CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 49
on the case-law of the Court
January 2003

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

Statistical information[1]

Judgments delivered		**January**
Grand Chamber		0
Section I		29(31)
Section II		11
Section III		4
Section IV		11
Sections in former compositions		1
Total		**56(58)**

Judgments delivered in January 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	1[2]	1
Section I	22(24)	5	0	2[3]	29(31)
Section II	10	1	0	0	11
Section III	4	0	0	0	4
Section IV	10	1	0	0	11
Total	**46(48)**	**7**	**0**	**3**	**56(58)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Revision.
3. One revision judgment and one just satisfaction judgment.

Decisions adopted			January
I. Applications declared admissible			
Grand Chamber			0
Section I			5(6)
Section II			11
Section III			12
Section IV			11
former Section III			1
Total			**40(41)**
II. Applications declared inadmissible			
Section I	- Chamber		2
	- Committee		707
Section II	- Chamber		8
	- Committee		267
Section III	- Chamber		9(10)
	- Committee		310
Section IV	- Chamber		20
	- Committee		323
Total			**1646(1647)**
III. Applications struck off			
Section I	- Chamber		1
	- Committee		1
Section II	- Chamber		5
	- Committee		4
Section III	- Chamber		15
	- Committee		2
Section IV	- Chamber		59
	- Committee		1
Total			**88**
Total number of decisions[1]			**1775(1777)**

1. Not including partial decisions.

Applications communicated		January
Section I		16(18)
Section II		25
Section III		17
Section IV		50
Total number of applications communicated		**108(110)**

ARTICLE 2

LIFE
Death of applicant's father in shooting incident involving village guards: *admissible*.

BİLGİN - Turkey (N° 40073/98)
Decision 28.1.2003 [Section II]

The application concerns the circumstances in which the applicant's father died in August 1994. In response to the criminal complaint brought by the applicant's brother in 1994, the gendarmerie and later the public prosecutor examined three village guards - a suspect and two witnesses - whose evidence allowed them to establish the events leading up to the death of the applicant's father, who was shot while approaching the village at night with a stick in his hand. Several other guards appeared before the public prosecutor in 1995. In January 1996, the public prosecutor brought charges of intentional homicide against ten guards in the Assize Court, while admitting that the person mainly responsible for the death could not be identified. One of the accused, F.Y., stated that Inspector H.E., who arrived on the scene after the shooting, had advised that only one of them should be blamed for the crime. For that purpose, he allegedly cast lots between the three guards who had been standing closest to the victim. This allegedly led to F.Y.'s being designated as the one who had fired the fatal shot, and false statements were signed to that effect. The two other guards involved confirmed this version of the facts. In March 1997, the applicant entered the proceedings as an "intervening party", while reserving his civil law entitlement to compensation for his father's death. In June 1997, Inspector H.E. and six subordinates were charged with preparing a false report, concealing evidence, abusing their office - in short, obstructing investigation of the crime. They were acquitted for lack of evidence in October 1998. In September 1997, the Assize Court found that the guards involved, having acted while on duty, should be judged under the law on prosecution of public officials. It accordingly suspended judgment, since the prosecution could not be taken further without the Administrative Council's prior approval. The applicant contested this decision unsuccessfully. On the strength of an inspector's report on the administrative investigation, the Administrative Council decided that the guards should not be prosecuted. This decision was upheld by the Regional Administrative Court in September 1998, on the ground that the allegations of voluntary homicide were unsupported, and that there was not enough evidence to justify prosecution.
Admissible under Articles 2 and 13.

LIFE
Suicide in custody: *inadmissible*.

YOUNGER - United Kingdom (Nº 57420/00)
Decision 7.1.2003 [Section II]

The applicant's son, S., committed suicide in custody in February 1999 at the age of 20. He was arrested for driving offences and taken to a police station. There he met with a solicitor, whom he informed of his heroin addiction. The solicitor advised him that if he saw the police surgeon in order to obtain medication, his addiction would not be kept confidential and would diminish his chances of being released on bail. Although S. was apprehensive about spending the night in custody, the solicitor described him as rational and articulate at that point. The following morning, S. asked to see a doctor. He did not give details, stating instead that it was on a personal matter. He informed the police officer on duty that he preferred to

see a doctor before going to prison, where a medical consultation would be more difficult. The police officer and the police surgeon formed the view that this was not an emergency request and that there was no need to delay S.'s transfer to the Magistrates' Court, where he could, if he wished, see a doctor later on. The police officer later stated that S. had not displayed any sign of physical or mental distress during his detention at the police station. S. was handed over to Group 4 (a private company responsible for escorting persons to and from the courts and prison) to be taken to court. The police officers informed the Group 4 employees about the request for a doctor but were told that it was unlikely that a doctor would be called, as the company would have to bear the costs. After arriving at the court building, S. repeated his request for a doctor. He also told his custodians about his addiction. The senior staff member tried to arrange for the hearing to be held as soon as possible. A community psychiatric nurse arrived during the morning, but did not contact S. When S.'s solicitor came to see him, he advised him that he could see a doctor at that point without jeopardising his chance of bail at the imminent hearing. He found S. to be calm, rational and responsive, although worried at the prospect of prison. The hearing took place in the afternoon and S. was remanded to a young offenders' institution, where he had been previously. The guard escorting him stated that he was in good sprits up until bail was denied, whereupon he became very quiet. A different account was given by S.'s brother, who recalled him crying in the courtroom and screaming in the corridor. His solicitor met with him after the hearing and found him to be very unhappy about being sent to the institution. He mentioned suicide, a remark that his solicitor took seriously. Immediately after the interview, the solicitor informed the senior staff member of the failure to arrange for his client to see a doctor. She replied that she had been unaware of the request and that, in any event, she had been trying without success to find a doctor for another detainee. The solicitor also informed her of his concern at his client's allusion to suicide. A staff member was sent to check on S., who, in the seven minutes since the end of the interview with his solicitor, had hanged himself by his shoelaces from the open hatch in the door of his cell. Staff attempted to resuscitate him. He was taken in an ambulance to hospital where he died the next day.

An official inquiry was held into the death. It found, *inter alia*, that certain significant information had been omitted from the official form that accompanies detainees: repeated requests for a doctor, the fact of S.'s addiction, the change in his behaviour following the hearing. The report of the inquiry also referred to a memorandum circulated to Group 4 staff in the month before S. died, instructing them to ensure that cell door hatches were kept shut while the cell was occupied. The memorandum did not specify that the reason for the instruction was to try to prevent suicides. The potential danger of leaving hatches open was originally identified by an official circular in 1968. The staff who had dealt with S. told the inquest that they were unaware of the memorandum and that it had been policy at that time to leave hatches open. The senior staff officer testified that, nearly one year after the death of S., she had still not been informed of the purpose of the memorandum. The applicant was advised by her solicitor and by counsel that she had no viable cause of action for damages and would thus fail to qualify for legal aid. She was therefore unable to bring legal proceedings to establish the liability of her son's custodians for failing to prevent his death or to seek damages for his death.

Inadmissible under Article 2: The issue to be examined was whether the authorities ought to have known there was a risk of suicide, it being accepted by the applicant that as soon as the authorities had actual knowledge they had reacted promptly. Although the failure to make a written note of S.'s requests to see a doctor and of his drug addiction was a matter for concern, this information was not sufficient to put the authorities on notice that S. was a suicide risk. He had no history of mental health problems or suicidal tendencies, and his behaviour during his detention showed no particular sign of physical or mental stress. The applicant's argument that if her son had been seen by a doctor or the psychiatric nurse there was a real possibility that the authorities would have become aware of his vulnerability to the risk of suicide was too speculative. A "real possibility" test put the threshold for determining whether there has been a violation of Article 2 far too low. Even if such a test were applied, it would be pure speculation to conclude that, prior to the hearing, a medical professional would

have alerted the authorities and averted the tragic outcome. In all the circumstances, it could not be concluded that the authorities ought to have known that S. was a real and immediate suicide risk before his solicitor alerted them to his client's state of mind. In the absence of foreseeability, the authorities were not in breach of their positive obligation under Article 2 to protect S.'s life.

The applicant further contended that, in view of the enhanced risk of suicide in a custodial situation, the safest course for the authorities would be to adopt a minimum standard of care for all prisoners, including the closure of cell door hatches. However, the failure to observe the instruction regarding hatches did not of itself give rise to a violation of Article 2, given that the authorities had no actual or imputed knowledge that S. was a real and immediate suicide risk. Moreover, such a proposition was unsubstantiated: the statistical data available indicated that suicide among detainees in the United Kingdom was rare. To regard all prisoners as suicide risks would place a disproportionate burden on the authorities as well as unduly restrict the liberty of the individual. Article 2 did not impose any such minimum standard upon the State in the absence of any other evidence that an identified individual was a known suicide risk. Nevertheless, the Court expressed its particular disquiet that the instruction regarding cell door hatches had not been followed and that, almost one year later, staff were still unaware of the reason for the instruction.

EXPULSION

Threatened deportation to Nepal: *communicated*.

BASNET - United Kingdom (Nº 43136/02)

[Section IV]

The applicant is a citizen of Nepal, currently resident in the United Kingdom. She arrived there in October 2000 and requested asylum, claiming that she had suffered ill-treatment on account of her husband's political activities. He had been arrested in April 2000 and her son had been arrested six weeks later. Neither had been seen since. Her asylum application was rejected on the basis that her case did not come within the Geneva Convention: she was not facing persecution, her claims did not amount to a sustained pattern or campaign of persecution and she could have attempted to seek redress through the proper Nepalese authorities; there were also significant discrepancies in her account. The applicant appealed to the Special Adjudicator against the refusal of asylum. Although she was legally represented at the hearing, she prepared the written submissions herself. Her appeal was rejected on the ground that her account was unreliable and inconsistent in certain significant respects. The Special Adjudicator considered that there was no reasonable likelihood of her being targeted, detained, tortured, ill-treated or killed in Nepal; her fears were speculative and not well-founded. The applicant subsequently produced a translation of a letter from her lawyer informing her that an arrest warrant had been made out against her for treason and that he was unwilling to represent her on account of harassment by the authorities. The applicant prepared written submissions for the Immigration Appeals Tribunal (IAT), repeating her claims and explaining that the inconsistencies noted by the Special Adjudicator were due to poor translations. The IAT hearing was scheduled for April 2001. The applicant submitted a medical certificate indicating her inability to attend on the appointed date. Her solicitors withdrew just before the hearing, which went ahead nonetheless. The IAT decided to disregard the applicant's further documentary evidence since it had not been filed in triplicate and the applicant had not explained why she had not made these arguments earlier. The IAT upheld the Special Adjudicator's decision. The applicant sought leave to appeal, arguing that her failure to supply documents in triplicate was due to her lack of professional help, as she had not been able to pay her solicitors. She further submitted that the inconsistencies detected in her statements were due to factors such as trauma-induced memory loss and language difficulties, since the interpreters assigned to her were not proficient in her language. Following the refusal of leave to appeal, the applicant applied to the Court of Appeal, which

rejected her application in November 2002 on the basis that no error of law had been made by the IAT. The applicant's removal from the United Kingdom was scheduled for 10 December 2002. On that date, the President of the Chamber applied Rule 39 of the Rules of Court.
Communicated under Articles 2, 3, 5 and 6.

ARTICLE 3

EXPULSION
Intense fear and anxiety at prospect of forcible expulsion to Iran: *communicated*.

OVIHANGY - Sweden (Nº 44421/02)
[Section IV]

The applicant is an Iranian national of Kurdish descent. He arrived in Sweden in April 1999, without a passport or any other form of official identification, and applied for asylum. He claimed that he had become an activist for the Kurdish cause in 1990 and had been arrested, detained and tortured in 1994, after which he had avoided political activity. In February 1999, following the arrest of Abdullah Öcalan, he had participated in a public demonstration, handing out posters and leaflets. The military had intervened and the applicant had gone into hiding. He learned of the arrest of his father and brother and secretly left the country for Turkey, from where he travelled to Sweden. His asylum application was rejected by the National Immigration Board in September 1999 and his appeal was rejected by the Aliens Appeals Board in August 2000. The Board took the view that, apart from those who worked actively for Kurdish political goals, the members of this ethnic minority were normally left in peace. As the applicant had ceased political activity in 1994, his fears were exaggerated. The Board also had doubts about his credibility on certain points. The applicant submitted a new application to the Board, producing a medical opinion that pointed to a risk of suicide should he be deported. The Board rejected the application, considering that the applicant was not suffering from any serious mental illness. The applicant made another application, providing further information about the risks he would face in Iran and a medical diagnosis of post-traumatic stress disorder. This application was rejected in December 2000. The applicant petitioned the UN Committee against Torture, which found his claims to be unsubstantiated. He was detained in August 2002 pending expulsion. In October 2002, he was put on a plane to Istanbul, accompanied by two police officers. He maintains that he was given tranquillisers before and during the flight. He was violent and disruptive on the plane and at Istanbul airport and attempts to make him board a plane to Teheran the next day failed. He was therefore taken back to Sweden. He was kept in detention until 23 December. He lodged a new application for a residence permit and a stay of execution of his expulsion, attaching further medical and psychiatric assessments that attested to his panic and anxiety in prison and his symptoms of post-traumatic stress disorder. A further psychiatric assessment concluded that because of the long-lasting strains to which the applicant had been exposed (torture, political persecution), the applicant's mental health would be significantly prejudiced should he be forcibly expelled and that there was a high risk of suicide. On 2 January 2003, the expulsion order was stayed. In addition to arguing that his expulsion would be contrary to Article 3, the applicant contends that his detention was illegal, since it exceeded the period of two months permitted in Swedish law.
Communicated under Articles 3 and 5(1)(f).

ARTICLE 5

Article 5(3)

JUDGE OR OTHER OFFICER
Detention on order of prosecutor: *admissible*.

JASÍNSKI - Poland (Nº 30865/96)
Decision 21.1.2003 [Section IV]

The applicant was arrested by police on suspicion of burglary in January 1994. Two days later he was brought before a district prosecutor, charged with six counts of burglary and detained on remand. The prosecutor considered that there was a reasonable suspicion, given that the applicant had been arrested *in flagrante delicto*; he also relied on the seriousness of the events in question. The applicant's detention was continuously extended up to the conclusion of his trial in April 1995 (over fifteen months). The first two extensions (up until 8 April 1994) were ordered by the district prosecutor on the grounds that it was necessary to ensure the proper conduct of the proceedings, the likelihood of the applicant having committed other similar offences and the risk that he might hinder the gathering of evidence. Further extensions were granted in March and May 1994 by the District Court in view of the reasonable suspicion against the applicant, the need for further forensic reports and the processing of fresh evidence to support further charges. In August 1994, a district judge, Z.R., extended the applicant's detention, considering that the charge had a "sufficient degree of verisimilitude" and in view of the need to obtain evidence from psychiatrists of the applicant's criminal responsibility. Shortly afterwards, the applicant was indicted on 29 charges of burglary. The applicant again sought his release, but his application was rejected by Z.R. and an appeal was unsuccessful. The trial was due to commence on 7 December 1994, with Z.R. presiding, but the applicant objected, arguing that due to his involvement in the proceedings, the judge lacked impartiality. His objection was dismissed by a panel of three judges. Z.R. again rejected a further application for release, a decision that was upheld on appeal. The applicant made two further, unsuccessful applications for release before his trial began in March 1995. He also requested access to the prosecution file. Z.R. ruled that he could consult the file on the day of the first hearing. On that day, he was allowed ten minutes to look at a file of a thousand pages. At the end of the trial, he was sentenced to four years' imprisonment and a fine. Appeals lodged by the applicant and his lawyer were dismissed by the Regional Court in October 1995.
Admissible under Article 5(3) (ordering of detention by a prosecutor) and Article 6(1) (impartial tribunal).
Inadmissible under Article 5(3) as to the length of pre-trial detention: The authorities first of all relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged and its serious nature. As the investigation proceeded, the applicant's detention was justified by the need to gather new evidence relating to the new charges laid against him. Later, at the trial stage, the District Court and Regional Court were of the view that the applicant's continued detention was justified under national law given the serious nature of the charges and the fact he had relapsed into crime. The proceedings had been conducted with due diligence, having regard to the nature of the case and the volume of the evidence: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Parliamentary immunity – decision of Senate resulting in discontinuation of criminal proceedings against a senator : *violation*.

CORDOVA - Italy (n° 1) (Nº 40877/98)
Judgment 30.1.2003 [Section I]

Facts: At the time of the events in question, the applicant was a public prosecutor. As such, he was required to investigate a person who had had dealings with a former President of Italy, now a life member of the Senate. The latter sent the applicant a number of sarcastic letters, followed by a gift of children's toys. The applicant considered that his honour and reputation had been injured, and lodged a criminal complaint against the senator, who was prosecuted for insulting a public official, with the applicant appearing as a civil party in the proceedings. The Senate decided, however, that the senator's constitutional immunity covered the acts of which he had been accused, and its President so informed the district court judge hearing the case, who accordingly terminated the proceedings. The applicant then asked the public prosecutor to appeal against the order terminating the proceedings - which would have allowed him to raise a question of conflict of powers before the Constitutional Court at a later stage. The public prosecutor refused, on the grounds that the Senate had not used its power arbitrarily.
Law: Government's preliminary objection (non-exhaustion) – Article 35(4) of the Convention allows the Court to reject an application which it considers inadmissible under Article 35 at any stage in the proceedings, but only new facts and exceptional circumstances may lead it to reconsider its rejection of an objection lodged when the admissibility of the application was being examined. The Government has produced nothing which might lead the Court to reconsider its position on admissibility. Its application is accordingly rejected.
Article 6(1) – To have an effective right to a court, an individual must have a clear and practical possibility of contesting any act which affects his rights. The Senate's decision to extend the parliamentary immunity guaranteed by the Constitution to the acts complained of, and the district court judge's refusal to seek a ruling on a conflict of state powers from the Constitutional Court, led to termination of the proceedings brought by the applicant, who was thus deprived of any possibility of obtaining compensation for the alleged injury. In other words, his right of access to a court was violated. The aims pursued by this interference were legitimate, since they were connected with protecting free parliamentary debate and maintaining the separation of powers between legislature and judiciary. As for the proportionality of the interference, it would be contrary to the aim and purpose of the Convention if adoption of one of the systems normally used to give members of parliament immunity automatically absolved Contracting States of all liability under the Convention in this area. A state cannot, unreservedly and without supervision by the Convention bodies, withdraw a whole series of civil actions from the courts' jurisdiction or exempt certain categories of person from all liability, without disregarding the pre-eminence of law in a democratic society and Article 6(1). In a democracy, parliament or other comparable bodies provide vital tribunes for political debate. Pressing reasons are thus needed to justify any interference with freedom of expression, as practised in these bodies. Parliamentary immunity cannot therefore be regarded, in general, as a disproportionate restriction on the right of access to a court guaranteed by Article 6(1). In this connection, immunity covering

statements made in parliamentary debates, and designed to protect the interests of parliament as a whole, rather than those of individual members, has been judged compatible with the Convention. In this case, however, the conduct complained of had nothing to do with the exercise of parliamentary functions in the strict sense, but seemed more the product of a private quarrel. In such cases, access to the courts cannot be refused simply because the quarrel might be political, or connected with a political activity. Because there is no obvious link with a parliamentary activity, the concept of proportionality between the aims pursued and the means employed must be interpreted narrowly. This applies particularly when restrictions on the right to access result from a decision taken by a political body. To conclude differently would be to restrict the individual's right of access to a court, in a manner incompatible with Article 6(1) of the Convention, whenever the statements at issue in proceedings had been made by a member of parliament. Thus the termination of the proceedings to the senator's advantage, and the decision to block any other legal action aimed at protecting the applicant's reputation, failed to respect the fair balance which must exist in this area between the need to protect the general interests of the community and the need to protect the fundamental rights of individuals. Moreover, the applicant had no other reasonable ways of effectively protecting the rights guaranteed him by the Convention, and the Italian Constitutional Court now considers it unlawful that immunity should extend to remarks having no substantial connection with previous parliamentary acts which the representative in question could be taken as reflecting.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant the sum of 8,000 € for non-material damage, and the sum which he claims to cover the cost of the proceedings before the Convention bodies.

ACCESS TO COURT
Parliamentary immunity – annulment of conviction for defamatory statements made at electoral meeting by a Member of Parliament : *violation*.

CORDOVA - Italy (nº 2) (Nº 45649/99)
Judgment 30.1.2003 [Section I]

Facts: In 1993, the applicant was a public prosecutor in the prosecutor's department at Palmi. At two electoral meetings in Palmi, S., a member of parliament, made a number of coarse and offensive comments concerning the applicant, who lodged a complaint of aggravated defamation. The prosecutor's department at Palmi committed S. for trial, and the applicant participated in the proceedings as a civil party. S. was given a suspended prison sentence and ordered to pay the applicant damages, the amount to be determined in civil proceedings. The court did not think it necessary to suspend the proceedings, so that the opinion of parliament could be sought, since the statements complained of had not been made in connection with the exercise of parliamentary functions – and were not therefore covered by the parliamentary immunity guaranteed in the Constitution. S. appealed unsuccessfully against the judgment. He appealed again to the Court of Cassation, which suspended the proceedings and ordered referral of the matter to the Chamber of Deputies. The latter took the view that S. had expressed these opinions while exercising his functions as a member of parliament. The Court of Cassation accordingly set aside the judgments of the first-instance and appeal courts, and refused to allow the applicant to raise the question of a conflict of state powers before the Constitutional Court.
Article 6(1) – To have an effective right to a court, an individual must have a clear and practical possibility of contesting any act which affects his rights. As a result of the Chamber of Deputies' decision to extend immunity to the parliamentarian's statements, and the Court of Cassation's refusal to seek a ruling on a conflict of state powers from the Constitutional Court, the sentences passed on the parliamentarian were quashed, and the applicant was deprived of any possibility of obtaining redress for the alleged injury. In other words, his right of access to a court was violated. The aims pursued by this interference were legitimate,

since they were connected with protecting free parliamentary debate and maintaining the separation of powers between legislature and judiciary. As for the proportionality of the interference, it would be contrary to the aim and purpose of the Convention if adoption of one of the systems normally used to give members of parliament immunity automatically absolved Contracting States of all liability under the Convention in this area. A state cannot, unreservedly and without supervision by the Convention bodies, withdraw a whole series of civil actions from the courts' jurisdiction or exempt certain categories of person from all liability, without disregarding the pre-eminence of law in a democratic society and Article 6(1). In a democracy, parliament or other comparable bodies provide vital tribunes for political debate. Pressing reasons are thus needed to justify any interference with freedom of expression, as practised in these bodies. Parliamentary immunity cannot therefore be regarded, in general, as a disproportionate restriction on the right of access to a court guaranteed by Article 6(1). In this case, the statements complained of were made at an election meeting, i.e. outside parliament, were unconnected with the exercise of parliamentary functions in the strict sense, and seemed more the product of a private quarrel. In such cases, access to the courts may not be refused simply because the quarrel might be political, or connected with a political activity. Because there is no obvious link with a parliamentary activity, the concept of proportionality between the aims pursued and the means employed must be interpreted narrowly. This applies particularly when restrictions on the right to access result from a decision taken by a political body. Thus the decision to set aside the judgments given in the applicant's favour and to block any other legal action aimed at protecting his reputation, failed to respect the fair balance which must exist in this area between the need to protect the general interests of the community and the need to protect the fundamental rights of individuals. Moreover, the applicant had no other reasonable ways of effectively protecting the rights guaranteed him by the Convention, and the Italian Constitutional Court now considers it unlawful that immunity should extend to remarks having no substantial connection with previous parliamentary acts which the representative in question could be taken as reflecting.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant the sum of 8,000 € for non-material damage, and the sum which he claims to cover the cost of the proceedings before the Convention bodies.

ACCESS TO COURT
Possibility for landowner to challenge an administrative decision concerning his land which has been published but not served on him in person: *inadmissible*.

GEFFRE - France (N° 51307/99)
Decision 23.1.2003 [Section III]

In 1974, the applicant purchased several plots of land, not designated for building, on the Ile de Ré (Charente-Maritime), and used them as caravan sites. A ministerial order of 23 October 1979 placed the whole of the Ile de Ré on the list of monuments or sites to be conserved or protected in the general public interest. In December 1979 and January 1980, this order was twice published in two newspapers distributed in the communes concerned; it was also posted outside the town hall in Flotte de Ré and published in the compendium of administrative decisions and measures in the *département* of Charente-Maritime. One of the effects of inclusion on the list was a prohibition, provided for in the Town Planning Code, on camping and the parking of caravans, unless special exemption was granted. In 1996, caravans were found parked on the applicant's land on the Ile de Ré, although this land had been included on the list by the ministerial order of 23 October 1979, and was thus subject to the prohibition on camping/caravanning. The applicant was charged in the criminal court with parking caravans unlawfully on a listed site. He was fined and ordered to restore the site to its original condition, having objected unsuccessfully that the authorities had broken the

law by failing to give individual notice of the 1979 listing order. This sentence was upheld on appeal, and a further appeal to the Court of Cassation was also dismissed.
Inadmissible under Article 6(1): French law allowed the applicant, not only to contest the lawfulness of the disputed order in the administrative courts and seek compensation for the damage caused him by the prohibition on parking caravans on his site, but also to apply to the authorities for an exemption. The question which needs answering is whether the rules on exercise of these remedies, and particularly – in view of the publicity arrangements – the time-limits for using them, ensured effective access to a court, as required by Article 6. The disputed order in this case had been published in two newspapers (one of them a daily) circulated in the commune where the applicant's property lay, had been posted outside the town hall near his place of residence, and had also been published in the compendium of administrative decisions and measures of the *département* in whose principal town he lived. Collective publication has undeniable advantages; it stabilises the legal situation and simplifies the formalities for implementing measures like this, particularly when – as in this case – they apply to extensive holdings and numerous owners. Moreover, the French Government had reacted to the judgment given in the *De Geouffre de la Pradelle* case (judgment of 16 December 1992) by introducing a new system for collective publication of all listing orders. In its Resolution DH(2000)43 of 10 April 2000 on this judgment, the Committee of Ministers stated that the French Government had thus fulfilled its obligations under the former Article 53 of the Convention. The collective publication practised in this case constituted a coherent system, striking a fair balance between the interests of the authorities and those of the persons concerned; specifically, it gave the latter a clear, practical and effective possibility of contesting the administrative measure in question. This being so, the applicant's right of access to a court was not disproportionately restricted: manifestly ill-founded.

FAIR HEARING
Refusal of compensation for minor considered to have consented to sexual offences: *inadmissible*.

AUGUST - United Kingdom (Nº 36505/02)
Decision 21.1.2003 [Section IV]
(see under Article 8, below).

FAIR HEARING
Dismissal of appeal on points of law on basis that the grounds of appeal were not such as to warrant admissibility: *inadmissible*.

BURG and others - France (N° 34763/02)
Decision 28.1.2003 [Section II]

In a dispute with their employer, the applicants were successful at first instance before the Labour Court. When the employer appealed, the Appeal court set the judgment aside. The Social Chamber of the Court of Cassation rejected an appeal on a point of law brought by the applicants, on the ground that their argument would not succeed in the appeal proceedings (Article L. 131-6 of the Judicial Code).
Inadmissible under Article 6(i): The Court has ruled that Article 6 does not require that detailed reasons be given for decisions in which an appeal court, on the basis of a specific legal provision, dismisses an appeal as standing no chance of succeeding, and this case-law has already been applied to administrative court proceedings in France. There is no reason why it should not be applied to the ordinary courts as well, when the latter follow a similar procedure: manifestly ill-founded.

[This decision extends application of the case-law derived from *Société anonyme Immeuble Groupe Kosser v. France* (dec.), No. 38748/97, judgment of 9 March 1999, and *Latournerie v. France* (dec.), No. 50321/99, decision of 10 December 2002, which concerned Section 11 of the Act of 31 December 1987, introducing a prior review procedure for appeals on points of law to the *Conseil d'Etat*.]

FAIR HEARING
Adoption of law during dispute involving the State: *admissible*.

GORRAIZ LIZARRAGA and others - Spain (Nº 62543/00)
Decision 14.1.2003 [Section IV]
(see below).

EQUALITY OF ARMS
Right of State Counsel to submit observations to the Constitutional Court in proceedings brought against the State by the applicants, who did not have the same right: *admissible*.

GORRAIZ LIZARRAGA and others - Spain (Nº 62543/00)
Decision 14.1.2003 [Section IV]

There are six applicants – an association (*Coordinadora de Itoiz*) and five individual members of that association. The third applicant is also the association's president and legal representative. The association's aim is to co-ordinate the efforts of its members to oppose construction of the Itoiz dam and protect areas affected by the project. In November 1990, it contested the technical plan for construction of the dam approved by the Ministry of Public Works. Its application was successful, and the plan was partly set aside by decision of the *Audiencia nacional* in September 1995. In January 1996, the association secured provisional enforcement of the judgment, ordering provisional suspension of the work. The state appealed on a point of law and, in a final judgment given in July 1997, the Supreme Court rejected part of the dam construction project, specifically saving the applicants' holdings, by reason of their ecological value. Filling of the dam was finally prohibited. However, the state argued that changes in the law brought about by an act on natural areas adopted in June 1996 made it legally impossible to execute the Supreme Court's judgment of July 1997. It contended that these changes in the law meant that work of general interest could now be carried out on land previously excluded from the flooding zone. The applicant association rejected this position, arguing that the Act of June 1996 had post-dated the administrative decisions reviewed in the proceedings, and also the judgment and decisions on provisional execution, and could not be therefore be applied in this case. It applied for a preliminary ruling on the constitutional validity of certain provisions in the act. In December 1997, the *Audiencia nacional* asked the Constitutional Court to give a ruling on the question raised by the applicant association, and added a new question of its own. In July 1998, the Constitutional Court formally agreed to consider the questions raised in the application, and notified them to the state, giving it two weeks to submit its observations. The state's legal representative presented its observations in September 1998. The Attorney General also submitted observations. In March 2000, the Constitutional Court decided that the contested provisions of the Act of June 1996 were compatible with the Constitution and accordingly rejected the application for a preliminary ruling that they were unconstitutional.
Admissible under Articles 6(1) and 8, and Article 1 of Protocol No. 1: The Court has decided to join to the merits the Government's preliminary objections concerning, firstly, the absence of "victims" and the individual applicants' failure to exhaust domestic remedies, and, secondly, the inapplicability of Article 6(1) to the proceedings brought by the applicant association.

IMPARTIAL TRIBUNAL
Impartiality of the Maritime Chambers: *admissible*.

BRUDNICKA and others - Poland (N° 54723/00)
Decision 16.1.2003 [Section III]

The applicants are the wives and mothers of sailors who died when their ship was lost in the Baltic, and were parties in proceedings brought in the Maritime Chamber at the Regional Court in Szczecin to establish the causes of the disaster. In its decision, the court blamed the ship's captain, the technical crew-members and the Polish Shipping Register officials who had verified the state of the ship before the disaster, and the Polish rescue services. This decision was set aside by the Maritime Appeal Chamber at the Regional Court in Gdansk. The Maritime Chamber in Gdansk subsequently found that failings on the part of the crew and the ship's owners, as well as natural causes, had all contributed. Finally, the Maritime Appeal Chamber went some way towards confirming that negligence by the ship's owners and crew had caused the accident, and strongly criticised the rescue operations.
Admissible under Article 6(1), as far as the eleven original applicants are concerned, the question of their victim status being joined to the merits, except in the case of one applicant.
Concerning the Government's preliminary objection that domestic remedies had not been exhausted, since no constitutional appeal had been brought: In the form in which it exists in Polish law, this remedy may be used only against a legal provision taken as the basis for settlement of a dispute. In this case, the Government argues that it could be used against the regulations on the composition of maritime chambers. However, these regulations have no bearing on the merits, and this means that a constitutional appeal – if possible - would never have been an effective remedy in this situation: rejection of the preliminary objection.
Concerning the possibility of bringing a civil action for damages, referred to by the Government in connection with Article 35(1): The Government has failed to indicate against whom such an action would lie, and has cited no examples of its being used successfully in connection with disasters at sea: rejection of the preliminary objection.

Article 6(1) [criminal]

APPLICABILITY
Interlocutory proceedings: *Article 6 inapplicable*.

KORELLIS - Cyprus (Nº 54528/00)
Judgment 7.1.2003 [Section II]

Facts: The applicant was charged with rape. The Assize Court granted the defence's request for forensic examinations to be carried out. The Attorney General applied for judicial review of that decision by means of a writ of certiorari. The application was granted by judge A. of the Supreme Court and the applicant's appeal was dismissed by the plenary court, which included judge G., who had been previously involved in the case as a senior member of the prosecution service. The applicant was subsequently convicted. He appealed against conviction, the first ground of appeal concerning judge G.'s participation. He further lodged a plea for the certiorari judgment of the Supreme Court to be vacated, which was a precondition to the examination of that ground of appeal. The petition was dismissed by the plenary of the Supreme Court, including judge A., an objection to his participation having been rejected. The first ground of appeal was consequently withdrawn and the applicant's other grounds of appeal were rejected.
Law: Article 6(1) – Government's preliminary objection: The issue could not be decided without referring to the trial proceedings as a whole and the objection was therefore joined to

the merits. The Court had found in its decision on admissibility that although the certiorari proceedings, which had taken place before the trial, had not determined a criminal charge against the applicant, they were closely interwoven with the proceedings before the Assize Court. It had considered that the question of the forensic examination was crucial for the outcome of the trial, as it might have disclosed evidence having an important bearing on the applicant's guilt or innocence. However, since then the Court had examined a further application lodged by the applicant, concerning the fairness of his trial, and had come to the conclusion that the evidence at issue and the related interlocutory proceedings had not ultimately played a decisive role in the determination of the criminal charge. The applicant had failed to show the relevance of the forensic examination and indeed it had emerged that such an examination would have been ineffective. In view of the conclusion in relation to the fairness of the trial, the complaint relating to the interlocutory proceedings did not give rise to any issue under Article 6.
Conclusion: no violation (unanimously).

APPLICABILITY
Constitutional Court proceedings: *Article 6 applicable*.

CALDAS RAMIREZ DE ARRELLANO - Spain (N° 68874/01)
Decision 28.1.2003 [Section IV]
(see Article 35(1), below).

ARTICLE 7

Article 7(1)

RETROACTIVITY
Retroactive application of the criminal law: *violation*.

VEEBER - Estonia (no. 2) (Nº 45771/99)
Judgment 21.1.2003 [Section IV]

Facts: The applicant was convicted in October 1997 of tax offences committed between 1993 and May 1995. He was given a suspended sentence of 3 years and 6 months' imprisonment. The court, considering that the acts constituted an ongoing crime, applied the version of Article 148-1 of the Criminal Code which had come into force on 13 January 1995. Prior to that date, conviction under Article 148-1 could take place only if an administrative punishment had been imposed on the person concerned for a similar offence. However, under the new version of Article 148-1 it was only necessary that the offence had been committed intentionally. The applicant's appeal and subsequent appeal on points of law, in which he complained that the law had been applied retroactively, were dismissed.
Law: Article 7(1) – Tax evasion was an offence prior to 13 January 1995 but it was a prerequisite to criminal conviction that the person concerned had previously been subjected to an administrative punishment for a similar offence. The new version of Article 148-1 of the Criminal Code added the condition of intent as an alternative, so that the fact that the applicant had not previously been subjected to an administrative punishment did not bar his criminal conviction. However, the courts brought under the 1995 law acts which had been committed before its entry in force, on the basis that these acts formed a continuing criminal activity which went on after the relevant date. Many of the acts of which the applicant was convicted related exclusively to the period prior to that date and as the sentence imposed on

him took these into account it could not be stated with any certainty that the approach of the domestic courts had not had any effect on the severity of the sanction. Moreover, the case-law of the Supreme Court on the application and interpretation of the 1995 law, which according to the Government made the risk of criminal punishment foreseeable, dated from 1997 and 1998. The applicant could not have expected at the time of the initial discovery of his activities that he would risk criminal conviction, considering the terms of the criminal law in force at that time. The domestic courts thus applied the 1995 law retrospectively to conduct which had not previously constituted a criminal offence.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 2,000 € in respect of non-pecuniary damage. It also made an award in respect of costs.

ARTICLE 8

PRIVATE LIFE
Disclosure to media of CCTV footage of individual who attempted to commit suicide in a public place: *violation*.

PECK - United Kingdom (Nº 44647/98)
Judgment 28.1.2003 [Section IV]

Facts: The applicant attempted to commit suicide in a public street, unaware that he was being filmed by a closed circuit television ("CCTV") camera. The operator, who saw only that the applicant was carrying a kinfe, alerted the police, who intervened and gave the applicant medical assistance. The applicant was released without charge. The local authority released a press feature which included two still photographs from the footage of the incident, without masking the applicant's face, to accompany an article entitled "Defused – the partnership between CCTV and the police prevents a potentially dangerous situation." Two local newspapers also published photographs and a local television broadcast included footage of the incident, with masking which was subsequently found by the Independent Television Commission (ITC) to be inadequate. The local authority also agreed to provide footage for inclusion in "Crime Beat", a series on BBC national television, with the oral condition that no one should be identifiable. However, many of the applicant's friends and family recognised him on the programme and the masking was found by the Broadcasting Standards Commission (BSC) to have been inadequate. The applicant made a number of media appearances to speak out against the dissemination of the footage and his complaints to the ITC and BSC were upheld. A complaint to the Press Complaints Commission was unsuccessful, however, and an application for judicial review was refused, the High Court concluding that the local authority had not acted unlawfully or irrationally.
Law: Article 8 – The monitoring of the actions of an individual in a public place by means of photographic equipment, without recording, does not as such give rise to an interference with private life but the recording of data and the systematic or permanent nature of the record may do so. In the present case, the applicant did not complain that the monitoring of his movements and the creation of a permanent record of itself amounted to an interference; rather, he submitted that the disclosure of that record in a manner which he could not have foreseen gave rise to an interference. The applicant was in a public street, but not for the purpose of participating in a public event, and he was not a public figure; it was late at night and he was in distress and although he was wielding a knife he was not charged with any offence in that respect. The actual suicide attempt was not recorded or disclosed but the immediate aftermath was disclosed to the public without the applicant's identity being adequately masked. As a result, the incident was viewed to an extent which far exceeded any exposure to a passer-by or to security observation and to a degree surpassing what the

applicant could reasonably have foreseen. The disclosure thus constituted a serious interference with the right to respect for private life. It had a basis in domestic law and was foreseeable and it pursued the legitimate aims of public safety, the prevention of disorder and crime and the protection of the rights of others. As to the necessity of the disclosure, the case did not concern the commission of a crime: it was not disputed that the CCTV system played an important role in the detection and prevention of crime, a role rendered more effective through advertising its benefits, but the local authority had other options available. Firstly, it could have identified the applicant and obtained his consent: while individuals might not give their consent and it might not be feasible to obtain consent when footage includes numerous persons, the footage in the present case related to one individual and it was not disputed that the local authority could have made enquiries with the police to establish his identity. Secondly, the local authority could itself have masked the images: while the authority did not have facilities, its guidelines indicated that it was intended to have them, and in any event no attempt was made to mask the images released in its own press feature. Thirdly, the authority could have taken the utmost care in ensuring that the media masked the images: in that connection, it would have been reasonable to demand written undertakings rather than oral requests. The authority did not explore the first two possibilites and the steps it took in respect of the third were inadequate. Particular care was required – including verifying whether the applicant had been charged – where the material was released with the aim of promoting the effectiveness of CCTV in the context of crime prevention. Thus, in the circumstances of the case, there were not relevant and sufficient reasons to justify the direct disclosure of stills to the public without obtaining the applicant's consent or masking his identity, or to justify the disclosures to the media without taking steps to ensure as far as possible that masking would be effected. The applicant's voluntary media appearances did not diminish the serious nature of the interference or reduce the correlative requirement of care. The disclosures were not accompanied by sufficient safeguards and constituted a disproportionate interference with his private life.

Conclusion: violation (unanimously).

Article 13 – The Court confined its assessment to the remedies which could be considered as having had some relevance to the applicant's complaints. As to judicial review, the sole issue before the domestic courts was whether the policy could be said to be "irrational". This threshold was placed so high that it effectively excluded any consideration of the question of whether the interference with the applicant's right answered a pressing social need or was proportionate. Consequently, judicial review did not provide an effective remedy. As to the media commissions, their lack of power to award damages meant that they could not provide an effective remedy. Finally, as to an action in breach of confidence, it could be concluded that the applicant did not have an actionable remedy at the relevant time: it was unlikely that the courts would have accepted that the images had the "necessary quality of confidence" or that the information was "imparted in circumstances importing an obligation of confidence". Moreover, once the material was in the public domain, its re-publication was not actionable as a breach of confidence, yet such an action could not have been contemplated before the applicant became aware of the disclosures. Given these deficiencies, it was not necessary to consider whether an award of damages would have been available. In conclusion, the applicant had no effective remedy.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 11,800 € in respect of non-pecuniary damage. It also made awards in respect of costs and expenses.

PRIVATE LIFE
Minor considered to have consented to sexual offences and therefore not eligible for victim compensation: *inadmissible*.

AUGUST - United Kingdom (Nº 36505/02)
Decision 21.1.2003 [Section IV]

The applicant was born in 1976 and taken into voluntary care by the local authority at the age of 8. He was subsequently diagnosed as being a disturbed child, in need of psychiatric assessment. In 1990, at the age of 13 and in residential care, the applicant engaged in sexual acts with a 53 year-old man (C.) in a public lavatory for payment. Further sexual acts were performed in the subsequent months. In 1993, C. was convicted of one count of buggery involving the applicant, in which the evidence was that the former had been the passive participant, as well as two other offences. A sentence of 7 years' imprisonment was imposed. This was reduced to 5 years on appeal, in particular in light of the applicant's active and willing participation. In 1997, the applicant applied to the Criminal Injuries Compensation Authority (CICA). His application was rejected on the basis that he was not a victim within the meaning of the law, had contributed to the incident and had since committed a series of criminal offences himself. The applicant appealed, arguing that although he had voluntarily engaged in sexual acts with an adult, as a minor he was incapable of consenting. He further cited the fact that he was in care and had a history of sexual abuse. The Appeal Panel rejected his appeal, finding that there had not been a crime of violence. The applicant sought judicial review, producing a psychiatric report that indicated he was a damaged and vulnerable child, a type preyed upon by paedophiles, and arguing that in view of C.'s age it could not be said that the applicant's choice was informed. The High Court ruled that the absence of consent did not render the crime violent. Rather this was a matter of fact. The applicant appealed unsuccessfully to the Court of Appeal. Leave to appeal to the House of Lords was refused.
Inadmissible under Article 8: The situation in this case was significantly different from *X and Y v. the Netherlands*, since C. had been prosecuted, convicted and sentenced to a substantial term of imprisonment. It could not be said that United Kingdom criminal law condoned or permitted the acts that C. performed. Regarding the applicant's unsuccessful claim for compensation, Article 8 did not include as such the right to compensation. Nor could it be argued that the provision of an *ex gratia* award by the State to the applicant formed part of the deterrent framework to protect children effectively against adult abusers. The decision of the courts not to equate sexual offences against children with crimes of violence in all circumstances did not deprive the applicant of protection of his physical and moral integrity. The applicant had been a willing, active participant in the sexual acts and sought to make money from them. It was not inconsistent with the acknowledgement of the applicant's vulnerable and damaged character to find that he was not a victim of violence: *manifestly ill-founded*.
Inadmissible under Article 6(1): The Criminal Injuries Compensation scheme was not concerned with civil or tortious liability for injury, rather with *ex gratia* payments. Even assuming that the proceedings before the CICA and the Appeal Panel did come within the scope of Article 6(1), this provision did not guarantee any particular content for "rights and obligations" within the domestic legal order. The decisions taken by the relevant bodies regarding the substantive content of any "right" were matters which in general fell outside the scope of the Court's supervision. As the applicant had had access to the courts with legal representation and the opportunity to make his arguments, there was no appearance of unfairness in the proceedings: *manifestly ill-founded*.
Inadmissible under Article 14: Even assuming that the applicant's complaints could, arguably, fall within the scope of either Article 8 or Article 6, he could not claim to be a victim of discrimination. The compensation scheme was restricted to certain categories of criminal offences, particularly "crimes of violence". This criterion applied to adults and children alike, with each decision as to whether the crime was violent being made on the facts of each case.

The taking into account of the applicant's participation in the offences did not disclose a difference of treatment based on any element of his personal status. Though children were often more vulnerable and more in need of protection than adults, this was not a general justification for different considerations when assessing eligibility for compensation for criminal injuries. The restriction of the compensation scheme to particularly serious crimes of violence fell within the State's margin of appreciation and could be regarded as having objective and reasonable justification: *manifestly ill-founded*.

FAMILY LIFE

Urgent removal of children from family home and placement in care, with prohibition on contact: *admissible*.

HAASE - Germany (Nº 11057/02)
Decision 23.1.2003 [Section III]

The applicants are spouses. Mrs Haase has eleven children, seven being from a previous marriage. Following her divorce in 1993, she was awarded custody of her three youngest children. She married Mr Haase in 1994. Four children were born of their marriage. In 2001, the applicants requested family aid from the Youth Office. They agreed to a psychological assessment of their family situation. The designated expert met with Mrs Haase and three of her children on several occasions at the family home in September and October 2001. The applicants then withdrew their co-operation, disagreeing with the expert on certain matters. In December 2001 the expert reported back to the Youth Office. He considered that the children's normal development was in jeopardy, that their parents were often unreasonably harsh and had beaten them and that any further contact between the children and the parents should be severed. The Youth Office immediately sought and obtained an injunction from the District Court withdrawing the applicants' parental rights in respect of the seven children living with them, including the youngest, who was just one week old and still in the maternity hospital. The court considered that the parents were unable to give satisfactory care and education, and were abusive towards them to the point that the only possible means of protecting the children's well-being was to remove them from their care. The court authorised the use of force if necessary to enforce its decision. All contact between the parents and the children was forbidden and the latter's whereabouts were not to be disclosed. Mrs Haase was also forbidden access to her four other children or to come within 500m of their residence or schools. The court accepted the expert's view that the parents would use any and all means to pressurise their children, justifying the prohibition on all contact. The parents were urged to face up to their deficiencies, to accept the necessity of the separation for the time being and to contribute to the pacification of the overall situation. The court considered that the Youth Office's approach met in part the expressly stated wishes of the children and that the measures ordered were inevitable and proportionate to the urgent needs and objective interests of all of the children. That same day, the children were taken from the applicants.
The applicants appealed the order of the district court. The court of appeal found that the District Court's order was justified. The children had been exposed to patterns of violence and there were chronic shortcomings in the care given to them in their home. A new expert report would be submitted the following month (April 2002). It was against the best interests of the children to remove them from their new environment, where they were building up new contacts, and restore them to the applicants, there being the risk that they would be placed in a new environment again shortly afterwards. The applicant's request to the Federal Constitutional Court to issue an interim injunction was refused, since the court did not wish to jeopardise the children's well-being by ordering their return when the second expert report might recommend separation from their parents again. Instead, the court considered that the applicants could be expected to await the outcome of the main proceedings, which would be conducted with due diligence. The District Court then appointed a lawyer to represent the children's interests. It requested the experts to submit the results of their assessment before

discharging them and appointing a new expert to consider whether the only way of protecting the children from danger was to separate them from their family. The new expert conducted a lengthy interview with the parents in June. Shortly afterwards, the Federal Constitutional Court set aside in part the decisions of the District Court and Court of Appeal and referred the case back to the District Court. It found that there were serious doubts whether the courts had had due regard to parental rights and proportionality.
The District Court arranged for a second hearing of the Youth Office's application to revoke the applicants' parental rights in July 2002. It transferred to the Youth Office the right to decide where the children should live, and decided that it was in their interests to remain in care. The prohibition on contact between parents and children, which the Federal Constitutional Court had not set aside, remained in force. Following the second hearing, the District Court confirmed its decision of December 2001. It relied on the first expert report, which assessed the applicants as being incapable of bringing up their children because of their own basic and irreparable educational deficiencies and their abuse of parental authority. The second expert's opinion was not ready in time for the hearing, but she informed the court that she agreed with the first expert that there was no alternative to separation. The court indicated that the absence of warning to the parents before their children were removed in December was intended to avoid trauma to the children. The applicants appealed to the Court of Appeal. They also complained of bias on the part of the second expert and the District Court judge. These complaints were dismissed as unsubstantiated in October 2002.
Admissible under Article 8: The question of the exhaustion of domestic remedies, raised by the Government, was, having regard to the drastic measure of separating the children from their parents, so closely related to the merits that it could not be determined separately.
Admissible under Article 6(1).

HOME
Annulment of protected tenancy because of lengthy absence: *admissible*.

BLEČIĆ - Croatia (Nº 59532/00)
Decision 30.1.2003 [Section I]

The applicant is a Croatian citizen resident in Italy. In 1953, she and her husband were granted a specially protected tenancy on a flat in the town of Zadar. Following his death in 1999, she became the sole tenant. In July 1991, she travelled to visit her daughter in Rome. Shortly afterwards armed conflict broke out in Dalmatia. Zadar was subjected to heavy shelling and was without water and electricity for over one hundred days. In October 1991, the Croatian authorities terminated the applicant's pension and medical insurance, as she was not, at that time, a Croatian citizen. In view of her age and poor health, the applicant decided to remain in Rome. In November 1991, a family occupied the applicant's flat. In February 1992, the municipal authorities took proceedings against her to terminate her tenancy on the basis that she had been absent for more than six months without justification. The applicant relied on her lack of means and poor health as reasons for staying with her daughter. The Municipal Court found these reasons insufficient to justify her absence and terminated her tenancy. The County Court quashed this decision for failure to have regard to all the relevant facts and remitted it for rehearing. The Municipal Court again ruled against the applicant. This decision was overturned on appeal. The municipal authorities took the case to the Supreme Court, which reversed the appellate decision in February 1996, finding that the applicant's absence was unjustified. In November 1996, the applicant filed a constitutional complaint. In November 1999, the Constitutional Court found that the Supreme Court had correctly applied the law to the facts established by the lower courts and that, therefore, the applicant's constitutional rights had not been violated.
Admissible under Article 8 and Article 1 of Protocol No. 1: While the Government had not raised the issue of the Court's competence *ratione temporis*, the Court observed that the applicant's tenancy was terminated by virtue of the decisions of the courts. Although part of

the proceedings took place before the entry into force of the Convention in respect of Croatia (5 November 1997), the outcome of the proceedings before the Constitutional Court was directly decisive for the applicant's Convention rights. The application was therefore compatible *ratione temporis*.

HOME
Construction of a dam : *admissible*.

GORRAIZ LIZARRAGA and others - Spain (N° 62543/00)
Decision 14.1.2003 [Section IV]
(see Article 6(1), above).

ARTICLE 14

DISCRIMINATION (Article 8)
Different age of consent for homosexual and heterosexual/lesbian acts: *violation*.

L. and V. - Austria (Nº 39392/98 and Nº 39829/98)
Judgment 9.1.2003 [Section I]

Facts: Each of the applicants was convicted of engaging in homosexual acts with adolescents between 14 and 18 years old. Article 209 of the Criminal Code, which was repealed in 2002, provided that it was an offence for a male over 19 years old to engage in sexual acts with a person of the same sex between 14 and 18 years old. Consensual heterosexual or lesbian acts between an adult and a person over 14 years old were not punishable.
Law: Article 14 in conjunction with Article 8 – The amendment of the law in 2002 did not affect the applicants' status as victims, as their convictions were unaffected by it. Thus, the matter had not been resolved within the meaning of Article 37(1)(b) of the Convention. Sexual orientation is covered by Article 14 and differences based on sexual orientation require particularly serious reasons by way of justification. Although in previous cases concerning Article 209 of the Austrian Criminal Code the European Commission of Human Rights had found no violation, it had concluded in the more recent case of Sutherland v. the United Kingdom (no. 25186/94) that in the absence of any objective and reasonable justification the maintenance of a higher age of consent for homosexual acts violated Article 14 taken together with Article 8 of the Convention. The Commission had had regard to recent research according to which sexual orientation is usually established before puberty and to the fact that the majority of member States of the Council of Europe had recognised equal ages of consent. In the light of these developments, the Government had not in the present case offered convincing and weighty reasons justifying the maintenance in force of Article 209 of the Criminal Code and, consequently, the applicants' convictions.
Conclusion: violation (unanimously).
Article 8 – It was unnecessary to rule on the question whether there had been a violation of Article 8 taken alone.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court awarded each applicant 15,000 € in respect of non-pecuniary damage. It also made awards in respect of costs and expenses.

S.L. - Austria (Nº 45330/99)
Judgment 9.1.2003 [Section I]

Facts: The applicant, who is homosexual, complained that until he reached the age of 18 he was unable to enter into a sexual relationship with an adult man, since under Article 209 of the Criminal Code (see L. and V. v. Austria, above) it was an offence for an adult man to commit homosexual acts with a person between 14 and 18 years old.
Law: Article 14 in conjunction with Article 8 – The repeal of the provision at issue in 2002 did not affect the applicant's status as a victim, as he had been prevented from entering into any sexual relationship with an adult man and had thus been directly affected by the maintenance in force of the provision until he reached the age of 18. There had been no acknowledgement of or redress for the alleged breach. Nor had the matter been resolved with the meaning of Article 37(1)(b) of the Convention. On identical grounds to those in the L. and V. judgment (see above), the Court concluded that there had been a violation of Article 14 in conjunction with Article 8 of the Convention.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 5,000 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Poland)
Effectiveness of constitutional complaint: *admissible*.

BRUDNICKA and others - Poland (N° 54723/00)
Decision 16.1.2003 [Section III]
(see Article 6(1), above).

EFFECTIVE DOMESTIC REMEDY (Spain)
Effectiveness of claim for compensation under Article 292 of the Judicature Law with regard to the length of completed constitutional proceedings: *non-exhaustion*.

CALDAS RAMIREZ DE ARRELLANO - Spain (N° 68874/01)
Decision 28.1.2003 [Section IV]

The *Audiencia nacional* found the applicant guilty of trafficking in psychotropic substances which were not a serious danger to health, and sentenced him to imprisonment, a fine and temporary withdrawal of his civic rights. The Supreme Court allowed an appeal on a point of law by the prosecutor's department and set this judgment aside. The applicant was found guilty of repeated offences against health, involving substances which damaged health seriously, and his prison sentence and fine were both increased. In January 1995, the applicant brought an *amparo* appeal in the Constitutional Court, which rejected it as manifestly ill-founded in July 2000. The applicant complains of the length of the proceedings in the Constitutional Court.
Inadmissible under Article 6(i) (reasonable time): concerning the applicability of Article 6(1): The proceedings in the Spanish Constitutional Court were directly concerned with the validity of the criminal charges brought against the applicant. When it wholly or partly allows an

amparo appeal, the Constitutional Court does not limit itself to determining the constitutional provision which has been violated. It sets the decision complained of aside, and the case is referred back to the relevant court for review. In other words, the constitutional proceedings were a further stage in the criminal proceedings, with potentially decisive consequences for the person sentenced – which means that Article 6 applies.
Concerning failure to exhaust domestic remedies: In view of the Constitutional Court's special character, as national court of last instance and guarantor of the fundamental rights embodied in the Constitution, an application for compensation offers the only adequate redress for delays already incurred in the constitutional proceedings. The Government's observations, which are not contested by the applicant, indicate that this remedy is provided for in Sections 292ff. of the Organisation of the Courts Act, under which the applicant may apply, following the Court's decision on admissibility, to the Ministry of Justice for compensation, with every chance of succeeding: non-exhaustion.

SIX MONTH PERIOD
Delay of one year between initial communication and lodging of application: *inadmissible*.

NEE - Ireland (Nº 52787/99)
Decision 30.1.2003 [Section III]

The applicant was born in 1974. His parents never married. His father (PK), who had no other children, died intestate in 1987. Under Irish law at that time, the applicant had no claim on his late father's estate. However, he wished to bring a case under the Convention and, when his request for a declaration from the solicitors acting for PK's parents recognising him as PK's son was denied, he initiated proceedings in the Circuit Court in December 1989. His claim was struck out in May 1990. The applicant issued amended proceedings in May 1991 and appealed to the High Court, which in December 1993 ordered that blood samples be taken from the applicant and from PK's mother and brother. In January 1998, the High Court declared that PK was the applicant's father and ordered the administrator of the estate to pay to the applicant the costs of the proceedings.
On 17 July 1998, the applicant's solicitor submitted an outline of the facts of the case to the European Commission of Human Rights, along with supporting documentation, and requested that the application, relating to Articles 8 and 14 of the Convention, be registered. The Commission sent her an application form the following month, indicating that it should be returned as soon as possible. In September 1998, the applicant's solicitor acknowledged receipt of the form and indicated that it would be returned within six weeks. It was not in fact returned until 22 September 1999. The solicitor subsequently gave several reasons for the delay, including lack of familiarity with Convention case-law, the complexity of the domestic proceedings, and the fact that the applicant lived in England. She added that it was her understanding that the key date was that of her first letter, namely 17 July 1998.
Article 35(1): The Court recalled and adopted the approach of the Commission regarding delays in pursuing an application after its initial submission. Thus, where there is a substantial interval before the applicant submits further information, the particular circumstances of the case must be examined in order to decide what date should be regarded as the date of introduction of the application, interrupting the running of the six-month time limit. In the present case, the initial submissions to the Commission were made almost ten years after the death of PK. If, as the applicant maintained, the lengthy proceedings that took place in the intervening period were for the sole purpose of taking a case under the Convention, his legal representative could have been expected to exercise particular conscientiousness and diligence in the pursuit of the application. However, there had been no contact with the Commission or the Court for over a year, and no explanation for the delay had been submitted when the application form was eventually submitted. Furthermore, the reasons provided thereafter were not convincing. The substantive Convention issue was relatively straightforward and directly relevant jurisprudence had been published. The domestic

proceedings involved only two parties, the subject matter was not complex, and the documentation submitted was not voluminous. Consequently, it could not be said that the completion of the application was especially intricate or complex. In addition, the applicant's residence in the England could have been responsible for only minor delays. The solicitor's belief that the important date was that on which she first contacted the Commission was incorrect, the position having been clearly explained in the letter accompanying the application form. As to the alleged lack of any identifiable prejudice to the State on account of the lapse of time, notice of an intention to pursue a Convention application was quite different from the legal certainty established by the resolution of the application by way of a final decision or judgment of the Court. The date of introduction was therefore 22 September 1999 and the application had consequently been introduced outside the six-month time-limit.

Article 35(3)

RATIONE TEMPORIS
Court decisions taken after entry into force of the Convention: *admissible*.

BLEČIĆ - Croatia (Nº 59532/00)
Decision 30.1.2003 [Section I]
(See Article 8, above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 46):

BARAGAN - Romania (Nº 33627/96)
Judgment 1.10.2002 [Section II]

SAWICKA - Poland (Nº 37645/97)
GUCCI - Italy (Nº 52975/99)
AGATONE - Italy (Nº 36255/97)
Judgments 1.10.2002 [Section IV]

KUCERA - Austria (Nº 40072/98)
Judgment 3.10.2002 [Section III]

BECKLES - United Kingdom (Nº 44652/98)
Judgment 8.10.2002 [Section IV]

D.P. and J.C. - United Kingdom (Nº 38719/97)
Judgment 10.10.2002 [Section I]

GÜNDOĞAN - Turkey (Nº 31877/96)
ÇELEBI - Turkey (Nº 20139/92)
İNCE - Turkey (Nº 20143/92)
CZEKALLA - Portugal (N° 38830/97)
Judgments 10.10.2002 [Section III]

OTTOMANI - France (Nº 49857/99)
AYŞE ÖZTÜRK - Turkey (Nº 24914/94)
Judgments 15.10.2002 [Section II]

KARAKOÇ and others - Turkey (Nº 27692/95, Nº 28498/95 and Nº 28138/95)
CAÑETE DE GOÑI - Spain (N° 55782/00)
SOMJEE - United Kingdom (Nº 42116/98)
Judgments 15.10.2002 [Section IV]

VOSTIC - Austria (Nº 38549/97)
AGGA - Greece (no. 2) (Nº 50776/99 and Nº 52912/99)
Judgments 17.10.2002 [Section I]

STAMBUK - Germany (Nº 37928/97)
Judgment 17.10.2002 [Section III]

CURUTIU - Romania (Nº 29769/96)
MATEESCU - Romania (Nº 30698/96)
FOLEY - United Kingdom (Nº 39197/98)
TAYLOR-SABORI - United Kingdom (Nº 47114/99)
Judgments 22.10.2002 [Section II]

SATIK, ÇAMLI and MARAŞLI - Turkey (Nº 24737/94, Nº 24739/94, Nº 24740/94 and Nº 24741/94)
ALGÜR - Turkey (Nº 32574/96)
PERKINS and R. - United Kingdom (Nº 43208/98 and Nº 44875/98)
BECK, COPP and BAZELEY - United Kingdom (Nº 48535/99, Nº 48536/99 and Nº 48537/99)
Judgments 22.10.2002 [Section IV]

W.Z. - Poland (Nº 65660/01)
Judgment 24.10.2002 [Section III]

YILDIZ - Austria (Nº 37295/97)
KONCEPT-CONSELHO EM COMUNICACÃO E SENSIBILIZAÇÃO DE PÚBLICOS, Lda. - Portugal (Nº 49279/99)
GIL LEAL PEREIRA - Portugal (Nº 48956/99)
Judgments 31.10.2002 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal to return confiscated coins on account of inability of claimant to show where they were deposited: *violation*.

KOPECKÝ - Slovakia (Nº 44912/98)
Judgment 7.1.2003 [Section IV]

Facts: In 1992 the applicant's late father's conviction in 1959 for unlawfully keeping gold and silver coins was quashed. The applicant then obtained a court order for return of the coins, which had been confiscated. However, this decision was reversed on appeal, on the ground that the applicant had failed to show where the coins were deposited. The applicant's appeal was dismissed by the Supreme Court on the same ground.
Law: Article 1 of Protocol No. 1 – The finding of the first instance court indicated that the applicant could claim, at least on arguable grounds, that he met the relevant requirements and was entitled to return of the property, and the fact that the appeal courts reached a different conclusion could not affect that position. There thus existed a genuine and serious dispute about whether the applicant met the requirements and he therefore had a "possession" in the form of a "legitimate expectation" of having his claim satisfied. It would be too formalistic to reach a different conclusion on the ground that he failed to show the location of the coins. The relevant authorities failed to provide any plausible explanation as to why the coins were no longer in their possession and the applicant was unable, for reasons imputable to the authorities, to trace the property. As a result, he was deprived of any possibility of complying with the relevant requirements. The obligation to show where the property was imposed an excessive burden on the applicant.
Conclusion: violation (4 votes to 3).
Article 41 – The Court awarded the applicant the value of the coins and considered that the finding of a violation in itself constituted just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs and expenses.

DEPRIVATION OF PROPERTY
Expropriation in favour of the State on basis of interrupted occupation for over 20 years on grounds of public utility: *admissible*.

I.R.S. and others - Turkey (N° 26338/95)
Decision 28.1.2003 [Section II]

The applicants were joint owners of part of a site occupied since 1955 by a military airfield, another part of which belonged to the Turkish Aviation League. In 1993, on application by the Ministry of Defence, the Ankara Regional Court decided to transfer ownership of the land to the authorities, considering that the conditions required by the Expropriation Act of 1983 were satisfied. It stated that the file showed that the authorities had occupied the land without interruption for over 20 years in the public interest. The applicants appealed unsuccessfully on a point of law.
Admissible under Article 1 of Protocol No. 1.

DEPRIVATION OF PROPERTY
Termination of disability pension following introduction of new rules: *admissible.*

ASMUNDSSON - Iceland (Nº 60669/00)
Decision 28.1.2003 [Section II]

The applicant worked on a trawler until he suffered a serious work accident in 1978, at the age of 29. His level of disability was assessed at 100%, making him eligible for a disability pension from the Pension Fund, to which he had contributed, on an interrupted basis, from 1969 to 1981. In accordance with the applicable legislation, the assessment was based in particular on the fact that the applicant could no longer perform his normal work and had suffered a diminution of his physical strength of 35% or more. The legislation was revised in 1992 so as to take into account the person's ability to perform work of any kind. This change was made in response to the Pension Fund's financial difficulties and was to apply also to persons already in receipt of a disability pension, after a transition period of five years. In 1994, another legislative change brought disability and child benefit within the scope of regulations that took effect in September 1994. The applicant contends that the five-year transition period was terminated on that date. The Government maintain that the transition period was not affected and ran until 1997. A new assessment of the applicant found that his incapacity for work in general was less than 35%. Consequently, his disability pension and related child benefit were stopped in July 1997. According to figures supplied by the Government, of the 689 persons in receipt of a disability pension when the transition period expired, 54, including the applicant, were found not to reach the threshold of 35% and so ceased to qualify. A large number of beneficiaries had their pensions reduced, while some were found to be 100% incapable of work in general and thus retained a full pension. The applicant instituted proceedings against the Pension Fund and the State. The District Court dismissed his claim. On appeal, the Supreme Court found the contested measures were justified by the Fund's financial situation and that there had been no discrimination in their application.
Admissible under Article 1 of Protocol No. 1 on its own and in conjunction with Article 14.

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Disenfranchisement as consequence of preventive measures: *admissible*.

SANTORO - Italy (Nº 36681/97)
Decision 16.1.2003 [Section III]

In March 1994 preventive measures were imposed on the applicant for one year by the District Court, which found that although he had not been convicted of any offence he was an habitual offender and thus "socially dangerous" within the meaning of Law No. 1423/56. The applicant was notified on 3 May 1994. His appeal was dismissed in July 1994 and the order was notified to the municipality two months later. In July 1995 the police drew up, in the applicant's presence, the document setting out the obligations imposed on him. He applied to the District Court for a declaration that the order had expired on 2 May 1995, i.e. one year after it was notified to him. The court held that the notification was not a sufficient act to start the execution of the order: the law provided for the order to be forwarded to the police for enforcement and the Court of Cassation's case law established that such orders did not cease to apply on the expiry of the duration indicated, independently of execution. The starting date was when the police had drawn up the document. This was confirmed by the Court of Appeal.

The applicant appealed to the Court of Cassation, which held that the special supervision had ceased to apply on 2 May 1995, since the law provided that the period of supervision started to run on the date of notification. One of the consequences of the special supervision order was that the applicant was struck off the electoral register for its duration. He was therefore unable to vote in the elections for the Regional and Provincial Councils, for the President of the Province (April 1995) and in a referendum (June 1995). He was reinstated in the electoral register in July 1995, but struck off again in November 1995 on the basis that his special supervision order was still in force. He unsuccessfully challenged his exclusion from the register in April 1996, the month of parliamentary elections.
Admissible under Article 2 of Protocol No. 4.
Partly inadmissible under Article 3 of Protocol No. 1: The word "legislature" in the text of this provision is not limited to the national parliament but it must be interpreted in the light of the constitutional structures of the State in question. The power to legislate may be vested in bodies other than parliament, but must be distinguished from the power to make regulations and by-laws. The Italian Provinces have the power to adopt regulations on local matters within the limits of the principles set out in national legislation but the Constitution does not confer on provincial authorities legislative power within the meaning of Article 3 of Protocol No. 1. Similarly, Article 3 of Protocol No. 1 does not apply to referendums. Accordingly, the part of the complaint referring to the provincial elections and the referendum was incompatible *ratione materiae*.
Admissible under Article 3 of Protocol No. 1 with regard to the applicant's exclusion from regional and parliamentary elections.

STAND FOR ELECTION
Refusal to allow prospective candidate to stand for election on the ground that he was not permanently resident in Ukraine, having refugee status in the USA: c*ommunicated*.

MELNYCHENKO - Ukraine (Nº 17707/02)
[Section II]

The applicant is a Ukrainian national currently resident in the USA, where he has been granted refugee status. He was previously a major in the State Security Service of Ukraine, assigned to guarding the President's office. During the course of his work, he made audio recordings of phone calls between the President and other persons regarding the possible involvement of the President in the disappearance of a journalist. The applicant left the country two days before the tapes were made public in Parliament in November 2000. He was granted refugee status by the USA in April 2001. In January 2002 the Socialist Party of Ukraine nominated the applicant to stand for the upcoming parliamentary elections. The Central Electoral Committee rejected his candidature on the basis that he was not permanently resident in the country and that he had provided inaccurate information about his actual place of residence and his residence during the previous five years. The Supreme Court upheld this decision. The applicant maintains that he still has a permanent address in Kiev, being co-owner of an apartment and house there.
Communicated under Article 3 of the Protocol No. 1 and Article 14.

ARTICLE 2 OF PROTOCOL No. 4

FREEDOM OF MOVEMENT
One-year preventive measure remaining in force for more than 12 months following notification: *admissible*.

SANTORO - Italy (Nº 36681/97)
Decision 16.1.2003 [Section III]
(see Article 3 of Protocol No. 1, above).

Other judgments delivered in January 2003

Articles 2, 3 and 5

H.K. and others - Turkey (Nº 29864/96)
Judgment 14.1.2003 [Section II]

death allegedly resulting from ill-treatment in custody in 1994 – friendly settlement (*ex gratia* payment, statement of regret by the Government and undertaking to take appropriate measures and to reopen the investigation).

Article 5(1), (3) and (4)

NIKOLOV - Bulgaria (Nº 38884/97)
Judgment 30.1.2003 [Section I]

role of investigator and prosecutor in ordering detention (cf. *Assenov* judgment, and *Nikolova* judgment of 25 March 1999), detention based on reference to wrong provision, reasonableness of detention on remand (cf. *Shishkov* judgment of 9 January 2003, above), delay in implementation of release order, length of time taken to decide on requests for release from detention on remand and denial of access to file in connection with appeal against detention on remand (cf. *Shishkov* judgment) – violation, except with regard to the detention based on reference to the wrong provision.

Article 5(3) and/et 6(1)

DEMIREL - Turkey (Nº 39324/98)
Judgment 28.1.2003 [Section IV]

length of detention on remand, independence and impartiality of State Security Court and length of criminal proceedings – violation.

Article 5(4)

KADEM - Malta (Nº 55263/00)
Judgment 9.1.2003 [Section I]

absence of possibility of speedy review of lawfulness of detention with a view to extradition – violation.

Article 6 § 1

MACGEE - France (Nº 46802/99)
Judgment 7.1.2003 [Section II]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général* – violation (cf. *Reinhardt and Slimane Kaid* judgments of 31 March 1998, and *Slimane-Kaid* judgment of 25 January 2000).

RICHEN and GAUCHER - France (Nº 31520/96 and Nº 34359/97)
Judgment 23.1.2003 [Section I]

failure to communicate observations of *avocat général* to and unrepresented appellants in Court of Cassation proceedings – violation; time-limit for unrepresented appellants in Court of Cassation proceedings to submit pleadings, and absence of oral hearing – no violation. (cf. *Reinhardt and Slimane Kaid* judgment of 31 March 1998; *Meftah* judgment of 26 April 2001, *Voisine* judgment of 8 February 2000).

N.K. - Turkey (Nº 43818/98)
Judgment 30.1.2003 [Section III]

independence and impartiality of State Security Court – violation.

BOŘÁNKOVÁ - Czech Republic (Nº 41486/98)
C.D. - France (Nº 42405/98)
Judgments 7.1.2003 [Section II]

RAWA - Poland (Nº 38804/97)
W.M. - Poland (Nº 39505/98)
Judgments 14.1.2003 [Section IV]

SOBAŃSKI - Poland (Nº 40694/98)
Judgment 21.1.2003 [Section IV]

MOLLES - France (Nº 43627/98)
Judgment 28.1.2003 [Section II]

KUBISZYN - Poland (Nº 37437/97)
GÖKCE - Belgium (Nº 50624/99)
DAUTEL - Belgium (Nº 50855/99)
Judgments 30.1.2003 [Section I]

FIGUEIREDO SIMÕES - Portugal (Nº 51806/99)
Judgment 30.1.2003 [Section III]

length of civil proceedings – violation.

POLOVKA - Slovakia (Nº 41783/98)
Judgment 21.1.2003 [Section IV]

length of civil proceedings – friendly settlement.

D'AMMASSA and FREZZA - Italy (Nº 44513/98)
Judgment 9.1.2003 [Section IV (former composition)]

length of civil proceedings – revision of judgment.

SCOTTI - France (Nº 43719/02)
Judgment 7.1.2003 [Section II]

length of administrative proceedings – violation.

VITALIOTOU - Greece (Nº 62530/00)
Judgment 30.1.2003 [Section I]

length of administrative proceedings – friendly settlement.

WIOT - France (Nº 43722/98)
Judgment 7.1.2003 [Section II]

length of proceedings relating to employment – violation.

OBASA - United Kingdom (Nº 50034/99)
Judgment 16.1.2003 [Section III]

length of proceedings relating to discrimination in employment – violation.

PAPADOPOULOS - Greece (Nº 52848/99)
Judgment 9.1.2003 [Section I]

ŽIAČIK - Slovakia (Nº 43377/98)
Judgment 7.1.2003 [Section IV]

PAPAZAFIRIS - Greece (Nº 55753/00)
Judgment 23.1.2003 [Section I]

length of criminal proceedings – violation.

TAMER - Turkey (Nº 28002/95)
Judgment 9.1.2003 [Section I]

length of criminal proceedings – friendly settlement.

Article 6(3)(c)

LAGERBLOM - Sweden (Nº 26891/95)
Judgment 14.1.2003 [Section IV]

refusal to appoint Finnish-speaker as court-appointed defence counsel – no violation.

Articles 6(1) and 13

LAIDIN - France (Nº 39282/98)
Judgment 7.1.2003 [Section II]

length of administrative and civil proceedings and lack of effective remedy – violation (with the exception of one set of administrative proceedings).

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

KIENAST - Austria (Nº 23379/94)
Judgment 23.1.2003 [Section I]

unification, for the purposes of registration, of plots of land owned by the same person, and alleged lack of a fair hearing – no violation.

POPESCU NASTA - Romania (Nº 33355/96)
Judgment 7.1.2003 [Section II]

OPRESCU - Romania (Nº 36039/97)
Judgment 14.1.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation, and deprivation of property – violation (cf. *Brumarescu* judgment of 28 October 1999).

CICCARIELLO - Italy (Nº 34412/97)
E.P. - Italy (Nº 34658/97)
MARINI - Italy (Nº 35088/97)

C.T. v. Italy (Nº 35428/97)
TOLOMEI - Italy (Nº 35637/97)
CARLONI and BRUNI - Italy (Nº 35777/97)
Judgments 9.1.2003 [Section I]

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

DI TULLIO - Italy (Nº 34435/97)
CECCHI - Italy (Nº 37888/97)
Judgments 9.1.2003 [Section I]

CANDELA - Italy (Nº 35997/97)
Judgment 30.1.2003 [Section I]

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

KARAGIANNIS and others - Greece (Nº 51354/99)
Judgment 16.1.2003 [Section I]

occupation of land in 1967 and adequacy of compensation in respect of subsequent expropriation in 1999; length of civil proceedings – violation (cf. *Papamichalopoulos* judgment of 24 June 1993 and *Malama* judgment of 1 March 2001).

NASTOU - Greece (Nº 51356/99)
Judgment 16.1.2003 [Section I]

absence of compensation in respect of expropriation in 1973; length of civil proceedings – violation.

Article 8

K.A. - Finland (Nº 27751/95)
Judgment 14.1.2003 [Section IV]

taking of children into care and sufficiency of parent's involvement in procedure resulting in taking into care of children – no violation; failure of authorities to take proper steps to reunite parents and children taken into care – violation.

Article 1 of Protocol No. 1

AHMET ACAR - Turkey (Nº 26546/95)
Judgment 30.1.2003 [Section III]

delays in payment of compensation for expropriation – violation.

Revision

TSIRIKAKIS - Greece (Nº 46355/99)
Judgment 23.1.2003 [Section I]

SPINELLO - Italy (Nº 40231/98)
Judgment 30.1.2003 [Section I]

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

Convention

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

Protocol No. 1

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

Protocol No. 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