death of Mr Stefanov had been the result of racial prejudice. While the Court did not underestimate the fact that there existed many published accounts of the existence in Bulgaria of prejudice and hostility against Roma, it did not consider that in the particular circumstances the authorities had had before them information which had been sufficient to alert them to the need to investigate possible racist overtones in the events that had led to the death of Mr Stefanov.
Conclusion: no violation of Article 14 (unanimously).

Article 41 – The Court awarded EUR 20,000 to Ms Ognyanova, and EUR 10,000 to Ms Choban for non-pecuniary damage as well as a further amount for costs and expenses.

POSITIVE OBLIGATIONS
Effectiveness of the investigation concerning the death of a drug addict three days after his arrest by two police officers: *violation*.

SCAVUZZO-HAGER and Others - Switzerland (N° 41773/98)
Judgment 7.2.2006 [Section IV]

Facts: The son of the first two applicants, who was also the brother of the third, died three days after his arrest by two police officers. At the time of the arrest he was in a disturbed state. Once inside the police-car he went into hysterics, escaped from the vehicle, fought back violently when the officers caught and tried to restrain him with the help of a third party, then lost consciousness. Paramedics quickly arrived on the scene and managed to resuscitate him but he lost consciousness again on the way to hospital and never regained it. According to an investigation by the police officers who carried out the arrest, he most probably died of natural causes. An autopsy report attributed his death to excessive drug intake. The Public Prosecutor decided not to take any further action. The applicants lodged a claim for compensation. The Federal Court, which had exclusive jurisdiction to rule on the claim, ordered a forensic medical report. The report concluded that the death had not been caused solely by the victim's heavy drug intake, but that the loss of consciousness and subsequent complications were the result of his physical exertions during the arrest on top of a pre-existing state of weakness involving muscular, renal and circulation problems. The expert indicated that deaths were often reported by medical practitioners in cases of individuals who had been arrested in a state of overexcitement, especially when police officers had used the method of pinning them face down on the ground with their hands and feet handcuffed. The Federal Court found that there was no causal link between the actions of the police officers and the victim's death, which would in all probability have followed in any event, given his acute state of weakness. In the court's view it was by chance that the death had occurred at the time of the arrest and the police officers' conduct had not caused the death, even though it could not be excluded that it may have been hastened by their intervention. The court added that, even if the police intervention had been one of the causes of death, it

would not render the authorities responsible because it had not been possible for the two officers to identify the victim's pre-existing state of weakness.

Law : Article 2(2)(b): *Use of force by police officers*: the Government contended that the death had not been "inflicted", within the meaning of Article 2(2), by State action, but that it would have occurred in any event, even without the arrest, in view of the suspect's failing health, undermined as it was by a heavy intake of drugs. The Court noted, in the light of the evidence before it, that the agents of the State had not used force in a manner that was lethal *per se* for the victim. Nevertheless, the victim had lost consciousness precisely when the police officers were attempting to restrain him. In the Court's view it could not therefore be excluded at the outset that the force used for that purpose might have provoked the fatal outcome. However, for this to have engaged the international responsibility of the respondent State, the officers also had to have been reasonably able to realise that the suspect was particularly vulnerable and that a high degree of caution was required in the choice of "normal" arrest techniques. It had in fact been impossible for the two police officers to know that the suspect was so vulnerable that the slightest impact on his body could lead to fatal complications.
Conclusion: no violation (unanimously).

Positive obligation to protect life: The police officers had immediately called for an ambulance and had placed the suspect, who was unconscious, in the lateral safety position. The Court was not persuaded by the applicants' argument that the two police officers had failed to make any attempt to resuscitate the arrested suspect when he lost consciousness.
Conclusion: no violation (unanimously).

Article 2(1) – *Obligation to conduct an effective inquiry*: It was the two police officers who had arrested the victim who had also conducted the initial phase of the investigation, but they had never themselves been questioned by a third-party authority. In addition, the authorities had discontinued the proceedings on the sole ground that the victim's level of intoxication would in any case have caused his death, without submitting to experts the question whether the force used by the police, even though not lethal in itself, had nevertheless caused or at least hastened his death. Regard being had to the fact that the victim had lost consciousness at the very moment when the police officers were using force to restrain him; the investigation should have covered that question if it was to be effective. The precise method used to restrain the victim, including such details as whether and to what extent he had been pinned down on the ground or handcuffed, had never finally been uncovered. Lastly, the prosecuting authorities should have asked themselves whether or not the police officers could have been aware of the suspect's vulnerability.
Conclusion: violation (unanimously).

The Court held, unanimously, that there had been no violation of Article 3 in its substantive aspect, that no separate issue arose regarding the procedural aspect of that provision, and that it was not necessary to examine the complaint under Article 6 (the Federal Court's refusal to take evidence from the witnesses, in particular the two police officers).

Article 41 – The Court awarded the applicants, the parents and brother of the deceased, EUR 12,000 for non-pecuniary damage and a further sum for costs and expenses.

POSITIVE OBLIGATIONS
Reaction of the police when the suspect lost consciousness in the course of his arrest: *no violation*.

SCAVUZZO-HAGER and Others - Switzerland (N° 41773/98)
Judgment 7.2.2006 [Section IV]

(see above).

Article 2(2)

USE OF FORCE
Arrest by two police officers of a very agitated drug addict who died three days later: *no violation*.

SCAVUZZO-HAGER and Others - Switzerland (N° 41773/98)
Judgment 7.2.2006 [Section IV]

(see above).

ARTICLE 3

EXPULSION
Impending expulsion of Christians to Pakistan: *inadmissible.*

Z. and T. - United Kingdom (N° 27034/05)
Decision 28.2.2006 [Section IV]

(see Article 9 below).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO A COURT
Refusal to return a child to a foreign mother who delivered anonymously in France, given the expiry of the brief retraction time-limit (two months): *communicated.*

KEARNS - France (N° 35991/04)
Section II

ORAL HEARING
Refusal to hold an oral hearing in appeal proceedings: *inadmissible*.

RIPPE - Germany (Nº 5398/031)
Decision 2.2.2006 [Section III]

The applicant was the managing partner of a company which rented commercial premises from another company ("the lessor"). In view of arrears of three months' rent, the lessor terminated the lease without notice. He subsequently lodged an action for eviction, alleging that he had sent the applicant two requests for payment. The Regional Court ordered the applicant's eviction from the premises, finding that the lessor had proved he had posted the letters to the applicant. The applicant appealed, claiming that the Regional Court's assessment of the evidence had been contrary to case-law because the fact that the letters had been posted to him did not suffice to prove that he had actually received them. He subsequently requested an oral hearing on his appeal. However, the Court of Appeal unanimously rejected the applicant's appeal without a hearing pursuant to new provisions in the Code of Civil Procedure (which had been introduced with a view to expediting civil proceedings). The court stated that the appeal had no prospect of success, that the matter at issue was not of fundamental importance and that it was not

necessary to allow the appeal in order to safeguard a consistent application of the law. Moreover, the Court of Appeal confirmed that the Regional Court's assessment of evidence had not been contrary to the law, and that Article 6 of the Convention did not require a public hearing in every case in which an appeal was not ill-founded, but left sufficient room for the application of the new provisions of the Code of Civil Procedure.

Inadmissible under Article 6(1) (public hearing) – Article 6 does not always require a right to a public hearing. Whilst publicity is certainly one of the means whereby confidence in the courts is maintained, there are also other considerations, such as the need for an expeditious handling of a court's case-load, which must be taken into account in determining the necessity of public hearings in proceedings subsequent to trial at first-instance level. Moreover, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue. In the present case, had the Court of Appeal decided that the legal matter was of fundamental importance regarding facts or law, or that the first-instance court's reasoning could have led to inconsistent case-law, the new legislation expediting civil proceedings would not have applied and an oral hearing would have been required. The same situation would have arisen if only one of the three judges of the Court of Appeal had considered that the appeal had prospects of success. As regards the safeguarding of the applicant's procedural rights, a public hearing had been held at first instance. Moreover, the applicant had sufficient possibility of submitting arguments to the Court of Appeal before it took its final decision. As regards the main question raised by the applicant's appeal, that is, the assessment of evidence related to the eviction from his business premises, the Court did not find that the assessment of evidence by the first-instance court had been contrary to the law. Having regard to the entirety of the proceedings and the nature of the issues submitted to the Court of Appeal, the Court found there were special features to justify the decision not to hold a public hearing: *manifestly ill-founded*.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Failure to weigh and review the reasons for accepting anonymous witness testimony forming the basis for conviction: *violation.*

KRASNIKI - Czech Republic (N° 51277/99)
Judgment 28.2.2006 [Section II]

Facts: The applicant was charged with supplying heroin to two individuals who testified as anonymous witnesses against him in the course of the investigation. The applicant pleaded not guilty. At the trial before a district court the judge heard the testimony of one of the witnesses outside the courtroom and out of sight of the applicant and his counsel. Since attempts to locate the second anonymous witness had failed, her statement was read out in court in her absence. The court found the applicant guilty and sentenced him to imprisonment. The court based the conviction solely on the testimonies of the two anonymous witnesses. The applicant's appeal to a regional court was dismissed as was his appeal to the Constitutional Court.

Law: As there was nothing in the case-file to indicate the reasons for taking testimony anonymously it could not be established how the investigating officer and the trial judge had assessed the reasonableness of the witnesses' fear of reprisals by the applicant. The regional court also had failed to examine the reasons for granting anonymity. The Court was not satisfied that the interest of the witnesses in remaining anonymous could have justified limiting the rights of the applicant to such an extent. The district court had based the applicant's conviction to a decisive extent on the anonymous testimonies and the regional court's decision which had upheld that judgment had not been based on any new evidence from named sources. Accordingly, the proceedings as a whole had been unfair.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. In the circumstances the most appropriate form of redress would, in principle, be a fresh trial or a reopening of the proceedings, if so requested by the applicant. He was awarded a certain amount for costs and expenses.

ARTICLE 8

PRIVATE LIFE
Alleged former collaborator with state security agency unable to challenge his registration in agency files in proceedings guaranteeing equal treatment of both parties: *violation*.

TUREK - Slovakia (N° 57986/00)
Judgment 14.2.2006 [Section IV]

Facts: The applicant held a senior public sector post dealing with the administration of education in schools. In 1992, in response to a request made by his employer under "the Lustration Act", an Act of 1991 which defined supplementary requirements for holding certain posts in the public sector, the Ministry of the Interior of the Czech and Slovak Federal Republic issued a negative security certificate in respect of the applicant. As a consequence, he felt compelled to leave his job. The document stated that he had been registered by the former State Security Agency ("the StB") as one of its collaborators and that he was therefore disqualified from holding certain posts in the public sector. The applicant claimed he had unwillingly met with StB agents before and after trips he had made abroad in the mid-1980s but had never passed on to them any confidential information and had not operated as an informer.
The applicant initiated a civil action for protection of his good name and reputation, seeking a ruling declaring that his registration as a collaborator with the StB had been wrongful. In 1995, at the request of a regional court, the Slovak Intelligence Service ("the SIS") – which had in effect taken over the relevant archives – handed over all ex-StB documents concerning the applicant which were in its possession, with the indication that the documents were top secret and that the rules on confidentiality were to be observed. The court then held a number of hearings where it heard the testimonies of several former StB agents. At a hearing in 1998 the SIS submitted a copy of the internal guidelines of the Federal Ministry of the Interior of 1972 concerning secret collaboration. As that document was classified the applicant was denied access to it. In 1999 the applicant's action was dismissed and the Supreme Court upheld that judgment. It found, in particular, that only unjustified registration in the StB files would amount to a violation of an individual's good name and reputation. It had therefore been crucial for the applicant to prove that his registration had been contrary to the rules applicable at the material time, which he had failed to do.
Before the European Court the applicant alleged that the continued existence of a former Czechoslovak Communist Security Agency file registering him as one of its agents, the issuance of a negative security clearance, the dismissal of his action challenging that registration and the resultant effects constituted a violation of his right to respect for his private life. He also complained about the length of the proceedings.

Article 8 – While this provision contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8. The Court therefore examined whether the procedural protection enjoyed by the applicant with regard to the subject-matter had been practical and effective. Particularly in proceedings related to the operations of state security agencies, there might be legitimate grounds to limit access to certain documents and other materials. However, in respect of lustration proceedings, that consideration lost much of its validity, particularly since such proceedings were by their nature orientated towards the establishment of facts dating from the communist era and were not directly linked to the current functions of the security services. Furthermore, in lustration proceedings it was the legality of the agency's actions which was in question. The domestic courts had considered it of crucial importance for the applicant to prove that the State's interference with his rights had been contrary to the applicable rules. As those rules had remained secret the applicant had not had full access to them. On the other hand, the State – the SIS –

had had such access. In these circumstances the requirement on the applicant had placed an unrealistic and excessive burden on him and had failed to respect the principle of equality. There had therefore been a violation of Article 8 concerning the lack of a procedure by which the applicant could seek protection for his right to respect for his private life. The Court found it unnecessary to examine separately the effects on the applicant's private life of his registration in the StB files and of his negative security clearance.
Conclusion: violation (six votes to one).

Article 6(1) – With particular regard to what was at stake for the applicant, the Court found that the length of the proceedings, lasting seven years and some five months for two levels of jurisdiction, had been excessive.
Conclusion: violation (unanimously).

Article 41 – The Court awarded EUR 8,000 for non-pecuniary damage and a certain amount for costs and expenses.

PRIVATE LIFE
Refusal to set aside from the debates private love letters submitted before the judge on provisional measures without the agreement of persons concerned: *admissible*.

N. N. and T. A. –Belgium (N° 65097/01)
Decision 9.2.2006 [Section I]

In connection with the interim measures stage of divorce proceedings, the wife produced a number of love letters between her husband and a third party. They were added to the case file without the permission of either the writer or the addressee, the applicants in the case now before the Court, who applied to have those letters excluded from the interim proceedings. They contended that the letters would only be of relevance at the merits stage, when it came to examining the wife's allegation of fault on the part of the husband. Moreover, the wife had obtained them by breaking open a document safe. The applicants' request to have the letters excluded was dismissed and the interim measures were ordered without reference to the correspondence. The Court of Appeal found that, while general legal rules did not allow private documents to be produced by a third party, case-law and legal theory admitted of an exception in divorce proceedings including, therefore, at the stage of related interim applications. The Court of Appeal further considered that the applicants were not entitled to argue that the wife had unlawfully obtained the documents at issue, because they had not submitted the requisite evidence. The Court of Cassation confirmed that the letters could be used as evidence in proceedings concerning the adoption of interim measures prior to a decree of divorce.
Admissible under Article 8.

PRIVATE AND FAMILY LIFE
Refusal to return a child to a foreign mother who delivered anonymously in France, given the expiry of the brief retraction time-limit (two months): *communicated.*

KEARNS - France (N° 35991/04)
Section II

On 18 February 2002 the applicant, an Irish national who was married and lived in Ireland, gave birth anonymously in France to an illegitimate child from her extramarital relations with B. The day after the birth she signed a statement in which she indicated her wish that her child be admitted as a ward of the State, requested secrecy and gave her consent to full adoption. She stated that her daughter was an illegitimate child who had not been acknowledged by the father. On 7 May 2002 the girl was entrusted to a foster family with a view to her full adoption. On 25 July 2002 the applicant applied to the French social services for the return of her child. Her request was denied because the two-month time-limit for retraction had expired. The applicant then applied to the appropriate *tribunal de grande instance* seeking

annulment of the adoption and the return of the child. B., the child's biological father, intervened in the proceedings. The court dismissed the application, considering that it was evident from the statement of consent that the French social services had fulfilled their duty of information and that, despite the short retraction period, the remedies under French law were effective remedies within the meaning of Article 13 of the Convention. The applicant appealed and the judgment was overturned by the Court of Appeal on the ground that she had not been meaningfully informed of her rights, because of the ambiguity of the indications on the statement of consent and the inaccuracy of the translation provided to the applicant by a person whose use of English was merely occasional and who had no legal knowledge. On appeal from the prefect, the Court of Cassation found in a judgment of 6 April 2004 that as the child had not been acknowledged its parentage was not established, such that the applicant's consent did not need to be recorded. That court quashed and annulled all the operative provisions of the appeal court judgment and, applying itself the appropriate legal norm, dismissed the applicant's claims.
Communicated under Articles 8 and 6(1).

ARTICLE 9

FREEDOM OF RELIGION
Refusal of work permit to prospective imam: *admissible*.

EL MAJJAOUI and STICHTING TOUBA MOSKEE - Netherlands (N° 25525/03)
Decision 14.2.2006 [Section III]

Facts: The first applicant is a Moroccan national and the second applicant is a foundation with legal personality under the law of the Netherlands, where it operates a mosque. In 1999 the foundation applied for a work permit allowing it to appoint the first applicant as its imam. In 2000 the General Directors of the Employment Services Authority refused such a permit. Since the job vacancy had not been reported, it had to be assumed that an adequate supply of priority labour (i.e. European Union or European Economic Area nationals, or others with equivalent status as regards residence and the right to work, possessing the requisite qualifications) existed. In addition, it had not been shown that the first applicant would earn the statutory minimum wage and that the foundation had made sufficient efforts to fill the position by advertising the position in the local and national press. In his objection to the refusal the first applicant argued that he had been admitted to the Netherlands already in November 1998, so that section 8 (1)(d) of the Foreign Nationals (Employment) Act did not apply to him, and that it was well known that there was a dearth of imams in the Netherlands. The General Directors upheld their refusal in 2001 as the foundation had not investigated the labour market at the time when the application for a work permit had been made, and as the vacant position had not been reported to the Employment Services Organisation at least five weeks before the date of the application. The first applicant had been admitted to the country to work as a teacher of religion, not as an imam, and although the applicants had submitted a draft contract of employment naming a sufficient monthly wage it was not stated that this wage would be linked to the statutory index. The information supplied by the applicants as to the alleged shortage of suitably qualified persons on the Netherlands and European Union labour markets was not persuasive. Finally, two training establishments for imams existed in the Netherlands and it had not been shown that the second applicant had tried to recruit its imam from one of these. The first applicant appealed to a regional court. The foundation, intervening as a "third party" with an interest in the decision, stated that already in September or October 1999 it had made unsuccessful attempts to find a suitable imam through the Labour Exchange. Given the unreasonable length of time taken up by the proceedings and in the absence of any other candidate for the position, the first applicant had in the meantime started work as the imam of the second applicant's mosque, and was functioning to the satisfaction of all concerned. In its decision the regional court upheld the findings of the General Directors. As to Article 9, the court found that any interference that might have occurred was prescribed by law and necessary in a democratic society for the protection of public order – an expression construed by the court as encompassing the labour market.

The applicants each lodged appeals with the Council of State, alleging *inter alia* that the regional court had erred in finding that the vacancy for a qualified imam had not been duly reported to the Employment Services Organisation. The Council of State found that the applicants had not corroborated with documentary evidence their allegation that the second applicant had sought to find a suitably qualified imam prior to lodging the application for a work permit, nor had they shown sufficient diligence in trying to find priority labour available on the labour market to fill the vacancy. The applicants' statement that it would have been pointless for the second applicant to approach the one remaining training institute for imams operating in the Netherlands was also found to be unsubstantiated. Article 9 could not be construed as entitling a religious community to employ a foreign national as a teacher and minister of religion who did not meet statutory requirements set for the purpose of preserving peace and public order: admissible.

MANIFEST RELIGION OR BELIEF
Impending expulsion of Christians to Pakistan: *inadmissible.*

Z. and T. - United Kingdom (N° 27034/05)
Decision 28.2.2006 [Section IV]

Facts: The applicant sisters are Pakistani Christians. Their parents were active in the Christian community in Bahawalpur, their father Mr M. being a Methodist minister since more than 30 years. In 1990, the second applicant married her cousin, also a Christian and the son of a priest. From 1999 she worked as a teacher in a convent school. The first applicant married a fellow Christian in 1997. In 2001, after the attacks in the United States on 11 September, machine guns were fired into the church in Bahawalpur and many worshippers were killed or injured. Mrs M. was among those severely injured. Mr and Mrs M., and their son Dr H. fled to the UK to obtain medical treatment for Mrs M. Their son I. was already in the UK. All were granted asylum as was the applicants' sister A. In 2004 the first applicant travelled to the UK with her children on a visitor's visa to see her mother who continued to be unwell. Later in 2004 Mrs M. died and the second applicant came to the UK with her family to attend the funeral.
A day after her arrival in the UK, the first applicant applied for asylum, along with her husband and daughter. She stated that there had been a bomb threat on their church in Sukkur in 2002, while in October 2003 her husband and his brother had been attacked by extremists. In the latter incident no-one had been hurt in the shooting but the assailants had absconded with her husband's motorbike. She and her husband had also received threatening telephone calls. The Secretary of State refused asylum, considering that the first applicant had never been physically attacked or ill-treated on the basis of her beliefs and had not been present during the bomb threat at the church where the police had successfully intervened. He noted that Christians were a recognised minority group under the Constitution of Pakistan, that the Pakistani Government were taking measures to curb acts of sectarian violence and that they were willing and able to take action to protect Christian churches and communities. The Adjudicator refused the first applicant's appeal, finding that the Pakistani authorities offered protection to churches, *inter alia* convicting six men for an attack on a Christian church. He also noted that the first applicant had not herself been personally or directly threatened with violence and that she had lived some distance from Bahawalpur, having no direct connection with the incident there. He noted that the assault on her husband in 2003 had been reported as robbery without any mention of religious motivation for the attack. He found no problem arising under Article 9 as there was no bar on Christianity as shown by the fact that her father had been a Methodist minister for 38 years. He concluded that she had not shown that she was personally at risk. The Immigration Appeal Tribunal refused permission to appeal further, finding in line with a recent UK authority that the situation of Christians in Pakistan who, for example, had their own representatives in Parliament was not so flagrantly bad as to allow exceptionally a case to proceed under Article 9 where there were no grounds under Article 3.
In 2004 the second applicant also applied for asylum, together with her children and husband, claiming that she feared that if she returned to Pakistan she would be subjected to attack by Muslim extremists because she was a Christian. She referred to having received nuisance telephone calls during the night after the incident on the Bahawalpur Church. The Secretary of State again refused asylum, considering, in particular, that the applicant had not been at risk because of the incident at Bahawalpur as she had lived in Peshawar and since the incident had suffered nothing more serious than nuisance telephone calls. He

found no ground for a breach of Article 9 as she had not shown any risk of a flagrant denial of her rights. The Adjudicator refused the second applicant's appeal, noting that she had not applied for asylum at the time of the 2001 attack but had remained in Pakistan for another three years. While she claimed to have received unpleasant telephone calls, she had been able to deal with them by switching off the phone. The Adjudicator found no indication that there would be insufficient protection offered to her by the authorities who had placed guards on the churches and on the school where she worked. The Immigration Appeal Tribunal refused permission to appeal further, noting that the second applicant had not raised her Article 9 complaint before the Adjudicator, even though represented by specialist advocates, and finding no error in the Adjudicator's decision.

Article 9 – It is true that the responsibility of a Contracting State may be engaged, indirectly, through placing an individual at a real risk of a violation of his rights in a country outside their jurisdiction. This was first established in the context of Article 3 but applies equally to the risk of violations of Article 2. Such compelling considerations do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an alien to a country where the conditions are in full and effective accord with each of the safeguards of the rights and freedoms set out in the Convention. Nonetheless, the Court has not excluded that issues may also arise under Article 6, where the person being expelled has suffered or risks suffering a flagrant denial of a fair trial in the receiving country, particularly where there is the risk of execution or possibly under Article 5, if the prospect of arbitrary detention was sufficiently flagrant.
In the present case the question arose as to what approach should be applied to Article 9 rights allegedly at risk on expulsion. The Court's case-law indeed underlined that freedom of thought, religion and conscience was one of the foundations of a democratic society and that manifesting one's religion, including seeking to convince one's neighbour, was an essential part of that freedom. This was however first and foremost the standard applied within the Contracting States, which are committed to democratic ideals, the rule of law and human rights. The Contracting States nonetheless have obligations towards those from other jurisdictions, imposed variously under the 1951 United Nations Convention on the Status of Refugees and under the above-mentioned Articles 2 and 3 of the Convention. Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, very limited assistance, if any, can be derived from Article 9 by itself; otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world. While the Court would not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 where the person concerned ran a real risk of flagrant violation of that provision in the receiving State, it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3. The applicants had failed to make out a case of persecution on religious grounds or to substantiate that they were at risk of a violation of Articles 2 or 3. Neither applicant had herself been subject to any physical attack or prevented from adhering to her faith. Both had claimed to have received unpleasant telephone calls and to have felt at risk of attack. The essence of their case rested on the general situation in Pakistan where there have been, over the past few years, attacks on churches and Christians. The UK authorities however had placed weight on the fact that the Christian community in Pakistan was under no official bar and indeed had their own parliamentary representatives and that the Pakistani law enforcement and judicial bodies respectively were taking steps to protect churches and schools and to arrest, prosecute and punish those who carried out attacks. It was not apparent to the Court therefore that the Pakistani authorities were incapable of taking, or unwilling to take, appropriate action in respect of violence or threats of violence directed against Christian targets. Even assuming that Article 9 was in principle capable of being engaged in the circumstances of the expulsion of an individual by a Contracting State, the applicants had not shown that they were personally at such risk or are members of such a vulnerable or threatened group or in such a precarious position as Christians as might disclose any appearance of a flagrant violation of that provision: *manifestly ill-founded.*

Article 8 – While the exclusion of a person from a country where his or her immediate family resides may in some circumstances raise an issue under Article 8, relationships between adult relatives do not necessarily attract the protection of that provision without further elements of dependency involving more

than the normal emotional ties. The applicants in question were adults, with families of their own, and had been living separately from their parents and siblings when the 2001 attack on the Bahawalpur Church had occurred. They had continued living in Pakistan for three years after their parents and brother had left. The Court therefore discerned no elements of dependency involving more than the normal emotional ties between the applicants and the members of their family now living in the United Kingdom: *manifestly ill-founded*.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of a journalist for having published inaccurate information and unacceptable opinions concerning other journalists: *inadmissible*.

KATAMADZE - Georgia (N° 69857/01)
Decision 14.2.2006 [Section II]

The applicant, a journalist, published an editorial criticising the founder and editor and three journalists of another local newspaper. They complained that the applicant had been spreading rumours through the press and that the expressions used in the impugned article undermined their dignity and reputation. The Ajarian High Court considered that a number of phrases and expressions used flippantly by the applicant in her article undermined the reputation and dignity of the journalists and constituted interference with their private life. Some of her allegations had no basis in reality and as she had failed to adduce evidence to the contrary she had acted in breach of her statutory duty as a journalist. The applicant refused to comment on the phrases or expressions that had been regarded as unacceptable by the court, even though she bore the burden of proof under domestic law. She was further accused of acting with intent to cause harm to the journalists. As they had waived their right to have the impugned article retracted by the offending newspaper, the Court confined itself to ordering the applicant jointly to pay compensation for non-pecuniary damage to the aggrieved parties in an amount of approximately EUR 2,100. An appeal by the applicant on points of law was dismissed.

Inadmissible under Article 10 – Since the complainants had objectively shown that the impugned allegations were capable of interfering with their rights, the fact that domestic law required the applicant to adduce evidence as to the veracity of her statements did not seem in itself to run counter to Article 10 of the Convention. The Court attached paramount importance to the fact that the applicant's article did not contribute to any debate of legitimate public interest or to any controversy between her and the other newspaper's journalists. The applicant had been unable to show that her impugned statements had any informational value whatsoever for society. Nor had the applicant been caught out during a spontaneous debate or lively exchange of views in which she might have been provoked into thoughtlessly using offensive language. The content of the impugned article, when analysed in the context of the case, suggested that there had been some private argument between the applicant and the journalists concerned and that the applicant had used the newspaper of which she was editor as a forum for a public attack on those fellow-journalists of whom she had conceived a dislike. Even though those journalists were, like the applicant herself, public figures in respect of whom the limits of acceptable criticism were wider than in respect of a private individual, they were not obliged to tolerate language that went beyond those limits and interfered with their rights. The impugned expressions and insinuations were offensive to the persons concerned and the applicant had adduced no evidence that she had based her judgments on facts or that she had acted in good faith in writing them. She had been unable to show that it had not been a gratuitous personal attack with pointlessly harmful comments. In short, the finding against her had been a necessary measure in a democratic society for the protection of the reputation and rights of others. The grounds stated by the domestic courts had been "relevant and sufficient" for the purposes of paragraph 2 of Article 10. Moreover, having regard to the public insult to those individuals, without any valid justification, the penalty imposed did not appear excessively harsh: *manifestly ill-founded*.

FREEDOM TO IMPART INFORMATION
Publication of a photograph showing the body of a prefect shot dead, penalised by the judges on request of the family: *admissible*.

HACHETTE FILIPACCHI ASSOCIÉS - France (N° 71111/01)
Decision 2.2.2006 [Section I]

Paris Match, a weekly sensationalist magazine with nationwide circulation, published a photograph of the bleeding body of a French prefect who had been shot dead and was lying on the road. The photograph had been taken just a few minutes after the murder and showed the mutilated victim quite close up, with his face turned towards the camera. The picture illustrated an article entitled "The Republic Assassinated". It was published one week after the national tragedy. The widow and children of the deceased sought an injunction to have the magazine withdrawn from sale. They asserted, in particular, that the photograph constituted particularly intolerable interference with their private life. The judges agreed, finding that the publication of the photograph was harmful to the complainants' feelings and privacy. The court ordered the publication of a judicial notice in *Paris Match* to inform readers of the interference with private life thus constituted. The Court of Cassation, noting that the picture diminished the dignity of the human person, upheld the decision challenged by the applicant press company, considering it justified under Article 10 of the Convention.
Admissible under Article 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Temporary ban on a political party on account of unauthorised gatherings: *violation*.

CHRISTIAN DEMOCRATIC PEOPLE'S PARTY - Moldova (N° 28793/02)
Judgment 14.2.2006 [Section IV]

Facts: The applicant is an opposition political party, the Christian Democratic People's Party (CDPP). As a sign of protest against a government proposal to make the study of Russian compulsory in schools, it informed the Municipal Council of its intention of holding a meeting with its voters in front of the seat of the Government. The Municipal Council initially granted authorisation for the meeting at another location, but subsequently suspended this decision awaiting the official position of Parliament as to which law was to apply to the gathering. In the meantime, the party's voters held a number of meetings without having complied with formalities. The Ministry of Justice required a halt to the meetings and, after giving the applicant party a warning, imposed a one-month ban on the party for having breached several pieces of legislation. The ban was imposed on the basis of the Law on Parties and other Socio-Political Organisations. The Ministry of Justice also found that the gatherings by the CDPP were demonstrations which fell within the scope of the Assemblies Law, and hence could only have been carried out upon authorisation. Following an inquiry by the Council of Europe Secretary General and the approaching local elections, the Ministry of Justice lifted the ban and authorised the party to restart its activity. Despite the lifting of the ban, the applicant party challenged the measure in the courts. The Court of Appeal dismissed the applicant's action, finding that the meetings of voters had transformed into demonstrations which required an authorisation. It also found that the demonstrations had blocked public roads and that the participation of minors in them was in breach of several laws. The Supreme Court of Justice found that the sanction imposed on the party had not been disproportionate. In another set of proceedings undertaken by the Government seeking a declaration that the demonstrations had been illegal, the Supreme Court of Justice ruled in favour of the Government and effectively declared the gatherings illegal.

Law: Article 11 – It was not disputed that the imposition of a temporary ban on the applicant party's activities had amounted to an interference. As to whether the interference had been prescribed by law and pursued a legitimate aim, the Court decided not to examine these questions in view of the conclusions it

reached on the “necessity of the interference in a democratic society”. Given the essential role played by political parties in the proper functioning of democracy, interferences with their rights under Article 11 must be construed strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In the present case, the ban on the CDPP's activities (which was an opposition party) was imposed as a result of the gatherings it had organised in protest against the Government's plans to make the study of Russian compulsory for school children. Given the public interest and topicality of this issue at the time, the Court considered that the State's margin of appreciation was correspondingly narrowed, and that only very compelling reasons would have justified the interference with the CDPP's rights. The authorities and courts had relied on three main grounds in justifying the temporary ban. Firstly, the lack of authorisation for the gatherings as required by the Assemblies Law. However, it should be borne in mind that this legislation was initially considered unclear and not applied by the Municipal Council. It was thus questionable that non-compliance with it could justify such a serious measure as a temporary ban. Even assuming that the legislation was clear, the Court was not convinced that failure to comply with it, which was generally punishable with an administrative fine, could justify a temporary ban on the activities of an opposition party. As regards the presence of children at the gatherings, it had not been established by the domestic courts that they were there as a result of any action or policy of the applicant party. Moreover, since the gatherings were held in a public place where everyone could attend, the Court considered it was rather a matter of personal choice for parents to allow their children to attend those gathering or not, and would appear contrary to both the parents' and children's' freedom of assembly to prevent them from attending such events, which it should be recalled were a protest against a Government policy on schooling. Accordingly, this was not a sufficient reason for the ban. As to the third ground for the ban, that some statements at the gatherings amounted to calls to public violence, the Court was not persuaded that the singing of a fairly mild student song could be interpreted as an incitement to violence; this had not been explained either by the authorities or the courts. Consequently, it could not be considered either as a relevant and sufficient reason. Since the CDPP's gatherings were entirely peaceful, there were no calls to violent overthrow of the Government or any other encroachment on the principles of pluralism and democracy, it cannot be reasonably said that the measure applied to it was proportionate to the aim pursued and that it met a “pressing social need”. The fact that the ban was temporary was not of decisive importance, as such a ban could also have a “chilling effect” on the Party's freedom to exercise its freedom of expression and to pursue its political goals, in particular on the eve of local elections. The Court noted with satisfaction the lifting of the ban following the enquiry by the Secretary General under Article 52 of the Convention. Even so, the temporary ban had not been based on relevant and sufficient reasons.
Conclusion: violation (six votes to one).

Article 10 – The Court found that there was no separate issue under this complaint.

Article 41 – The Court made an award in respect of costs and expenses.

FREEDOM OF ASSOCIATION
Dissolution of a trade union formed by civil servants: *violation.*

TÜM HABER SEN and ÇINAR - Turkey (N° 28602/95)
Judgment 21.2.2006 [Section II]

Facts: In 1992 Tüm Haber Sen was founded by 851 public-sector contract staff. Its constitution provided among other things for the right to enter into collective agreements. A few days later, the Istanbul Governor's Office called upon the appropriate prosecutor to seek the suspension of activity and dissolution of Tüm Haber Sen on the ground that civil servants were not entitled to form trade unions. The District Court allowed the prosecutor's application and ordered the applicant's dissolution. However, the Court of Cassation, considering that the organisation was not a “union” in the technical sense of that term, quashed the order and remitted the case to the District Court. In that court the representatives of Tüm Haber Sen argued that it should be regarded as a union empowered to call strikes and enter into collective agreements. Having examined their arguments, the District Court decided to maintain its initial judgment.

The representatives of Tüm Haber Sen again appealed on points of law and the Court of Cassation, at a plenary sitting of the civil divisions, ordered at last instance the dissolution of the applicant organisation on the ground that, in the absence of any statutory provisions of Turkish law governing the legal status of trade unions for civil servants and public-sector contract workers, the applicant trade union could not claim to have any legal basis. Nor could it be regarded as a professional association or organisation because it had been explicitly presented by its leaders as a trade union in its own right. Moreover, the Court of Cassation found that Tüm Haber Sen was not entitled to rely on the international labour conventions that it had invoked, as those instruments were not directly applicable in domestic law and implementing legislation had not yet been enacted. On 8 June 1995, a few days after notice of that judgment had been served on the representatives of Tüm Haber Sen, all the branches and divisions of the union were dissolved by order of the Ministry of the Interior.

Law: Article 11 – Whilst this provision presented trade-union freedom as one form or particular aspect of freedom of association, it did not provide trade unions or their members with a guarantee of specific treatment by the State and left to the State the choice of the means to be utilised so that their right to be heard would be upheld. However, Article 11 was binding on the State, whether the latter's relations with its employees were governed by public or private law. In this case, at the material time, civil servants had not been entitled to form or join trade unions, as the Court of Cassation had construed as a prohibition the fact that Turkish law admitted of no legal status for such organisations and that there were no statutory instruments providing for the application in domestic law of the international labour conventions to which Turkey was a party. It accordingly appeared that Tüm Haber Sen had been dissolved solely on the ground that it had been founded by civil servants and its members were civil servants. The interference was consistent with domestic law, as construed by the plenary sitting of the civil divisions, with the aim of preventing disorder. As to its necessity, the Court reiterated that the exceptions set out in Article 11 had to be construed strictly and only convincing and compelling reasons could justify restrictions on freedom of association. In the present case, however, the Government had failed to provide any explanation as to how the absolute prohibition on forming trade unions, imposed at the time by Turkish law on civil servants and public-sector contract workers, had met a “pressing social need”. Moreover, at the material time there had been two elements that supported a narrow interpretation of the restriction of civil servants' rights to form trade unions. Firstly, Turkey had already ratified International Labour Organisation Convention no. 87, which secured to all workers the unrestricted right to form and join trade unions and, secondly, the European Social Charter's Committee of Independent Experts had construed Article 5 of the Charter, affording all workers the right to form trade unions, as applying to civil servants as well. Accordingly, in the absence of any concrete evidence to show that the formation or activities of Tüm Haber Sen had represented a threat to Turkish society or the Turkish State, it could not be said that the statutory prohibition was sufficient in itself to ensure that the union's dissolution satisfied the conditions in which freedom of association might be restricted. The respondent State had thus failed to comply, at the material time, with its positive obligation to secure enjoyment of the rights protected under Article 11.
Conclusion: violation (unanimously).

Article 13 – Having regard to its conclusions under Article 11, the Court did not consider it necessary to examine this complaint separately.
Conclusion: not necessary to examine separately

Article 41 – As the applicants had not submitted any request for just satisfaction within the time-limit, the Court considered that it was not required to make an award under this head.

ARTICLE 14

DISCRIMINATION
Placement of Roma gypsy children in “special” schools: *no violation.*

D.H and Others - Czech Republic (N° 57325/00)

Judgment 7.2.2006 [Section II]

Facts: The applicants are all Czech nationals of Roma origin who, between 1996 and 1999, were placed, either directly or after a certain period in ordinary primary schools, in "special schools", a category of schools within a larger group called "specialised schools", for children with learning difficulties unable to attend a "basic" or other specialised elementary school. By law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests devised to measure the child's intellectual capacity and carried out in an educational psychology and child guidance centre, and requires the consent of the child's parent or legal representative. It was apparent from the case file that the applicants' parents had given their consent to their child's placement in a special school or had even expressly requested it. The appropriate written decisions had been given by the head teachers of the schools concerned and had been notified to the applicants' parents. They contained indications on the possibility of appeal but none of the applicants had availed themselves of that right. The applicants had also been informed by the school authorities of the possibilities of transfer from a special school to a primary school. It appeared that four of the children had passed the proficiency tests and were now attending ordinary schools. In 1999 some of the applicants applied to the appropriate Education Department, outside the appeal procedure, for review of the administrative decisions on their placement in special schools. The Department replied that the applicants had failed to meet the conditions for bringing proceedings outside the appeal procedure, the impugned placements having been decided in accordance with the statutory rules. In addition, some of the applicants lodged a constitutional complaint in which they argued, in particular, under Articles 3 and 14 of the Convention and Article 2 of Protocol No. 1, that they had been subjected to *de facto* segregation through the general operation of the special education system and that they had not been sufficiently informed of the consequences of their placement in special schools. The Constitutional Court dismissed the applicants' complaint. It found that it lacked jurisdiction to rule on the claims of some of the applicants and dismissed those of the other applicants as being manifestly ill-founded, noting that they had not produced concrete evidence in support of their allegations, that they had not exercised their right of appeal and that their representatives had not made the effort to apprise themselves of the consequences of placement in special schools.

Law: Government's preliminary objection (non-exhaustion) – As in its decision on the admissibility of this case, the Court considered that the parties' arguments in this connection raised questions that were closely linked to the merits of the case, and that the application was one of considerable importance and had serious implications. Accordingly, and since the application resulted in a finding that there had been no violation, the Court considered it unnecessary to examine whether the applicants had satisfied the condition of non-exhaustion of domestic remedies.

Article 14 taken in conjunction with Article 2 of Protocol No. 1 – The applicants' complaint under these provisions was based on a certain number of serious arguments, and several organisations had expressed their concern about the arrangements whereby Roma children living in the Czech Republic were placed in special schools and about the difficulties they had in gaining access to ordinary schools. However, it was not for the Court to assess the overall social context; its task in the present case was specifically to examine the individual applications before it and to determine, on the basis of the relevant facts, whether the reason for the applicants' placement in special schools had been their ethnic or racial origin. In this connection, if a policy or general measure had disproportionate prejudicial effects on a group of individuals, the possibility of their being discriminatory could not be ruled out, notwithstanding the fact that they had not been specifically directed against such a group. However, the statistics did not suffice in themselves to indicate the existence of a practice that might be characterised as discriminatory; moreover, the setting and planning of the school curriculum fell in principle within the remit of the Contracting State. With regard to those children who had specific needs, the choice between different possible systems involved the difficult exercise of balancing the various interests concerned. It was reiterated that, given States' margin of appreciation in matters of education, they could not be prohibited from setting up different types of school for children with difficulties or implementing special educational programmes to respond to specific needs. In this case, the Court found that the Government had adequately proved that the special schools system in the Czech Republic was not intended only for Roma children and that great efforts had been made in such schools to help certain categories of pupil to acquire elementary

knowledge. It appeared that the rules governing children's placement in special schools did not refer to the pupils' ethnic origin, but pursued the legitimate aim of adapting the education system to the needs and aptitudes or disabilities of the children. Moreover, it was not in dispute that the tests had in this case been set by specialists in the relevant field, and the applicants' representatives had not succeeded in refuting the experts' findings that the children had been prevented by their learning disabilities from following the ordinary primary school curriculum. It also needed to be borne in mind that, in their capacity as the applicants' lawful representatives, the applicants' parents had failed to take any action, despite having received a clear written decision informing them of their children's placement in a special school; indeed, in some instances it had been the parents who had asked for their children to be placed or to remain in a special school. Furthermore, the fact that some of the applicants had subsequently been transferred to ordinary schools proved that the situation was not irreversible. As to the applicants' argument that the parental consent had not been "informed" and in two cases had apparently been pre-dated, it was the parents' responsibility, as part of their natural duty to ensure that their children received an education, to find out about the educational opportunities offered by the State, to make sure they knew the date on which they had given their consent to their children's placement in a particular school and, if necessary, to make an appropriate challenge to the decision ordering the placement if it had been issued without their consent. Thus, while acknowledging that the statistics disclosed figures that were worrying and that the overall situation in the Czech Republic concerning the education of Roma children was by no means perfect, the Court could not in the circumstances conclude that the applicants' placement or, in some instances, continued placement, in special schools had been the result of racial prejudice as alleged by the applicants.
Conclusion: no violation (six votes to one).

ARTICLE 34

LOCUS STANDI
Locus standi of a person who is not a family member of the deceased applicant: *struck out*.

THEVENON – France (N° 2476/02)
Decision 28.2.2006 [Section II]

The applicant died three years after lodging with the Court an application in which he complained of his medical confinement and the length of his appeal proceedings, relying on Articles 5, 8 and 13 of the Convention. Having no descendants, whether legitimate, illegitimate or by adoption, and no surviving ascendants, he had left a will in which he appointed a longstanding friend as his universal legatee. She expressed her intention to maintain the applicant's application before the Court. The respondent Government submitted that she lacked the *locus standi* to take over the application.

Struck out: The applicant left a will in which he had appointed Ms Yahi as his universal legatee. She was not a close relative of the applicant. Ms Yahi was in fact a friend of the applicant to whom she did not claim to be closely or distantly related. Moreover, in French law a universal legatee is not an heir. The Court was bound to find it of decisive importance that the person wishing to maintain the application was neither a close relative nor an heir of the applicant, and that the rights guaranteed by Article 5 and 8 were highly personal and non-transferable.

ARTICLE 37

Article 37(1)(c)

CONTINUED EXAMINATION NOT JUSTIFIED
Refusal of applicant to get legal representation for proceedings before the Court: *struck out*.

GRIMALYO - Ukraine (N° 69364/01)
Decision 7.2.2006 [Section II]

The applicant, who was suspected of involvement in smuggling, drug-trafficking, illegal storage of weapons and unlawful crossing of the State border, was detained on remand in January 1999 (his residence was also searched at the time). His numerous requests to the courts for release from custody were rejected, as was his complaint about the unreasonable length of his detention. It appears that the applicant's trial is still pending. The applicant complained under Articles 1, 3, 5, 6, 8 and Article 1 of Protocol No. 1.
Following communication of the application to the Government, the President of the Second Section decided – in spite of the applicant's request to represent himself or to be represented by his wife – that a lawyer's participation was essential, given the complexity of the case from a legal and factual point of view. Several reminders were sent to the applicant by the Registry warning him that the case might be struck out of the Court's list if he did not comply with the President's decision. However, the applicant replied that he still wanted to represent himself, or alternatively that his wife be his representative before the Court. In the absence of appropriate legal representation of the applicant, it was no longer justified to continue the examination of the application. Moreover, in accordance with Article 37(1) *in fine*, there were no special circumstances regarding respect for human rights which required the further examination of this case. Hence, the application of Article 29(3) was discontinued: *struck out*.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Refusal to return an estate on the territory of the former German Democratic Republic (GDR): *inadmissible*.

MELCHIOR - Germany (Nº 66783/01)
Decision 2.2.2006 [Section III]

The applicant is an American national. In 1937 his father was the owner of an estate of one hundred hectares on the territory of the former German Democratic Republic (GDR). When his father emigrated to the United States his estate was initially leased to a GDR authority, and subsequently declared to be the property of the GDR. Following his father's death, the applicant inherited the estate as well as any claims for compensation which would be paid by any government with regard to the estate, but he waived his hereditary titles in favour of his sister, who was a Danish citizen. In the 1970s, Denmark and the GDR went into negotiations over unresolved financial and property issues. Both countries concluded a Lump Sum Agreement in 1987, whereby the GDR was to pay an amount for unresolved property and financial issues. The two States disagreed on whether the applicant's estate was property which required compensation under the Agreement, and it was finally not included on the list of properties to be compensated. However, Article 6 of the Agreement provided that unresolved property issues were to be settled between the parties exhaustively and definitely upon the entry into force of the Agreement. The applicant's sister subsequently received an amount of 100,000 German marks from the lump sum. After German reunification, the Federal Republic of Germany (FRG) was registered as the owner of the estate. The applicant subsequently instituted proceedings for the return of the property. His claim was successful at first instance but dismissed on appeal by the Court of Appeal. The court found that the applicant's claim had been extinguished by the Lump Sum Agreement, which had also comprised the estate, despite having been subject to debate between the two parties to the treaty. Articles 2 and 6 of the Agreement showed that the two States had opted for a final and exhaustive solution of all property issues, and the fact that the estate had not been included in the list of claims did not prove it was not covered at all by the Agreement, but rather that compensation had been paid from the *Restsumme*. The fact that the applicant's sister had accepted and received an amount from the lump sum was a further indication that the estate had been covered by the Agreement. The Federal Constitutional Court found that the Court of Appeal's

interpretation of the Lump Sum Agreement (which after reunification had become binding on the FRG) had not violated any of the applicant's fundamental rights.

Inadmissible under Article 1 of Protocol No. 1 – As to whether the applicant had a "possession" within the meaning of this provision, the German courts had found that the applicant's property claim for restitution of the estate had been extinguished by the entry into force of the Lump Sum Agreement. Having regard to the fundamental principle that it is primarily for the national courts to interpret and apply domestic law, the same standard of review should be applied in the present case with regard to the interpretation and application of the Lump Sum Agreement. The Court of Appeal had conducted a thorough review of the facts of the case and the applicant's arguments before finding that the Lump Sum Agreement did cover the estate. This interpretation, subsequently confirmed by the Federal Constitutional Court, was comprehensible and could not be considered as either manifestly erroneous or arbitrary. Such an interpretation, although not based on the express terms of the Agreement, was in harmony with the latter's object and purpose to settle exhaustively, definitively and comprehensively all unresolved property and financial issues between the Contracting Parties. It was also in accordance with the subsequent practice under the Agreement, whereby compensation was effectively paid to the applicant's family. In conclusion, the applicant had not demonstrated that he had a legitimate expectation of restitution of his property within the meaning of this provision. Hence, the decisions of the German courts had not amounted to an interference with the peaceful enjoyment of his possessions and the facts of the case did not fall within the ambit of this provision*: incompatible ratione materiae.*

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Annulment of the successful results of a candidate sitting university admission exams given his poor results in previous years: *violation*.

MÜRSEL EREN - Turkey (Nº 60856/00)
Judgment 7.2.2006 [Section II]

Facts: The applicant sat a university admission examination for the first time in 1994, after having graduated from high school. The examination, which is organised on a yearly basis by the Higher Education Council's Centre for the Selection and Placement of Students ("OSYM"), consists of a two-tier multiple choice exam. The applicant also failed to pass the first stage of the exam in his attempts the two following years. In 1997, the applicant attended a private course to prepare for the examination. That year he passed the first exam and proceeded to the second stage. After taking the second examination, he believed he had been successful. However, his name was not announced in the list of successful students. He was subsequently informed by the OSYM that he had obtained one of the highest results amongst the students sitting the second examination but that his results had been annulled on the advice of an academic council, consisting of three professors, which found that in view of his poor results in the previous years his excellent achievement could not be explained. The authorities claimed this was in accordance with the OSYM's Regulations. The applicant brought proceedings in the administrative courts requesting that the OSYM decision be suspended and annulled. Although the judge rapporteur of the Supreme Administrative Court considered that the OSYM decision was based on pure supposition and should be annulled, the majority of judges rejected the application, finding it was inexplicable that a student who had obtained very poor results in previous exams could be so successful in subsequent examinations. The applicant's successive appeals were also dismissed on grounds that he could not have achieved the result through his own knowledge and ability.

Law: Article 2 of Protocol No. 1 – It was not disputed that the applicant was unable to gain access to university education despite having obtained the required marks. Hence, the guarantees of this provision applied. The Government had failed to point to any legal basis for the OSYM's discretion to annul exam results of candidates on the ground of their inability to explain their success. In any event, any legal basis

granting such a broad discretion could create legal uncertainty incompatible with the rule of law, or would injure the very substance of the right to education. It was also borne in mind that the results achieved by participants were calculated in a highly elaborate way which gave no leeway for the authorities to substitute the results of computerised systems marking the exam papers with their own personal views. Moreover, the wording of the OSYM Regulations allowed a *bona fide* student to form the legitimate expectation that he or she would be able to attend the university course for which he or she had obtained the necessary marks at the exam. In the absence of any proof of the applicant having cheated – or even any explicit accusation against him to that effect –, and bearing in mind the undisputed submission that he had prepared for the 1997 examinations by attending a private course, the conclusion reached by the academic council that his good results could not be explained was untenable. The decision to annul his results, which was upheld by the courts, lacked a legal and rational basis, resulting in arbitrariness.
Conclusion: violation (six votes to one).

Article 41 – The Court awarded the applicant 5,000 EUR in respect of non-pecuniary damage. It also made an award for costs and expenses.

RIGHT TO EDUCATION

Placement of Roma gypsy children in "special" schools: *no violation*.

D.H. and Others - Czech Republic (N° 57325/00)
Judgment 7.2.2006 [Section II]

(see Article 14 above).

RESPECT FOR PARENTS' RELIGIOUS CONVICTIONS
Refusal to exempt children of non-Christian parents from a compulsory subject focusing on the teaching of Christianity: *admissible*.

FOLGERØ - Norway (N° 15472/02)
Decision 14.2.2006 [Section I]

The applicants are parents who are members of the Norwegian Humanist Association and their children, who were primary school pupils at the time of the events complained of, respectively. Their complaint is related to the legislative reform introduced in school curricula as from 1997, when the subject of Christianity, Other Religions and Philosophy started being taught. The emphasis of the subject was placed on the teaching of Christianity, so pupils who adhered to other religions or life stances could be exempted from parts of the teaching on the submission of a parental note. Pursuant to a ministerial circular, such notes were to contain parents' reasons of what they considered amounted to practicing another religion or adherence to another life stance. Prior to the reform it was possible for children to be exempted in whole from the teaching of the Christian faith. The applicants brought proceedings in the domestic courts following the administrative refusals for the full exemption of their children from the subject. Their action was rejected at three domestic judicial levels. The Supreme Court found that the provision on exemption was not contrary to any requirements pertaining to religious freedom and parental rights. Moreover, the teaching did not present one faith as being superior to others. Two evaluation reports on the new system in 2000 concluded that the arrangement of partial exemption did not work as intended and should be thoroughly reviewed. The applicants complain that the refusal of the domestic authorities to grant a full exemption violated their rights under Article 9 of the Convention and Article 2 of Protocol No. 1 (as well as Articles 8 and 14). In October 2004, the Court declared the application inadmissible in respect of the children as well as the parents' complaints about the possibilities and modalities for obtaining a partial exemption. Another group of parents, who had also been parties to the domestic proceedings, subsequently lodged, together with their children, a communication with the United Nations Human Rights Committee under the Protocol to the 1966 International Covenant on Civil and Political Rights.

Admissible under Article 9 and Article 2 of Protocol No. 1 (concerning the parents' complaint about the lack of possibility of obtaining full exemption) and Article 14, taken in conjunction with Articles 8, 9 and Article 2 of Protocol No. 1 (concerning the parents' complaint of discrimination). Moreover, the application could not be declared inadmissible under Article 35(2). Although certain parents who had been parties to the domestic proceedings had lodged a petition before the United Nations Human Rights Committee, they were not the same ones that had lodged an application before the Court. Hence, as the complainants before the two institutions were not identical, the “application” to the Court could not be considered as being “substantially the same as a matter submitted to another procedure”.

Other judgments delivered in February

Keser and Others - Turkey (Nº 33238/96 and Nº 32965/96), 2 February 2006 [Section III]
Artun and Others - Turkey (Nº 33239/96), 2 February 2006 [Section III]
Ağtaş - Turkey (Nº 33240/96), 2 February 2006 [Section III]
Şayli - Turkey (Nº 33243/96), 2 February 2006 [Section III]
Öztoprak and Others - Turkey (Nº 33247/96), 2 February 2006 [Section III]
Yilmaz and Others - Turkey (Nº 36211/97), 2 February 2006 [Section III]
Iovchev - Bulgaria (Nº 41211/98), 2 February 2006 [Section I]
Sekin - Turkey (Nº 41968/98), 2 February 2006 [Section III]
Yurtsever - Turkey (Nº 47628/99), 2 February 2006 [Section III]
Sincar and Others - Turkey (Nº 46281/99), 2 February 2006 [Section III]
Reçber - Turkey (Nº 52895/99), 2 February 2006 [Section III]
Latif Fuat Öztürk - Turkey (Nº 54673/00), 2 February 2006 [Section I]
Biç and Others - Turkey (Nº 55955/00), 2 February 2006 [Section III]
Özsoy - Turkey (Nº 58397/00), 2 February 2006 [Section III]
Vasilev - Bulgaria (Nº 59913/00), 2 February 2006 [Section I]
Yayan - Turkey (Nº 66848/01), 2 February 2006 [Section III]
Chizzotti - Italy (Nº 15535/02), 2 February 2006 [Section III]
Taciroğlu - Turkey (Nº 25324/02), 2 February 2006 [Section III]
Levin - Russia (Nº 33264/02), 2 February 2006 [Section I]
Genovese and Others - Italy (Nº 9119/03), 2 February 2006 [Section III]
Yalçinkaya - Turkey (Nº 14796/03), 2 February 2006 [Section III]

Tekin and Baltaş - Turkey (Nº 42554/98 and Nº 42581/98), 7 February 2006 [Section II]
Yusuf Genç - Turkey (Nº 44295/98), 7 February 2006 [Section II]
Balci and Others - Turkey (Nº 52642/99), 7 February 2006 [Section II]
Sima - Slovakia (Nº 67026/01), 7 February 2006 [Section II]
Muharrem Aslan Yildiz - Turkey (Nº 74530/01), 7 February 2006 [Section II]
Yatir - Turkey (Nº 74532/01), 7 February 2006 [Section II]
Halis Doğan - Turkey (Nº 75946/01), 7 February 2006 [Section II]
Donnadieu - France (no. 2) (Nº 19249/02), 7 February 2006 [Section II]
Debono - Malta (Nº 34539/02), 7 February 2006 [Section II]

Prenna and Others - Italy (Nº 69907/01), 9 February 2006 [Section III]
Freimanis and Lidums - Latvia (Nº 73443/01 and Nº 74860/01) 9 February 2006 [Section III]
Athanasiou and Others - Greece (Nº 2531/02), 9 February 2006 [Section I]
Bogdanov - Russia (Nº 3504/02), 9 February 2006 [Section I]
Comellini - Italy (Nº 15491/02), 9 February 2006 [Section III]
Barillon - France (Nº 22897/02), 9 February 2006 [Section III]
Igusheva - Russia (Nº 36407/02), 9 February 2006 [Section I]
De Luca - Italy (Nº 17644/03), 9 February 2006 [Section III]

Lecarpentier and Others - France (Nº 67847/01), 14 February 2006 [Section II]
Šebeková and Horvatovičová - Slovakia (Nº 73233/01), 14 February 2006 [Section IV]
Skoma, Spol s.r.o. - Czech Republic (Nº 21377/02), 14 February 2006 [Section II]
Havlíčková - Czech Republic (Nº 28009/03), 14 February 2006 [Section II]
Dušek - Czech Republic (Nº 30276/03), 14 February 2006 [Section II]

Osman - Bulgaria (Nº 43233/98), 16 February 2006 [Section I]
Prikyan - Bulgaria (Nº 44624/98), 16 February 2006 [Section I]
Porteanu - Romania (Nº 4596/03), 16 February 2006 [Section III]

Bilen - Turkey (Nº 34482/97), 21 February 2006 [Section IV]

Atkin - Turkey (Nº 39977/98), 21 February 2006 [Section IV]
Memiş - Turkey (Nº 42593/98), 21 February 2006 [Section II]
Çoban - Turkey (Nº 48069/99), 21 February 2006 [Section IV]
Doğanay - Turkey (Nº 50125/99), 21 February 2006 [Section IV]
Odabaşi and Koçak - Turkey (Nº 50959/99), 21 February 2006 [Section IV]
Calişir - Turkey (Nº 52165/99), 21 February 2006 [Section IV]
Şeker - Turkey (Nº 52390/99), 21 February 2006 [Section II]
Zherdin - Ukraine (Nº 53500/99), 21 February 2006 [Section II]
Tüzel - Turkey (Nº 57225/00), 21 February 2006 [Section IV]
Aydin Eren and Others - Turkey (Nº 57778/00), 21 February 2006 [Section IV]
Mehmet Fehmi Işik - Turkey (Nº 62226/00), 21 February 2006 [Section IV]
Yüce - Turkey (Nº 75717/01), 21 February 2006 [Section II]
Cuma Ali Doğan and Betül Doğan - Turkey (Nº 76478/01), 21 February 2006 [Section II]
Kavasoğlu - Turkey (Nº 76480/01), 21 February 2006 [Section II]
Klepetář - Czech Republic (Nº 19621/02), 21 February 2006 [Section II]
Cambal - Czech Republic (Nº 22771/04), 21 February 2006 [Section II]
Dostál - Czech Republic (Nº 26739/04), 21 February 2006 [Section II]

Hulewicz - Poland (Nº 39598/98), 23 February 2006 [Section III]
Tzekov - Bulgaria (Nº 45500/99), 23 February 2006 [Section I]
Latry - France (Nº 50609/99), 23 February 2006 [Section I]
Stere and Others - Romania (Nº 25632/02), 23 February 2006 [Section III]
Immobiliare Cerro - Italy (Nº 35638/03), 23 February 2006 [Section I]

Hellborg - Sweden (Nº 47473/99), 28 February 2006 [Section II]
Brenière - France (Nº 62118/00), 28 February 2006 [Section II]
André - France (Nº 63313/00), 28 February 2006 [Section II]
Deshayes - France (Nº 66701/01), 28 February 2006 [Section II]
Jakub - Slovakia (Nº 2015/02), 28 February 2006 [Section IV]
Tosun - Turkey (Nº 4124/02), 28 February 2006 [Section II]
Savinskiy - Ukraine (Nº 6965/02), 28 February 2006 [Section II]
Plasse-Bauer - France (Nº 21324/02), 28 February 2006 [Section II]
Berestovyy - Ukraine (Nº 35132/02), 28 February 2006 [Section II]
Komar and Others - Ukraine (Nº 36684/02, Nº 14811/03, Nº 26867/03, Nº 37203/03, Nº 38754/03 and Nº 1181/04), 28 February 2006 [Section II]
Gaponenko - Ukraine (Nº 9254/03), 28 February 2006 [Section II]
Shchukin - Ukraine (Nº 16329/03), 28 February 2006 [Section II]
Glova and Bregin - Ukraine (Nº 4292/04 and Nº 4347/04), 28 February 2006 [Section II]

Relinquishment in favour of the Grand Chamber

Article 30

Jussila - Finland (N° 73053/01)
[Section IV]

The applicant complains under Article 6(1) of the Convention that he did not receive an oral hearing in tax surcharge proceedings.

Referral to the Grand Chamber

Article 43(2)

Anheuser-Busch Inc. - Portugal (73049/01), 11 October 2005, [Section II]

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Note No. 80):

Bakır - Turkey (n° 54916/00)
Judgment 25.10.2005 [Section II]

Nedyalkov - Bulgaria (N° 44241/98)
Kostov - Bulgaria (N° 45980/99)
Marien - Belgium (N° 46046/99)
Kukalo - Russia (N° 63995/00)
Judgments 3.11.2005 [Section I]

Potier - France (N° 42272/98)
Sınırlı Sorumlu Özulaş Yapı Kooperatifi - Turkey (N° 42913/98)
Şeyhmus Yaşar and Others - Turkey (N° 44763/98)
Authouart - France (N° 45338/99)
Haydar Kaya - Turkey (N° 48387/99)
Zielonka - Poland (N° 49913/99)
Leshchenko and Tolyupa - Ukraine (N° 56918/00)
De Sousa - France (N° 61328/00)

Kechko - Ukraine (Nº 63134/00)
Timotiyevich - Ukraine (Nº 63158/00)
Gorshkov - Ukraine (Nº 67531/01)
Bozon - France (Nº 71244/01)
Strizhak - Ukraine (Nº 72269/01)
Daş - Turkey (Nº 74411/01)
Geniteau – France (No. 2) (Nº 4069/02)
Dag and Yasar - Turkey (Nº 4080/02)
Zamula and Others - Ukraine (Nº 10231/02)
Tambovtsev - Ukraine (Nº 20625/02)
Bukhovets - Ukraine (Nº 22098/02)
Kasperovich - Ukraine (Nº 22289/02)
Baglay - Ukraine (Nº 22431/02)
Ishchenko and Others - Ukraine (Nº 23390/02, Nº 11594/03, Nº 11604/03 and Nº 32027/03)
Mezei - Hungary (Nº 30330/02)
Kuzmenkov - Ukraine (Nº 39164/02)
Smirnova - Ukraine (Nº 36655/02)
Vladimirskiy - Ukraine (Nº 2518/03)
Cheremskoy - Ukraine (Nº 7302/03)
Chernysh - Ukraine (Nº 25989/03)
Bader and Others - Sweden (N° 13284/04)
D.D. - France (N° 3/02)
Gongadze - Ukraine (N° 34056/02)
Judgments 8.11.2005 [Section II]

Asito - Moldova (Nº 40663/98)
H.F. - Slovakia (Nº 54797/00)
Wojda - Poland (Nº 55233/00)
Majewski and Others - Poland (Nº 64204/01)
Alver - Estonia (Nº 64812/01)
Kaniewski - Poland (Nº 38049/02)
Badowski - Poland (Nº 47627/99)
Saliba - Malta (Nº 4251/02)
Judgments 8.11.2005 [Section IV]

Schelling - Austria (Nº 55193/00)
Antonić-Tomasović - Croatia (Nº 5208/03)
Drakidou - Greece (Nº 8838/03)
Raguz - Croatia (Nº 43709/02)
Judgments 10.11.2005 [Section I]

Ionescu - Romania (Nº 38608/97)
Çelik and Yıldız - Turkey (Nº 51479/99)
Bocos-Cuesta – Netherlands (Nº 54789/00)
Argenti - Italy (Nº 56317/00)
Doğru - Turkey (Nº 62017/00)
Dede Taş - Turkey (Nº 62877/00)
Abdullah Aydın - Turkey (no. 2) (Nº 63739/00)
Dželili - Germany (Nº 65745/01)
Farcaş and Others - Romania (Nº 67020/01)
Gezici and İpek - Turkey (Nº 71517/01)
Forte - Italy (Nº 77986/01)
Judgments 10.11.2005 [Section III]

Hun - Turkey (Nº 5142/04)
Uyan - Turkey (Nº 7454/04)
Sinan Eren - Turkey (Nº 8062/04)
Mürüvvet Küçük - Turkey (Nº 21784/04)
Eğilmez - Turkey (Nº 21798/04)
Kuruçay - Turkey (Nº 24040/04)
Gürbüz - Turkey (Nº 26050/04)
Tekin Yıldız -Turkey (N° 22913/04)
Judgments 10.11.2005 [Section III (former)]

Kukkola - Finland (Nº 26890/95)
Bogucki - Poland (Nº 49961/99)
Lammi - Finland (Nº 53835/00)
Lanteri - Italy (Nº 56578/00)
Polacik - Slovakia (Nº 58707/00)
Bitsinas - Greece (Nº 33076/02)
Baibarac - Moldova (Nº 31530/03)
Judgments 15.11.2005 [Section IV]

Suntsova - Russia (Nº 55687/00)
Istituto Diocesano Per Il Sostentamento Del Clero - Italy (Nº 62876/00)
La Rosa and Alba (No. 7) - Italy (Nº 63241/00)
Binotti - Italy (No. 1) (Nº 63632/00)
Pia Gloria Serrilli and Others - Italy (Nº 77823/01, Nº 77827/01 and Nº 77829/01)
Mikhaylova and Others- Russia (Nº 22534/02)
Valentina Vasilyeva - Russia (Nº 7237/03)
Bobrova - Russia (Nº 24654/03)
Gerasimenko - Russia (Nº 24657/03)
Nogolica - Croatia (Nº 29052/03)
Judgments 17.11.2005 [Section I]

Bulut - Turkey (Nº 49892/99)
Reigado Ramos - Portugal (Nº 73229/01)
Karman - Hungary (Nº 6444/02 and Nº 26579/04)
Antonenkov and Others- Ukraine (Nº 14183/02)
Krutko - Ukraine (Nº 22246/02)
Szikora - Hungary (Nº 28441/02)
Kántor - Hungary (Nº 458/03)
Ovcharenko - Ukraine (Nº 5578/03)
Romanchenko - Ukraine (Nº 5596/03)
Tsanga - Ukraine (Nº 14612/03)
Gayday - Ukraine (Nº 18949/03)
Melnikova - Ukraine (Nº 24626/03)
Kozhanova - Ukraine (Nº 27349/03)
Miroshnichenko - Ukraine (Nº 29420/03)
Litovkina - Ukraine (Nº 35741/04)
Judgments 22.11.2005 [Section II]

Yağız and Others- Turkey (Nº 57344/00)
Ebru Demir - Turkey (Nº 60262/00)

Taal - Estonia (Nº 13249/02)
Karakullukçu - Turkey (Nº 49275/99)
Emire Eren Keskin - Turkey (Nº 49564/99)
Kakoulli - Turkey (Nº 38595/97)
Judgments 22.11.2005 [Section IV]

Ivanov and Others - Bulgaria (Nº 46336/99)
Katsoulis and Others- Greece (Nº 66742/01)
Ouzounoglou - Greece (Nº 32730/03)
Proios - Greece (Nº 35765/03)
Capital Bank AD - Bulgaria (Nº 49429/99)
Shofman - Russia (Nº 74826/01)
Judgments 24.11.2005 [Section I]

Skubenko - Ukraine (Nº 41152/98)
Evrim Çiftçi - Turkey (Nº 59640/00)
Öncü and Others - Turkey (Nº 63357/00)
Şaşmaz and Others - Turkey (Nº 67140/01)
Aşga - Turkey (Nº 67240/01)
Ekin and Others - Turkey (Nº 67249/01)
Keltaş - Turkey (Nº 67252/01)
Urbino Rodrigues - Portugal (Nº 75088/01)
Belanova - Ukraine (Nº 1093/02)
Shevelev - Ukraine (Nº 10336/02)
Shevchenko - Ukraine (Nº 10905/02)
Rudenko - Ukraine (Nº 11412/02)
Karpova - Ukraine (Nº 12884/02)
Alagia and Nusbaum - France (Nº 26160/02)
Kim - Ukraine (Nº 29872/02)
Kurshatsova - Ukraine (Nº 41030/02)
Yukin - Ukraine (Nº 2442/03)
Vishnevskaya - Ukraine (Nº 16881/03)
Zakharov - Ukraine (Nº 17015/03)
Ilchenko - Ukraine (Nº 17303/03)
Nosal - Ukraine (Nº 18378/03)
Grachevy and Others - Ukraine (Nº 18858/03, Nº 18923/03 and Nº 22553/03)
Buza - Ukraine (Nº 26892/03)
Rybak - Ukraine (Nº 26996/03)
Cherginets - Ukraine (Nº 37296/03)
Nuri Kurt - Turkey/(Nº 37038/97)
Judgments 29.11.2005 [Section II]

Mikolaj and Mikolajova - Slovakia (Nº 68561/01)
Wyszczelski - Poland (Nº 72161/01)
Vanek - Slovakia (Nº 53363/99)
Judgments 29.11.2005 [Section IV]

Article 44(2)(c)

On 15 February 2006 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

The United Macedonian Organisation Ilinden and Ivanov - Bulgaria (44079/98), 20 October 2005 [Section I]
Karakurt - Turkey (45718/99), 20 September 2005[Section IV]
Siemianowski - Poland (45972/99), 6 September 2005 [Section II]
Biro - Slovakia (46844/99), 8 November 2005[Section IV]
Bzdyra - Poland (49035/99), 15 November 2005[Section IV]
Bekir Yildiz - Turkey (49156/99), 6 September 2005 [Section II]
Jaroslaw Niedzwiecki - Germany (58453/00), 25 October 2005[Section IV]
Okpisz - Germany (59140/00), 25 October 2005[Section IV]
Androsov - Russia (63973/00), 6 October 2005 [Section I]
Vasilyev - Russia (66543/01), 13 October 2005 [Section I]
Romanov - Russia (69341/01), 25 October 2005 [Section II]
Müller - Germany (69584/01), 6 October 2005[Section III]
Lupandin - Ukraine (70898/01), 20 September 2005 [Section II]
Yetkinsekerci – United Kingdom (71841/01), 20 October 2005 [Section III]
Sgattoni - Italy (77132/01), 6 October 2005 [Section III]
Kálnási - Hungary (4417/02), 27 September 2005 [Section II]
Özata - Turkey (19578/02), 20 October 2005 [Section III]
Górski - Poland (28904/02), 4 October 2005 [Section IV]
Mathew - Netherlands (24919/03), 29 September 2005 [Section III]
« Amat-G » Ltd and Mabaghishvili - Georgia (2507/03), 27 September 2005 [Section II]
Carvalho Acabado - Portugal (30533/03), 18 October 2005 [Section II]
Güllü - Turkey (1889/04), 10 November 2005[Section IV]
Günaydin - Turkey (27526/95), 13 October 2005 [Section I]
N.A. and Others - Turkey (37451/97), 11 October 2005[Section II]
Kutepov and Anikeyenko - Russia (68029/01), 25 October 2005 [Section II]
Butsev - Russia (1719/02), 22 September 2005 [Section I]
Denisenkov -Russia (40642/02), 22 September 2005 [Section I]
Bracci - Italy (36822/02), 13 October 2005 [Section III]
Ostrovar - Moldova (35207/03), 13 September 2005 [Section IV]

Statistical information[1]

Judgments delivered	February	2006
Grand Chamber	0	1(2)
Section I	13	30(31)
Section II	36(43)	78(86)
Section III	25(27)	30(32)
Section IV	16	39
former Sections	0	3
Total	**90(99)**	**181(193)**

Judgments delivered in February 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	13	0	0	0	13
Section II	35(42)	1	0	0	36(43)
Section III	22(24)	3	0	0	25(27)
Section IV	16	0	0	0	16
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**86(95)**	**4**	**0**	**0**	**90(99)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	30(31)	0	0	0	30(31)
Section II	75(83)	3	0	0	78(86)
Section III	27(29)	3	0	0	30(32)
Section IV	37	1	0	1	39
former Section I	0	0	0	0	0
former Section II	3	0	0	0	3
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**173(185)**	**7**	**0**	**1**	**181(193)**

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

Decisions adopted		February	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		15	24
Section II		2	12
Section III		1	3
Section IV		5	15(16)
Total		**23**	**54(55)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	6	12
	- Committee	312	966
Section II	- Chamber	4	12
	- Committee	506	930
Section III	- Chamber	12(13)	22(24)
	- Committee	250	551
Section IV	- Chamber	10	26(27)
	- Committee	232	1018
Total		**1332(1333)**	**3537(3540)**
III. Applications struck off			
Section I	- Chamber	4	13
	- Committee	5	10
Section II	- Chamber	15	44
	- Committee	9	23
Section III	- Chamber	5	8
	- Committee	3	9
Section IV	- Chamber	3	10
	- Committee	4	15
Total		**48**	**132**
Total number of decisions[1]		**1403(1404)**	**3723(3727)**

[1] Not including partial decisions.

Applications communicated	February	2006
Section I	58	116
Section II	46	99(101)
Section III	130	171
Section IV	73	115
Total number of applications communicated	**307**	**501(503)**

Articles of the European Convention of Human Rights and Protocols Nos. 1, 4, 6 and 7

Convention

Article 2 :	Right to life
Article 3 :	Prohibition of torture
Article 4 :	Prohibition of slavery and forced labour
Article 5 :	Right to liberty and security
Article 6 :	Right to a fair trial
Article 7 :	No punishment without law
Article 8 :	Right to respect for private and family life
Article 9 :	Freedom of thought, conscience and religion
Article 10 :	Freedom of expression
Article 11 :	Freedom of assembly and association
Article 12 :	Right to marry
Article 13 :	Right to an effective remedy
Article 14 :	Prohibition of discrimination
Article 34 :	Applications by person, non-governmental organisations or groups of individuals

Protocol No. 1

Article 1 :	Protection of property
Article 2 :	Right to education
Article 3 :	Right to free elections

Protocol No. 4

Article 1 :	Prohibition of imprisonment for debt
Article 2 :	Freedom of movement
Article 3 :	Prohibition of expulsion of nationals
Article 4 :	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1 :	Abolition of the death penalty

Protocol No. 7

Article 1 :	Procedural safeguards relating to expulsion of aliens
Article 2 :	Right to appeal in criminal matters
Article 3 :	Compensation for wrongful conviction
Article 4 :	Right not to be tried or punished twice
Article 5 :	Equality between spouses