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EUROPEAN COURT OF HUMAN RIGHTS

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

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ARTICLE 2 of PROTOCOL No. 1

Inadmissible

ARTICLE 2

POSITIVE OBLIGATIONS
Effectiveness of the investigation into murders involving a criminal organisation: *no violation*.

BAYRAK and others - Turkey (N° 42771/98)
Judgment 12.1.2006 [Section III]

Facts: The applicants are close relatives of two persons who died in September 1993 following an attack in the street by two masked killers, for which no one claimed responsibility. The police conducted an investigation at the scene on the day of the attack and heard evidence from witnesses. The public prosecutor's office opened a criminal investigation of its own motion, which included a ballistics report and an examination of the bodies. A new preliminary investigation was begun. In 1995, following a wide-ranging police operation against Hizbullah – an organisation accused of perpetrating several attacks in south-east Turkey, including in the town where the murders had been committed – fresh intelligence was obtained. One of the suspects questioned named the possible killers and disclosed information which led to the presumed murder weapon being found in June 1995. The preliminary investigation continued. In November 2000 a further arrest yielded new information as to the identity of those involved in the killings. In October 2002 criminal proceedings were brought against the suspected perpetrators. The national security court held an initial hearing in November 2002. The criminal proceedings against the suspected perpetrators were still pending when the judgment was adopted.

Law: Article 2 – The applicants complained that their relatives had been victims of an extrajudicial execution. However, it had not been established beyond any reasonable doubt that the murder of the applicants' relatives had engaged the responsibility of the respondent State. No violation of the substantive aspect of Article 2 of the Convention had been established.
Conclusion: no violation (unanimously).

As to the investigation conducted at national level, the authorities could not be criticised for any lack of diligence. The judicial measures taken to investigate the attacks perpetrated by Hizbullah had required far-reaching efforts. As a result of those efforts, the authorities had been able to bring to justice those suspected of the killings, albeit some years after the events. The investigation, although still in progress, had not been lacking in effectiveness and the Turkish authorities had not remained passive with regard to the circumstances in which the applicants' relatives had been killed. No violation of the procedural aspect of Article 2 had been established.
Conclusion: no violation (unanimously).

The Court also held unanimously that there had been no violation of Article 13.

ARTICLE 3

TORTURE
Ill-treatment during police custody amounting to torture, and effectiveness of the investigation: ***violation.***

MIKHEYEV - Russia Nº 77617/01)
Judgment 26.1.2006 [Section I]

Facts: The applicant, a road traffic officer in the police force, and his friend F. were arrested and questioned on 10 September 1998 in relation to the disappearance of M.S., a teenage girl, whom they had given a lift in the applicant's car two days earlier. The girl was subsequently reported missing. The applicant claimed that, while in police custody, his superior officer also forced him to sign a back-dated letter of resignation from the police. On 11 September the police searched the applicant's flat, country house, garage and car and found three gun cartridges in his car. On 12 September an administrative

offence report was filed against the applicant and F. for allegedly disturbing the peace. They were sentenced to five days' administrative detention. On 16 September 1998 the police opened a criminal investigation into the finding of the gun cartridges in the applicant's car. He was placed in custody and transferred to another detention centre under the jurisdiction of Leninskiy police department where, he submitted, questioning became more intensive and violent. Meanwhile, F. testified to the police that he had seen the applicant rape and kill MS. On 19 September 1998 the applicant was questioned at Leninskiy police station in the presence of several police officers and prosecution officials, including the deputy regional prosecutor. The applicant alleged that he was later tortured to make him corroborate F.'s confession and that police officers administered electric shocks to his ears through metal clips connected by a wire to a box. He was also threatened that he would be severely beaten and that an electric current would be applied to his genitals. He complained to the deputy regional prosecutor about the ill-treatment, who allegedly took no action. Then, unable to withstand the torture, the applicant submitted that he broke free and jumped out of the window of the second floor of the police station to commit suicide. He fell on a motorbike and broke his spine. He was taken to hospital, where his mother asked a number of doctors to make a note of the burns on her son's ears in his medical records. Her request was refused. The same day, M.S. returned home unharmed, explaining that she had gone to stay with friends without telling her parents. The criminal case concerning her alleged abduction, rape and murder were consequently closed. However the applicant was then charged with M.S.'s abduction. That charge was dropped in March 2000 on the ground that he had freed M.S. at her request. The case concerning the illegal possession of gun cartridges was discontinued in March 1999 on the ground that, being a police officer at the time, the applicant was entitled to have ammunition in his possession. In September 1998 a criminal investigation was opened into the applicant's fall from the police station window. The criminal proceedings were discontinued in December 1998, however, for lack of evidence. The case was subsequently reopened and closed several times. In September 2002 the prosecution service discontinued the investigation, finding that no criminal offence had been committed. The case was then again reopened and closed a number of times. A forensic medical examination of the applicant was drawn up in October 1998 which found that he had wounds on the top of his head, scratches on his forehead and bite marks on his tongue. No burns or other traces of the use of electrical current were recorded. In 2005 two policemen who had participated in the questioning of the applicant on 19 September 1998 were charged. The case file was eventually forwarded to the District Court, which found that the police officers had administered electric shocks to the applicant using a device connected to his ears. Unable to withstand the pain, the applicant had attempted suicide by jumping out of the window. On 30 November 2005 the police officers were found guilty under the Criminal Code of abuse of official power associated with the use of violence or entailing serious consequences. According to the information available to the Court, the judgment is not yet final. The applicant's dismissal from the police force was later annulled and he was reinstated in his post. The officers responsible for his backdated dismissal were subjected to disciplinary proceedings. However, he is completely disabled and has had to leave the traffic police.

Law: Applicant's victim status –Despite the Government's information to the Court that the November 2005 judgment convicting the police officers who had ill treated the applicant was not yet final and could be reversed on appeal, and, even though the first-instance court had recognised the fact of ill-treatment, the applicant had not been afforded any redress in this respect. Moreover, the judgment only dealt with the ill-treatment itself and did not examine the alleged flaws of the investigation, which was one of the main concerns of the applicant. Hence, the applicant's status as a victim was not affected by this judgment.

Article 3 (*concerning the effectiveness of the investigation*) – In order to be able to assess the merits of the applicant's complaints and in view of the nature of the allegations, the Court asked the Russian Government to submit copies of the criminal investigation files. The Government refused to do so, without explaining how the disclosure of the materials sought might be prejudicial for the interests of the investigation or the individuals involved. Neither did they advance any other plausible explanation for their failure to produce relevant documents and information, which were clearly in their possession. The Court therefore considered that it could draw inferences from the Government's conduct and examine the merits of the case on the basis of the applicant's arguments and existing elements in the file and the evidence given at the hearing of the District Court on 30 November 2005. In the absence of the investigation file, it was impossible for the Court to assess the quality of the investigative measures

performed. However, a number of shortcomings in the investigation were noted, in particular: (i) the investigators' decisions to discontinue the proceedings disclosed significant omissions in the official pre-trial investigation. Moreover, it was unclear whether an attempt had been made to search the premises where the applicant had allegedly been tortured; (ii) many investigative measures were carried out after a significant lapse of time, e.g. the forensic medical examination of the applicant was dated more than five weeks after the alleged ill-treatment; (iii) until 2000 the decisions to discontinue the proceedings were based on almost identical evidence and reasoning; (iv) there was a clear link between the officials responsible for the investigation and those allegedly involved in the ill-treatment; and, (v) the approach to the assessment and collection of evidence by the prosecutor's office was selective and inconsistent. The Court was particularly struck by the factual inaccuracy of the investigator's report of 21 December 1998 which stated that the applicant had been released from custody on 11 September 1998 but then arrested again for disturbing the peace, when it had already been officially confirmed that at the relevant time he had been in the hands of the police. This fact was such as to discredit the consistency of the official investigation in the eyes of any independent observer. Moreover, it had taken seven years for the case to reach trial stage. The pre-trial investigation was closed and then re-opened more than 15 times and it was clear that during certain periods the investigative process was no more than a formality with a predictable outcome. In the light of such shortcomings, the investigation had not been adequate or sufficiently effective, and the Government's objection on non-exhaustion of domestic remedies was thus dismissed.
Conclusion: violation (unanimously).

Article 3 (*concerning the alleged ill-treatment*) – Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. It was not disputed that the applicant had sustained injuries by jumping out of the window of the police station. However, the parties disagreed on what had driven the applicant to attempt suicide. Throughout the investigation the applicant had provided a consistent and detailed description of who had tortured him and how. He also had witnesses to support his allegations and the bite marks on his tongue described in the forensic report could also be seen as indirectly supporting his accounts. In the absence of any evidence to the contrary, the Court concluded that that the applicant did not suffer from any mental deficiency which might have influenced his decision to commit suicide. He was subjected to a very stressful situation, having been wrongfully suspected of such an appalling crime. However, no plausible explanation had been adduced as to why, knowing he was innocent, he should attempt suicide, if no pressure had been put upon him. In addition, there was evidence that other detainees had suffered, or had been threatened with, similar ill-treatment. In view of the circumstances, the Court was prepared to accept that, while in custody, the applicant was seriously ill-treated by agents of the State, with the aim of extracting a confession or information about the offences of which he was suspected. The ill-treatment inflicted on him caused such severe physical and mental suffering that he attempted suicide, resulting in a general and permanent physical disability. The severity of the ill-treatment had amounted to torture.
Conclusion: violation (unanimously).

Article 13 – The applicant had been denied a sufficiently effective investigation in respect of the ill-treatment by the police and thereby access to any other available remedies at his disposal, including a claim for compensation.
Conclusion: violation.

Articles 34 and 38 – Concerning the non-disclosure of the materials of the investigation by the respondent Government, in view of the Court's findings under Articles 3 and 13, it was not necessary to examine these complaints separately.

Article 41 – The Court awarded the applicant EUR 130,000 in respect of pecuniary damage and EUR 120,000 in respect of non-pecuniary damage.

INHUMAN TREATMENT
Alleged ill-treatment of war criminals by other prisoners, and failure of the authorities to prevent such treatment: *communicated*.

RODIĆ and three others - Bosnia and Herzegovina (Nº 22893/05)
[Section IV]

The applicants were convicted of war crimes against Bosniac civilians and committed to a maximum-security prison in the Federation of Bosnia and Herzegovina, the population of which was mostly made up of Bosniacs. Three of the applicants requested a transfer to another prison, but their request was refused by the Ministry of Justice of the Federation. In June 2005, two of the applicants were injured and threatened by other prisoners. The same month the applicants announced a hunger strike asking that they be transferred to another prison in Bosnia and Herzegovina. On 15 June 2005 the Ministry of Justice of Bosnia and Herzegovina ordered their transfer to a prison in the Republika Srpska, but this decision was overridden by a subsequent decision of the Ministry of Justice of the Federation ordering that the applicants be indefinitely segregated in the hospital unit of Zenica prison. It appears that the prisoners who had hit the applicants had been paid by another person to do so. These prisoners had been punished with 15 days' solitary confinement and criminal charges had been brought in respect of the person that had commissioned them to beat the applicants. The applicants subsequently complained to the Constitutional Court of Bosnia and Herzegovina about the non-enforcement of the decision of 15 June 2005 of the Ministry of Justice of Bosnia and Herzegovina, as well as under Article 3 of the Convention about the conditions in which they were held. It appears that the proceedings are still pending and that the applicants were once again on hunger strike. Two of the applicants have now been transferred to another prison, whilst two others remain segregated in the hospital unit of Zenica prison.
Communicated under Articles 3 and 13, with a question on exhaustion of domestic remedies.

INHUMAN TREATMENT
Segregation of war criminals in hospital unit of a prison with poor material conditions: *communicated*.

RODIĆ and three others - Bosnia and Herzegovina (Nº 22893/05)
[Section IV]
(see above).

INHUMAN OR DEGRADING TREATMENT
Women of Romani origin allegedly sterilised without their consent: *communicated*.

I.G., M.K. and R.H. - Slovakia (Nº 15966/04)
[Section IV]

Facts: The applicants were subjected to sterilisation between 1999 and 2002, during the delivery of their respective babies at a particular hospital. All three applicants had already given birth to one or more children. Prior to each case of sterilisation the gynaecologist had indicated to them that the delivery should take place by caesarean section. During the surgery the applicants were sterilised via tubal ligation. One applicant was asked to sign a document at the outset of being anaesthetised and another one was asked to sign a document on completion of the surgery. Both signed, but allegedly without having been informed that this would be tantamount to consenting to their sterilisation. The applicants allegedly learned of their sterilisation between one and four years later while reviewing their medical files. At the hospital in question they were allegedly accommodated separately from non-Romani women in so called "Gypsy rooms". They were also prevented from using the same bathrooms and toilets as non-Romani women and were prevented from entering the dining room. The second applicant allegedly also experienced verbal abuse from health-care personnel.
In 2003 the police closed the investigation into the sterilisations, concluding that the alleged facts had not occurred. In 2004 a regional prosecutor's office found that the police investigator's decision had been lawful and correct. In 2004 the applicants claimed damages from the hospital, arguing that they had been

unlawfully sterilised by its staff. These civil proceedings remain pending. In 2004 the applicants also filed a complaint under Article 127(1) of the Constitution with regard to the decision to close the police investigation as well as to the prosecutors' subsequent decisions. In June 2005 the Constitutional Court found that the regional prosecutor's office had violated the applicants' rights under Articles 13 and 3 in that it had erroneously rejected their complaint against the 2003 decision by the police to close the investigation. The Constitutional Court quashed the 2004 decision of the regional prosecutor's office and ordered a re-examination of the applicants' complaint. The Constitutional Court did not accept that there had also been a violation of Articles 8 and 14 as the assessment of those complaints depended on the outcome of the future proceedings before the regional prosecutor's office. In September 2005 a public prosecutor again dismissed the complaint against the 2003 decision to close the police investigation. In November 2005 the applicants filed a new constitutional complaint, arguing that the authorities in charge of the above criminal proceedings had failed to ensure that the persons liable for their sterilisations be prosecuted and that the applicants be compensated. The applicants alleged a violation of Articles 3, 8, 13 and 14 of the Convention. The proceedings in respect of this complaint remain pending before the Constitutional Court. However, the applicants are of the opinion that a complaint under Article 127 of the Constitution is not a remedy capable of providing appropriate redress to them in respect of the rights they allege have been violated.
Communicated under Articles 3, 8, 12, 13, 14 and 35(1) of the Convention.

EXPULSION
Expulsion to Algeria of an applicant suffering from hepatitis C and son of a "harki": *no violation*.

AOULMI - France (N° 50278/99)
Judgment 17.1.2006 [Section IV]
(see Article 34 below).

ARTICLE 5

Article 5(3)

JUDGE OR OTHER OFFICER
Independence of prosecutor ordering detention on remand: *violation*.

JASÍNSKI - Poland (Nº 30865/96)
Judgment 20.12.2005 [Section IV]
(see Article 6 below).

ARTICLE 6

Article 6(1) [civil]

RIGHT TO A COURT
Impossibility of introducing an action for disavowal of paternity: *violation*.

MIZZI - Malta (Nº 26111/02)
Judgment 12.1.2006 [Section I]
(see Article 8 below).

Article 6(1) [criminal]

IMPARTIAL TRIBUNAL
Defence counsel found in contempt of court by the same judges before whom the contempt had taken place and judges' use of emphatic language when convicting him: *violation*.

KYPRIANOU - Cyprus (N° 73797/01)
Judgment.12.2005 [Grand Chamber]
For the Chamber judgment, see CLR-60.

Facts: The applicant, acting as defence counsel during a murder trial before an Assize Court, was interrupted by the court while cross-examining a prosecution witness. He felt aggrieved and sought leave to withdraw from the case, but as leave was not granted, he responded by alleging that during the cross-examination members of the court had been talking to each other and sending each other notes ("*ravasakia*" - which can mean, among other things, short and secret letters/notes, or love letters, or messages with unpleasant contents). The judges stated they had been "deeply insulted" "as persons"; could not "conceive of another occasion of such a manifest and unacceptable contempt of court by any person, let alone an advocate"; and that "if the court's reaction is not immediate and drastic, … justice will have suffered a disastrous blow". They gave the applicant the choice, either to maintain what he had said and to give reasons why a sentence should not be imposed on him, or to retract. As the applicant did neither, the court found him in contempt of court and sentenced him to five days' imprisonment, to be enforced immediately, which the court deemed to be the "only adequate response", as "an inadequate reaction on the part of the lawful and civilised order, as expressed by the courts would mean accepting that the authority of the courts be demeaned". The applicant served the prison sentence, although he was in fact released early, in accordance with the relevant legislation. His appeal was dismissed by the Supreme Court.

Law: Article 6(1) – This complaint was directed at a functional defect in the relevant proceedings. The applicant's case had related to contempt in the face of the court, aimed at the judges personally. They had been the direct object of his criticisms as to the manner in which they had been conducting the proceedings. The same judges then had taken the decision to prosecute him, had tried the issues arising from his conduct, had determined his guilt and had imposed the sanction (a term of imprisonment) on him. In such a situation the confusion of roles between complainant, witness, prosecutor and judge could self-evidently prompt objectively justified fears as to the conformity of the proceedings with the time-honoured principle that no one should be a judge in his or her own cause and, consequently, as to the impartiality of the bench. Accordingly, the impartiality of the Assize Court had been capable of appearing open to doubt and the applicant's fears in that respect could therefore be considered to have been objectively justified.
Turning to the applicant's allegation that the judges concerned had acted with personal bias, the Court observed that the judges in their decision sentencing the applicant had acknowledged that they had been "deeply insulted" "as persons" by the applicant. That statement in itself had showed that the judges had been personally offended by the applicant's words and conduct and had indicated personal embroilment on the part of the judges. In addition, the emphatic language used by the judges throughout their decision had conveyed a sense of indignation and shock, which had run counter to the detached approach expected of judicial pronouncements. The judges had proceeded to impose a sentence of five days' imprisonment, enforced immediately, which they had deemed to be the "only adequate response" to what had happened. In addition, the judges had expressed the opinion early on in their discussion with the applicant that they had considered him guilty of the criminal offence of contempt of court. After deciding that he had committed the above offence they had given him the choice, either to maintain what he had said and to give reasons why a sentence should not be imposed on him, or to retract. Although no doubt the judges were concerned with the protection of the administration of justice and the integrity of the judiciary and, for that purpose, felt it appropriate to initiate the procedure in question, they did not succeed in detaching themselves sufficiently from the situation. That conclusion was reinforced by the speed with which the proceedings had been carried out and the brevity of the exchanges between the judges and the applicant. Against that background and having regard in particular to the different elements of the judges' personal

conduct taken together, the applicant's misgivings about the Assize Court's impartiality had been justified in this respect as well. As the Supreme Court had declined to quash the lower court's decision the defect in question had not been remedied.
Conclusion: violation (unanimously).

Articles 6(2) and 6(3)(a) – Contrary to the Chamber, the Grand Chamber considered that no separate issue arose under these provisions.

Article 10 – Contrary to the Chamber, the Grand Chamber considered that a separate examination of this complaint was called for. The Assize Court had sentenced the applicant to five days' imprisonment which could not but be regarded as a harsh sentence, especially considering that it was enforced immediately. His conduct could be regarded as having shown certain disrespect for the judges of the Assize Court. Nonetheless, albeit discourteous, his comments had been aimed at and limited to the manner in which the judges had been trying the case, in particular concerning the cross-examination of a witness he had been carrying out in the course of defending his client against a charge of murder. The penalty in question had been disproportionately severe and had been capable of having a "chilling effect" on the performance by lawyers of their duties as defence counsel. The Court's finding of procedural unfairness in the summary proceedings for contempt served to compound that lack of proportionality. In sum, the Assize Court had failed to strike the right balance between the need to protect the authority of the judiciary and the need to protect the applicant's right to freedom of expression.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 15,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs.

IMPARTIAL TRIBUNAL
Impartiality of a judge who had on many occasions dealt with the applicant's petitions for release: *no violation*.

JASÍNSKI - Poland (Nº 30865/96)
Judgment 20.12.2005 [Section IV]

Facts: 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 22 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. 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.

Law: Article 5(3) – In previous judgments the Court has already dealt with the question whether under the Polish legislation in force at the material time a prosecutor could be regarded as a "judicial officer" endowed with attributes of "independence" and "impartiality", and found that a prosecutor did not offer these necessary guarantees as he not only belonged to the executive branch of the State but also performed investigative and prosecution functions in criminal proceedings to which he was a party. Moreover, as guardians of the public interest they could not confer upon themselves the status of "officer[s] authorised by law to exercise judicial power".
Conclusion: violation (unanimously).

Article 6(1) (impartial tribunal) – The applicant's main complaint was that in view of the fact that the judge presiding his trial had made decisions on his detention both before and during the trial, he had formed a preconceived view on his conviction and sentence. However, he did not suggest that the judge had acted with any personal bias against him, and the sole issue to be determined was therefore whether the applicant's fear of lack of impartiality was objectively justified. Whilst situations where a judge presiding over a trial had already dealt with a case at an earlier stage of the proceedings could occasion misgivings on the part of the accused, such misgivings could not in themselves be treated as objectively justified. In the judge's initial decisions on the applicant's continued detention there was no assessment by the judge that the applicant had committed the offences and they could not therefore be considered tantamount to a finding of guilt. In subsequent decisions, the judge relied repeatedly on two grounds, namely that the offences for which the applicant was charged were characterised by a high degree of danger to society and that he was criminally liable under the rules governing the so-called "relapse into crime". Given that the applicant had been charged with numerous counts of burglary, it did not appear that neither of these statements or evaluations indicated any pre-conceived view by the judge that he had already pre-judged the future penalty or sentence to be imposed on the applicant.
Conclusion: no violation (unanimously).

Article 41 – The Court found that the finding of a violation of Article 5(3) constituted sufficient just satisfaction in respect of any pecuniary and non-pecuniary damage. The Court made an award for costs and expenses.

ARTICLE 7

Article 7(1)

NULLUM CRIMEN SINE LEGE
Conviction of war crimes in relation to acts committed in 1944: *communicated*.

KONONOV - Latvia (N° 36376/04)
[Section III]

The applicant had been a member of the Soviet armed forces during the Second World War. In 2004 he was convicted of war crimes and sentenced to one year and eight months' imprisonment for the massacre of civilians in May 1944 on Latvian soil during the German occupation of the country. His conviction was based on provisions introduced into the Latvian Criminal Code in April 1993 which, referring explicitly to the relevant conventions, provided for the retroactive application of criminal law to war crimes and for such crimes to be excluded from statutory limitation.
Communicated under Article 7.

Article 7(2)

GENERAL PRINCIPLES OF LAW RECOGNISED BY CIVILISED NATIONS
Inapplicability of prescription to crimes against humanity: *inadmissible.*

KOLK and KISLYIY - Estonia (N° 23052/04 and 24018/04)
Decision 17.1.2006 [Section IV]

Facts: A county court convicted the applicants of crimes against humanity under the Estonian Criminal Code and sentenced them to eight years' suspended imprisonment with a probation period of three years. The court found that in 1949 the applicants had participated in the deportation of the civilian population from the occupied Republic of Estonia to remote areas of the Soviet Union. The applicants appealed, alleging that at the material time the Criminal Code of 1946 of the Russian Soviet Federative Socialist Republic (SFSR) had been applicable on the territory of Estonia. That Code had not provided for a punishment for crimes against humanity. The criminal responsibility for crimes against humanity had been established only in 1994 by the amendments made to the Estonian Criminal Code of 1992. With reference to Article 7 of the Convention, the defence argued that the county court had not established whether the deportation had been a crime against humanity under international and domestic law in 1949 and whether the applicants had had a possibility to foresee, at that time, that they were committing an offence. A court of appeal nevertheless upheld the lower court's judgment, noting that crimes against humanity were punishable, irrespective of the time of the commission of the offence, both according to the Estonian Criminal Code and the Penal Code. Moreover, Article 7(2) of the Convention did not prevent punishment of a person for an act which, at the time of its commission, had been criminal according to the general principles of law recognised by civilised nations. Deportations committed by the applicants had been considered crimes against humanity by civilised nations in 1949. Such acts had been defined as criminal in the Charter of the International Military Tribunal (the Nuremberg Tribunal) and affirmed as principles of international law by the General Assembly of the United Nations in its Resolution No. 95 adopted in 1946. The applicants were refused leave to appeal to the Supreme Court.

Law: The Court noted that Estonia had lost its independence as a result of the Treaty of Non-Aggression between Germany and the Union of Soviet Socialist Republics and the Soviet Army's large-scale entry into the country in 1940. Except for being occupied by German forces from 1941 to 1944, Estonia had remained occupied by the Soviet Union until its restoration of independence in 1991. Accordingly, Estonia as a state had been temporarily prevented from fulfilling its international commitments. The Court noted, however, that deportation of the civilian population had been expressly recognised as a crime against humanity in the Charter of the Nuremberg Tribunal of 1945. Although the Nuremberg Tribunal had been established for trying the major war criminals of the European Axis countries for the offences they had committed before or during the Second World War, the universal validity of the principles concerning crimes against humanity had been subsequently confirmed by, *inter alia*, Resolution No. 95 of the General Assembly of the United Nations adopted in 1946. Article 7(2) of the Convention expressly provides that Article 7 shall not prejudice the trial and punishment of a person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations. That is true of crimes against humanity, in respect of which the rule that they cannot be time-barred was laid down by the Charter of the Nuremberg International Tribunal. Even if the acts committed by the applicants could have been regarded as lawful under the Soviet law at the material time, they were nevertheless found by the Estonian courts to constitute crimes against humanity under international law at the time of their commission. The Court saw no reason to come to a different conclusion. Furthermore, as the Soviet Union had been a party to the 1945 agreement whereby the Nuremberg Charter had been adopted as well as a member of the United Nations when its General Assembly had adopted its resolution No. 95, it could not be claimed that the principles in question had been unknown to the Soviet authorities. Furthermore, Estonia had acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity on having regained its independence in 1991. In sum, the Court found no reason to call into question the Estonian courts' interpretation and application of domestic law made in the light of the relevant international law: *manifestly ill-founded*.

ARTICLE 8

PRIVATE LIFE
Impossibility to challenge in court the legal presumption of paternity: *violation*.

MIZZI - Malta (Nº 26111/02)
Judgment 12.1.2006 [Section I]

Facts: In 1966, the applicant's wife X became pregnant. The following year, the applicant and X separated and stopped living together and, X gave birth to a daughter, Y. The applicant was automatically considered to be Y's father under Maltese law and was registered as her natural father. Following a DNA test which, according to the applicant, established that he was not Y's father, the applicant tried unsuccessfully to bring civil proceedings to repudiate his paternity of Y. According to the Maltese Civil Code, a husband could challenge the paternity of a child conceived in wedlock if he could prove both the adultery of his wife and that the birth had been concealed from him. This latter condition was dropped when the law was amended in 1993 and a time-limit of six months from the day of the child's birth was set as the cut off point for introducing such proceedings. In 1997 the Civil Court accepted the applicant's request for a declaration that, notwithstanding the provisions of the Civil Code, he had a right to proceed with a paternity action and found that there had been a violation of Article 8 of the European Convention on Human Rights. That judgment was subsequently revoked by the Constitutional Court.

Law: Article 6 (right to a court) – The applicant's allegations that he was not the biological father of Y were not manifestly devoid of substance. It could therefore be considered that the right to deny paternity claimed by the applicant was arguable and that the dispute he wished to bring was genuine and serious. Thus, Article 6 was applicable to the case. At the time of Y's birth, any action which the applicant could have brought in order to deny paternity would have had little prospects of success as he would have been unable to prove any of the elements required by the Civil Code in force at the time. After the 1993 amendments, a time-limit precluded a possible action before the courts by the applicant. While the applicant could still file an application before the Civil Court, a degree of access to a court limited to the right to ask a preliminary question could not be considered sufficient to secure the applicant's "right to a court". Moreover, the Civil Court's favourable decision was revoked by the Constitutional Court. This, coupled with the wording of the relevant domestic provisions, deprived the applicant of the possibility of obtaining a judicial determination of his claim. The Court accepted that under certain circumstances, the institution of time-limits for the introduction of a paternity action might serve the interests of legal certainty and the interests of the children. However, the application of the rules in question should not have prevented litigants from making use of an available remedy. The practical impossibility for the applicant to deny his paternity from the day Y was born until the present day impaired, in essence, his right of access to a court. The domestic courts had failed to strike a fair balance between the applicant's legitimate interest of having a judicial ruling over his presumed paternity and the protection of legal certainty and of the interests of the other people involved in his case. The interference thus imposed an excessive burden on the applicant.
Conclusion: violation (unanimously).

Article 8 – In the present case the applicant sought by means of judicial proceedings to rebut the legal presumption of his paternity on the basis of biological evidence. The Court's task was to examine whether the respondent State, in handling the applicant's paternity action, had complied with its positive obligations under this Article. The applicant had never had the possibility of having the results of his daughter's blood test examined by a tribunal. It was only after the 1993 amendments that the applicant would have had the right to contest paternity on the basis of scientific evidence and of proof of adultery, had it been possible for him to lodge the action within six months of Y's birth. However, the only means of redress open to the applicant to obtain the reopening of the time-limit was to apply to the Civil Court. Had the Civil Court and the Constitutional Court accepted his request, they would have adequately secured the interests of the applicant, who had legitimate reasons to believe that Y might not be his daughter and wished to challenge in court the legal presumption of his paternity. The Court was not

convinced that such a radical restriction of the applicant's right to take legal action was "necessary in a democratic society". It found that the potential interest of Y to enjoy the "social reality" of being the daughter of the applicant could not outweigh the latter's legitimate right of having at least one occasion to reject the paternity of a child who, according to scientific evidence that the applicant alleged to have obtained, was not his own. The fact that the applicant was never allowed to disclaim paternity was not proportionate to the legitimate aims pursued. It followed that a fair balance had not been struck between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence. Therefore, despite the margin of appreciation afforded to the domestic authorities, the latter had failed to secure to the applicant the respect for his private life, to which he was entitled under Article 8.
Conclusion: violation (unanimously).

Article 14 taken in conjunction with Articles 6 and 8 – In bringing an action to contest his paternity the applicant was subject to time-limits which did not apply to other "interested parties". The Court found that the rigid application of the time-limit along with the Constitutional Court's refusal to allow an exception deprived the applicant of the exercise of his rights guaranteed by Articles 6 and 8 which were and still are, on the contrary, enjoyed by the other interested parties.
Conclusion: violation (unanimously).

EXPULSION
Expulsion to Algeria of an applicant who has close links with France: *no violation*.

AOULMI - France (N° 50278/99)
Judgment 17.1.2006 [Section IV]
(see Article 34 below).

PRIVATE AND FAMILY LIFE
Refusal to allow foreign mother to remain in the Netherlands, where she has been staying without holding a residence permit, in order to share in the care of Dutch child born there: *violation*.

RODRIGUES DA SILVA AND HOOGKAMER - Netherlands (N° 50435/99)
Judgment 31.1.2006 [Former Section II]

Facts: The first applicant, a Brazilian national, entered the Netherlands in 1994 and began cohabiting with a Dutch national without seeking a residence permit. A daughter, Rachael (the second applicant), was born to them in 1996 but in 1997 the couple split up. Parental authority over Rachael was awarded to her father, a decision later reversed by a regional court following the first applicant's appeal. In 1998 the Supreme Court quashed the latter decision and referred the case to a court of appeal.
Meanwhile, in 1997 the first applicant sought a residence permit but this was refused in 1998. The Deputy Minister of Justice noted, in particular, that the first applicant, who was working illegally, did not pay taxes or social security contributions. The interests of the economic well-being of the country therefore outweighed her right to reside in the Netherlands. In 1999 a regional court upheld the refusal. Later that year the police informed the applicant that she had to leave the country within two weeks, although she remains in the country to this day.
In July 1999 the court of appeal awarded parental authority over Rachael to her father, a judgment upheld by the Supreme Court in 2000. The higher courts based their decisions on an expert report which stated that it would be a traumatic experience for the child to be uprooted from the Netherlands and separated from her father and paternal grandparents. In 2002 the first applicant again applied for a residence permit but this was again refused.

Law: The case concerned the domestic authorities' refusal to allow the first applicant to reside in the Netherlands, where her stay has at no time been lawful. The question to be examined was therefore whether the authorities had a positive obligation to allow the first applicant to reside there, thus enabling the applicants to maintain and develop family life within Dutch territory. The Court noted that at the time

the final decision on her application for a residence permit had been taken in 1999, the first applicant no longer had parental authority over Rachael as the Supreme Court had quashed the decision of the regional court to that effect. Moreover, from a very young age, Rachael had been raised jointly by the first applicant and her paternal grandparents, with her father playing a less prominent role. The refusal of a residence permit and the expulsion of the first applicant to Brazil would render it impossible for the applicants to maintain regular contacts. It was true that the applicant had not attempted to regularise her stay in the Netherlands until more than three years after first arriving in that country and her stay there had been illegal throughout. Persons who, without complying with the regulations in force, confront the authorities of a Contracting State with their presence in the country as a *fait accompli* do not, in general, have any entitlement to expect that a right of residence will be conferred upon them. Nevertheless, in the present case the Government had indicated that lawful residence in the Netherlands would have been possible on the basis of the fact that the first applicant and her former partner had had a lasting relationship between 1994 and 1997. Although a serious reproach had to be made of the first applicant's cavalier attitude to Dutch immigration rules, this case fell to be distinguished from others in which the Court considered that the persons concerned could not at any time reasonably expect to be able to continue family life in the host country. In view of the far-reaching consequences which an expulsion would have on the responsibilities which the first applicant has as a mother, as well as on her family life with her young daughter, and taking into account that it is clearly in Rachael's best interests for the first applicant to stay in the Netherlands, the Court considered that in the particular circumstances of the case the economic well-being of the country did not outweigh the applicants' rights under Article 8, despite the fact that the first applicant had been residing illegally in the Netherlands at the time of Rachael's birth. Indeed, by attaching such paramount importance to this latter element, the authorities could be considered to have indulged in excessive formalism and no fair balance had been struck between the different interests at stake.
Conclusion: violation (unanimously).

Article 41– The finding of a violation was held to be sufficient just satisfaction for the non-pecuniary damage sustained. The Court awarded a certain amount for costs and expenses incurred at domestic level.

PRIVATE AND FAMILY LIFE
Refusal to permit widow to transfer her late husband's urn to a family burial plot in a different city: *no violation*.

ELLI POLUHAS DÖDSBO - Sweden (N° 61564/00)
Judgment 17.1.2006 [Section II]

Facts: The applicant, her husband and five children lived in Fagersta. Following the husband's death in 1963 his ashes were buried in a family grave at a local cemetery. In 1980 the applicant moved to Västerås (70 kilometres away) to be closer to her children. In 1996 she requested the cemetery authorities to allow the transfer of her husband's urn to her family burial plot in Stockholm, where her parents had been buried and where she herself intended to be buried after her death (Stockholm is situated 180 kilometres from Fagersta). The applicant submitted in addition that she had no connections to Fagersta any more, that all her children agreed to the removal of the ashes and that she was sure that her husband would not have objected either. Her request was refused by the authorities out of respect for the notion of "a peaceful rest" under the Funeral Act. A county administrative board upheld the refusal, as did a county administrative court. Leave to appeal was refused by an administrative court of appeal and by the Supreme Administrative Court. Following the applicant's death in 2003 she was buried at the family burial plot in Stockholm.
Under domestic law, when a person dies, his or her wishes concerning cremation and burial should, as far as possible, be followed. Once remains or ashes have been buried, moving them from one place to another is in principle not allowed. However, permission to that end may be granted if special reasons exist and if the proposed new location has clearly been stated. In several judgments rendered in 1994 the Supreme Administrative Court interpreted the notion of "special reasons" restrictively.

Law: The Court did not consider it necessary to determine whether the refusal to allow the transfer of the ashes of the applicant's husband involved the notions of "family life" or "private life", and assumed that there had been an interference, within the meaning of Article 8(1). In the present case, on the one hand, the removal of the urn appeared, in practical terms, to be quite easy and no public health interests seem to be involved. On the other hand, there were no indications that the applicant's husband had not been buried in accordance with his wishes, on the contrary. In principle, it had to be assumed that account had been taken of any such wish when the burial took place. Moreover, at the relevant time, although having no connection to Stockholm, the applicant's husband, the applicant, or both together, could have chosen that he be buried with his in-laws at the family burial plot in Stockholm, established in 1945. Instead, in 1963 when the applicant's husband had died, the family burial plot in Fagersta had been established and he had been buried there, in the town where he had lived for 25 years. Finally, nothing had prevented the applicant from having her final resting place in the same burial ground as that of her husband, albeit in Fagersta, the town where she had continued to live until 1980, 17 years after her husband's death. In sum, the Swedish authorities had taken all relevant circumstances into consideration and balanced them carefully; the reasons given by them for refusing the transfer of the urn had been relevant and sufficient; and the national authorities had acted within the wide margin of appreciation afforded to them in such matters.
Conclusion: no violation (four votes to three).

PRIVATE AND FAMILY LIFE
Women of Romani origin allegedly sterilised without their consent: *communicated*.

I.G., M.K. and R.H. - Slovakia (N° 15966/04)
[Section IV]
(see Article 3 above).

HOME
Forced relocation of members of the Inughuit tribe on Greenland in the 1950s: *inadmissible*.

HINGITAQ 53 - Denmark (N° 18584/04)
Decision 12.1.2006 [Section I]
(see Article 1 of Protocol No. 1 below).

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Prohibition for students of religiously-oriented public secondary schools to wear the Islamic head-scarf within the limits of the school: *inadmissible*.

KÖSE and 93 Others - Turkey N° 26625/02)
Decision 24.1.2006 [Section II]
(see Article 2 of Protocol No. 1 below).

MANIFEST RELIGION OR BELIEF
Prohibition for a university professor to wear the Islamic head-scarf in the exercise of her functions: *inadmissible*.

KURTULMUŞ - Turkey (N° 65500/01)
Decision 24.1.2006 [Section II]

At the time of the events the applicant was an associate professor at Istanbul University. She stated that she had obtained her doctorate in 1992 and passed the competitive examination for senior teaching posts in 1996 while wearing an Islamic headscarf. In 1998 she was the subject of a disciplinary investigation under the rules in force on the dress of civil servants, which resulted in her receiving a caution and being barred from promotion for two years for failing to observe the rules. As she continued to wear the headscarf while performing her duties, she received a reprimand and was deemed to have resigned. Her application to have the last of these penalties set aside was rejected by the administrative court following a hearing. The applicant then appealed to the Supreme Administrative Court against the severity of the penalty. Before the Supreme Administrative Court could examine the case, a law entered into force granting an amnesty to civil servants who had been the subject of disciplinary measures and erasing the effects of such measures. After the applicant requested that her case continue to be heard notwithstanding the amnesty, the Supreme Administrative Court upheld the first-instance judgment, without holding a hearing. According to the information in the Court's possession, the applicant appeared not to have requested reinstatement in her post.

Inadmissible under Article 9 – Despite the amnesty granted to the applicant and the fact that she had not applied to be reinstated, the Court considered that it must continue its examination of her complaints, which in substance amounted to an allegation that her right to manifest her religion had been violated as a result of the dress code imposed on civil servants in the performance of their duties. The Court proceeded on the basis that the rules at issue amounted to an interference with the exercise of the right in question. The interference could be considered to have pursued legitimate aims, namely the protection of the rights and freedoms of others and the prevention of disorder. As to whether it had been necessary, Article 9 did not confer on individuals who chose to behave in a certain way on the basis of their religious beliefs the right to disregard rules which had been shown to be justified; that principle applied also to civil servants. The Court therefore had to consider whether a fair balance had been struck in the present case between the fundamental right of the individual to freedom of religion and the legitimate interest of a democratic State in ensuring that its civil service properly furthered the purposes enumerated in Article 9(2). In the particular context of relations between the State and religions, the role of the domestic policy-maker needed to be given special weight. In a democratic society, the State was entitled to restrict the wearing of Islamic headscarves if the practice clashed with the aim of protecting the rights and freedoms of others. In the present case, the applicant had chosen to become a civil servant; the "tolerance" shown by the authorities, on which the applicant relied, did not make the rule at issue any less legally binding. The dress code in question, which applied without distinction to all members of the civil service, was aimed at upholding the principles of secularism and neutrality of the civil service, and in particular of State education. Furthermore, the scope of such measures and the arrangements for their implementation must inevitably be left to some extent to the State concerned. Consequently, given the margin of appreciation enjoyed by the Contracting States in the matter, the interference complained of had been justified in principle and proportionate to the aim pursued: ***manifestly ill-founded.***

Inadmissible under Articles 6 and 7 – As to the alleged lack of impartiality and independence, the Court noted the constitutional and legal safeguards which attached to judges in administrative tribunals and the lack of any relevant argument which might cast doubt on their independence and impartiality. As to the fact that there had been no public hearing before the Supreme Administrative Court, the lower administrative court had had full jurisdiction to rule in the case and had held a hearing at which the applicant had been represented. The proceedings considered as a whole did not therefore disclose any appearance of a violation of Article 6: *manifestly ill-founded*.

With regard to Article 7, the penalties imposed on the applicant had indisputably been of a disciplinary nature and could not be considered as a punishment resulting from a criminal conviction. Consequently, Article 7 did not therefore apply to the present case: *incompatible ratione materiae*.

Inadmissible under the other provisions of the Convention relied on by the applicant – The applicant's arguments concerning Articles 8 and 10 merely reiterated the complaint under Article 9. As to Article 14, the Court noted that the impugned rules had not been based on the applicant's religion or the fact that she was a woman. Finally, with regard to the complaint under Article 1 of Protocol No. 1, the penalties imposed on the applicant had been the subject of an amnesty. In any event, the dismissal of a civil servant and the resulting loss of future earnings did not constitute an interference with that person's right to peaceful enjoyment of his or her "possessions": *manifestly ill-founded*.

ARTICLE 10

FREEDOM OF EXPRESSION
Defence counsel found in contempt of court following intemperate outburst: *violation*.

KYPRIANOU - Cyprus (N° 73797/01)
Judgment 15.12.2005 [Grand Chamber]
(see Article 6(1) [criminal] above).

FREEDOM OF EXPRESSION
Journalists sentenced to pay damages and interests to a high-ranking police officer and a judge: *no violation.*

STÂNGU and SCUTELNICU - Romania (N° 53899/00)
Judgment 31.1.2006 [Section II (former composition)]

Facts: The applicants, who are journalists, published an article in a local newspaper about the resignation of the head of the local police force and referring also to his wife, a judge. The couple brought proceedings for defamation against the journalists, who were convicted by the trial and appeal courts. The Supreme Court of Justice set aside the decisions and retried the case. It found that the applicants had merely informed the public about certain activities on the part of the former police officer and his wife, and stressed that imposing a criminal penalty on the journalists would amount to censorship and would discourage the press from criticising the professional activities of certain public figures in the future. The Supreme Court acquitted the journalists of defamation, but ordered them to pay compensation to the complainants for non-pecuniary damage.

Law: Article 10 – The interference, prescribed by law, had pursued the legitimate aim of protecting the rights of others, in this instance the reputations of the complainants. As to whether the interference had been necessary in a democratic society, the Court pointed out that the article as a whole had contained factual allegations and had sought to convey a fairly unambiguous message to the public, namely that the chief police officer had in all likelihood dealt with a large number of cases with the complicity of his wife, a judge, and that he planned to invest a substantial sum of money in the setting-up of a private bank. However, the applicants had failed throughout the proceedings in the domestic courts to produce any evidence to substantiate their statements and had also failed to attend the hearings. They had also published statements attributed to a third party, which the latter had vigorously denied before the court and which had not been corroborated by any other evidence. In short, in view of the fact that the journalists had acted in bad faith and had failed to substantiate their allegations, and despite the fact that the impugned article had been published in the context of a broader and highly topical debate within Romanian society on corruption in the civil service, the Court did not believe that the applicants' assertions could be taken as an example of the "degree of exaggeration" or "provocation" which was permissible in the exercise of journalistic freedom. The applicants could not argue that the Supreme Court

had given insufficient reasons for its finding that the complainants had sustained non-pecuniary damage, since they themselves had omitted to substantiate their allegations before the courts, thus making it impossible for the domestic courts to assess in full knowledge of the facts whether or not they had exceeded the limits of acceptable criticism. Finally, the amount of damages had been relatively low, equivalent to EUR 831 to each of the complainants, and the sums had, in any event, not been paid.
Conclusion: no violation (five votes to two).

FREEDOM OF EXPRESSION
Conviction for defamation of the Christian community: ***violation.***

GINIEWSKI - France (N° 64016/00)
Judgment 31.1.2006 [Section II]

Facts: The applicant, a journalist, sociologist and historian, wrote an article in a daily newspaper on Pope John Paul II's encyclical "The Splendour of Truth". An association called the "General Alliance against Racism and for Respect for French and Christian Identity" complained that the article defamed the Christian community. The courts allowed the civil claim lodged by the association, finding that some passages in the article undermined the honour and character of Christians and, more specifically, the Catholic community. The applicant was found guilty of publicly defaming a group of persons on the basis of their religion. He was ordered to pay the association one French franc in damages and 10,000 French francs in expenses, and to publish a statement concerning his conviction in a national newspaper.

Law: Article 10 – The interference, prescribed by the 1881 Freedom of the Press Act, was aimed at protecting groups of persons against defamation on the basis of their belonging to a particular religion. That aim corresponded to the aim of protecting "the reputation or rights of others" set forth in Article 10(2). As to whether the interference had been necessary in a democratic society, the Court took the view that the conviction did not correspond to a "pressing social need". Although the article by the applicant had criticised a Papal encyclical and hence the Pope's position, the analysis it contained could not be extended to Christianity as a whole, which was made up of various strands, several of which rejected Papal authority. The applicant had sought primarily to develop an argument about the scope of a particular doctrine and its possible links with the origins of the Holocaust. In so doing he had made a contribution, which by definition was open to discussion, to a wide-ranging and ongoing debate, without sparking off any controversy that was gratuitous or detached from the reality of contemporary thought. By considering the detrimental effects of a particular doctrine, the article in question had contributed to discussion of the various possible reasons behind the extermination of Jews in Europe, a question of indisputable public interest in a democratic society. In such matters restrictions on freedom of expression were to be strictly construed. Although the issue raised in the present case concerned a doctrine upheld by the Catholic Church, and hence a religious matter, an analysis of the article in question showed that it did not contain attacks on religious beliefs as such, but a view which the applicant had wished to express as a journalist and historian. In that connection, the Court considered it essential in a democratic society that a debate on the causes of acts of particular gravity amounting to crimes against humanity should be able to take place freely. The article in question had, moreover, not been "gratuitously offensive" or insulting, and had not incited disrespect or hatred. Nor had it cast doubt in any way on clearly established historical facts. With regard to the penalties imposed on the applicant, the fact that the statement which he had been required to publish had mentioned the criminal offence of defamation undoubtedly had a deterrent effect, and the sanction appeared disproportionate in view of the importance of the debate in which the applicant had legitimately sought to take part.
Conclusion: violation (unanimously).

ARTICLE 11

NOT JOIN TRADE UNIONS
Obligation to join trade union as condition of employment: *violation*.

SØRENSEN and RASMUSSEN - Denmark (Nº 52562/99 and Nº 52620/99)
Judgment 11.1.2006 [Grand Chamber]

Facts: The first applicant was offered a short-term job as a holiday-relief worker, one of the conditions of employment being that he become a member of a trade union, SID. On receiving his first pay slip, he realised that he was paying a subscription to that union, although he had applied for membership of a different union. He informed his employer that he did not want to pay the subscription to SID and as a result he was dismissed for not satisfying the requirements for obtaining the job. The second applicant was offered a job as a gardener on the condition that he become a member of SID, with which the employer had entered into a closed shop agreement. The applicant, who had been unemployed, joined SID so that he could take up the job, although he did not agree with the union's political views.

Law: Article 11 – Freedom of association encompasses a negative right of association, which is a right not to be forced to join an association. An individual could not be considered to have renounced his negative right where, in the knowledge that trade union membership was a precondition of employment, he had accepted an offer of employment notwithstanding his opposition to that condition. Thus, a distinction between pre-entry and post-entry closed shop agreements was not tenable. Moreover, while the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with exercise of the rights protected, the authorities may in certain circumstances be obliged to intervene in the relationship between private individuals by taking reasonable and appropriate measures to secure the effective enjoyment of those rights. Consequently, the State's responsibility will be engaged if it fails to secure the negative right of association under domestic law. In that respect, whether the State has a positive or a negative obligation, the applicable principles are similar: a fair balance must be struck between the competing interests of the individual and of the community. In the area of trade union freedom, the State enjoys a wide margin of appreciation but that margin is reduced considerably if the domestic law permits closed shop agreements which run counter to the individual's freedom of choice. In that connection, particular weight must be attached to the justifications advanced by the authorities and account must be taken of changing perceptions of the relevance of closed shop agreements.
In the case at issue, the fact that the applicants had accepted membership of the union as a condition of employment did not significantly alter the element of compulsion inherent in having to join a trade union against their will. Although it was not in dispute that the first applicant could have found similar employment with an employer who had not entered into a closed shop agreement, he was nevertheless dismissed without notice as a direct result of his refusal to comply with the requirement to join SID, a requirement which had no connection with his ability to perform the job. In the Court's opinion, such a consequence could be considered serious and capable of striking at the very substance of the freedom of choice inherent in the negative right to freedom of association. As to the second applicant, it was speculative whether he could have found employment elsewhere but it was certain that if he had resigned his membership of SID he would have been dismissed without any possibility of reinstatement or compensation. The Court was therefore satisfied that he was individually and substantially affected by the application of the closed shop agreement to him. Both applicants were thus compelled to join SID and that compulsion struck at the very substance of their freedom of association. The Court considered that legislative attempts to eliminate the use of closed shop agreements in Denmark reflected the trend in Contracting States not to regard such agreements as an essential means of securing the interests of trade unions and to give due weight to the right of individuals to join a union of their choice, without fear of prejudice to their livelihood. These attempts were furthermore consistent with developments on the international level, notably pursuant to the European Social Charter. Taking all the circumstances into account, the Court found that the respondent State had failed to protect the applicants' negative right to trade union freedom.

Conclusion: violation (12 votes to 5 with regard to the first applicant and 15 votes to 2 with regard to the second applicant).

Article 41 – The Court made an award in respect of pecuniary damage with regard to the first applicant. Neither applicant had claimed non-pecuniary damage. The Court also made awards in respect of costs and expenses with regard to both applicants.

ARTICLE 14

DISCRIMINATION
Women of Romani origin allegedly sterilised without their consent: *communicated*.

I.G., M.K. and R.H. - Slovakia (N° 15966/04)
[Section IV]
(see Article 3 above).

ARTICLE 30

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER
Lack of power of magistrates' court to grant release on bail: *relinquishment*.

McKAY - United Kingdom (Nº 543/03)
Decision 17.1.2006 [Section IV]

The applicant was arrested on suspicion of robbery. He was brought before the magistrates' court two days after his arrest, when he applied for release on bail. A police officer gave evidence to the court that the robbery was not connected with terrorism, but the resident magistrate nevertheless refused the applicant's request, on the ground that robbery was a scheduled offence under the Terrorism Act 2000 and he lacked power to order release. The applicant's bail request was heard and granted by the High Court three days after his arrest. The applicant complains of a breach of Article 5 as there was no automatic bail hearing before the magistrates' court following his arrest.
The Section has relinquished jurisdiction in favour of the Grand Chamber.

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Hindrance of the right of individual application as a result of non-respect by the defending State of the measure indicated under Rule 39: *violation*.

AOULMI - France (N° 50278/99)
Judgment 17.1.2006 [Section IV]

Facts: The applicant, an Algerian national and the son of a *harki* (Algerians loyal to the French during the Algerian War of Independence), moved to France with his parents in 1960, at the age of four. He has six brothers and sisters, who were born in France and all have French nationality. He also has a daughter born in 1983, and was married to a French national between 1989 and 1993. He was diagnosed with chronic active hepatitis in 1994.
In the 1980s the applicant was convicted on several occasions of drug trafficking, and an order was eventually made for his permanent exclusion from French territory. An appeal by the applicant against the exclusion order was dismissed in June 1996. On 11 August 1999 the prefect issued an order for his

deportation to Algeria. An administrative appeal by the applicant against that decision and a request for asylum on his part were both dismissed.
In the meantime, on 11 August 1999, the Court had decided, under Rule 39 of the Rules of Court, to request the French Government to refrain from deporting the applicant until 24 August, the date on which the Chamber dealing with the case was due to meet to examine the application. The French authorities agreed to stay execution of the deportation order until 16 August 1999 to allow a medical report to be prepared. However, on 19 August 1999 the applicant was deported to Algeria.
On 13 December 2000 the administrative court set aside the deportation order, in view of the "exceptionally serious consequences" which the measure was likely to entail for the applicant's health. The applicant, according to his lawyer, is unable to return to France owing to administrative barriers in both countries; according to the lawyer, his health is continuing to deteriorate and he is not receiving the medical treatment he needs.

Law: Preliminary objections by the Government (failure to exhaust domestic remedies) – As the Government had not raised these issues at the admissibility stage, they were stopped from doing so now.

Article 3 – The applicant had not proved that his illness could not be treated in Algeria. The fact that treatment would be less easy to obtain there than in France was not decisive for the purposes of Article 3. The Court pointed out that Article 3 set a high threshold of severity, in particular when the Contracting State could not be held directly liable for the damage caused to the applicant. In the circumstances, there was not a sufficiently real risk that the applicant's removal to Algeria was incompatible with Article 3 on account of his state of health. As to the reprisals which the applicant might suffer in Algeria as the son of a *harki*, the mere possibility of ill-treatment on account of the unsettled situation in a particular country was not in itself sufficient to give rise to a breach of Article 3, particularly as, with regard to this case, political changes were now under way in Algeria.
Conclusion: no violation.

Article 8 – The fact that the interference had been in accordance with the law and had pursued the legitimate aim of "the prevention of disorder or crime" was not in dispute. It therefore remained to be determined whether the exclusion order against the applicant had struck a fair balance between his right to respect for his family life on the one hand and the prevention of disorder or crime on the other. His conviction had been for drug trafficking, an area in which the Contracting States might be expected to take a very firm approach. However, the applicant's ties to France also had to be taken into account. He had spent most of his life in France and all his family members lived there. In assessing whether he had a family life within the meaning of Article 8, however, it was necessary to refer back to the time when the impugned measure had become final, in this case the date in 1996 when the judgment dismissing the appeal against the exclusion order had been delivered. At that time, the applicant's marriage had already been dissolved for more than three years. As for his daughter, who had been 16 years old at the time of his removal, the applicant had indicated only that he had "special ties" with her, without specifying the nature of such ties or the role he might have played in her life. Accordingly, despite the strength of the applicant's ties with France, the Court of Appeal had been legitimately entitled to consider that ordering his permanent exclusion from French territory had been necessary for the prevention of disorder or crime. The impugned measure had therefore been proportionate to the aims pursued.
Conclusion: no violation (unanimously).

Article 34 – The consequences of failure by a respondent State to comply with the measures indicated by the Court under Rule 39 had been examined in the *Mamatkulov and Askarov v. Turkey* judgment of 4 February 2005, in which the Court had reiterated that the obligation not to hinder the effective exercise of the right of petition precluded any interference with the right of the individual effectively to present and pursue his or her complaint before it. In the present case the applicant's removal to Algeria, despite the request made by the Court to suspend the measure, had irreversibly undermined the protection of the applicant's rights under Article 3. Furthermore, as the applicant's lawyer had lost touch with him in the meantime, the taking of evidence had been made more difficult. The applicant's removal to Algeria had therefore hampered the examination of his complaints and had ultimately prevented the Court from affording him protection against potential violations of the Convention. As a result, the applicant had been hindered in the effective exercise of his right of individual petition as set forth in Article 34. Although at

the time of his deportation the binding nature of the measures enacted under Rule 39 had not been stated explicitly, the Contracting States had already been bound by Article 34 and the obligations arising out of it.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant specified sums in respect of non-pecuniary damage and costs and expenses.

ARTICLE 35

EFFECTIVE DOMESTIC REMEDY
Adoption of a Compensation Law to redress the problem of internally displaced persons who had been denied access to their possessions in their villages (as a result of terrorist acts or measures taken by the authorities to combat terrorism): *inadmissible*.

ICYER - Turkey (N° 18888/02)
Decision 12.1.2006 [Section III]

The applicant, who lived in a village in south-east Turkey, claims to have been forcibly evicted from his village by the security forces in October 1994 on account of the disturbances in the region. All his property was destroyed and he and his family moved to Istanbul. He lodged a petition with the Prosecutor's Office in December 1994. The file was transferred to the Administrative Council, body from which he received a response the following year stating that there would be no investigation into his allegations as the perpetrators of the alleged acts could not be identified. In 2001 the applicant filed a petition with the Governor's office in his region requesting permission to return to his village. The Government disputes this version of the facts and claims that the applicant (and his co-villagers) had evacuated their village on account of intense terrorist activities in the region and threats by the PKK. In July 2004 the Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism was passed, which the Government claims is a sufficient remedy capable of redressing the Convention grievances of persons who have been denied access to their possessions in their villages.

Inadmissible under Articles 8, 13, and Article 1 of Protocol No. 1 – It was not disputed that there was currently no obstacle preventing the applicant from returning to his village. Moreover, under the new Law the applicant was entitled to claim compensation for damage. The Law foresaw that a claimant had to prove damage by means of any information or document. After determining the damage, a compensation commission would prepare a friendly-settlement declaration and would make an offer to the claimant. As regards the effectiveness of this remedy, compensation commissions were now operational in 76 provinces and there were already around 170,000 making use of this remedy, which proved that it was not only available in theory but also in practice. As to the applicant's claim of the lack of adversarial proceedings before the compensation commissions, these bodies did not assume the task of a "tribunal" and did not therefore need to provide adversarial proceedings. They merely served to determine the damage sustained by individuals and to make a friendly-settlement offer either in kind or in cash. Compensation could be obtained not only for damage to property but also for a wide range of economic activities. As regards non-pecuniary damage, the Law opened an avenue to the possibility of seeking such damages in the administrative courts. The Court's approach in this case had been similar to that in *Broniowski v. Poland*: after having identified the problem of internally displaced persons as a structural problem in Turkey, measures to be taken to put an end to this problem were indicated to the authorities. With the adoption of the Compensation Law of 27 July 2004, the Government could be deemed to have fulfilled their duty to review the systemic situation at issue and to introduce an effective remedy. Hence, the applicant should be required by Article 35(1) to lodge an application with the relevant compensation commission under the new Law to claim compensation for the damage sustained as a result of his inability to gain access to his possessions: *non-exhaustion*.

ARTICLE 37

Article 37(1)

MATTER RESOLVED
Ex gratia payment to holders of fishing rights who had been unable to have their complaint examined by a domestic court: *struck out*.

DANELL and Others - Sweden (N° 54695/00)
Judgment 17.1.2006 [Section II]

Facts: The applicants are 15 Swedish nationals. Eight of them were professional fishermen. They live in the North of Sweden close to the border with Finland. The applicants, who held private fishing rights in the Torne River Fishing Area, requested the Finnish-Swedish Frontier Rivers Commission to grant them an exemption for the 1999 season from certain fishing restrictions. The eight professional fishermen in the group were granted authorisation to catch fish, other than trout and salmon, using stationary equipment, but the remainder of their request was rejected. Under the 1971 Frontiers River Agreement between Sweden and Finland no appeal was permitted against a decision from the Commission. The applicants notwithstanding brought appeals to the administrative courts, which were dismissed. They complained to the Court that the Finnish-Swedish Frontier Rivers Commission could not be considered to be an independent and impartial tribunal, and that, since no appeal against its decision was possible, they had been refused access to court. They had therefore also been denied the right to an effective remedy. They relied on Articles 6(1) and 13. The Court declared the application admissible in March 2005.

Law: Article 37(1) – In July 2005 the Court received a formal declaration signed by the parties accepting a friendly settlement of the case. The Government agreed to pay the applicants 750,000 Swedish kronor (approximately EUR 79,736). It also informed the Court that a new agreement revising the 1971 Frontier Rivers Agreement would enter into force when approved by the respective Parliaments of Sweden and Finland. The new Commission would not in the future be empowered to grant exemptions from fishing provisions, and issues of the kind would be dealt with by domestic authorities and courts in the two States: *struck out*.

ARTICLE 1 OF PROTOCOL No. 1

DEPRIVATION OF PROPERTY
Forced relocation of members of the Inughuit tribe on Greenland in the 1950s and related compensation award: *inadmissible*.

HINGITAQ 53 - Denmark N° 18584/04)
Decision 12.1.2006 [Section I]

Facts: The applicants are over 400 individuals from the Thule District in Greenland, and Hingitaq 53, a group that represented the interests of relocated Inughuit (the Thule Tribe) and their descendants in a legal action against the Danish Government. The Thule District was incorporated into the Danish colonial area in Greenland in 1921. After World War II Denmark and the USA signed a treaty on the defence of Greenland, which was approved by the Danish Parliament in 1951. Consequently, an American air base was established amidst the applicants' hunting areas and in the vicinity of the applicants' native village site, Uummannaq (then called Thule). As part of the base an airstrip was built, together with housing and facilities intended to accommodate 4,000 people. In 1953 the US Government requested permission to expand the base to cover the whole Dundas Peninsula. The request was granted, with the consequence that the Thule Tribe was evicted and had to settle outside the defence area. Within days, twenty-six Inuit families left Uummannaq, leaving behind their houses, a hospital, a school, a radio station, warehouses, a

church and a graveyard. Most of the families chose to move to Qaanaaq, more than 100 km north of Uummannaq, where they lived in tents until substitute housing was built for them.
In 1953 a new Danish Constitution was passed which extended to all parts of the Danish Kingdom, including Greenland, which thus became an integral part of Denmark. In 1954 the United Nations General Assembly approved the constitutional integration of Greenland into the Danish Realm and deleted Greenland from the list of non-self-governing territories. In 1959 and 1960 the Thule Tribe requested the Ministry for Greenland to grant compensation for the relocation of the tribe but never received a decision. In 1979 home rule was introduced in Greenland, a scheme which left most of the important decision-making, excluding the areas of foreign policy and defence, to the Home Rule Government. In 1985 the Thule Tribe lodged a fresh claim for compensation. This eventually led, among other things, to the building of new houses instead of the original houses from the 1950s, and to an agreement between the Danish Government and the Home Rule Government to improve the conditions for the Thule municipality in order to remedy the inconveniences resulting from the existence of the military base. The plan was implemented in the period 1985-1986 and in 1986 the US and Denmark entered into an agreement reducing the area of the base to almost half its original size. In 1987 the Minister of Justice set up a review committee to submit a report establishing the facts of the Thule Tribe's relocation in 1953. In 1997 the Danish Government agreed to donate a substantial amount of money towards the cost of a new airport in Thule. In 1999 the Danish Prime Minister formally apologised to the applicants for the forced relocation of the Inughuit in 1953.
In the meantime, in 1996, the applicants brought a case against the Prime Minister's Office before a High Court, seeking declarations that they had the right to live in and use their native settlement in Uummannaq/Dundas in the Thule District and that they had the right to move, stay and hunt in the entire Thule District; and seeking compensation both for the Thule Tribe and individual members of the tribe. In 1999 the High Court, having found that the applicants' claims had not become time-barred, dismissed the claims in so far as a declaratory judgment had been sought, but granted compensation to the tribe and individual members. The court noted that the Thule Air Base had been legally established under the 1951 Defence Treaty, the adoption and content of which had been in accordance with Danish law; that the population at the relevant time could be regarded as a tribal people as this concept was now defined in the International Labour Organisation's Convention no. 169 of 1989 concerning Indigenous and Tribal Peoples in Independent Countries; that the substantial restriction of access to hunting and fishing caused by the establishment of the Thule Air Base in 1951 and the eviction of the tribe from the Thule District in May 1953 had amounted to such serious interferences that they had to be regarded as expropriations; that the tribe had been afforded too little time to prepare their departure; that expropriations could be carried out in Greenland at the relevant time without statutory authority; but that at the relevant time, pursuant to Article 73 of the UN Charter, the Danish Government had had international obligations towards Greenland.
The High Court awarded the tribe DKK 500,000 (equivalent to approximately EUR 66,000) in compensation for its eviction and loss of hunting rights in the Thule District. In addition, applicants who at the relevant time had been at least 18 years of age were granted some EUR 3,000 in compensation. Those who had been between 4 and 18 years old were granted approximately EUR 2,000 in compensation for non-pecuniary damage. In 2003 the Supreme Court unanimously upheld the High Court's judgment.

Law: Article 1 of Protocol No. 1 and Article 8 of the Convention *(interferences occurring in the 1950s)* – The applicants had maintained that they had, on a continuing basis, been deprived of their homeland and hunting territories and denied the opportunity to use, peacefully enjoy, develop and control their land. The Court considered however that the interferences in the present case had consisted, firstly, in the substantial restriction of Inughuit access to hunting and fishing as a result of the establishment of the Thule Air Base in 1951 and, secondly, in the relocation of the population from their settlement in Uummannaq in May 1953. Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation. Moreover, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party. As regards Denmark, the Convention entered into force in September 1953 and Protocol No. 1 in May 1954. Accordingly, the Court had no jurisdiction: *incompatible ratione temporis*.

Article 1 of Protocol No. 1 *(outcome of court proceedings 1996-2003*) – In their judgments of 1999 and 2003 the Danish courts had found that both the substantial restriction of access to hunting and fishing as a

result of the establishment of the Thule Air Base in 1951 and the intervention in the Uummannaq settlement and the Thule colony in connection with the decision in 1953 to move the population had to be considered acts of expropriation carried out in the public interest, which at the relevant time had been legal and valid. That had not been an arbitrary interpretation of the High Court and the Supreme Court and it was primarily for the national authorities, notably the courts, to interpret and apply domestic law.
Both the High Court and the Supreme Court had found that the applicants' claims for compensation had not become time-barred and that owing to the Danish authorities' failure in the past to examine and specify the loss suffered, the burden of proof for the loss incurred had to be eased. The courts had taken into account, on the one hand, the fact that the relocation of the population of Uummannaq had been decided and carried out in such a way and under such circumstances that it had constituted a serious interference and unlawful conduct towards them. On the other hand, in 1953 substitute housing and various other facilities had been built for the families. Eventually the Thule Tribe had been granted DKK 500,000 in compensation for its eviction and loss of hunting rights and individual applicants had been granted compensation for non-pecuniary damage. Furthermore, at some time after 1985 new houses had been built in Qaanaaq instead of the original houses from the 1950s; in 1986 the US and Denmark had entered into an agreement reducing the area of the base to almost half its original size; and in 1997 the Danish Government had agreed to donate DKK 47,000,000 toward the cost of a new airport in Thule. Against this background, the Court found that the national authorities had struck a fair balance between the proprietary interests of the persons concerned: *manifestly ill-founded.*

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Prohibition for students of religiously-oriented public secondary schools to wear the Islamic head-scarf within the limits of the school: *inadmissible*.

KÖSE and 93 others - Turkey (No 26625/02)
Decision 24.1.2006 [Section II]

The applicants are pupils at İman-Hatip schools – State secondary schools whose main task is to train religious functionaries – and the parents of some of the pupils. The applicants contended that they had been allowed to attend school wearing Islamic headscarves until 26 February 2002, after which time pupils wearing headscarves were no longer allowed into the schools. The measure was based on a directive of 12 February 2002 from the Istanbul Governor's Office requesting head teachers and teaching staff to ensure rigorous compliance with the rules in force on pupils' dress. Failure to do so would make them liable to penalties. A further memorandum on the same subject from the Governor's Office, dated 2 March 2002, characterised any failure to comply with the rules on dress as a collective breach of the fundamental principles of the Republic, and reminded head teachers of the conduct to be adopted and the penalties to be applied in the event of non-compliance with the rules. These documents appear to have been the subject of a series of complaints and incidents involving pupils wearing headscarves who were refused entry to school. In addition, numerous petitions were sent to the human rights committee attached to the Istanbul Governor's Office. On 27 March 2002 the committee issued an opinion on the matter, in which it concluded that the impugned rules observed human rights and the constitutional principles of secularism and neutrality in the education system. It reiterated that those principles had already been expounded in detail in the Constitutional Court judgment of 7 March 1989.
Exhaustion of domestic remedies: The applicants had not raised their complaints under the Convention with the Turkish courts. However, there was no need to establish whether or not they had had domestic remedies available to them, as the application was in any event inadmissible for the reasons set out below.

Inadmissible under the first sentence of Article 2 of Protocol No. 1 – The right to education set forth in that provision guaranteed everyone a right of access to educational institutions existing at a given time, but that right could be subject to restrictions. In the present case the measures applied to the applicants had been clearly foreseeable, given that they had undertaken when enrolling in the school to comply with the dress code for pupils, that the Turkish Constitutional Court and Supreme Administrative Court had

both found the wearing of Islamic headscarves by pupils to be incompatible with the principle of secularism and that, contrary to the applicants' assertions, the attitude of the school authorities towards the wearing of headscarves by certain pupils had in no way suggested tacit approval of the situation on their part. Furthermore, the impugned measures could be considered to pursue the legitimate aims of the prevention of disorder and protection of the rights of others. As to whether they had been proportionate, binding rules regarding dress were in place in Turkish secondary schools. An exception to those rules had been granted to the İman-Hatip schools, allowing girls to cover their hair during Koran lessons. It was important to note that internal rules of that kind in schools constituted general measures applicable to all pupils, irrespective of their religious beliefs, and pursued in particular the legitimate aim of preserving the neutral character of secondary education, which concerned adolescents who were liable to be subject to pressure. The Court also noted that the school authorities in question, before prohibiting pupils wearing headscarves from entering their schools, had attempted to negotiate a solution with the pupils concerned. Finally, the Court considered the principles set forth in the opinion of the human rights committee attached to the Governor's Office to be clear and perfectly legitimate. Accordingly, the restriction at issue was based on clear principles and was proportionate to the aims of preventing disorder and protecting the rights and freedoms of others, and of preserving the neutrality of secondary education: *manifestly ill-founded*.

Inadmissible under the second sentence of Article 2 of Protocol No. 1 – The main thrust of the provision in question was that the State, in the exercise of its functions in relation to education and teaching, must ensure that information and knowledge were imparted in an objective, critical and pluralist manner. The Court noted that the establishments in question, although their chief task was to train future religious functionaries, were not denominational schools and were not exempt from the principle of secularism. As a result, a State which had set up establishments of that kind must still fulfil its role as an impartial arbiter, and must take great care to ensure that the manifestation of pupils' religious beliefs within schools did not take on the nature of an ostentatious act which might constitute a source of pressure and exclusion. In the present case both the pupils and their parents had been informed of the consequences that would result from a failure to observe the rules in force, and the refusal to allow pupils wearing headscarves to enter the school premises had not been accompanied by disciplinary measures. Furthermore, the rules at issue did not deprive parents of the ability to guide their children in a direction which accorded with their own religious or philosophical beliefs. Accordingly, the dress code imposed in the present case and the related measures were not in breach of the right set forth in the second sentence of Article 2 of Protocol No. 1: *manifestly ill-founded*.

Inadmissible under Article 9 of the Convention – The dress code imposed on pupils was a general measure applicable to all pupils irrespective of their religious beliefs. Consequently, even assuming that there had been interference with the applicants' right to manifest their religion, there was no appearance of a violation of Article 9: *manifestly ill-founded*.

Inadmissible under the other provisions of the Convention relied on by the applicants – Some of the applicants, who had been arrested and detained at the police station for a few hours during the demonstrations against the impugned measures, alleged a violation of Articles 5 and 11 of the Convention. However, there was nothing to indicate that they had been deprived of their liberty in an arbitrary fashion or that their right to freedom of assembly had been violated. As to the complaints under Articles 6 and 7, the applicants could have had access to a court by applying to have the measures set aside, which they had not done. Nor could the decision not to allow pupils wearing headscarves access to the schools be regarded as a punishment resulting from a criminal conviction: *manifestly ill-founded*.

Other judgments delivered in January

W.B. – and Poland (Nº 34090/96), 10.1.2006 [Section IV]
Bora and Others - Turkey (Nº 39081/97), 10.1.2006 [Section IV]
Imret - Turkey (Nº 42572/98), 10.1.2006 [Section IV]
Kuzu and Others - Turkey (Nº 44000/98), 10.1.2006 [Section II]
Bişkin - Turkey (Nº 45403/99), 10.1.2006 [Section IV]
Teltronic-CATV - Poland (Nº 48140/99), 10.1.2006 [Section II]
Mordeniz - Turkey (Nº 49160/99), 10.1.2006 [Section IV]
Güler - Turkey (Nº 49391/99), 10.1.2006 [Section IV]
Halis Doğan and Others - Turkey (Nº 50693/99), 10.1.2006 [Section II]
Hatice Acar and Others - Turkey (Nº 53796/00), 10.1.2006 [Section II]
Refik Karakoç - Turkey (Nº 53919/00), 10.1.2006 [Section II]
Budak and Others - Turkey (Nº 57345/00), 10.1.2006 [Section IV]
Aslan - Turkey (Nº 57908/00), 10.1.2006 [Section IV]
Kaba and Güven - Turkey (Nº 59774/00), 10.1.2006 [Section II]
Yavuz - Turkey (Nº 67137/01), 10.1.2006 [Section II]
Gruais and Bousquet - France (Nº 67881/01), 10.1.2006 [Section II]
Swierzko - Poland (Nº 9013/02), 10.1.2006 [Section IV]
Selçuk - Turkey (Nº 21768/02), 10.1.2006 [Section IV]
Ezel Tosun - Turkey (Nº 33379/02), 10.1.2006 [Section II]
Harazin - Poland (Nº 38227/02), 10.1.2006 [Section IV]
Koshchavets - Ukraine (Nº 12170/03), 10.1.2006 [Section II]
Kotelnikova - Ukraine (Nº 21726/03), 10.1.2006 [Section II]
Dunda - Ukraine (Nº 23778/03), 10.1.2006 [Section II]
Patrino - Ukraine (Nº 26907/03), 10.1.2006 [Section II]
Kehaya and Others - Bulgaria (Nº 47797/99 and Nº 68698/01), 12.1.2006 [Section I]
Yavuz - Turkey (Nº 69912/01), 12.1.2006 [Section III]
Nicolau - Romania (Nº 1295/02), 12.1.2006 [Section III]
Sciarrotta and Others - Italy (Nº 14793/02), 12.1.2006 [Section III]
Mihailova - Bulgaria (Nº 35978/02), 12.1.2006 [Section I]
Goussev and Marenk - Finland (Nº 35083/97), 17.1.2006 [Section IV]
Purmonen and Others - Finland (Nº 36404/97), 17.1.2006 [Section IV]
Aristimuño Mendizabal - France (Nº 51431/99), 17.1.2006 [Section II]
Akbaba - Turkey (Nº 52656/99), 17.1.2006 [Section II]
Çalişlar - Turkey (Nº 60261/00), 17.1.2006 [Section II]
Popov - Moldova (Nº 74153/01), 17.1.2006 [Section IV]
Barbier - France (Nº 76093/01), 17.1.2006 [Section II]
Hagert - Finland (Nº 14724/02), 17.1.2006 [Section IV]
Vodopyanovy - Ukraine (Nº 22214/02), 17.1.2006 [Section II]
Ratnikov - Ukraine (Nº 25664/02), 17.1.2006 [Section II]
Tribunskiy - Ukraine (Nº 30177/02), 17.1.2006 [Section II]
Konyukhov - Ukraine (Nº 1858/03), 17.1.2006 [Section II]
Šroub - Czech Republic (Nº 5424/03), 17.1.2006 [Section II]
Kuzu - Turkey (Nº 13062/03), 17.1.2006 [Section II]
Monteiro da Cruz - Portugal (Nº 14886/03), 17.1.2006 [Section II]
Gordeyevy and Gurbik - Ukraine (Nº 27370/03 and Nº 30049/04), 17.1.2006 [Section II]
Savenko - Ukraine (Nº 6237/04), 17.1.2006 [Section II]
Volkov - Ukraine (Nº 8794/04), 17.1.2006 [Section II]
Voykina - Ukraine (Nº 17686/04), 17.1.2006 [Section II]
Albert-Engelmann GmbH - Austria (Nº 46389/99), 19.1.2006 [Section I]
UMO Ilinden and Others - Bulgaria (Nº 59491/00), 19.1.2006 [Section I]
Cichowicz - Cyprus (Nº 6470/02), 19.1.2006 [Section I]

Papakokkinou - Cyprus (Nº 20429/02), 19.1.2006 [Section I]
Paroutis - Cyprus (Nº 20435/02), 19.1.2006 [Section I]
Tsaggaris - Cyprus (Nº 21322/02), 19.1.2006 [Section I]
Josephides - Cyprus (Nº 2647/02), 19.1.2006 [Section I]
Kyriadkidis and Kyriakidou - Cyprus (Nº 2669/02), 19.1.2006 [Section I]
Clerides and Kynigos - Cyprus (Nº 35128/02), 19.1.2006 [Section I]
Waldner - Cyprus (Nº 38775/02), 19.1.2006 [Section I]
R.H. - Austria (Nº 7336/03), 19.1.2006 [Section I]
Ülke - Turkey (Nº 39437/98), 24.1.2006 [Section II]
Yaşar - Turkey (Nº 46412/99), 24.1.2006 [Section II]
Yasar Kaplan - Turkey (N° 56566/00), 24.21.2006 [Section II]
Kezer and Others - Turkey (Nº 58058/00), 24.1.2006 [Section IV]
Gouget and Others - France (Nº 61059/00), 24.1.2006 [Section II]
Kelali and Others - Turkey (Nº 67585/01), 24.1.2006 [Section II]
Deligöz - Turkey (Nº 67586/01), 24.1.2006 [Section II]
Kreuz - Poland (no. 3) (Nº 75888/01), 24.1.2006 [Section IV]
Maria Kaczmarczyk - Poland (Nº 13026/02), 24.1.2006 [Section IV]
Barillon - France (Nº 32929/02), 24.1.2006 [Section II]
Skowronski - Poland (Nº 36431/03), 24.1.2006 [Section IV]
Lungoci - Romania (Nº 62710/00), 26.1.2006 [Section III]
Brugger - Austria (Nº 76293/01), 26.1.2006 [Section I]
Tzaggaraki and Others - Greece (Nº 17965/03), 26.1.2006 [Section I]
Sezen - Netherlands (Nº 50252/99), 31.1.2006 [Section II (former composition)]
D.H. and Others - Czech Republic (Nº 57325/00), 31.1.2006 [Section II]
Dukmedjian - France (Nº 60495/00), 31.1.2006 [Section II]
Malejčík - Slovakia (Nº 62187/00), 31.1.2006 [Section IV]
Bernát - Slovakia (Nº 1395/02), 31.1.2006 [Section IV]
Malinovskiy - Ukraine (Nº 6028/02), 31.1.2006 [Section II]
Shiker - Ukraine (Nº 10614/02), 31.1.2006 [Section II]
Yurtayev - Ukraine (Nº 11336/02), 31.1.2006 [Section II]
Kranc - Poland (Nº 12888/02), 31.1.2006 [Section IV]

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Note No. 79):

Ünsal Öztürk - Turkey (Nº 29365/95)
Conus - France (Nº 55763/00)
Svintitskiy and Goncharov - Ukraine (Nº 59312/00)
Falkovich - Ukraine (Nº 64200/00)
Maisons Traditionnelles - France (Nº 68397/01)
Molchan - Ukraine (Nº 68897/01)
Citikbel - Turkey (Nº 497/02)
Golovin - Ukraine (Nº 3216/02)
Bitkivska - Ukraine (Nº 5788/02)
Polovoy - Ukraine (Nº 11025/02)
Chernobryvko - Ukraine (Nº 11324/02)
Sidenko - Ukraine (Nº 19158/02)
Toropov - Ukraine (Nº 19844/02)
Pastukhov - Ukraine (Nº 20473/02)
Belitskiy - Ukraine (Nº 20837/02)
Nikishin - Ukraine (Nº 22993/02)
Zyts - Ukraine (Nº 29570/02)
Mikheyeva - Ukraine (Nº 44379/02)
Ryabich - Ukraine (Nº 3445/03)
Bozhko - Ukraine (Nº 3446/03)
Zhurba - Ukraine (Nº 7884/03)
Morkotun - Ukraine (Nº 10072/03)
Sivokoz - Ukraine (Nº 27282/03)
Judgments 4.10.2005 [Section II]

Krawczak - Poland (Nº 17732/03)
Kankowski - Poland (Nº 10268/03)
Becciev - Moldova (Nº 9190/03)
Sarban - Moldova (Nº 3456/05)
Jarzynski - Poland (Nº 15479/02)
Sibilski - Poland (Nº 64207/01)
Cangöz - Turkey (Nº 28039/95)
Shannon - United Kingdom (N° 6563/03)
Judgments 4.10.2005 [Section IV]

H.Y. and Hu.Y. - Turkey (Nº 40262/98)
Shilyayev - Russia (Nº 9647/02)
Papuk Trgovina d.d. - Croatia (Nº 2708/03)
Tatjana Marinovic - Croatia (Nº 9627/03)
Zagorec - Croatia (no. 2) (Nº 10370/03)
Meznaric - Croatia (Nº 10955/03)
Drazic - Croatia (Nº 11044/03)
Judgments 6.10.2005 [Section I]

Nesibe Haran - Turkey (Nº 28299/95)
Tanrikulu and Others - Turkey (Nº 29918/96, Nº 29919/96 and Nº 30169/96)
Lukenda - Slovenia (N° 23032/02)
Judgments 6.10.2005 [Section III]

Kanioğlu and Others - Turkey (Nº 44766/98, Nº 44771/98 and Nº 44772/98)
Ceylan - Turkey (no. 2) (Nº 46454/99)
Eşidir and Others - Turkey (Nº 54814/00)
Bazancir and Others - Turkey (Nº 56002/00 and Nº 7059/02)
Mehmet Özkan and Others - Turkey (Nº 56006/00)
Alataş and Kalkan - Turkey (Nº 57642/00)
Tibbling - Sweden (Nº 59129/00)
Yildiz Yilmaz - Turkey (Nº 66689/01)
Sychev - Ukraine (Nº 4773/02)
Miklós - Hungary (Nº 21742/02)
Slezák and Others - Czech Republic (Nº 27911/02)
Zouhar - Czech Republic (Nº 8768/03)
Judgments 11.10.2005 [Section II]

Baginski - Poland (Nº 37444/97)
Spang - Switzerland (Nº 45228/99)
Palka - Poland (Nº 49176/99)
Majewski - Poland (Nº 52690/99)
La Rosa and Alba - Italy (Nº 58119/00)
Chiro and Others - Italy (no. 1) (Nº 63620/00)
Chiro and Others - Italy (no. 2) (Nº 65137/01)
Dora Chiro - Italy (Nº 65272/01)
Chiro and Others - Italy (no. 4) (Nº 67196/01)
Chiro and Others - Italy (no. 5) (Nº 67197/01)
Szczecinski - Poland (Nº 73864/01)
Savitchi - Moldova (Nº 11039/02)
Cibulkova - Slovakia (Nº 38144/02)
Judgments 11.10.2005 [Section IV]

La Rosa and Alba - Italy (no. 4) (Nº 63238/00)
Colacrai - Italy (no. 1) (Nº 63296/00)
Colazzo - Italy (Nº 63633/00)
Fiore - Italy (Nº 63864/00)
Maselli - Italy (Nº 63866/00)
Serrao - Italy (Nº 67198/01)
De Pascale - Italy (Nº 71175/01)
Binotti - Italy (no. 2) (Nº 71603/01)
Savvas - Greece (Nº 22868/02)
Gerasimova - Russia (Nº 24669/02)
Judgments 13.10.2005 [Section I]

Clinique des Acacias and Others - France (Nº 65399/01, Nº 65405/01, Nº 65406/01 and Nº 65407/01)
Fedorov and Fedorova - Russia (N° 31008/02)
Judgments 13.10.2005 [Section III]

Tütüncü and Others - Turkey (Nº 74405/01)
Schemkamper - France (Nº 75833/01)
Terem Ltd., Chechetkin and Olius - Ukraine (Nº 70297/01)
Siddik Aslan - Turkey (N° 75307/01)
Judgments 18.10.2005 [Section II]

Daniliuc - Moldova (Nº 46581/99)
Siroky - Slovakia (Nº 69955/01)
Judgments 18.10.2005 [Section IV]

Parkhomov - Russia (Nº 19589/02)
Shvedov - Russia (Nº 69306/01)
Groshev - Russia (Nº 69889/01)
Umo Ilinden and Pirin and Others - Bulgaria (Nº 59489/00)
Roumen Todorov - Bulgaria (Nº 50411/99)
Emil Hristov - Bulgaria (Nº 52389/99)
Ouranio Toxo and Others - Greece (N° 74989/01)
Judgments 20.10.2005 [Section I]

Kilicoglu - Turkey (Nº 41136/98)
Orhan Aslan - Turkey (Nº 48063/99)
Osman Özcelik and Others - Turkey (Nº 55391/00)
Hatun and Others - Turkey (Nº 57343/00)
Romanov - Russia (Nº 63993/00)
Ataoglu - Turkey (Nº 77111/01)
Karagöz - Turkey (Nº 5701/02)
Mehmet Mübarek Küçük - Turkey (Nº 7035/02)
Fatma Tunc - Turkey (Nº 16608/02)
Bazhenov - Russia (Nº 37930/02)
Uludag - Turkey (Nº 38861/03)
Judgments 20.10.2005 [Section III]

Mete - Turkey (Nº 39327/02)
Fernandez-Rodriguez - France (Nº 69507/01)
Hüseyin Yildiz - Turkey (Nº 58400/00)
Vejmola - Czech Republic (Nº 57246/00)
Judgments 25.10.2005 [Section II]

N.M. - Turkey (Nº 35065/97)
IPSD and Others - Turkey (Nº 35832/97)
Yuksel (Geyik) - Turkey (Nº 56362/00)
Öner and Others - Turkey (Nº 64684/01)
Gabay - Turkey (Nº 70829/01)
Eser - Turkey (Nº 5400/02)
Fedotov v. Russia (N° 5140/02)
Judgments 25.10.2005 [Section IV]

Mathieu - France (Nº 68673/01)
Ali Erol - Turkey (no. 2) (Nº 47796/99)
Wirtschafts-Trend Zeitschriften-Verlags GmbH - Austria (Nº 58547/00)
Judgments 27.10.2005 [Section I]

Schenkel - Netherlands (Nº 62015/00)
Keles - Germany (Nº 32231/02)
Judgements 27.10.2005 [Section III]

Statistical information[1]

Judgments delivered	January	2006
Grand Chamber	1(2)	1(2)
Section I	17(18)	17(18)
Section II	42(43)	42(43)
Section III	5	5
Section IV	23	23
former Sections	3	3
Total	**91(94)**	**91(94)**

Judgments delivered in January 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	17(18)	0	0	0	17(18)
Section II	40(41)	2	0	0	42(43)
Section III	5	0	0	0	5
Section IV	21	1	0	1	23
Former Section I	0	0	0	0	0
Former Section II	3	0	0	0	3
Former Section III	0	0	0	0	0
Former Section IV	0	0	0	0	0
Total	**87(90)**	**3**	**0**	**1**	**91(94)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	17(18)	0	0	0	17(18)
Section II	40(41)	2	0	0	42(43)
Section III	5	0	0	0	5
Section IV	21	1	0	1	23
Former Section I	0	0	0	0	0
Former Section II	3	0	0	0	3
Former Section III	0	0	0	0	0
Former Section IV	0	0	0	0	0
Total	**87(90)**	**3**	**0**	**1**	**91(94)**

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

Decisions adopted		January	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		9	9
Section II		10	10
Section III		2	2
Section IV		10(11)	10(11)
Total		**31(32)**	**31(32)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	6	6
	- Committee	654	654
Section II	- Chamber	8	8
	- Committee	424	424
Section III	- Chamber	10(11)	10(11)
	- Committee	301	301
Section IV	- Chamber	16(17)	16(17)
	- Committee	786	786
Total		**2205(2207)**	**2205(2207)**
III. Applications struck off			
Section I	- Chamber	9	9
	- Committee	5	5
Section II	- Chamber	29	29
	- Committee	14	14
Section III	- Chamber	3	3
	- Committee	6	6
Section IV	- Chamber	7	7
	- Committee	11	11
Total		**84**	**84**
Total number of decisions[1]		**2320(2323)**	**2320(2323)**

1. Not including partial decisions.

Applications communicated	January	2006
Section I	58	58
Section II	53(55)	53(55)
Section III	41	41
Section IV	42	42
Total number of applications communicated	**194(196)**	**194(196)**

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