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PALIĆ - Bosnia and Herzegovina (4704/04)
[Section IV]

During the 1992-95 war in Bosnia and Herzegovina the applicant's husband, Colonel Avdo Palić, was captured by opposing forces. In a decision handed down in 2000 the Human Rights Chamber for Bosnia and Herzegovina held that he had been the victim of an enforced disappearance in violation of Articles 2 and 3 as well as other Convention provisions. The respondent Entity – the Republika Srpska – was ordered to carry out immediately a full investigation capable of exploring all the facts regarding his fate with a view to bringing the perpetrators to justice; to release him, if still alive, or otherwise to make available his mortal remains to the applicant; and to make all information and findings relating to his fate and whereabouts known to the applicant. The applicant was awarded non-pecuniary damage. The decision became final and enforceable in 2001. The Republika Srpska subsequently acknowledged that Colonel Palić had been held in a military prison until September 1995, when he had been transferred to an unknown location. In 2005 the applicant informed the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina (the legal successor of the Human Rights Chamber) that the monetary award had been paid but that she had not received any information from the Republika Srpska concerning the fate and whereabouts of her husband. The Republika Srpska was given an additional three-month period in which to enforce the Human Rights Chamber's decision in full. In January 2006 the Human Rights Commission again found that the core element of the Human Rights Chamber's decision had not been enforced. Later that month the Republika Srpska, upon a request of the High Representative for Bosnia and Herzegovina, established an *ad hoc* commission to investigate the fate of Colonel Palić. The applicant was able to appoint a representative on that commission. It adopted a report in April 2006 but the contents thereof have not been revealed to the general public.
The applicant complains *inter alia* under Article 2 and on behalf of her husband that not enough has been done to clarify his fate and to identify and punish those responsible for his disappearance.

ARTICLE 3

TORTURE
Torture of opposition leader and lack of effective investigation: *violation*.

MAMMADOV (JALALOGLU) - Azerbaijan (N° 34445/04)
Judgment 11.1.2007 [Section I]

Facts: More commonly known as Sardar Jalaloglu in political circles, the applicant was the Secretary General of the Democratic Party of Azerbaijan, one of the opposition parties that considered the presidential elections on 15 October 2003 to be illegitimate. On 18 October 2003 several masked police officers, armed with machine guns, forced their way into the applicant's home, arrested him and took him into custody in order to interrogate him in connection with a demonstration two days earlier. The demonstration had taken place in the centre of Baku to protest against the results of the elections and had turned violent.
On 19 October 2003, the applicant was charged with "organising public disorder" and "use of violence against state officials". Banned from seeing his lawyer for three days, the applicant finally met with him on 22 October 2003 complaining that he had been ill-treated by police officers. The lawyer filed a petition requesting a medical examination, then on 27 October 2003, having received no reply, filed a complaint. The applicant alleged that he had been ill-treated during his arrest, while being transported to the

detention centre and during police custody. He claimed to have been beaten on the soles of his feet (*falaka*) by two masked policemen with truncheons, tortured and threatened with rape. After the beating, he had temporarily lost the ability to walk unaided and had been placed in a poorly-ventilated cell where the threats of rape had continued and from where he could hear the cries of other detainees being ill-treated. Following his transfer on 22 October 2003 to a remand facility, the applicant again complained of poor detention conditions and intimidation. Upon arrival at the remand facility, doctors observed two bruises on his right calf and right heel.
On 29 October 2003 a medical examination was ordered, which concluded that the bruising observed on the applicant had been caused by a hard blunt object. The investigation authorities found that the medical report did not establish conclusively that the applicant's injuries had been inflicted while in police custody and, having questioned four police officers who denied all the allegations of ill-treatment, refused to institute criminal proceedings. The several complaints filed by the applicant to local district courts, were finally dismissed as unsubstantiated.
The applicant was ultimately convicted as charged and sentenced to three years' imprisonment. It was found that, although the applicant had not been present at the demonstration of 16 October 2003, he was one of the organisers. He was, however, released early by way of a presidential pardon.

Law: Article 3 – *Ill-treatment in police custody*: The Court considered that the applicant could not have sustained injuries during the demonstration in question because he had not taken part in that event. Also, on arrival at the detention facility on 18 October 2003, no injury was found on the applicant's body and no other plausible explanation as to the origin of his subsequent injuries had been provided by the Government. Furthermore, the specific nature of the applicant's injuries were consistent with the application of *falaka* and were unlikely to have been caused either accidentally or during street clashes with riot police. The Council of Europe's Committee for the Prevention of Torture had received reports that *falaka* was one of the forms of ill-treatment used in Azerbaijani temporary detention centres. Given that accountability lay with the Government to provide a satisfactory and convincing explanation for injuries to those within their custody, the Court concluded that the applicant's injuries could only be attributable to a form of ill-treatment for which the authorities were responsible. In those circumstances, the violence inflicted on the applicant, administered with the aim of extracting information, was of such a serious and cruel nature that it could be characterised as torture.
Conclusion: violation (unanimously).

Lack of an effective investigation: The authorities had failed to gather forensic evidence in a timely manner. The applicant had not been allowed to see his lawyer for the first three days of his detention and it had taken a further seven days for a medical examination to be carried out. Furthermore, the authorities had limited their investigation to studying the medical report and questioning four police officers. No other witnesses had been interrogated concerning the applicant's injuries, in particular his cellmates who had seen him immediately after the beating, or concerning his alleged presence at the demonstration in question. Notably, the authorities had failed to take into account the key statement of the warden who had testified to the applicant's good health on arrival at the temporary detention facility.
Conclusion: violation (unanimously).

Article 13 – The domestic courts simply had endorsed the criminal investigation, without assessing independently the facts of the case, and so had been insufficiently thorough and ineffective. Therefore, the applicant had been denied an effective domestic remedy in respect of his ill-treatment by the police.
Conclusion: violation (unanimously).

Article 14 – The Court declared inadmissible the applicant's complaint under Article 14 on the grounds that he had submitted insufficient evidence that he had been tortured or otherwise ill-treated on account of his political opinions.

Article 41 – EUR 10,000 in compensation for non-pecuniary damage.

TORTURE
Torture and wrongful detention of Chechnyan applicants: *violation*.

CHITAYEV and CHITAYEV - Russia (N° 59334/00)
Judgment 18.1.2007 [Section IV]

Facts: Following the outbreak of hostilities in Chechnya, the applicants moved their families and valuables to their parent's house which was searched by officers many times without a warrant. Household items and personal documents were seized. Following a search on 12 April 2000, they were told they had been arrested and were taken into detention, where they were held until 28 April in unheated, damp cells with no toilets. They were interrogated about activities of Chechen rebel fighters and kidnappings for ransom, but denied involvement in any crimes. They alleged that they were ill-treated through electric shocks; being forced to stand continually in a stretched position, with their feet and hands spread wide apart; being beaten with rubber truncheons and plastic bottles filled with water; being strangled with adhesive tape, with a cellophane bag and a gas mask; and having parts of their skin were torn away with pliers. On 28 April the applicants were transferred to another detention centre. They were interrogated and tortured to force them to make false confessions: they were beaten, threatened, strangled and subjected to electric shocks and their fingers and toes were squashed with mallets. Their lawyer was only once given access to them during the entire period of their detention, being allowed only to question how they were doing in Russian. On 19 September the applicants returned to the former detention centre and informed that they were charged with kidnapping and participation in an unlawful armed group. On 5 October they were released. On 6 October they were medically examined. Among other things, they were found to have numerous injuries to their heads and bodies and to be suffering from post-traumatic stress disorder. Doctors noted that the traumas and other medical conditions had apparently been sustained in the latter detention centre between April and October 2000. On 9 October the prosecutor's office informed them that criminal proceedings against them had been discontinued as their involvement in the imputed offences had not been proved. The applicants' relatives had applied repeatedly to various official bodies (but not a court) concerning the searches in their house and seizure of their property and made applications concerning the applicants' arrest and detention. The prosecutor's office refused to bring criminal proceedings in connection with the applicants' allegations of ill-treatment On 29 October 2003 a decision discontinuing the criminal proceedings against the applicants was quashed by the republican prosecutor's office and the case forwarded for additional investigation.

Law (extracts): Article 3 – The applicants maintained that they had been severely ill-treated while in detention, referring to the medical documents produced. The Government denied they had been subjected to any form of unlawful violence while in detention, insisting that they had been examined by a doctor upon admission to the second detention centre and that no injuries had been found except for a head trauma that had previously been sustained by the first applicant. The Government's arguments were not convincing to the Court since neither the authorities at domestic level, nor the Government in the proceedings before the Court, made any comments as regards the medical documents attesting to the applicant's injuries or advanced any plausible explanation as to the origin of those injuries.
The applicants were kept in a permanent state of physical pain and anxiety owing to their uncertainty about their fate and to the level of violence to which they were subjected throughout the period of their detention. Such treatment was intentionally inflicted on the applicants by agents of the State acting in the course of their duties, with the aim of extracting from them a confession or information about the offences of which they were suspected. Taken as a whole and having regard to its purpose and severity, the ill-treatment at issue was particularly serious and cruel and capable of causing "severe" pain and suffering and amounted to torture.
Conclusion: violation (unanimously).

Alleged inadequacy of the investigation: When questioned during the investigation opened in connection with the complaint on the applicants' behalf, the second applicant retracted his allegations of ill-treatment, following which the district prosecutor's office terminated the investigation. The applicants challenged the decision and pointed out that the second applicant had been compelled to withdraw his allegations concerning ill-treatment. The Court considered that the medical evidence and the applicants' complaints

together raised a reasonable suspicion that their injuries could have been caused by representatives of the State. The latter were therefore under an obligation to conduct an effective investigation. This investigation was not conducted diligently. Though the applicants' complaints were dealt with by prosecutor's offices at two levels, the authorities never addressed the medical documents. No attempts were made to order and carry out a forensic medical examination of the applicants, to inspect the scene of the incident or to identify and question officials who worked in the detention centres. Neither the applicants nor their representatives were granted access to the materials of the investigation, or even provided with a copy of the decision. The authorities failed to carry out a thorough and effective investigation into the applicants' arguable allegations of ill-treatment while in detention.
Conclusion: violation (unanimously).

Article 5 – Given that the applicants were detained by the authorities on 12 April 2000 and the fact that the Government provided no explanation concerning their detention between 12 and 16 April 2000, or any documents by way of justification during that period the applicants were held in unacknowledged detention.
Conclusion: violation (unanimously).

Article 5(4) – It was acknowledged by the respondent Government that the courts in the Chechen Republic had been inoperative until November 2000, while the applicants had remained in custody between 17 April and 4 October 2000. The applicants were unable to take proceedings to challenge the lawfulness of their detention during the relevant period.
Conclusion: violation (unanimously).

Article 5(5) – Given that the judicial system in Chechnya was not functioning at least until November 2000, and the fact that neither of the decisions ordering the discontinuance of the criminal proceedings against the applicants was final, as well as the fact that the criminal proceedings were still pending, the Court found that applicants had been prevented from seeking compensation for their detention.
Conclusion: violation (unanimously).

Article 13 – The Court found that the applicants had been denied an effective domestic remedy in respect of the ill-treatment by the police, in violation of Article 13, but that no separate issue arose in respect of Article 13 in connection with Article 5.

Article 41 – EUR 35,000 each in respect of non-pecuniary damages.

INHUMAN OR DEGRADING TREATMENT
Proposed deportation of asylum seeker to "relatively safe area" of Somalia: *expulsion would violate Article 3*.

SALAH SHEEKH - Netherlands (N° 1948/04)
Judgment 11.1.2007 [Section III]

Facts: The applicant, a Somali national born in 1986, left Somalia on a false passport in May 2003 and asked for asylum on arriving at Amsterdam Schiphol Airport. He explained that his family, who were members of the minority Ashraf population group, had left Mogadishu in 1991 because of the civil war and taken refuge in a village 25 kilometres away, where they had been robbed of their remaining possessions. The village was controlled by the Agbal clan, whose armed militia persecuted the applicant and his family and three other Ashraf families, knowing that they had no means of protection. In various incidents ranging over several years the militia had killed his father and brother, violently assaulted him and his brothers and twice abducted and raped his sister. His request for asylum was refused in June 2003, as the Minister for Immigration and Integration considered, *inter alia*, that he did not qualify for refugee status, there being no evidence that he had made himself known as an opponent to the (local) regime, was a member or sympathiser of a political party or movement or had ever been arrested or detained. The Minister found that the applicant's problems were not the result of major, systematic acts of

discrimination, but a consequence of the general unstable situation in which criminal gangs frequently, but arbitrarily, intimidated and threatened people. There was, therefore, no real risk of his being subjected to treatment proscribed by Article 3 upon his return to Somalia and arrangements could be made for him to settle in one of the areas which the Netherlands authorities classified as "relatively safe". An appeal by the applicant to a regional court was dismissed. After being informed that he was to be issued with a European Union travel document and deported to one of the "relatively safe areas", the applicant lodged an objection with the Minister and requested the regional court to stay his deportation pending the hearing of the objection. He argued, *inter alia*, that, as a member of a minority unable to obtain protection from one of the ruling clans, even if he went to one of the "relatively safe areas" he would be forced to live in a camp for internally displaced persons where conditions were appalling. The applicant's objection to the Minister's decision and his request for a stay were dismissed. However, in the interim the Netherlands authorities cancelled the arrangements for the applicant's expulsion and released him from detention after receiving an indication under Rule 39 from the Court. The applicant was subsequently permitted to apply for a residence permit under temporary arrangements that had been adopted in the interim by the Minister for certain categories of asylum seeker from Somalia. He was granted asylum in March 2006.

Law: Article 37(1)(c) – While the applicant was in no danger of immediate expulsion, the Court nevertheless found that the temporary arrangements that had been put in place for certain categories of asylum seeker from Somalia did not constitute a solution of the matter, as the authorities had unambiguously stated that these would be reviewed once the Court had decided the merits of the cases concerning Somali nationals in which it had indicated an interim measure. Continuing with the examination of the application thus appeared to be the most efficient way of proceeding, especially bearing in mind that if the application was struck out and the arrangements were then withdrawn, the applicant would in all probability seek the restoration of his application to the list: *no reason to strike out*.

Article 3 – The Court noted that it was not the Government's intention to expel the applicant to areas in Somalia other than those they considered "relatively safe". Although such areas were generally more stable and peaceful than those in other parts of the country, there was a marked difference between the position of individuals who originated from those areas and had clan and/or family there and individuals from elsewhere in Somalia who did not have such links. It was most unlikely that the applicant, who fell into the latter category, would be able to obtain clan protection in one of the "relatively safe" areas. The chances were, therefore, that he would end up in a settlement for internally displaced persons, whose occupants were marginalised, isolated and vulnerable to crime. However, irrespective of whether the applicant would be exposed to a real risk of proscribed treatment within those areas, his expulsion was in any event precluded by Article 3, as the guarantees that had to be in place as a precondition for relying on an internal flight alternative – the person to be expelled had to be able to travel to the area concerned, gain admittance and be able to settle there – were missing. The authorities in the "relatively safe areas" had informed the respondent Government that they were opposed to the forced deportation of various classes of refugee and did not accept the EU travel document. Thus, even if the Government succeeded in removing the applicant to one of the "relatively safe" areas, this by no means constituted a guarantee that, once there, he would be allowed to stay, and in the absence of monitoring, the Government would have no way of verifying whether he had succeeded in gaining entry. Consequently, there was a real danger of his being removed, or of having no alternative but to go to areas of the country which both the Government and the UNHCR considered unsafe. As to whether the applicant would run a real risk of being exposed to proscribed treatment if he ended up outside one of the "relatively safe areas", the treatment to which he alleged he had been subjected prior to leaving Somalia could be classified as inhuman within the meaning of Article 3 and the vulnerability of the minority group to which he belonged to human rights abuses was well-documented. The respondent Government's assertion that the problems experienced by the applicant were a consequence of a general unstable situation in which criminal gangs frequently, but arbitrarily, intimidated and threatened people was insufficient to remove the treatment meted out to the applicant from the scope of Article 3, as that provision could thus also apply in situations where the danger emanated from persons who were not public officials The relevant factor was whether the applicant would be able to obtain protection against and seek redress for the acts perpetrated against him and the Court considered that he would not. Given that there had been no significant improvement in the situation in Somalia, there was no indication that the applicant would find himself in a significantly different situation

from the one he had fled. Nor had the treatment been meted out arbitrarily: the applicant and his family had been specifically targeted because they belonged to a minority and were known to have no means of protection. The applicant could not be required to establish that further special distinguishing features, concerning him personally, existed in order to show that he was, and continued to be, personally at risk. While a mere possibility of ill-treatment was insufficient to give rise to a breach of Article 3, the Court considered that there was a foreseeable risk in the applicant's case.
Conclusion: expulsion would violate Article 3 (unanimously).

Article 13 – The applicant had applied to a regional court for a stay of expulsion pending a decision on his objection, but it had ruled that his expulsion would not violate Article 3. Bearing in mind that the word "remedy" within the meaning of Article 13 did not mean a remedy that was bound to succeed, and that the compatibility of the scheduled removal with Article 3 had been examined, the applicant had been provided with an effective remedy as regards the manner in which his expulsion was to be carried out.
Conclusion: no violation (unanimously).

For further details, see Press Release no. 18.

INHUMAN OR DEGRADING TREATMENT
Assault of prison inmates by police in training exercise and conditions of detention: *admissible*.

DRUZENKO and Others - Ukraine (N^{os} 17674/02 and 39081/02)
Decision 15.1.2007 [Section V]

The 13 applicants were prisoners in a State penitentiary at the material time. They allege that on two separate occasions (May 2001 and January 2002) the penitentiaries were stormed by members of the "Berkut" special police on a training exercise conducted under the supervision of the prison authorities. Cells were taken by force and the inmates beaten with rifle butts and batons and forced to strip naked. Some of the prisoners sustained serious injuries including broken bones, severed tendons, concussion and trauma to the spine. Those who had complained to the authorities following the first assault were subjected to particularly harsh treatment in the second. The applicants also allege that conditions generally in the penitentiary were bad (overcrowding, lack of an adequate diet, medical treatment or heating and arbitrary use of disciplinary penalties and solitary confinement). All their complaints to the authorities were rejected as being unsubstantiated. The applicants also say that their correspondence was interfered with and that the first applicant received 15 days' solitary confinement when it was discovered that he had been corresponding with the Court.
Admissible under Articles 3, 8, 13 and 34.

Inadmissible under Articles 9, 10 and 14 of the Convention and Article 3 of Protocol No. 1: the applicants' complaints that the penitentiaries did not allow freedom of religion and that pressure had been put on prisoners to vote for particular parties or candidates at elections amounted to a request for an abstract review of the relevant practices and regulations: *lack of victim status*.

INHUMAN OR DEGRADING TREATMENT
Conditions of detention of a terrorist suspect: *inadmissible*.

SOTIROPOULOU - Grèce (N^{o} 40225/02)
Decision 18.1.2007 [Section I]

In 2002 the applicant was remanded in custody on suspicion of belonging to a particularly dangerous terrorist group. Special detention arrangements were made by the prison in order to protect the presumed members of this group against any potential risk of being harmed by other detainees or by third parties involved in the terrorist group. Some months later the applicant went on a hunger strike to protest against the conditions of her detention and was transferred to the prison clinic. Using the prison's public telephone

she gave an interview to a journalist in the course of which she complained of the conditions of her detention. Her statements were broadcast by a television channel and published in a political weekly. A disciplinary penalty of five days' solitary confinement was imposed on her for having given the interview without the prior authorisation of the competent judicial authority. Complaints by the applicant about the conditions of her detention and about the penalty imposed were dismissed as unfounded by the criminal court. In 2003 the applicant's criminal case was set down for trial and all the specific restrictions affecting her were lifted. She was then accorded the same detention arrangements as the "ordinary" detainees in the prison. The criminal proceedings are currently pending before the Court of Appeal.

Article 3 – The applicant's pre-trial detention had caused major difficulties for the authorities. As a suspected member of a terrorist group, the applicant had had to be placed in detention under conditions that guaranteed both her personal safety and the smooth conduct of the judicial investigation. In such circumstances special detention arrangements had been justified. The parties had disagreed as to the space allotted to the applicant in the prison. The criminal court examining the case had found that the cell in question had a surface area of about 10 sq.m. In view of the applicant's contradictory allegations on this point, the Court could not dismiss the domestic court's finding. Even supposing that the cell had measured 6 sq.m., as the applicant had claimed, that fact by itself would not have entailed the finding of a violation of Article 3, as she was detained there alone and was allowed three hours of exercise every day in a prison courtyard. In addition, the cell had a window through which daylight could pass and was adequately ventilated, as the domestic court had also observed. The cell moreover contained a bed, a table, a chair, an individual toilet separated by a wall from the rest of the cell, and heating. Its furnishings and fittings were thus not open to criticism. The applicant had therefore been held in material conditions that complied with the European Prison Rules adopted by the Committee of Ministers and did not breach Article 3 of the Convention.
Unlike the arrangements applicable to "ordinary" detainees, the applicant had not been allowed contact with other prisoners and the frequency of visits by family members had been restricted. As a result her isolation had been partial and relative; it had not been complete sensory isolation, coupled with total social isolation – a measure which in itself would entail a breach of the Convention. As regards the severity of the arrangements imposed, the applicant had been allowed to receive visits from family members twice a week and visits from her lawyer for an hour and a half every day. She had also been able to receive newspapers and magazines and listen to the radio. Lastly, she had been allowed to make telephone contact with anyone who was entitled to visit her. As a result, the only absolute prohibition imposed on the applicant had concerned her contact with other detainees – a measure justified by the objective pursued, namely to guarantee her security and to ensure the smooth conduct of the pending judicial investigation. There was no indication in the case file that her mental or physical health had declined to such a point that the responsibility of the prison authorities was engaged. Nor had she complained about the lack of medical supervision during this period. The imposition of the special arrangements had only lasted for four months and nineteen days.
In the course of the judicial investigation, the competent authorities had gradually relaxed the restrictions imposed on the applicant: she had been accorded better conditions in which to see her child and had been allowed visits from her husband, who was accused of belonging to the same terrorist group. She had also been authorised to make an unlimited number of calls using the prison telephones and to use an electric hotplate in her cell. Lastly, from the very day the judicial investigation ended, normal detention arrangements had been restored. The steps taken by the competent authorities, when considered as a whole, thus proved that the special detention arrangements were not applied to her with the intention of humiliating or degrading her, but reflected a concern to find a solution that was adapted to her character and to the requirements of the investigation. Accordingly, the material conditions and special detention arrangements in question had not reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3: *manifestly ill-founded*.

Article 10 – The impugned penalty amounted to "interference" with the applicant's right to freedom of expression, that interference being prescribed by law and pursuing a legitimate aim: to prevent disorder and to maintain the authority of the judiciary. The penalty in issue did not impose an absolute restriction on the applicant's right to communicate with third parties during the period of her pre-trial detention – a restriction that could have raised an Article 10 issue. She had not been penalised for her communication

per se with a daily newspaper and with a television channel but rather because she had not sought the requisite authorisation beforehand. That requirement had been justified in the present case by the serious and specific nature of the charges laid against the applicant (membership of a terrorist group) and because the judicial proceedings were still at an early stage. It had thus been reasonable for the authorities to impose harsher restrictions on her right of communication, in order to prevent any contact through third parties with other presumed members of the terrorist group or the disclosure of information on the conditions of her detention. That eventuality might have undermined the smooth conduct of the on-going investigation and have endangered the safety of the applicant or other detainees. Accordingly, the grounds put forward by the national authorities to justify the interference were "relevant and sufficient" and the penalty imposed on the applicant, namely the five-day period of solitary confinement in her cell, was in this case "proportionate to the legitimate aims pursued": *manifestly ill-founded*.

EXPULSION
Expulsion of Uzbek national in spite of an interim measure ordered by the Court and his pending asylum claim and appeal against the removal order: *communicated*.

MUMINOV - Russia (N° 42502/06)
[Section I]

The applicant moved to Russia in 2000. In 2005 the Uzbek authorities charged him, *inter alia*, with unlawful actions against the constitutional order and dissemination of subversive materials, establishment of a proscribed organisation, keeping subversive materials calling for religious extremism, separatism and fundamentalism and participation in the activities of a proscribed organisation. The authorities essentially accused him of membership in *Hizb ut-Tahrir*, an Islamist organisation which is banned in Russia, Uzbekistan and some other Central Asian republics. In February 2006 he was apprehended and a town court authorised his detention with a view to his being extradited. In September 2006 the Prosecutor-General's Office refused the extradition request as some acts incriminated to the applicant were not criminally punishable in Russia, while the others had been committed before becoming punishable under the Russian Criminal Code or because prosecution for such offences had become time-barred. In a judgment of 17 October 2006 the applicant was found guilty of residing in Russia without a valid residence registration. He was fined and detained in a detention centre for aliens with a view to being expelled. His counsel appealed against the expulsion order and a hearing was scheduled for 26 October 2006. On 24 October 2006 the Court indicated to the Russian Government under Rule 39 of the Rules of Court that the applicant should not be expelled to Uzbekistan until further notice. It appears that on the evening of the same day he was put on a flight to Uzbekistan. Subsequently, criminal proceedings for abuse of power were brought against officials of the detention centre. A city court quashed the judgment of 17 October 2006 and remitted the case to a district court where it remains pending. The applicant's asylum claim which had been refused in May 2006 likewise remained pending before a Russian court at the time of his expulsion.
The applicant complains *inter alia* about his precipitated expulsion despite his fears of being subjected to ill-treatment in his country of origin. He further complains that he will not receive a fair trial in Uzbekistan.

Communicated under Articles 3, 5, 6, 13 and 34 of the Convention and Article 1 of Protocol No. 7. See also *Ismoilov and Others v. Russia* (N° 2947/06), partial decision 12.12.2006, reported in Information Note no. 92.

ARTICLE 5

Article 5(3)

LENGTH OF DETENTION ON REMAND
Date when time starts to run for the purposes of the six-month time-limit in cases of consecutive periods of pre-trial detention: *violation*.

SOLMAZ - Turkey (N° 27561/02)
Judgment 16.1.2007 [Section II]

Facts: The applicant was arrested on suspicion of involvement in the activities of an illegal armed organisation in January 1994 and remanded in custody. His requests for release pending trial were rejected. In June 2000 he was convicted and sentenced to life imprisonment by a State Security Court. That decision was quashed by the Court of Cassation in May 2001 on procedural grounds and the case was remitted to a lower court for further examination. The applicant remained in detention. He was released on bail in February 2002 on medical grounds and in view of the time he had already spent in custody. The proceedings were still pending when the Court gave its judgment.

Law: The applicant's detention pending trial began with his arrest in January 1994. He was detained within the meaning of Article 5(3) until his initial conviction by a State Security Court in June 2000. From that date until May 2001, when the Court of Cassation quashed his conviction, the applicant was detained "after conviction by a competent court", within the meaning of Article 5(1)(a). That period of detention therefore fell outside the scope of Article 5(3). From May 2001 until his release on bail in February 2002, the applicant was again in pre-trial detention for the purposes of Article 5(3). The multiple consecutive periods of detention had to be regarded as a whole, and the six-month period only started to run from the end of the last period of pre-trial detention, that is to say February 2002.
In order to assess the reasonableness of the length of the applicant's pre-trial detention, the Court made a global evaluation of the accumulated periods of detention under Article 5(3). After deduction of the periods when the applicant had been detained after conviction within the meaning of Article 5(1)(a) from the total time he had been deprived of his liberty, the period to be taken into consideration was nearly six years and eight months.
As to whether that period was reasonable, the Court held that the grounds given for the applicant's pre-trial detention were not "sufficient" and "relevant" to justify holding him in custody for such a long period.
Conclusion: violation (unanimously).

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

Article 5(5)

COMPENSATION
Denial of compensation due to malfunction of judicial system and lack of final decisions ordering discontinuance of criminal proceedings: *violation*.

CHITAYEV and CHITAYEV - Russia (N° 59334/00)
Judgment 18.1.2007 [Section IV]

(see Article 3 above "Torture").

ARTICLE 6

Article 6(1) [civil]

FAIR HEARING
Retrospective and final determination of the merits of pending litigation by legislative intervention that was not justified by compelling general-interest grounds: *violation*.

ARNOLIN and Others and 24 Other cases - France (N° 20127/03)
AUBERT and Others and 8 Other cases - France (N° 31501/03)
Judgments 9.1.2007 [Section II]

Facts: The applicants were all currently or formerly employed in specialised institutions run by associations under State supervision. Their work included night duty, for which they had to remain on call in a "watch" room, ready to respond to any incidents or requests by residents. Under the collective agreement applicable to institutions and services for people with disabilities, the applicants were only entitled to receive partial remuneration for the working time in question. Considering that this was nevertheless actual work warranting full remuneration, the applicants took their cases to French employment tribunals. While most of their cases were still pending, new legislation entered into force which had the effect, subject to any judicial decisions that had become *res judicata*, of validating salary payments to staff in respect of night work, including periods of non-activity, when they were on standby in the workplace, pursuant to the provisions of national collective agreements on general or specific conditions of employment, to the extent that the amount of such payments might be disputed on the ground that the provisions were invalid. The law was followed by an implementing decree introducing a period equivalent to statutory working time in social and medico-social establishments run by private persons on a non-profit-making basis. The cases brought before the domestic courts thus had different outcomes. Some were favourable to employees, in the cases where the judges of the tribunals, courts of appeal or Court of Cassation justified their positions by reference to Article 6(1) of the Convention, to the case-law of the European Court of Human Rights and to the absence of any compelling financial or egalitarian grounds of the general interest that might justify a departure from case-law favourable to employees. Other judges found in favour of employers, considering that the system of equivalence to statutory working time was lawful, finding that the remuneration of night duty was consistent with the provisions of the applicable agreements, with which employers scrupulously complied and which were justified by compelling grounds of the general interest. However, the Court of Cassation, which had found in favour of employees, clearly reasserted its position of principle on the matter. Lastly, the European Court of Justice considered that a directive precluded the system of equivalence in issue, and the *Conseil d'Etat*, taking into account the ruling of that court, found that the decree was partly tainted with illegality in that in had failed to set the limits within which the system of equivalence was to be implemented in order to ensure compliance with the thresholds or ceilings set out in the European directive.

Law: Article 6(1) in the case of *Arnolin and Others* – Although, in theory, the legislature was not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing law, the principle of the rule of law and the notion of fair trial enshrined in Article 6 precluded any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute. The State had not been a party to the pending judicial proceedings at the time of the legislative intervention in issue. However, the Court's case-law went beyond disputes in which the State was a party. The responsibility of the State would be engaged in respect of the notion of fair trial, both in its legislative role, if it distorted the trial or influenced the judicial determination of a dispute, and in its judicial role, if it failed to guarantee a fair trial, even in the context of private-law disputes between individuals. As regards litigation involving opposing private interests, the "equality of arms" principle implied that both parties had to be afforded a reasonable opportunity to present their case under conditions that would not place them at a substantial disadvantage *vis-à-vis* their opponent. Although the law expressly excluded from its scope any judicial decisions that had become *res judicata*, it determined once and for all – and, moreover,

retrospectively – the terms of the question referred to the ordinary courts. Thus the enactment of the law had settled the case on its merits and made it pointless to continue the proceedings. In those circumstances there could be no equality of arms between the two private parties, as the State had vindicated one of them once the impugned law was on the statute book. Lastly, whilst the State had not *stricto sensu* been a party to the dispute, it had nevertheless been a stakeholder and had had a direct financial interest in view of the way in which the establishments concerned were financed. As to the "compelling ground of the general interest", in principle a financial reason could not by itself warrant such legislative intervention. There was nothing to support the argument that the impact would otherwise have been so significant that the stability of the health and welfare sectors would have been undermined. It had not been established that the survival of the establishments concerned, and still less the general stability of the public health and welfare services, would have been undermined. Accordingly, the impugned legislative intervention, which had determined, with final and retrospective effect, the merits of disputes pending before domestic courts, was not justified by compelling grounds of the general interest.
Conclusion: violation (unanimously)

Article 1 of Protocol No. 1, in the case of *Aubert and Others* – With the Court of Cassation's case-law being favourable to the applicants and the decision of the European Court of Justice having led to the partial annulment of the decree by a judgment of the *Conseil d'Etat*, the applicants clearly had a proprietary interest which entailed, if not a claim against the other party, at least a "legitimate expectation" of being able to receive salary arrears for the impugned working time, and this had to be regarded as a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1. The enactment of a law in order to counter the case-law of the Court of Cassation, which had been favourable to the applicants, certainly confirmed that finding. The impugned law had entailed interference with the exercise of the rights that the applicants were entitled to assert by virtue of the applicable case-law and, accordingly, with their right to the peaceful enjoyment of their possessions. That interference amounted to a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. It was not in dispute that the interference was "provided for by law". However, the law in question was not justified by the two general-interest grounds adduced: firstly, in terms of ensuring legal certainty, because the Court of Cassation had taken a position that was favourable to employees and its case-law allowed the applicant to rely on the existence of a "possession" within the meaning of Article 1 of Protocol No. 1; secondly, in terms of preserving the long-term continuity of the public health and welfare service, because there was nothing to support the argument that the impact would otherwise have been so significant that the stability of the health and welfare system would have been undermined. The impugned legislative intervention, which had determined the merits of disputes pending before domestic courts with final and retrospective effect, was therefore not justified by compelling grounds of the general interest, as required in particular by the principle of the rule of law. Moreover, the law had finally determined the merits of the dispute in favour of one of the parties, thus depriving the applicants of a pre-existing "proprietary interest" which formed part of their "possessions" and in respect of which they could legitimately expect payment. The impugned measure had thus placed an "abnormal and excessive burden" upon the applicants, and the interference with their possessions had been disproportionate and had upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.
Conclusion: violation (unanimously).

Article 41 – Awards in respect of pecuniary and non-pecuniary damage.

FAIR HEARING
Failure by domestic courts to examine an alleged Convention violation: *violation*.

KUZNETSOV and Others - Russia (N° 184/02)
Judgment 11.1.2007 [Former Section I]

(see Article 9 below).

FAIR HEARING
Judge on appellate court examines the merits of an appeal as well as the admissibility of a cassation appeal against that court's judgment, following which the appellant could appeal to the Supreme Court directly: *no violation*.

WARSICKA - Poland (N° 2065/03)
Judgment 16.1.2007 [Section IV]

Facts: A regional court dismissed a civil action brought by the applicant. She appealed unsuccessfully. Judge S. G. was the judge rapporteur in the case. The applicant lodged a cassation appeal against the judgment through a panel of the court of appeal. This panel, presided over by S.G. (also the rapporteur on the panel), rejected her appeal. The applicant then appealed to the Supreme Court challenging, among other things, the fact that the same judge had sat on a panel giving a second-instance judgment on the merits and subsequently on a panel rejecting a cassation appeal against that very judgment. The Supreme Court dismissed her appeal.

Law: The requirements of a fair hearing as guaranteed by Article 6(1) do not, in principle, automatically prevent the same judge from successively performing different functions within the framework of the same civil case. In particular, it is not incompatible with the requirements of that provision if the same judge is involved, first, in a decision on the merits of a case and, subsequently, in proceedings in which the admissibility of an appeal against that decision is examined. The assessment of whether the participation of the same judge in different stages of a civil case complies with the requirement of impartiality laid down by Article 6(1) is to be made on a case-to-case basis, regard being had to the circumstances of the individual case. In particular, it is necessary to consider whether the link between substantive issues determined in a decision on the merits and the admissibility of an appeal against that decision is close enough to cast doubt on the judge's impartiality.
It was crucial for the assessment of the applicant's case that a further recourse was available to her against the decision of the court of appeal's panel in that she was entitled to lodge an appeal directly with the Supreme Court. She did so, challenging both the composition of the panel and the lawfulness of its decision. The Supreme Court considered unfounded her objection to the composition of the panel. Like the panel, the Supreme Court also concluded that her appeal had failed to comply with applicable procedural requirements.
Moreover, the question for determination by the court of appeal's panel was not the same as the question which that court had determined by its judgment on the merits. The panel had to determine only the admissibility of the applicant's cassation appeal against the second-instance judgment given by that very court. The scope of the examination involved could not be said to have amounted to an assessment of the merits of the cassation appeal, which was the exclusive task of the Supreme Court. Hence S.G., when participating as the judge rapporteur in the panel deciding on the admissibility of the applicant's appeal, was not called upon to assess and determine whether, for example, the court of appeal had correctly applied the relevant domestic law to the applicant's case. In those circumstances, there was no such link between substantive issues determined by the judgment on the merits and the admissibility of the cassation appeal which would have cast doubt on the impartiality of S.G. Having regard to the circumstances of the case taken as a whole, it could not be said that the applicant's fears as to the impartiality of the Court of Appeal when examining the admissibility of her cassation appeal had been objectively justified.
Conclusion: no violation (unanimously).

ADVERSARIAL TRIAL
Failure to communicate the opinion of the court's medical expert: *violation*.

AUGUSTO - France (N° 71665/01)
Judgment 11.1.2007 [Section I]

Facts: By a decision of the COTOREP (occupational counselling and redeployment board) the applicant was registered as 50-79% disabled and was issued with a card certifying that she found it difficult to remain in a standing position. However, the regional health insurance office dismissed her request for a retirement pension on the basis of her incapacity to work, on the ground that she was not at least 50% disabled. The disability claims tribunal upheld the decision to reject her request. The applicant appealed to the CNITAAT (national tribunal for claims relating to disability and insurance coverage for accidents at work), submitting a number of medical certificates attesting to her state of health and relying on the decision to register her as a disabled person. The CNITAAT upheld the judgment of the first-instance tribunal, partly basing its findings on the observations of its accredited doctor. The applicant appealed on points of law, alleging that there had been a violation of Article 6 of the Convention in that the report by the accredited doctor, drawn up solely on the basis of documents, had not been made available to her or to the doctor that she had appointed to submit observations. In a judgment the Employment and Welfare Division of the Court of Cassation dismissed her appeal on the ground that the accredited doctor responsible for the preliminary examination of the case file had simply given an opinion to the CNITAAT without filing an expert's report that would have been subject to adversarial debate between the parties; and that the CNITAAT, independently assessing the findings of its accredited doctor and the various documents in the case file after prior analysis, considered that the degree of disablement, of which the COTOREP's assessment was not binding on the court, was in fact less than 50%, so that the applicant was not entitled to a retirement pension on the basis of unfitness for work.

Law: As to the admissibility of the complaints not referred to the Court of Cassation – Appeals on points of law would normally be included among the remedies to be exhausted, but an applicant could not be regarded as having failed to exhaust domestic remedies if he or she could show, by providing relevant domestic case-law or any other suitable evidence, that an available remedy which he or she had not used had been bound to fail. The applicant had appealed on points of law against the judgment of the CNITAAT, complaining, in particular, of the failure to communicate to her the opinion of the accredited doctor concerning her case. The applicant had relied on Article 6 of the Convention, referring to the "requirements of the right to a fair trial" and, in particular, to the non-observance of the "equality of arms" principle. At the material time such an argument should have been dismissed according to settled case-law of the Court of Cassation, but that had not prevented the applicant from lodging her appeal on points of law or from considering that a departure from precedent might be possible. The applicant had had a remedy that she considered effective in respect of violations of Article 6 in general. She should have submitted all of her complaints to the domestic court.

Inadmissible for failure to exhaust domestic remedies.

Admissible concerning the failure to communicate to the applicant the opinion of the accredited doctor appointed by the domestic court to carry out a preliminary medical examination of her case.

Merits: The opinion of the accredited doctor had been a crucial factor in the decision reached by the court, and the communication of that opinion was all the more important as the doctor could not be regarded as impartial, in so far as he had been chosen from a list drawn up by the Minister for Social Security, the supervisory authority of the other party in the proceedings at issue. The opinion had not been communicated to the applicant. A medical expert's report, in so far as it concerned a technical matter outside the knowledge of the domestic courts, was capable of having a preponderant influence on their assessment of the facts and constituted an essential item of evidence on which the parties to the dispute had to be able to comment effectively. The assignment entrusted to the accredited doctor played a decisive role as it consisted in an examination of the medical file before the CNITAAT for the purpose of reaching a conclusion as to whether or not the medical conditions had been satisfied for the granting of the welfare

benefit claimed. The CNITAAT essentially relied on that opinion to reject the applicant's request for a pension. In this connection, the Court was not persuaded by the distinction that the Court of Cassation had made between the opinion of an accredited doctor and the report of a medical expert, in order to show that only such a report would be subject to adversarial scrutiny by the parties. Moreover, whilst it was true that the opinion of the accredited doctor did not, in law, bind the CNITAAT, it was nevertheless capable, as shown in the present case, of having a decisive influence on the decision of that tribunal. Therefore, the applicant had not had a fair hearing, on account of the lack of adversarial communication of the opinion of the doctor appointed by the CNITAAT, so that the applicant had been unable to discuss it.
Conclusion: violation.

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

Article 6(1) [criminal]

APPLICABILITY
Police warning to a schoolboy for indecent assault on girls at his school: *Article 6 not applicable*.

R. - United Kingdom (N° 33506/05)
Decision 4.1.2007 [Section IV]

The applicant, then aged 15, was arrested and cautioned on suspicion of indecent assault following a complaint by girls at his school. He admitted to actions amounting to indecent assault in respect of some girls and was released pending a further assessment of the case. The police finally decided to deal with him by issuing a warning under the Crime and Disorder Act 1998. A consequence of the warning was that he would be required to sign the Sex Offenders Register. In the case of indecent assault, the registration is valid for two and a half years. The applicant complained that he had been subject to a public declaration of guilt by an administrative process to which he had not consented. The question arose at domestic level whether Article 6 of the Convention applied to the issue of a warning. The proceedings ended with a decision denying any penal or punitive element to the warning procedure after it was noted that the consequence of the recording of a final warning on the Police National Computer was far from a public announcement or declaration of guilt, as access was limited to a relatively small number of police, prison and probation officers and agencies fulfilling public functions. Access to the Sex Offenders' Register was similarly controlled and in neither case did members of the public have access.

Inadmissible – The Court noted that the police had decided not to prosecute, and the applicant had been so informed; instead they had issued a warning to the applicant in respect of the offences he had admitted. Under domestic law, a warning was not a criminal conviction. Its purpose was largely preventive and did not pursue the aims of retribution and deterrence, and no fine or restriction of liberty was imposed. The applicant had been required to sign a register and referred to the youth offending team in order to determine whether or not an intervention programme should be provided, measures which the Court found to be preventive in nature. Therefore, the warning applied to the applicant did not involve the determination of a criminal charge within the meaning of Article 6(1). Nor did it involve any public official declaration of guilt of a criminal offence which could offend against Article 6(2): *incompatible* ratione materiae.

FAIR HEARING
Failure to afford a defendant in administrative proceedings the guarantees available in criminal proceedings: *no violation*.

MAMIDAKIS - Greece (N° 35533/04)
Judgment 11.1.2007 [Section I]

Facts: The applicant is the chairman of an oil company. Oil was to be exported to two Bulgarian oil companies through the intermediary of the applicant's company and another Greek oil company. Customs duty on the oil had been lifted for that purpose. The applicant claimed that the person who had acted as broker in the transaction had, in collusion with the other Greek company, made the oil available for sale in Greece instead of exporting it as intended, having falsified the export declarations. The director of the special customs investigation service imposed a fine of some three million euros on the applicant for smuggling. He was also declared jointly and severally liable for the payment of fines imposed on other persons for customs offences, amounting to a total of some four million euros. The applicant lodged an appeal against that decision, complaining of the amount of the fine imposed on him. The appeal was only partly upheld in a decision of the administrative court. His appeal against that decision was dismissed by the administrative court of appeal, which considered that the applicant's intent to defraud had been established. It further noted that, in view of the seriousness of the customs offences and the penalties provided for by law, the fine imposed had not been disproportionate. The applicant appealed on points of law, challenging in particular the gathering of evidence. He complained that the finding of intent to defraud had not been sufficiently reasoned and that the courts below had not taken into account the fact that no criminal proceedings had been brought against him. The applicant further claimed that the excessive fine constituted a flagrant breach of the proportionality principle. The Supreme Administrative Court, emphasising the considerable importance of the questions concerning the finding of intent to defraud and the proportionality of the fine, referred the case to the plenary formation of the court, which gave a fully reasoned judgment dismissing the applicant's appeal by a majority. Referring in particular to the separation between administrative and criminal procedures, it considered that the appellate court had not been required to attribute particular importance to the fact that no criminal proceedings had been brought against the applicant; that the appellate court's decision as to the existence of intent to defraud on the applicant's part had been legally and adequately reasoned; and that the fine imposed on the applicant had not breached the proportionality principle.

Law: Article 6 – The Court had to ascertain whether, in the proceedings before the administrative courts, the applicant had been afforded the rights guaranteed by Article 6 under its criminal head. It bore in mind, however, that under Greek law administrative proceedings concerning penalties for the smuggling of oil were conducted totally independently of criminal proceedings, which, if appropriate, might lead to punishment for the constituent acts of the same offence. The domestic courts had given their decisions on the basis of the legislation in force. It did not appear, in this connection, that they had shown any arbitrariness in the interpretation of the applicable law or in the assessment of the constituent elements of the offence. Moreover, the applicant had had the benefit of adversarial proceedings during which he had been able to submit to the competent courts the arguments that he deemed appropriate for his defence. As to the complaint that the administrative courts had not taken account of the lack of criminal proceedings against the applicant for the same offence, that situation did not breach the principle of the presumption of innocence. Such an argument would imply that no administrative proceedings could be conducted in the absence of criminal proceedings and that no offence could be established by an administrative court unless the person concerned had been formally convicted by a criminal court. Moreover, the applicant had not raised any argument that might lead the Court to find that the administrative courts had considered him to be guilty before delivering their final judgment in the case.
Conclusion: no violation (unanimously).

Article 1 of Protocol No. 1 – The impugned fine constituted interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1, because it had deprived the applicant of a possession, namely the amount that he was required to pay. That interference was justified in accordance with the second paragraph of that Article, which expressly provided for a derogation where the payment of taxes or other contributions or penalties was concerned. However, that principle had to be interpreted in the light of the general principle referred to in the first sentence of the first paragraph and there thus had to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Accordingly, the financial obligation arising from the payment of a fine was capable of impairing the guarantee enshrined in that provision if it imposed an excessive burden on the person concerned or fundamentally affected his financial situation. In the present case the impugned interference had been in conformity with domestic legislation and satisfied the demands of the general interest, namely the

punishment of smuggling. As to the requirement of proportionality between the interference with the applicant's right and the general-interest aim pursued, the fine imposed had been extremely high. In those circumstances, even taking into account the margin of appreciation enjoyed by contracting States in such matters, the imposition of the fine in question had dealt such a blow to the applicant's financial situation that it amounted to a disproportionate measure in relation to the legitimate aim pursued.
Conclusion: violation (unanimously).

Article 41 - EUR 10,000 for non-pecuniary damage.

FAIR HEARING
Request for annulment by prosecutor resulting in quashing of applicant's acquittal without any new evidence: *violation*.

BUJNIŢA - Moldova (N° 36492/02)
Judgment 16.1.2007 [Section IV]

Facts: The applicant was acquitted of rape by a district court. The prosecutor and the victim appealed. A regional court upheld their appeal and found the applicant guilty of rape. The applicant lodged an appeal in cassation. By a final judgment the court of appeal upheld the applicant's appeal in cassation and quashed the judgment of the regional court. The Deputy Prosecutor General lodged with the Supreme Court a request for annulment of the judgments of the district court and the court of appeal. He argued that those courts had unlawfully assessed the evidence and asked the Supreme Court to uphold the regional court's judgment. The Supreme Court upheld his request. The applicant complained that he did not have a fair hearing as a result of the quashing of his acquittal.

Law: The applicant complained about the quashing of the final judgment of the court of appeal following a request for annulment lodged by the Prosecutor General's Office. The Government maintained that this request had been made in accordance with the procedure prescribed by law and that the applicant had enjoyed the necessary procedural safeguards during the request for annulment proceedings. The Court noted that the grounds for the re-opening of the proceedings were based neither on new facts nor on serious procedural defects, but rather on the disagreement of the Deputy Prosecutor General with the assessment of the facts and the classification of the applicant's actions by the lower instances. The latter had examined all the parties' statements and evidence and their original conclusions did not appear to have been manifestly unreasonable. The grounds for the request for annulment were insufficient to justify challenging the finality of the judgment and using this extraordinary remedy to that end. The Court considered therefore that the State authorities had failed to strike a fair balance between the interests of the applicant and the need to ensure the effectiveness of the criminal justice system.
Conclusion: violation (unanimously).

Article 41 – EUR 2,000 in respect of non-pecuniary damages.

FAIR HEARING
Expulsion of Uzbek national allegedly risking a flagrant denial of a fair trial in his native country: *communicated*.

MUMINOV - Russia (N° 42502/06)
[Section I]

(see Article 3 above under “Expulsion”).

IMPARTIAL TRIBUNAL
Refusal of a request by the defendant for the record to indicate that an unlawful exchange had taken place between the advocate-general and members of the jury during a break in his trial at the assize court: *violation*.

FARHI - France (N° 17070/05)
Judgment 16.1.2007 [Section II]

Facts: The applicant was sentenced at first instance to 12 years' imprisonment. In the proceedings before the assize court of appeal, his counsel requested that the court take formal note of unlawful communication which had taken place between some members of the jury and the *avocat général* during an adjournment of the hearing when the court had retired in order to deliberate, leaving the jurors in the hearing room. The request was denied on the ground that the judges on the bench had been unable personally to observe an incident that had allegedly occurred in their absence. The same day the appeal court increased the applicant's sentence to 15 years' imprisonment.
Under domestic law, jurors in an assize court were prohibited from communicating with anyone during the trial. Before the Court of Cassation the applicant alleged that his right to be tried by an impartial tribunal had been breached on account of the refusal by the assize court to investigate the complaint, which concerned unlawful communication between some jurors and the representative of the prosecution during the trial. His appeal on points of law was dismissed.

Law: In view of the *avocat général*'s role in a criminal trial as representative of the prosecution, an allegation that he had had contact with jurors was serious enough to warrant a decision by the president of the assize court to initiate an investigation. The president had heard submissions on this matter from the *avocat général*, the applicant's lawyers, the civil party and the defendant. However, the Government had failed to show that this debate had helped to ascertain the subject of the impugned communication or the identity of the jurors concerned. In the Court's view, only by hearing evidence from the jurors would it have been possible to shed light on the nature of the remarks exchanged and on the influence they might have had on jurors' opinions.
Moreover, in the decision denying the request by the applicant's counsel to have the unlawful communication formally noted, it had merely been stated that there had been an adversarial hearing, though no details had been provided on information that might have been ascertained as a result of that hearing. This verification had moreover deprived the applicant of the possibility of submitting his complaint effectively to the Court of Cassation.
Conclusion: violation (unanimously)

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

ARTICLE 8

PRIVATE LIFE
Non-disclosure to applicant of notes kept by his bank: *inadmissible*.

SMITH - United Kingdom (N° 39658/05)
Decision 4.1.2007 [Section IV]

The applicant was the managing director and controlling shareholder of a company involved in development of industrial units. An oral agreement was reached between the applicant and a bank representative stating that the bank would take over funding the development and that the applicant's personal and company borrowings would be secured on the development and by a mortgage on the applicant's home. They agreed that the short-term bridging loan would be replaced by long-term mortgage finance once two units had been let and two had been sold. The bank later denied the existence of this oral

agreement, refusing to provide long term financing and giving notice that they were calling in their loans. This led to protracted litigation where the applicant was unsuccessful in his claims against Lloyds, which gained possession of his home, making him bankrupt. The applicant traced the representative who disclosed the existence of contemporaneous notes of the meeting. The applicant made application for access to the notes under the Data Protection Act claiming personal data concerning him was either processed or part of a filing system within the meaning of that Act. The high court refused to order the disclosure of the notes, while accepting there were documents which mentioned the applicant within the bundles. The judge rejected arguments seeking to bring the notes within the Act considering that they did not concern personal data about the applicant. Mere mention of an individual's name in a document held by a data controller did not mean that the document contained personal data. The documents held by the bank were not personal to the applicant. The Court of Appeal rejected his appeal application, finding that domestic and European legislation did not cover information held in unstructured files as opposed to a processing or filing system. Arguments that the data were personal to the applicant were rejected, noting that if the documents were covered it would mean that whenever an individual was involved in a transaction all the information about the transaction became his personal data.
The Court's role is not to assess whether domestic courts have correctly interpreted domestic or European legislation on data protection. No public authority had interfered with the applicant's private life by collection or storage of data. It was not decisive that the bank had stored this information in the files concerning transactions with the company rather than in a file concerning the applicant himself. There may be circumstances where information relevant to the private life of an applicant may be contained in files which are primarily concerned with another individual or entity, although in those circumstances countervailing issues may well arise relevant to the protection of the privacy of the third party. The information allegedly in the files concerned a business transaction, the terms of which the applicant claimed to be fully aware. It was his desire to obtain substantiation of these terms with a view to further legal proceedings that motivated his application for access to the data held by the bank, i.e. an oblique application for discovery of documentary evidence. This was not a case where the applicant sought access to files holding information about his identity or personal history, whether with a view to correcting any errors in those records or preventing misuse of personal information or to uncovering information with formative implications for his or her personality. Nor was the information in the documents obtained through any measure invasive of the applicant's privacy or held on a data base which is in current use or involves the possibility of release of personal information to others. The Court was not persuaded that the authorities had failed in any positive obligation to protect the applicant's right to respect for his private life within the meaning of Article 8(1): *manifestly ill-founded*.

PRIVATE AND FAMILY LIFE
Alleged inability of members of a family to regularise their immigration status: *striking out*.

SISOJEVA and Others - Latvia (N° 60654/00)
Judgment 8.1.2007 [GC]

(see Article 37(1)(c) below).

PRIVATE AND FAMILY LIFE
Unlawful expulsion of applicant, preventing relationship with family and new-born child: *violation*.

MUSA and Others - Bulgaria (N° 61259/00)
Judgment 11.1.2001 [Section V]

Facts: The applicant is a Jordanian national of Palestinian descent; his wife and their three daughters are Bulgarian nationals. The applicant arrived in Bulgaria to study and left the country on completion of his studies. He returned to Bulgaria, married there and obtained a permanent residence permit. He became director of a foundation, the role of which was to provide material assistance to Muslims in Bulgaria; at the same time, he was a shareholder in and director of a property company. The applicant was informed of

an order withdrawing his permanent residence permit and requesting him to leave Bulgarian territory within ten days. The order had been adopted on the basis of the 1998 Act, which provided for the withdrawal of residence permits issued to individuals whose activities were such as to endanger the State's security or interests. The applicant was not informed of the factual grounds on which the order had been based and was informed that no appeal lay against it. The applicant submitted several appeals to the Ministry of Justice and the Interior, the General Prosecutor's Office and the Bulgarian President, seeking to have the order set aside; all were dismissed. He also applied to the district court, which declared his appeal inadmissible. The applicant was arrested and taken to a detention centre and was held there. He met his wife and children in Turkey and Jordan on several occasions. His wife gave birth to their third daughter. The applicants alleged that there had been a violation of their right to respect for their family and private life, and claimed that there was no effective remedy available under Bulgarian law enabling them to complain of this.

Law: Article 8 – The Court had already held that an expulsion carried out in application of the 1998 Aliens Act did not meet the requirement of lawfulness on account of the absence of sufficient guarantees against arbitrariness; it had also considered that, where matters touching on fundamental human rights were concerned, the national legislation would run counter to the rule of law if, as in the present case, the margin of appreciation granted to the executive was unlimited. As the Bulgarian Supreme Administrative Court did not amend its case-law in this matter until 2003, the interference in the applicant's right to respect for his family life had not been "in accordance with the law".
Conclusion: violation (unanimously).

Article 13 – At the relevant time, no judicial review was possible against an order withdrawing a residence permit on the grounds of national security. The Bulgarian courts applied this law until 8 May 2003, the date of the Supreme Administrative Court's judgment announcing a reversal of the case-law in this area.
Conclusion: violation (unanimously).

Article 41 – The judgment constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage alleged by the applicants.

PRIVATE AND FAMILY LIFE
Prohibition of long-term family visits to detained applicant and his subsequent deportation: *violation*.

ESTRIKH - Latvia (N° 73819/01)
Judgment 18.1.2007 [Section III]

Facts: The applicant arrived in the Republic of Latvia as a member of the ex-USSR armed forces located in the territory of Latvia. He lived with a Latvian citizen and had a child with her. After military forces were withdrawn from Latvia, the applicant lived there on the basis of a temporary residence permit, and, upon expiry of the residence permit, he left Latvia. Within a five year period he visited Latvia three times with a visa. With the validity of the last visa having expired the applicant continued to live in Latvia illegally. He was apprehended by the police and taken into custody on suspicion of having committed robbery. Criminal proceedings were brought against him. He spent the whole period of his detention from February 1998 to August 2002 in a remand prison, where long-term family visits were prohibited. On 11 June 2002 a regional court found the applicant guilty of robbery and sentenced him to four years and six months' imprisonment. It was decided that on his release from prison, the applicant would be expelled from Latvia. The applicant appealed. While his appeal was still pending he was deported to the Russian Federation.

Law: Article 8 – *Applicant's right to long-term visits*: When the applicant was arrested, he had been living in a partnership for more than five years. In an earlier case the Court had already expressed doubts as to the compatibility of national regulation with the requirements of Article 8(2).
Conclusion: violation (unanimously).

Applicant's expulsion from Latvia: According to the wording of the decision of the Citizenship and Migration Authority (CMA) of 29 July 2002, the applicant was expelled pursuant to Article 24 of the Criminal Code on the basis of the judgment ordering his deportation from Latvia. There was no reference to Article 38 of the Law on Entry and Residence in the Republic of Latvia in the decision, which should have been there if the applicant was to be expelled because of the administrative provisions regarding the entry and stay of foreigners in Latvia. The Court therefore concludes that the applicant was expelled on the basis of the judgment of 11 June 2002. The applicant appealed this judgment. According to Article 357 of the Criminal Procedure Code, the judgment had not become final as his appeal was still pending. Thus, there was no lawful basis for the applicant's deportation and it was contrary to the requirements of Article 48 of the Law on Entry and Residence in the Republic of Latvia of Foreign Citizens and Stateless Persons. It follows that the applicant's deportation was not "in accordance with law" and as such contrary to the requirements of Article 8. Even considering that the applicant was expelled, as suggested by the Government, in the course of the administrative proceedings, the Court notes that he appealed against the decision of the CMA to the Central District Court of the City of Riga. The court required rectification of the form of the appeal, setting a time-limit for it. However, the applicant was expelled without being given a possibility to rectify the deficiency. Accordingly, his expulsion while his appeal against the decision of the CMA was still pending was not "in accordance with law" either.
Conclusion: violation (unanimously).

Article 5 – The Court notes that period to be taken into consideration for the examination of this complaint began on 19 February 1998, when the applicant was arrested, and lasted until 11 June 2002, when the Riga Regional Court delivered its judgment, that is four years, three months and 20 days.

i. Applicant's detention between 20 February 1998 and 20 April 1999
The Court noted that a preventive measure was imposed on the applicant on 20 February 1998 by a judge of the district court. Thereafter, his detention had been periodically extended by a judge of the district court until 20 April 1999. The reasons given in all the orders extending the applicant's pre-trial detention were brief and abstract. The orders had been drafted using a standard form. They repeated from one order to the next the same grounds for detention in the same words. The reasons which might have justified the applicant's initial detention became less relevant with time. The Court could accept that, as submitted by the Government, the fact that the applicant resided in Latvia illegally could have been one of the specific reasons for his continued detention. However, it was not mentioned in any court order.

ii. Applicant's detention between 21 April 1999 and 23 August 2000
The Court further observed that between 21 April 1999, when the order authorising his detention had expired, and 23 August 2000, when the investigating prosecutor decided to refuse to release the applicant, he was kept in prison on the basis of a provision which the Court had previously found to be so vague that it raised doubts as to its precise implications and was open to more than one interpretation. It did not clearly state that there was a requirement to keep the defendant in detention, still less that it was possible to do so without a warrant. In reality the automatic extension of the applicant's pre-trial detention during this period of time was the result of a generalised practice on the part of the Latvian authorities which had no precise basis in legislation and had clearly been designed to compensate for the deficiencies in the Criminal Procedure Code.

iii. Applicant's detention between 23 August and 7 September 2000
The decision refusing the release of the applicant was taken by the investigating prosecutor on 23 August 2000. It is true that in accordance with Article 1(1) of the Law on Public Prosecutor's Office, a prosecutor can be regarded as an "officer authorised by law to exercise judicial power". However, in the instant case, the prosecutor in charge of investigation exercised concurrent investigating and prosecuting functions as he drew up the indictment and represented the prosecuting authorities before the first and second instance trial court. Thus his status could not offer guarantees against arbitrary or unjustified continuation of detention as he was not endowed with the attributes of "independence" and "impartiality" required by Article 5(3).

iv. Applicant's detention between 7 September 2000 and 11 June 2002
The judge of the Riga Regional court gave no reasons justifying the applicant's continued detention. The Court considers that the suspicion that the applicant had committed a crime, which was part of a complex criminal case, and the fact that the applicant was residing in Latvia illegally might have justified his continued detention. However, the judge of the Riga Regional court said nothing about these reasons. Furthermore neither the applicant nor his defence counsel ever had a chance to comment in this respect. Moreover, it took two years for the first instance court to commence adjudication of the case. This was contrary to the time-limits set by Article 241 of the Criminal Procedure Code and thus infringed the principle of legal certainty protected by the Convention.
Conclusion: violation (unanimously).

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

PRIVATE AND FAMILY LIFE
Impossibility to challenge in court a declaration of paternity after expiry of the statutory time-limit: *inadmissible*.

KŇÁKAL - Czech Republic (N° 39277/06)
Decision 8.1.2007 [Section V]

In 2001 the applicant met his future partner, who was already pregnant. Shortly afterwards she gave birth to a daughter in respect of whom he acknowledged paternity, and he was entered as the father in the birth register. His partner then discontinued the paternity suit she had brought against the child's putative biological father. In 2004 the applicant and his partner ended their relationship. The applicant, claiming that he had lost all ties with the child, requested the attorney-general's office to initiate an action to disclaim paternity on his behalf. The attorney-general dismissed his request on the ground that the applicant himself had failed to bring an action to disclaim paternity within the statutory time-limit of six months, and that the possibility of disclaiming paternity would neither result in a positive change in the child's life nor lead to the restoration of ties between the child and her biological father. A constitutional appeal by the applicant was also dismissed.

Article 6(1) – In view of the decision of the Constitutional Court, which had considered that the applicant's right to disclaim paternity had lapsed, as he had failed to exercise that right within the statutory time-limit of six months, the Court found that he had asserted a right which could not arguably be said to have been recognised under domestic law: *incompatible* ratione materiae.

Article 8, whether or not in conjunction with Article 13 – There was nothing to substantiate the applicant's argument that it was in the child's interest that the right to disclaim paternity should be unrestricted. In the Court's opinion a fair balance had been struck between the various interests involved. In particular, it could not be regarded as unjustified that, once the limitation period for the applicant's own action to disclaim paternity had expired, greater weight had been given by the authorities to the interests of the child than to those of the applicant. Unlike the situation in the case of *Paulík v. Slovakia* (no. 10699/05, 10 October 2006 – see Case-Law Report / Information Note no. 90), the applicant in this case had known even before the child's birth that he was not her biological father but had nevertheless acknowledged paternity in full awareness of the consequences. Moreover, the child in question was an infant who was partly dependent on the applicant's maintenance payments: *manifestly ill-founded*.

CORRESPONDENCE
Minor disciplinary penalty for breach of requirement to conduct correspondence through prison administration: *no violation*.

PUZINAS - Lithuania (no. 2) (N° 63767/00)
Judgment 9.1.2007 [Section II]

Facts: The applicant is the president of an organisation for prisoners' mutual assistance and support. In 1999, while serving a sentence in prison, he signed a letter on behalf of his organisation and certain other prisoners complaining about the conditions of detention and about various allegedly unlawful acts of the prison administration. The complaint was addressed to State officials and media representatives and was sent via an inmate who had been released from the prison, in order to avoid censorship. The prison department director held that the sending of the complaint through channels other than the prison administration had breached the Prison Code and punished the applicant by prohibiting him from receiving a parcel during a personal visit. The director also held that the applicant could only send the complaint to the State authorities, not to other organisations or persons and that the Prison Code prohibited complaints on behalf of other prisoners. The applicant's appeal against the penalty was rejected by the administrative courts. The courts held that he had been punished not for corresponding with representatives of the media, but for a breach of the requirement to conduct such correspondence through the prison administration which had deprived the latter of the right to submit their comments as to the issues set out in his complaint.

Law: The ordinary and reasonable requirements of imprisonment may justify a system of internal inquiry into prisoners' complaints about their treatment and conditions of detention. The applicant's complaints had received an adequate judicial review and the penalty imposed on him had been of a minor nature. His possible fear of censorship had not been a valid excuse for circumventing an apparently legitimate prison rule regarding the channels of complaint. In the specific circumstances of the present case, the authorities had not overstepped their margin of appreciation and the interference had been proportionate and necessary in a democratic society.
Conclusion: no violation (unanimously).

CORRESPONDENCE
Interception of prisoners' letters to their lawyer: *violation*.

EKİNCİ and AKALIN - Turkey (N° 77097/01)
Judgment 30.1.2007 [Section II]

Facts: The applicants were serving a prison sentence for belonging to a terrorist organisation. They complained that their letters had been intercepted by the prison authorities. Under domestic law, letters to or from prisoners were vetted by the prison administration, except for applications addressed to official bodies. Any correspondence regarded as inappropriate was transferred to a disciplinary board, which decided whether the letter should be sent in its entirety or whether the inappropriate parts should first be crossed out. Any letters regarded as totally objectionable were destroyed if so decided by the disciplinary board. The applicants' lawyer complained that their letters had been subject to scrutiny and in particular that two letters they had addressed to him had not been sent on. In those letters the applicants had complained about operations by security forces in prisons and claimed that they had been ill-treated.

Law: Correspondence with one's lawyer, regardless of its purpose, was privileged under Article 8, especially where that correspondence constituted a preliminary step in the use of a remedy to complain about treatment during a period of detention. The interception of private letters "calculated to hold the authorities up to contempt" or "contain[ing] material deliberately calculated to hold the prison authorities up to contempt" was not "necessary in a democratic society"; nor was a prohibition on allegations against prison officers.
Conclusion: violation (unanimously).

Article 41 - Each of the applicants was awarded EUR 1,000 for non-pecuniary damage.

ARTICLE 9

FREEDOM OF RELIGION
Unlawful termination of meeting organised by Jehovah's Witnesses: *violation*.

KUZNETSOV and Others- Russia (N° 184/02)
Judgment 11.1.2007 [Former Section I]

Facts: The applicants are 103 Russian nationals in Chelyabinsk who are all Jehovah's Witnesses. In 1999 a lease agreement was signed which allowed the community of Jehovah's Witnesses to which the applicants belonged to rent the auditorium of a vocational training college for religious meetings. One Sunday in 2000, in accordance with the lease agreement, Jehovah's Witnesses were using the college facilities to hold a meeting for predominantly hearing-impaired to study the Bible and join in public worship. Many of the participants were elderly and also had impaired vision. The meeting was open to the public. The was disrupted by the chairwoman of the Regional Human Rights Commission ("the Commissioner"), accompanied by two senior police officers, who called for the meeting to be stopped. Mr Kuznetsov submitted that, given the intimidating behaviour of the Commissioner and the police, he thought it best to comply. The following day the Jehovah's Witnesses group was given notice of the termination of its lease agreement with the college "because of certain irregularities committed by the college administration at the time of its signing". The applicants unsuccessfully requested a criminal investigation into the actions of the Commissioner and the police officers. They also filed a civil complaint with the district court, but this was dismissed on the ground that the applicants had failed to show a causal link between the Commissioner's arrival and the premature termination of their meeting.

Law: Article 9 – The Court found it established that the order to terminate the meeting had emanated from the Commissioner, whereas Mr Kuznetsov merely had relayed it to the hearing-impaired audience, with whom the police officer could not communicate directly. That order amounted to an interference with the applicants' right to freedom of religion. The acts by the Commissioner and the police had not been in accordance with the law. The Court rejected the Government's claim that the applicants had lacked the appropriate documents for the religious meeting, noting that domestic law did not require any such documents. Neither did the Court accept the Government's claim that the Commissioner had come to the meeting to investigate a complaint about the unauthorised presence of children at a religious event: that claim had not been supported by any evidence. The Government had failed to submit any documents relating to the official powers of the Commissioner and no such documents had been produced in the domestic proceedings. There were, however, strong and concordant indications that she had acted without any legal basis and in a personal capacity. The involvement of two senior police officers gave her intervention a spurious authority. However, the police officers were not formally subordinated to her and she had had no authority to give them orders, such as to have the meeting dispersed. No inquiry had been ongoing, nor had there been any complaint about disturbance of public order or any other indication of an offence warranting police involvement. Therefore the legal basis for breaking up a religious event conducted on premises lawfully rented for that purpose had been lacking. The interference had not been "prescribed by law" and the Commissioner had not acted in good faith and had breached a State official's duty of neutrality and impartiality vis-à-vis the applicants' religious congregation.
Conclusion: violation (unanimously).

Article 6 – The Court was struck by the inconsistent approach of the Russian courts, on the one hand finding it established that the Commissioner and her aides had come to the applicants' religious meeting and that it had been terminated ahead of time, and on the other hand refusing to see a link between those two elements without furnishing an alternative explanation for the early termination of the meeting. Their findings of fact appeared to suggest that the Commissioner's arrival and the applicants' decision to

interrupt their religious service simply had happened to coincide. That approach had permitted the domestic courts to avoid addressing the applicants' main complaint, namely that neither the Commissioner nor the police officers had had any legal basis for interfering with the conduct of the applicants' religious event. The crux of the applicants' grievances – the alleged violation of their right to freedom of religion – had been left outside the scope of review by the domestic courts which had declined to undertake an examination of the merits of the complaint. In sum, the domestic courts had failed in their duty to state the reasons on which their decisions had been based and to demonstrate that the parties had been heard in a fair and equitable manner.
Conclusion: violation (unanimously).

Article 41 – The Court awarded Mr Kuznetsov, on behalf of all the applicants, EUR 30,000 for non-pecuniary damage.

MANIFEST RELIGION OR BELIEF
Refusal of a residence permit because of allegedly harmful religious activities: *admissible*.

PERRY - Latvia (N° 30273/03)
Decision 18.1.2007 [Section III]

The applicant, who is a pastor and a national of the United States, set up a religious community which was registered as a church in Latvia, where he lived, having been issued with a temporary residence permit "in connection with his pedagogical activities". He subsequently received a new temporary permit "for purposes of religious activities", which authorised him to organise public activities of a religious nature. However, the renewal of his permit was denied on the basis of a law stipulating that a residence permit could not be issued to a person who was "active in a totalitarian or terrorist organisation or one that use[d] violent methods; [who] represent[ed] a danger for national security or public order; or [who was] a member of any secret anti-State or criminal organisation". However, by virtue of his wife's residence permit he was also issued with a temporary residence permit, but without being authorised to conduct religious activities. He was unsuccessful in a number of appeals to a higher administrative authority in which he argued that his freedom to manifest his religion had been breached. He then appealed to the courts. His claim was upheld by a court, which set aside the impugned decision on account of the lack of evidence of acts that represented a danger for national security or that were incompatible with the operational principles of the Christian church in question. The national authority responsible for issuing permits appealed and the appellate court upheld the arguments of the authority, which had refused to issue a permit on account of the pastor's lack of theological training, one of its sources of information being the Lutheran Academy. The applicant appealed on points of law. The chamber of the Supreme Court quashed and set aside the judgment and remitted the case to the Regional Court, which dismissed the applicant's appeal with a finding that there was a potential threat to national security. He lodged a further appeal on points of law which was also dismissed. After a number of appeals, the procurator stated that he had no objection to the granting of a residence permit to the applicant "for purposes of religious activities". The applicant was thus issued with a new permit but left Latvia and returned to the United States before it expired.

Admissible under Articles 9 and 14, the applicant having exhausted all available and appropriate remedies in respect of the measure which had been directed against the exercise of his religious rights.

Inadmissible under Article 8 for non-exhaustion of domestic remedies. In such a situation, the administrative-law remedy should in principle have been exhausted.

ARTICLE 10

FREEDOM OF EXPRESSION
Newspaper closure without detailed reason or identification of which published phrases threatened national security and territorial integrity: *violation*.

KOMMERSANT MOLDOVY - Moldova (N° 41827/02)
Judgment 9.1.2007 [Section IV]

Facts: The applicant published a series of articles criticising the authorities of Moldova for their actions in respect of the break-away Moldavian Republic of Transdniestria (MRT) and reproducing harsh criticism of the Moldovan Government by certain MRT and Russian leaders. The economic court of Moldova ordered the closure of the newspaper. The court considered that the articles had exceeded the limits of publicity in the Press Act and endangered the territorial integrity of Moldova, national security and public safety and created the potential for disorder and crime, violating the Constitution. The court did not specify which expression or phrase constituted a threat but maintained that the articles did not represent a fair summary of public statements by public authorities. The applicant was ordered to pay court fees. The judgment was upheld on appeal. The newspaper was subsequently re-registered under the name "Kommersant-Plus".

Law: The closure of the newspaper constituted an interference with the applicant's right to freedom of expression which was prescribed by law. The interference could be considered to have pursued the legitimate aims of protecting the national security and territorial integrity of the Republic of Moldova, given the sensitive topic dealt with in the impugned articles and the sometimes harsh language used. The Court considered however that the domestic courts did not give relevant and sufficient reasons to justify the interference, limiting them essentially to repeating the applicable legal provisions. The courts did not specify which elements of the applicant's articles were problematic and in what way they endangered the national security and the territorial integrity of the country or defamed the President and the country. The courts avoided all discussion of the necessity of the interference. The only analysis made was limited to the issue of whether the articles could be considered as good-faith reproductions of public statements for which the applicant could not be held responsible in accordance with the domestic law. In light of the lack of reasons given by the domestic courts, the Court was not satisfied that they had applied standards which were in conformity with the principles embodied in Article 10 or that they had based themselves on an acceptable assessment of the relevant facts.
Conclusion: violation (unanimously).

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

FREEDOM OF EXPRESSION
Applicant ordered to pay compensation for having circulated defamatory letter: *violation*.

KWIECIEŃ - Poland (No 51744/99)
Judgment 9.1.2007 [Section IV]

Facts: The applicant was a party to administrative proceedings before the District Office. The applicant considered that decisions of the District Office issued in his cases were incorrect and unlawful as evidenced by the fact that they had been quashed by higher administrative authorities. He formed that view on the basis of administrative proceedings where the District Office ordered him to demolish a building on his property as being illegally erected. Those proceedings, following the applicant's complaints, were discontinued by the District Office decision in which the authority held that the contested building had been erected legally. The applicant also referred to the District Office's decision by which he had been refused planning permission. The Governor, following the applicant's appeal, reversed the contested decision and issued the planning permission sought by the applicant. The Head of the

District Office stood for election to the district council in the local elections scheduled. The applicant sent the Head an open letter wherein he called on him to withdraw from standing for election. The applicant sent copies of the letter to the Governor, the Regional Assembly, Municipal Council, local mayors, the Prime Minister's Office and a number of local newspapers. One thousand copies of the letter were to be made available to the inhabitants of the district. The Head brought an action against the applicant in the regional court which ordered the applicant to publish in a local newspaper and in a letter to the claimant, a statement that he had included untrue information in his open letter and to include an apology. The court also ordered the applicant to pay compensation for the benefit of a charity and compensation to the claimant in the form of damages. The court of appeal dismissed the applicant's appeal.

Law: The general aim of the applicant's open letter had been to attract the voters' attention to the suitability of the Head as a candidate for local public office and, as such, the statements contained in the letter were a matter of public interest for the local community. The domestic authorities had failed to recognise that the case involved a conflict between the right to freedom of expression and the protection of the reputation and the rights of others. They had also given no consideration to the fact that the limits of acceptable criticism of someone heading a local administrative authority were wider than in relation to a private individual. Furthermore, they had unreservedly qualified all of the applicant's comments as groundless statements of fact. The Court considered however that the applicant's open letter also had included statements which could reasonably have been regarded as value judgments. The applicant had also provided specific examples of decisions issued by the District Office but subsequently quashed on appeal. The Court therefore found that the applicant's allegations that the Head did not run the District Office competently were not devoid of a factual basis. The applicant had not acted in bad faith and his statements were not a gratuitous personal attack on the Head but part of a debate on matters of public interest. The Court particularly noted the summary nature of the proceedings that were brought against the applicant. Neither the regional court nor the court of appeal had sufficiently examined the evidence adduced by the applicant which, at least to some extent, could be considered as justifying his critical remarks about the Head. On that account the fairness of the proceedings could be called into question. The court of appeal's judgment was amended one day after the local elections had taken place, by which time the proceedings had lost all relevance to the claimant's electoral prospects. Regarding the severity of the sanction imposed, the Court noted that both awards were the maximum amounts which could be imposed and that the domestic courts failed to provide any reasons to justify the imposition of such heavy sanctions or to carry out any assessment of proportionality. The Court found the sanctions to be excessive.
Conclusion: violation (unanimously).

FREEDOM OF EXPRESSION
Conviction for publishing the declarations of an armed terrorist group in a daily newspaper: *no violation*.

FALAKAOĞLU and SAYGILI - Turkey (N^{os} 22147/02 and 24972/03)
Judgment 23.1.2007 [Section II]

Facts: The applicants were respectively the editor and proprietor of a daily newspaper which published a declaration entitled “We will vanquish the terror of solitary confinement”, signed on behalf of all detainees held on charges of belonging to an armed terrorist group. The relevant passages referred to: a campaign against the transfer of detainees to certain types of solitary confinement cell, which had to be demolished because of the terror they created; hunger strikes that had turned into a “death fast”; repeal of a statutory provision concerning the prevention of terrorism; the need to release detainees who had sustained incapacitating injuries in a brutal attack, together with the “hunger-strike warriors”; the perpetrators of certain killings who had to be held to account; and an appeal for others to join in this “just struggle”. The statement was accompanied by a list of names of hunger strikers and the prisons in which they were held. Subsequently, the daily newspaper published an article entitled “For the attention of the press and public opinion - We will resist and demolish [solitary confinement] cells! No more terror by solitary confinement!”, reiterating the ideas set out in the previous article. Consequently, by two separate indictments, proceedings were brought against the applicants in the National Security Court on charges of having published the impugned articles contrary to the legislation on the prevention of terrorism and on

the press. In their pleadings in response to the indictment concerning the first article, the applicants claimed that it had been published in the form of an announcement and that nothing in it constituted an offence. It had not consisted in a statement by illegal or terrorist groups but merely one by detainees who had not yet been convicted. The applicants were found guilty of publishing statements by terrorist organisations, were sentenced to a heavy fine and were ordered to close the daily newspaper in question for one day. They appealed on points of law. The Court of Cassation dismissed their appeal and upheld the decision given at first instance. The newspaper was shut down for two days. In response to the indictment concerning the second article, the applicants set out the same arguments as in their first pleadings. They were found guilty of publishing statements by terrorist groups, sentenced to heavy fines and ordered to close the newspaper for three days. The National Security Court considered that the offence was capable of undermining national security, as the article satisfied all the conditions for the offence of publication of statements by armed terrorist organisations to be made out. Under the legislation on the press, the proprietors of newspapers and editors-in-chief were liable in such circumstances. The applicants appealed on points of law. The Court of Cassation upheld the decision given at first instance.

Law: Article 10 - The press had the task of imparting information and ideas on all matters of public interest but could not overstep the bounds set, *inter alia*, for the protection of vital interests of the State such as national security or territorial integrity against the threat of terrorism or for the prevention of disorder or crime. National authorities, which had a certain margin of appreciation, assessed whether there was a pressing social need warranting the restriction of such freedom. The impugned interference was to be considered in the light of the case as a whole, with particular reference to the expressions used in the offending article and to the context of its publication, and taking into account the problems related to the prevention of terrorism. The applicants had been convicted of publishing statements by terrorist groups in a daily newspaper of which they had been, respectively, the editor-in-chief and proprietor. The statements had been written by detainees, asserting their membership of terrorist groups and setting out their demands, and the seriousness of their appeal to raise support for an unlimited hunger strike could not be disregarded. The content could not be assessed independently of the authors' personality, nor of the context of the publication. The offending statements had been published not long after the simultaneous intervention of the security forces in twenty prisons where coordinated hunger strikes had taken place, involving hundreds of detainees who had been charged under prevention of terrorism legislation. That operation, condemned in the offending statements, had given rise to violent clashes between security forces and detainees in which many detainees had been injured or killed and police officers had been injured. The offending announcements consisted in a direct appeal to public opinion, for the purpose of mobilising “support” for the action launched to “demolish” the prisons – an action in which the authors risked their lives. That appeal had been published on its own, with no presentation or analysis by a journalist. In this connection, whilst it was true that the applicants had not personally associated themselves with the views contained in the offending announcements, they had nevertheless provided the authors with an outlet and had permitted dissemination of the statements. Having the power to shape the editorial direction of the newspaper, they could not be exonerated from all liability for the content of the articles, and the right to impart information could not be used as an alibi or pretext for the distribution of statements by terrorist groups. Lastly, the nature and severity of the penalties imposed were elements to be taken into account in assessing the proportionality of interference with the right to freedom of expression. Accordingly, the penalties imposed, having regard to the margin of appreciation which national authorities had in such a case, could not be regarded as disproportionate to the legitimate aims pursued.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Civil defamation on account of criticism against a government-appointed expert who had made provocative statements himself: *violation*.

ARBEITER - Austria (N° 3138/04)
Judgment 25.1.2007 [Section I]

Facts: At the time of the events the applicant was the chairman of the workers' committee at the regional hospital of Carinthia, member of the regional parliament and speaker on health matters of the regional branch of the Social Democratic Party. In the context of a political debate concerning reform of the regional health system the regional government in 2001 commissioned a company to draft an expert opinion on the future of Carinthian hospitals, particularly with regard to reducing costs. In interviews with regional newspapers, the company's managing director, Mr Köck, advocated cutbacks in superfluous services and closing smaller hospitals and hospital departments. He also criticised the actual functioning of regional hospitals, stating that many unnecessary surgical operations were carried out and that the mortality rate due to medical negligence was relatively high.
In May 2001 Mr Köck co-founded a private investment company whose purpose was to take over and run hospitals with a view to maximising their potential. His appointment as expert by the regional government, approved by the regional branch of the Austrian People's Party and the Austrian Freedom Party, was contested by the Social Democratic Party. The latter also expressed misgivings that Mr Köck's role as a government-appointed expert on the reform of regional hospitals, giving him access to relevant data on the subject, was not compatible with his involvement in a private hospital management company.
In June 2001 a regional newspaper published an article in which the applicant criticised Mr Köck for wishing to eradicate whole departments and hospitals from Carinthia and to break up a good health system in order to take over hospitals using his newly-founded company. He went on to associate Mr Köck with another alleged technical "hot shot" previously employed by the Governor of Carinthia, Mr Jörg Haider, and who had ended up before the Public Prosecutor's Office.
A regional court issued an injunction ordering the applicant to retract his comments and prohibiting him from making similar statements. It found that the impugned statements were statements of fact which gave the impression that Mr Köck was totally unqualified and, furthermore, referred to his alleged criminal activity. Mr Köck had not taken any steps which would have justified the applicant's reproaches. The applicant's statements were therefore untrue and defamatory statements of facts in respect of which a civil offence had been made out. Mr Köck's situation was not comparable to the situation of a politician or a private person who had entered the public scene and therefore had to display a greater degree of tolerance.
A court of appeal dismissed an appeal by the applicant, noting that the fact that Mr Köck had proposed to close some hospitals and had founded a private investment company for hospitals did not constitute a sufficient basis for establishing that he would misuse his mandate to push private business dealings. The applicant had, furthermore, stressed the reproach of criminal conduct by drawing a comparison with a "wonder-wizard who had ended up before the Public Prosecutor's Office". The court did not agree with the applicant's argument that the impugned statements had to be understood as permissible value judgments.

Law: The Court could not agree with the regional court's findings that the statements made by the applicant had been untrue and defamatory and had given the impression that Mr Köck was totally unqualified and involved in criminal activities. The applicant had expressed his indignation at Mr Köck's alleged intentions, this being the applicant's own opinion rather than an actual statement of fact. At the time certain objective factors had supported the applicant's allegations: Mr Köck had advocated cutbacks and had recently founded a hospital investment company. While asserting that he was not focusing on Carinthian hospitals yet, he had not excluded that possibility in the future. Unlike the domestic courts, the Court did not find that the reference to a previous expert employed by Governor Haider had implied that Mr Köck was guilty of criminal conduct but had appeared more as an example of the Austrian Freedom Party's ways of choosing and supporting experts. The applicant's statements had to be seen as permissible contributions within the broader context of an ongoing general, political debate. Mr Köck had entered the public arena by repeatedly discussing the issue at stake with the press and, as a consequence, had to bear a

higher degree of tolerance to criticism. Furthermore, having regard, on the one hand, to Mr Köck's critical proposals and active involvement in a public discussion, and, on the other hand, to the applicant's position as spokesman for those people primarily concerned, a certain degree of exaggeration had to be tolerated in the applicant's response and reaction. In sum, the domestic courts had restricted the applicant's freedom of expression while relying on reasons which could not be regarded as sufficient and relevant.
Conclusion: violation (unanimously).

Article 41 – EUR 7,934 in respect of pecuniary damage.

FREEDOM OF EXPRESSION
Disciplinary penalty on remand prisoner for contacting media without prior judicial authorisation: *inadmissible*.

SOTIROPOULOU - Greece (N° 40225/02)
Decision 18.1.2007 [Section I]

(see Article 3 above).

FREEDOM OF EXPRESSION
Refusal to grant citizenship through naturalization, allegedly due to the applicant's political activities as a member of Russian minority: *communicated*.

PETROPAVLOVSKIS - Latvia (N° 4230/06)
[Section III]

In 1998 the Latvian Parliament adopted the Law on Education which declared Latvian as the only language of instruction in all state and municipal schools, whereas before the education had been conducted both in Latvian and in Russian. In 2003-2004 the applicant actively participated in meetings and demonstrations against these changes and made public statements advocating the Russian-speaking minority's right to education in Russian. In the meantime, the applicant sought to acquire the Latvian citizenship. The Naturalization Board, having found that he met the relevant legal requirements, recommended that the Cabinet of Ministers grant him the citizenship. However, the Cabinet of Ministers refused to do so, allegedly having taken into account the applicant's previous political activities. He challenged this decision before the administrative courts which terminated the proceedings without examining the case on its merits. The courts stated that a decision of the Cabinet of Ministers on granting citizenship was not an administrative act, but a political decision taken in the exercise of its constitutional functions and as such not subject to court review. Moreover, the law did not impose any obligation on the Cabinet of Ministers to motivate such decisions.
Communicated under Articles 10, 11 and 13 of the Convention.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Unlawful administrative penalty imposed for breach of rules on holding demonstrations: *violation*.

MKRTCHYAN - Armenia (N° 6562/03)
Judgment 11.1.2007 [Section III]

Facts: In 2002 the applicant took part in an authorised demonstration on Freedom Square in Yerevan, during which he called on the participants to leave Freedom Square and to follow him in a procession towards the Parliament building. Later on that evening he was arrested for organising an unlawful

procession and having violated the prescribed rules on organising demonstrations and street processions. The district court found that he had committed an administrative offence and fined him the equivalent of one Euro. The court of appeal upheld this decision.

Law: The fine had been imposed on the applicant for a violation of the prescribed rules for organising and holding rallies and street processions, pursuant the Code of Administrative Offences. Therefore, the interference had a basis in domestic law. However, it was in dispute between the parties whether at the material time there had been any legal act in Armenia which envisaged the "prescribed rules" referred to in the Code. The Government alleged that the "prescribed rules" were envisaged by the former USSR laws, while the applicant contended that the legal acts of the former USSR were no longer valid and applicable in Armenia following its independence and that no other "prescribed rules" existed in Armenia. The Court noted the absence of any domestic provision clearly stating whether the former USSR laws remained or did not remain in force on the territory of Armenia. The Court also drew attention to the absence of any domestic case-law concerning the disputed matter. The domestic courts also had failed to refer to any legal act prescribing the rules for holding rallies and street processions which the applicant had been found to have violated. At the relevant time, there had been no legal act applicable in Armenia which contained those rules, the relevant law having been adopted only in 2004. The Court accepted that it may take some time for a country to establish its legislative framework in a transition period, but it could not accept the delay of almost thirteen years to be justifiable, especially when such a fundamental right as freedom of peaceful assembly was at stake.
Conclusion: violation (unanimously).

ARTICLE 12

RIGHT TO MARRY
Refusal to grant an accused leave to marry in prison pending trial: *communicated*.

FRASIK - Poland (N° 22933/02)
[Section IV]

In 2000 the applicant was arrested and detained on remand on suspicion of having committed rape. Earlier, the applicant and the victim had had a relationship which had lasted for some four years and had terminated several months before the above events. Since the beginning of the trial, the victim and the applicant applied several times to the trial court for leave to marry in prison. This request was refused by a judge in a letter (allegedly not subject to appeal) stating that the conditions in a remand centre or prison were not suitable for wedding ceremony and that the relationship between the accused and the injured person was not, in reality, of a close nature, but had been invented only for the sake of the criminal proceedings. During the trial, the victim wished to exercise her right not to testify. The court rejected her request, holding that her wish had been dictated by her fear of the applicant rather than by her affection for him and, secondly, that their relationship – both past and present – had lacked the necessary psychological, physical and financial bonds to regard it as a "particularly close personal relationship" within the meaning of the Code of Criminal Procedure. Since she persisted in refusing to testify, the court imposed a fine on her. In her testimony, the victim stated that she had forgiven the applicant and no longer considered that he had raped her. In 2001 the district court convicted the applicant as charged and sentenced him to five years' imprisonment. The regional court upheld the conviction but mitigated the sentence to three years' imprisonment, taking into account the complete change of the victim's attitude to the applicant. The Supreme Court dismissed his appeal recognising, however, that the refusal to grant him leave to contract a marriage in prison had constituted a violation of Article 12 of the Convention.
Communicated under Articles 5(4), 12 and 13 of the Convention.

RIGHT TO MARRY
Refusal to grant leave to marry in prison: *communicated*.

JAREMOWICZ - Poland (N° 24023/03)
[Section IV]

In 2003, while serving a sentence of imprisonment, the applicant got acquainted and developed a relationship with a female detainee. Upon his transfer to another prison, he requested the prison governor's authorisation to have visits from her. This being refused, the applicant and this person applied to the regional court and to the Minister of Justice for leave to get married in prison. Upon referral, the prison governor and the regional director of the prison service refused both requests, stating that the couple had not been able to substantiate their relationship in the period prior to their imprisonment. In reply to the applicant's complaint, the Ombudsman stated that their relationship had developed in an illegal manner by means of sending kites in prison, which was decisive for considering their union unworthy from the point of view of their social rehabilitation.
Communicated under Articles 12, 13 and 14 of the Convention.

ARTICLE 13

EFFECTIVE REMEDY
Application for a stay of execution of a deportation order: *no violation*.

SALAH SHEEKH - Netherlands (N° 1948/04)
Judgment 11.1.2007 [Section III]

(see Article 3 above).

EFFECTIVE REMEDY
No judicial review possible against an order withdrawing a residence permit on grounds of national security: *violation*.

MUSA and Others - Bulgaria (N° 61259/00)
Judgment 11.1.2001 [Section V]

(see Article 8 above “Private Life/Family Life”).

EFFECTIVE REMEDY
Denial of effective domestic remedy in respect of ill-treatment by the police: *violation*.

CHITAYEV and CHITAYEV - Russia (N° 59334/00)
Judgment 18.1.2007 [Section IV]

(see Article 3 above “Torture”).

EFFECTIVE REMEDY
Impossibility to challenge refusal to grant citizenship: *communicated*.

PETROPAVLOVSKIS - Latvia (N° 4230/06)
[Section III]

(see Article 10 above).

EFFECTIVE REMEDY
Impossibility to challenge refusal to grant leave to marry in prison: *communicated*.

FRASIK - Poland (N° 22933/02)
JAREMOWICZ - Poland (N° 24023/03)
[Section IV]

(see Article 12 above).

ARTICLE 14

DISCRIMINATION (Article 9)
Restriction on pastoral activity for lack of theological training, applicable solely to foreign nationals: *admissible*.

PERRY - Latvia (N° 30273/03)
Decision 18.1.2007 [Section III]

(see Article 9 above).

DISCRIMINATION (Article 12)
Refusal to grant leave to marry in prison: *communicated*.

JAREMOWICZ - Poland (N° 24023/03)
[Section IV]

(see Article 12 above).

DISCRIMINATION (Article 3 of Protocol No. 1)
Refusal to register a former clergyman as candidate for parliamentary elections: *communicated*.

SEYIDZADE - Azerbaijan (N° 37700/05)
[Section I]

(see Article 3 of Protocol No. 1 below).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Police questioning touching on an application to the Court after the applicant was interviewed on Russian television: *no violation*.

SISOJEVA and Others - Latvia (N° 60654/00)
Judgment 8.1.2007 [GC]

(see Article 37 below).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Alleged pressure put on prisoners by prison authorities to withdraw their application to the Court: *admissible*.

DRUZENKO and Others - Ukraine (N°s 17674/02 and 39081/02)
Decision 15.1.2007 [Section V]

(see Article 3 above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Failure to raise all the complaints before a domestic court: *inadmissible*.

AUGUSTO - France (N° 71665/01)
Judgment 11.1.2007 [Section I]

(see Article 6(1) above).

SIX MONTH PERIOD
Date when time starts to run for the purposes of the six-month time-limit in cases of consecutive periods of pre-trial detention: *violation*.

SOLMAZ - Turkey (N° 27561/02)
Judgment 16.1.2007 [Section II]

(see Article 5(3) above).

Article 35(3)

ABUSE OF THE RIGHT OF PETITION
Applicant using in his observations offensive expressions against Government's representative: *inadmissible*.

DI SALVO - Italy (N° 16098/05)
Decision 11.1.2007 [Section III]

In 1984 the applicant was convicted of perjury and given a suspended prison sentence. He subsequently applied for a review, alleging that he had discovered new evidence to prove that he was innocent, and the proceedings were reopened. In 2005, following his application for a review based on new evidence, the Court of Appeal quashed his conviction and acquitted him. The applicant, contending that under Italian law a person was entitled to compensation only when he or she had served a custodial sentence, complained of a breach of his right to compensation for wrongful conviction under Article 3 of Protocol No. 7, on account of the fact that he had been given a suspended sentence and had never served time. After notice of his application had been given, in his observations in reply to those of the Government the applicant made offensive remarks about the Government's co-Agent. For example, he claimed that the co-Agent had "malevolently sought to mislead the Court" and that his opinion was "motivated by self-interest and petty". When asked by the Section Registrar to withdraw his insulting expressions the applicant refused, ignoring a warning that his application might be found inadmissible on account of its abusive nature. The Court examined the Government's observations without finding any expression in them that might, as the applicant had claimed, be regarded as offensive towards him. In his own observations, by contrast, the applicant, who was himself a lawyer, had engaged in a personal attack against the Government's representative and had used expressions that the Court considered to be insulting. Furthermore, in view of the Registrar's warning, the applicant had had the opportunity to withdraw from his observations all the expressions which, without affecting the merits of his arguments, formed a gratuitous and personal attack on the co-Agent. Instead of using that opportunity he had requested the Court to order the Government to indicate which expressions were allegedly offensive, whereas that had been made quite clear in the Registrar's letter. The applicant had subsequently carried on a pointless debate about the ethics of the Government's representative, reiterating his allegations that the co-Agent had deliberately inserted errors into his observations in order to provoke the other party. In the Court's view, the applicant's conduct was incompatible with the purpose of the right of individual application, as provided for in Articles 34 and 35, and constituted an abuse of that right within the meaning of Article 35(3): *inadmissible*.

ARTICLE 37

Article 37(1)(c)

SPECIAL CIRCUMSTANCES REQUIRING FURTHER EXAMINATION
Temporary arrangements for asylum seeker insufficient to "resolve matter": *no reason to strike out*.

SALAH SHEEKH - Netherlands (N° 1948/04)
Judgment 11.1.2007 [Section III]

(see Article 3 above).

CONTINUED EXAMINATION NOT JUSTIFIED
Failure by the applicants to act upon respondent Government's proposals to regularise their immigration status: *striking out of Article 8 complaint*.

SISOJEVA and Others - Latvia (N° 60654/00)
Judgment 8.1.2007 [GC]

Facts: Mr and Mrs Sisojev took up residence in Latvia in the late 1960s as Soviet nationals and their children were born there. However, following the break-up of the Soviet Union and the restoration of Latvian independence in 1991 they became stateless. Although they were subsequently granted permanent resident status in Latvia, this was revoked by a district court in 1996 on the grounds of an alleged breach of the immigration rules. The district court's decision was set aside on an appeal by the applicants. A subsequent ruling by the district court that Mrs Sisojeva was entitled under an agreement between Latvia and Russia on arrangements for retired members of the armed forces and their families to apply for a passport as a "permanently resident non-citizen" and that her husband and their daughter were entitled to permanent residence permits was set aside in September 1999 by the Supreme Court on the grounds that the applicants had committed serious breaches of Latvian immigration law by secretly obtaining duplicate passports, registering places of residence in two different countries and supplying false information to the authorities. The regional court to which the case was remitted dismissed the applicants' applications and its decision was upheld by the Supreme Court in April 2000. The applicants were reminded by the immigration authorities that they were required to leave Latvia. In November 2003 the immigration authorities wrote to the applicants to explain the procedure Mrs Sisojeva should follow if she wished to regularise her stay in Latvia and obtain an identity document as a stateless person, whereupon her daughter and husband could be issued with residence permits. None of the applicants complied with these instructions. The Latvian Government then informed the Court, before which the present application was by then pending, that Mr Sisojev and their daughter could be issued with residence permits, initially for five-years and subsequently of indefinite duration. In December 2005 the immigration authorities again reminded the applicants that it was open to them to regularise their stay, but received no response. The applicants stated that, in the interim, Mrs Sisojeva had been summoned to the regional headquarters of the security police and questioned about her application to the Court and an interview she had given to a Russian television channel. The applicants continue to reside in Latvia without valid resident permits.

Law: Article 8 – The Court acknowledged that, if not from the time of the removal of their names from the register of residents in May 1996, then at the latest from the time of the final dismissal of their appeal by the Supreme Court in April 2000, the applicants had experienced a period of insecurity and legal uncertainty in Latvia that had continued until November 2003. Nevertheless, they had been guilty of obtaining duplicate passports and registering themselves as resident in both Russia and Latvia without informing the Latvian authorities, although they had undoubtedly been aware that their conduct was illegal. The problems the applicants had experienced following the cancellation of their initial residence permits had thus stemmed to a large extent from their own actions. The first concrete proposal aimed at regularising the applicants' stay had been made in November 2003, so they could not claim the existence of uncertainty after that date. Moreover, despite having long been an illegal resident in Latvia, Mr Sisojev had been and continued to be in paid employment and his daughter had been able to complete a course of higher education and obtain a degree. The applicants did not face any real and imminent risk of deportation. Despite repeated reminders from the immigration authorities, they had not acted on their recommendations or made any attempt to get in touch to try to find a solution to any difficulties they might have in obtaining the required documents. Nor was there any indication that the Latvian Government had acted in bad faith. In conclusion, the Court found that the options outlined by the Latvian authorities for regularising the applicants' situation had been adequate and sufficient to remedy their complaint of a violation of Article 8. The matter giving rise to the complaint could therefore be considered to be "resolved".
C*onclusion*: striking out (16 votes to one).

Article 34 – It was of the utmost importance for the effective operation of the system of individual petition that applicants or potential applicants were able to communicate freely with the Court without

being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The word "pressure" had to be taken to cover not only direct coercion and flagrant acts of intimidation of applicants but also other improper indirect acts or acts designed to dissuade or discourage them from pursuing a Convention remedy. Mrs Sisojeva could reasonably have expected the police or the prosecuting authorities to take an interest in her allegations on Russian television of corruption on the part of immigration officials and the questioning was in accordance with Latvian legislation allowing the security police to investigate corruption offences. Accordingly, the Court accepted the Government's explanation that the main focus of the questioning had been the allegation of corruption, not the proceedings before the Court. Nevertheless, in questioning Mrs Sisojeva about her reasons for lodging an application with the Court, the police officer had exceeded the remit of the investigation by a considerable margin. In that connection, the Court reiterated that, even if a Government had reason to believe that, in a particular case, the right of individual petition was being abused, the appropriate course was to alert it and inform it of their misgivings. However, having regard to all the circumstances – including the incidental nature of the questioning, the polite manner in which it was conducted and the absence of any attempt to force Mrs Sisojeva to give evidence or to disclose the names of the allegedly corrupt officials – there was insufficient evidence to conclude that her questioning should be regarded as a form of "pressure", "intimidation" or "harassment" which might have induced the applicants to withdraw or modify their application or hindered them in any other way in the exercise of their right of individual petition.
Conclusion: no violation (unanimously).

For further details, see Press Release no. 32.

CONTINUED EXAMINATION NOT JUSTIFIED
Opinion of the guardianship judge of the deceased applicant's sole heir advising her, for her own protection, not to pursue the application: *striking out of the list*.

BENAZET - France (N° 49/03)
Decision 4.1.2007 [Section II]

The applicant complained to the European Court of Human Rights that there had been a number of violations of the Convention on account of his compulsory psychiatric treatment. He died while his application was pending before the Court. His daughter and sole heir was placed under the State-supervised guardianship of an association for disabled adults and young people. The association considered that it was unable to decide alone whether or not it was advisable for the deceased's application to be taken over and pursued by his daughter and sought authorisation from the guardianship judge. The judge indicated that, in the light of her medical history, it did not appear advisable to him, in the interest of the protection of the child placed under guardianship, that she should take over the various suits that her father had brought and in particular the application in question: *struck out*.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
PEACEFUL ENJOYMENT OF POSSESSIONS
Setting aside of a trade mark registration: *Article 1 of Protocol No. 1 applicable, no violation*.

ANHEUSER-BUSCH INC. - Portugal (N° 73049/01)
Judgment 11.1.2007 [GC]

Facts: The applicant company produced beer which it marketed under the brand name "Budweiser". In 1981 it applied to the National Institute for Industrial Property (NIIP) to have the name registered as a trade mark in Portugal. The application was opposed by a Czech company which had registered "Budweiser Bier" as an appellation of origin in 1968 under the terms of the Lisbon Agreement of 1958 for

the Protection of Appellations of Origin and their International Registration. In 1995 the applicant company obtained a court order cancelling the registration of the appellation of origin on the grounds that it did not qualify for protection under the Lisbon Agreement. The NIIP then registered its mark. The Czech company challenged that decision in a court of first instance, relying on a bilateral agreement between Portugal and Czechoslovakia that protected registered appellations of origin. The court of first instance found against the Czech company, but its decision was overturned by the court of appeal, which ruled that the applicant company's trade mark registration was invalid. An appeal by the applicant company to the Supreme Court was dismissed in 2001 on the grounds that the appellation of origin was protected by the bilateral agreement. The applicant company's trade mark registration was therefore set aside. In its application to the Court, the applicant company complained that it had been deprived of its trade mark by the application of a bilateral agreement that had come into force after its application to register the mark was filed.

Law: Article 1 of Protocol No. 1 – Intellectual property as such enjoyed the protection of Article 1 of Protocol No. 1. Unlike the Chamber, the Grand Chamber considered that an application for the registration of a trade mark also came within that provision, as it gave rise to interests of a proprietary nature. While it was true that registration of the mark only became final if the mark did not infringe legitimate third-party rights, so that, in that sense, the rights attached to an application for registration were conditional, the party wishing to register the mark was nevertheless entitled to expect that the application would be examined under the applicable legislation if it satisfied the relevant substantive and procedural conditions. The applicant company had therefore owned a set of proprietary rights recognised under Portuguese law, even though they could be revoked under certain conditions: *Article 1 of Protocol No. 1 applicable*.
As to whether the decision to apply the provisions of the bilateral agreement to a prior application for registration of a mark could amount to interference with the peaceful enjoyment of possessions, the Court noted that the applicant company's main complaint was about the manner in which the national courts had interpreted and applied the domestic law. In that connection, it reiterated that its jurisdiction to verify whether domestic law had been correctly interpreted and applied was limited and that it was not its function to take the place of the national courts, but to ensure that the decisions of those courts were not flawed by arbitrariness or otherwise manifestly unreasonable, particularly when, as here, the case turned upon difficult questions of interpretation of domestic law. The applicant company's case was distinguishable from those in which the Court had found retrospective intervention by the legislature as, in the instant case, the question whether the legislation had been retrospectively applied was in itself in issue whereas, in the earlier cases, the retrospective effect of the legislation had been both indisputable and intentional. The only effective registration in existence when the bilateral agreement came into force was of the appellations of origin registered in the Czech company's name and, although that registration was subsequently cancelled, the Court could not examine what consequences cancellation might have on any right of priority attaching to the mark. In the absence of any arbitrariness or manifest unreasonableness, the Court could not call into question the findings of the Supreme Court or its interpretation of the bilateral agreement. Confronted with the conflicting arguments of two private parties concerning the right to use the name, the Supreme Court had reached its decision on the basis of the material it considered relevant and sufficient for the resolution of the dispute, after hearing representations from the interested parties. Accordingly, the Supreme Court's judgment did not constitute interference with the applicant company's right to the peaceful enjoyment of its possessions.
Conclusion: no violation (fifteen votes to two).

PEACEFUL ENJOYMENT OF POSSESSIONS
State withholding tax refund from applicant company: *violation.*

INTERSPLAV - Ukraine (N° 803/02)
Judgment 9.1.2007 [Section IV]

Facts: The applicant company was an enterprise which manufactured purchased goods, bearing a 20% VAT rate. Part of the applicant's production was exported from Ukraine at a zero VAT rate. The applicant

was entitled to a refund of the VAT due on the price of the goods. This should have been made within a one-month period following the applicant's submission of the calculations to the local tax administration. If the refund is delayed, compensation is payable. Both payments (the refund and compensation) are made by the State Treasury upon the submissions of the relevant tax authority. The applicant had complained twice about the failure to issue certificates for the VAT refunds on time. While recognising the existence of the State's debts to the applicant, the authorities found no fault with the tax administration. The applicant complained to General Prosecutor's Office, without any result and instituted more than 140 sets of proceedings in the commercial court against the Town Tax Administration and the State Treasury Department in order to receive compensation. He requested the court to oblige the Tax Administration to confirm the amounts of compensation due. The court found for the applicant and ordered the tax administration to issue the requested confirmation for the amounts claimed. The applicant later changed the subject of its claim and requested the courts to award it the amounts of the VAT refund and compensation directly. The Tax Administration and Treasury opposed the claims; the former on the basis of an alleged lack of competence in VAT refunding, the latter on the basis of the impossibility of refunding any VAT without prior confirmation of such an amount by the Tax Administration. The court found for the applicant and awarded the claimed amounts in its decisions. It confirmed the applicant's right to compensation for the various delayed VAT refunds. The applicant maintained that the tax authorities claimed that the court decisions given in its favour should not be directly enforceable, but would require the prior confirmation of the awarded amounts by the Tax Administration. The applicant lodged a claim with the commercial court against the Regional Department of the State Treasury and the Town Tax Administration for their refusal to enforce the judgments and for a proposal to convert the amounts awarded by the above judgments into loan bonds with a five-year term. The court found for the applicant and ordered the defendants to enforce the impugned judgments. The applicant maintained that the amount of the State debt to the company as confirmed by court decisions exceeded 1 million euros.

Law: Having met the criteria and requirements established by the domestic legislation, the applicant could reasonably have expected the refund of the VAT it had paid in the course of its business activities, as well as compensation for any delay. The tax authorities did not dispute the amounts of the VAT refunds to be paid to the applicant, but simply refused to confirm them without any apparent reason, relying erroneously on a lack of competence in refunding matters. VAT refunds to the applicant had been systematically delayed. Such delays were caused by the situation in which the tax authorities, not disputing the amounts of VAT refunds due to the applicant, constantly failed to confirm these amounts. Such failure prevented the applicant from recovering the claimed amounts in due time and created a situation of chronic uncertainty. It forced the applicant to appeal to the courts on a regular basis with identical claims. It may be considered reasonable to require that such refusals be challenged in a single or a few cases. The applicant's recourse to this remedy had not however prevented the tax authorities from continuing the practice of delaying payment of the VAT refunds, even after court decisions had been given in the applicant's favour. The systematic nature of the failings of the State authorities has resulted in an excessive burden being imposed on the applicant. The constant delays with VAT refund and compensation in conjunction with the lack of effective remedies to prevent or terminate such an administrative practice, as well as the state of uncertainty as to the time of return of the applicants funds, upset the “fair balance” between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions.
Conclusion: violation (unanimously).

Article 41 – EUR 25,000 for pecuniary damage.

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal to refund election deposit: *violation*.

RUSSIAN CONSERVATIVE PARTY OF ENTREPRENEURS and Others – Russia (N° 55066/00)
Judgment 11.1.2007 [Former Section I]

(see Article 3 of Protocol No. 1 below).

PEACEFUL ENJOYMENT OF POSSESSIONS
Negation of the applicant company's claim against the State and absence of domestic procedures: *violation*.

AON CONSEIL ET COURTAGE S.A. and CHRISTIAN DE CLARENS S.A. - France (N° 70160/01)
Judgment 25.1.2007 [Section I]

Facts: The applicant companies carried on insurance broking activities and were liable for value-added tax (VAT), which they paid in respect of their transactions in 1978 pursuant to an Article of the General Tax Code. However, the Sixth Directive of the Council of the European Communities, dated 1977 and taking effect from 1978, provided for a VAT exemption for insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents. The Ninth Council Directive then extended the time-limit for the implementation of those provisions. As the new directive had no retroactive effect, the Sixth Directive was applicable from 1 January to 30 June 1978. One of the applicant companies lodged four applications with the administrative court seeking a VAT refund on the basis of the Sixth Directive, but they were all dismissed. An administrative circular of 1986 stipulated that "... no further action shall be taken to collect sums remaining due at the date of publication of the present circular from insurance brokers which did not charge value-added tax on their transactions between 1 January and 30 June 1978 and which have received re-assessments as a result". In 1992 the Administrative Court of Appeal ruled in favour of another company, declaring that the Article of the General Tax Code, as worded in the relevant period, had been incompatible with the provisions of the Sixth Directive. Considering that the French State had created an illegal situation by failing to incorporate into domestic law the provisions of the Sixth Directive within the time allowed, the applicant companies claimed compensation for their losses from the authorities. The requests were rejected pursuant to an Article in the Code of Tax Procedure on the grounds that such a request was inadmissible and that, moreover, the amount of the loss was to be reduced by the amount of payroll tax owed by the VAT-exempt companies. The applicant companies brought proceedings in the administrative court seeking to establish the negligence of the French State for not having incorporated the Sixth Directive into domestic law and, accordingly, for causing them a loss corresponding to the undue payment of the VAT which they claimed should be refunded. The court declared their applications inadmissible pursuant to the Article in the Code of Tax Procedure and did not find that Article to be incompatible with the Community rule. It was only since the date of the judgment of the Administrative Court of Appeal that it had been possible to determine, for all tax-paying entities, the period provided for under that Article in respect of which actions could be brought for repayment of sums already paid, for payments in respect of rights to deduct not exercised, or for compensation of a loss, on the basis of incompatibility with the Article in the General Tax Code. The companies appealed. Shortly afterwards the *Conseil d'Etat* quashed the above-mentioned 1992 judgment, which had been favourable to a company seeking a refund of the VAT that it had paid in respect of the period 1 January to 31 December 1978. However, on the same day the *Conseil d'Etat* gave a decision departing from its case-law when it declared another appeal admissible, finding that a company was entitled to rely on the provisions of the Sixth Directive. It considered that a release from the disputed tax liability, for which there was no statutory basis as it was incompatible with the directive, should be granted for the sums paid unduly in respect of the period from 1 January to 30 June 1978. In the present case, however, the Administrative Court of Appeal dismissed the appeals by the applicant companies, which then appealed on points of law. The *Conseil d'Etat* dismissed their appeals, finding that the object of the claim, on grounds of negligence on the part of the State, for payment of compensation in an amount

equal to that of the value-added tax, was in reality the same as that of a claim for a refund of that tax, and that as such the action was thus subject to the formalities and time-limits laid down in the relevant provisions of the Code of Tax Procedure.

Law: As to the existence of a possession, the legal situation facing the applicant companies was such as to fall within the scope of the Article on which they relied. The tax authorities had begun to give effect to the Sixth Directive only in an administrative circular, which was directed at companies refusing to pay VAT but which completely failed to address the matter of refunds of undue VAT to companies that had already paid it. The *Conseil d'Etat* had refused to grant refunds to the insurance companies concerned, considering in particular that it should not have to review a national rule in the light of a Community rule. The applicant companies had been denied the benefit of the Directive for a period of almost seven and a half years from the date of notification of the Ninth Directive. It was therefore unacceptable to impose on the companies a time-limit for bringing proceedings when there was no effective remedy under domestic law. Then the *Conseil d'Etat* had departed from its case-law and an effective remedy for the purpose of obtaining a refund had become available to them through the French administrative courts. However, the applicant companies had submitted their claims several years earlier, following the judgment of the Administrative Court of Appeal, which had upheld such a claim from a company for the first time. But whilst the applicant companies could legitimately have considered that this precedent was capable of making available an effective domestic remedy, that judgment had nevertheless been quashed by the *Conseil d'Etat*. The binding provisions of the Sixth Directive had still not been incorporated into French law at the time the applicant companies submitted their claims and the departure from case-law by the *Conseil d'Etat* had been somewhat belated. The applicant companies had nevertheless brought their action in the domestic courts at a time when their right was not only intact, in the light of the applicable Community rules, but also flouted at domestic level by both the authorities and the administrative courts. A limitation period could not therefore be imposed on the applicants in the circumstances of the case. As regards the limitation period in tax matters provided for in the Code of Tax Procedure, the applicants' claim had been based on a Community rule that was perfectly clear, precise and directly applicable. That right had not disappeared with the expiry of the impugned limitation period provided for by the domestic legislation since it was not in dispute that that very legislation had then been in breach of the directly applicable Community law and that the limitation period concerned an ineffective domestic remedy. The fact that the administrative courts had relied on that domestic limitation period could not by itself justify a failure to comply with the present requirements of European law. The unreasonable construction of a procedural requirement which prevented a claim for compensation from being examined on the merits had thereby entailed a breach of the right to the effective protection of the courts. Furthermore, the limitation period in tax matters laid down in the Code of Tax Procedure could not negate a substantive right created by the Sixth Directive. The applicant companies, at the time they lodged their appeals, had had a valid claim against the State for the VAT paid in error. A claim of that nature constituted an asset and therefore amounted to "a possession within the meaning of the first sentence of Article 1 [of Protocol No. 1], which was accordingly applicable in the present case". In any event, the applicants had had at least a legitimate expectation of being able to obtain the reimbursement of the sum. In the case of *S.A. Dangeville v. France* (judgment of 16 April 2002, no. 36677/97, ECHR 2002-III) the Court had found, firstly, that such interference with the peaceful enjoyment of possessions was not required in the general interest and, secondly, that both the negation of the claim against the State and the absence of domestic procedures affording a sufficient remedy to ensure the protection of a right to the peaceful enjoyment of one's possessions had upset the fair balance that ought to have been maintained between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In the present case, the balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights had also been upset.
Conclusion: violation (unanimously as regards the company Christian de Clarens and by five votes to two as regards the company Aon Conseil et Courtage).

Article 41 – The Court awarded Aon Conseil et Courtage about EUR 164,000 for pecuniary damage and Christian de Clarens S.A. about EUR 74,000 for pecuniary damage.

DEPRIVATION OF PROPERTY
FORESEEABILITY
Court order finally annulling, more than thirty years after their lawful acquisition, a title to properties belonging to a foundation set up by a religious minority: *violation*.

FENER RUM ERKEK LİSESİ VAKFI - Turkey (N° 34478/97)
Judgment 9.1.2007 [Former Section II]

Facts: The applicant is a foundation under Turkish law which was set up at the time of the Ottoman Empire. Its constitution adheres to the provisions of the Lausanne Treaty of 1923 affording protection to old foundations providing public services for religious minorities. In 1936 the applicant foundation filed a declaration of its aims and immovable property, in accordance with a law of 1935 by virtue of which it had obtained legal personality. In 1952 the applicant foundation received a gift of part of a building in Istanbul and purchased another part in 1958.
In 1992 the Treasury applied for the annulment of the applicant foundation's title deeds in respect of that property and the deletion of its name from the land register. In 1996 the District Court granted the application. Basing its decision on an expert report which referred to a Court of Cassation precedent from 1974, the court held that foundations belonging to religious minorities as defined by the Treaty of Lausanne and whose constitutive documents did not indicate a capacity to acquire immovable property were precluded from purchasing or accepting a gift of such property. Accordingly, their immovable property was restricted to that set out in their constitutive documents and finalised in the declaration of property made in 1936. The Court of Cassation upheld the judgment.

Law: The applicant foundation had been able to enjoy its property as rightful owner, from the dates of acquisition (1952 and 1958) until the date of the judgment of the Court of Cassation (1996), and had paid the various property taxes in respect of it. The final removal by the Turkish courts of the applicant foundation's property title from the land registers, 38 and 44 years after the acquisition of the properties in question, had amounted to a deprivation of its possessions.
The Turkish court had based its decision on a report stating that, under the 1974 case-law, religious minority foundations whose constitutive documents did not indicate that they had capacity to acquire immovable property were precluded from acquiring such property by any means. However, no statutory provision prohibited the foundations concerned from acquiring assets other than those which were included in the 1936 declaration. The applicant foundation's acquisitions had been validated by a certificate from the provincial governor's office and entered in the land register. The applicant foundation had thus been certain of having acquired the properties lawfully, at the time of the acquisitions in 1952 and 1958, and until the 1974 case-law had had "legal certainty" that it was entitled to acquire immovable property.
Consequently, the annulment of the applicant foundation's title to property pursuant to case-law adopted 16 years and 22 years after its acquisition, could not have been foreseen.
Conclusion: violation (unanimously).

Article 41 – The property was to be re-registered in the applicant foundation's name, failing which EUR 890,000 was to be paid in respect of pecuniary damage.

DEPRIVATION OF PROPERTY
Final determination of the merits of pending litigation by legislative intervention that deprived the applicants of a pre-existing "asset" forming part of their "possessions": *violation*.

AUBERT and Others and 8 Other case - France (N° 31501/03)
Judgments 9.1.2007 [Section II]

(see Article 6(1) above).

DEPRIVATION OF PROPERTY
Financial obligation arising out of the imposition of a heavy fine: *violation*.

MAMIDAKIS - Greece (N° 35533/04)
Judgment 11.1.2007 [Section I]

(see Article 6(1) above).

ARTICLE 3 OF PROTOCOL No. 1

VOTE
STAND FOR ELECTION
Entire party list disqualified on account of incorrect information provided by some candidates on it: *violation*.

RUSSIAN CONSERVATIVE PARTY OF ENTREPRENEURS and Others – Russia (N° 55066/00)
Judgment 11.1.2007 [Former Section I]

Facts: The applicants are the Russian Conservative Party of Entrepreneurs and two Russian nationals, Mr Zhukov (one of the party's candidates for the 1999 elections to the State Duma of the Russian Federation, the lower chamber of Parliament) and Mr Vasilyev, a party supporter.
The applicant party is a national party established under the laws of the Russian Federation. In September 1999 it nominated 151 candidates for the elections to the State Duma. In October, the Central Electoral Commission ("the CEC") confirmed receipt of the party's list and the party paid its electoral deposit. In November 1999 the CEC refused registration of the applicant party's list of candidates, having found that certain people on the list, including the candidate listed second, had provided incorrect information about their income and property. Section 51(11) of the 1999 Elections Act provided for disqualification of the entire party's list in the event of "withdrawal" of one of the top three candidates on the list. That provision was interpreted by the CEC as encompassing all instances of "withdrawal", whether voluntary or not. As a result, all candidates on the list, including Mr Zhukov, were disqualified. Disagreeing with the CEC's interpretation, the applicant party successfully challenged its decision before the domestic courts. On 22 November 1999 it obtained a final judgment to the effect that section 51(11) applied only if the "withdrawal" had been voluntary. The judgment was immediately enforced, the CEC registering the applicant party and allowing it to carry on its electoral campaign. Nevertheless, later that month a deputy prosecutor-general lodged an application for supervisory review, requesting the Supreme Court to reopen the proceedings and to accept the CEC's original interpretation of section 51(11). The Presidium of the Supreme Court subsequently quashed the earlier judgments by way of supervisory-review proceedings and upheld the CEC's position. In December 1999 the CEC annulled its earlier decisions, refused the registration of the applicant party's list and ordered the party's name to be removed from the ballot papers. The applicant party appealed unsuccessfully and on 19 December 1999 the elections took place.
In April 2000 the Constitutional Court of the Russian Federation declared unconstitutional the part of section 51(11) which provided for the refusal or cancellation of a party's registration in the event of the withdrawal of one of its top three candidates. However, the Constitutional Court also ruled that the finding that section 51(11) was unconstitutional had been of no consequence for the State Duma elections of December 1999 and could not be relied upon to seek a review of the election results. All further appeals by the applicant party were unsuccessful, including its application to have its election deposit returned.

Law: Article 3 of Protocol No. 1 - *The right to stand for election (complaint by the applicant party and Mr Zhukov)*: The final and enforceable judgment of 22 November 1999, which had cleared the way for the applicant party and Mr Zhukov to stand in the elections, had been quashed by means of supervisory-review proceedings on an application by a State official who was not a party to the proceedings. The

purpose of his application had been precisely to obtain a fresh determination of an issue that had been already settled. The Government had not pointed to any circumstances of a substantial and compelling character that could have justified that departure from the principle of legal certainty in the applicants' case. As a result of the re-examination, the applicant party and Mr Zhukov had been prevented from standing for election. By using the supervisory-review procedure to set aside the judgment of 22 November 1999, the domestic authorities had violated the principle of legal certainty in the procedure for determining the applicant party's and Mr Zhukov's eligibility to stand in the elections.
Concerning whether the decision to disqualify the applicant party and Mr Zhukov from standing in the election had been proportionate to the legitimate aims pursued, the Court found that requiring a candidate for election to the national parliament to make his or her financial situation publicly known pursued a legitimate aim, in that it enabled voters to make an informed choice and promoted the overall fairness of elections. In a party-list proportional representation system, where a voter voted for a party list on the understanding that candidates placed higher on the list had more chances of obtaining seats in the parliament, it was not surprising that political parties placed the most well-liked or charismatic figures at the top of their lists. Legal provisions reinforcing the bond between the top candidates and the entire party list were therefore instrumental for promoting the emergence of coherent political thinking, which was also a legitimate aim under the terms of Article 3 of Protocol No. 1.
The Court observed that neither the applicant party nor Mr Zhukov had been found to have been in breach of the electoral laws. Thus, it was not their own conduct that had led to their ineligibility or disqualification. They had been sanctioned for circumstances which were both unrelated to their own conduct and outside their control. Their disqualification for those reasons had been disproportionate to the legitimate aims pursued, this being also the view of the Constitutional Court.
Conclusion: violation of the applicant party's and Mr Zhukov's right to free elections (unanimously).

The right to vote in elections (complaint by prospective voter Vasilyev): Concerning Mr Vasilyev's complaint that it had been impossible for him to cast his vote for a party of his choosing (the applicant party) which had been denied registration for the election, the Court did not consider that an allegedly frustrated voting intention could be considered grounds for an arguable claim of a violation of the right to vote. An intention to vote for a specific party was essentially a thought; is existence could not be proved or disproved until and unless it had manifested itself through the act of voting or handing in a blank or spoiled paper. An individual applicant had to be able to claim to be actually affected by the measure of which he complained. But Mr Vasilyev did not furnish any information about the way in which he had exercised his right to vote.
The Court concluded that the right to vote could not be construed as laying down a general guarantee that every voter should be able to find on the ballot paper the candidate or the party he or she had intended to vote for. It reiterated, nevertheless, that the free expression of the opinion of the people was inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population. Accordingly, it had to be regarded in the broader context in which the right to vote could be exercised by Mr Vasilyev: more than 25 political parties and electoral blocs representing a broad gamut of political views and platforms had competed in the 1999 elections to State Duma. The elections were acclaimed as competitive and pluralistic by international observers. It was not alleged that the voters lacked sufficient or adequate information about the candidates. Nor had it been claimed that Mr Vasilyev was subjected to any form of pressure or undue inducement in his voting choices. It could not therefore be said on the basis of the information available that Mr Vasilyev's right to take part in free elections had been unduly restricted.
Conclusion: no violation of Mr Vasilyev's right to vote (unanimously).

Article 13 *(the applicant party and Mr Zhukov)*: The applicant party and Mr Zhukov had been denied an effective remedy in respect of the violation of their electoral rights through the use of the supervisory-review procedure.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 *(the applicant party)*: The Court having found, in particular, that the domestic proceedings concerning the applicants had been conducted in breach of the principle of legal certainty,

there had been a violation of Article 1 of Protocol No. 1 in respect of the domestic authorities' refusal to refund the election deposit to the applicant party.
Conclusion: violation (unanimously).

Article 41 – EUR 66,000 for pecuniary damage.

STAND FOR ELECTION
Refusal to register a former clergyman as candidate for parliamentary elections: *communicated*.

SEYIDZADE - Azerbaijan (N° 37700/05)
[Section I]

The applicant applied to the district election commission for registration as a candidate in the parliamentary elections in November 2005, submitting an undertaking to terminate any professional activities incompatible with the office of a parliament member. The commission allegedly approved his candidacy. He then resigned from his positions in the Caucasus Muslims Board and in the Baku Islamic University. Subsequently, however, the election commission revoked his registration as a candidate on the grounds that he had continued his activities as a professional clergyman, without any further specification in this respect. The Central Election Commission rejected the applicant's complaint as unsubstantiated. The courts upheld this decision, stating that a clergyman could not be elected to Parliament and that the applicant's resignation from the above positions had not excluded his engaging in "professional religious activities" in terms of the Election Code. Before the Court, the applicant contended, *inter alia*, that the domestic law did not provide for a clear definition of a person engaging in "professional religious activity". He also complained of discrimination, given that the other candidates who had formerly been involved in other activities incompatible with the office of a parliamentarian – in the executive or the judiciary – had actually been registered.
Communicated under Article 3 of Protocol no. 1 and Article 14 of the Convention.

FREE EXPRESSION OF OPINION OF PEOPLE
CHOICE OF THE LEGISLATURE
Requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament: *no violation*.

YUMAK and SADAK - Turkey (N° 10226/03)
Judgment 30.1.2007 [Section II]

Facts: In the parliamentary elections of November 2002 the applicants stood as candidates for the political party DEHAP (People's Democratic Party) in an electoral constituency formed from a single province. Their party received 45.95% of the votes cast in the province (47,449), but only 6.22% of the national vote. As the Law of 1983 on the election of members of the National Assembly provides "Parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast", the applicants were not elected. Out of the three members' seats allocated to the province, two went to another party which had obtained 14.05% of the votes (14,460) and one to an independent candidate who had obtained 9.69% of the votes (9,914).

Law: The 10% threshold required of political parties in order for them to be represented in parliament was provided for in a law which had been enacted well before the elections concerned, so that the applicants could have foreseen that if their party did not cross the threshold they could not win seats in parliament, regardless of the number of votes won in their electoral constituency. The aim was to avoid excessive and debilitating parliamentary fragmentation, and thus strengthen governmental stability, regard being had in particular to the period of instability which Turkey had gone through in the 1970s. The electoral system concerned, which had a high threshold without any possibility of a counterbalancing adjustment, had produced in Turkey, after the elections in question, the least representative parliament since the

introduction of the multi-party system (45.3% of the electorate - about 14.5 million voters - being completely unrepresented in parliament). However, an analysis of the results of the parliamentary elections held since the adoption of the threshold showed that it could not as such block the emergence of political alternatives within society. The threshold was intended to give small groupings the opportunity to establish themselves nationally and thus form part of a national political project. In addition, the Constitutional Court had not ruled the threshold unconstitutional.
In view of the extreme diversity of electoral systems adopted by the Contracting States, and taking into account the fact that many countries using one or other variant of proportional representation had national thresholds for election to parliament, the Court accepted that the Turkish authorities and Turkish politicians were best placed to assess the choice of an appropriate electoral system. The threshold applied was the highest in Europe and it was therefore desirable for it to be lowered, although in this area the national decision-makers had to be allowed sufficient latitude. The Court also stressed the fact that the electoral system was the subject of much debate within Turkey and that numerous proposals of ways to correct the threshold's effects were being made both in parliament and among leading figures of civil society. In addition, the Constitutional Court had stressed that the constitutional principles of fair representation and governmental stability necessarily had to be combined in such a way as to balance and complement each other. Accordingly Turkey had not overstepped its margin of appreciation, notwithstanding the high level of the threshold complained of.
Conclusion: no violation (five votes to two).

ARTICLE 2 OF PROTOCOL No. 4

Article 2(2)

FREEDOM TO LEAVE A COUNTRY
Inability to travel abroad as a result of an entry arbitrarily made in passport: *violation*.

SISSANIS - Romania (N° 23468/02)
Judgment 25.1.2007 [Section III]

Facts: The applicant, in connection with criminal proceedings against him, was twice prohibited from leaving the country. On the first occasion a preventive measure was adopted by the police, who ordered him not to leave Romanian territory and stamped his passport with the letter "C". After a thirty-day period in which he had been barred by the public prosecutor from leaving the country, he applied for this mark to be removed from his passport and the request was granted by the court of first instance. New criminal proceedings were subsequently brought against the applicant. The police asked for his passport to be stamped with the letter "C" and the public prosecutor then decided that he should be held in custody for thirty days. The county court sentenced him to immediate imprisonment and remanded him in custody pending determination of his appeal. The Court of Appeal allowed the appeal and ordered his release, then quashed the lower court's judgment and remitted the case to the provincial court, which acquitted him. He made various applications to various domestic authorities seeking to have the letter "C" removed from his passport. He claimed that any preventive measure prohibiting someone from leaving the country had to be ordered by a member of the State legal service, whereas the mark in his passport had been stamped on the instructions of the police. He was told that the applicable law in force at the time of the measure did not require that it be ordered by a member of the State legal service. Moreover, the applicant was criticised for not adducing evidence that the criminal proceedings against him had ended or that he had been acquitted. After several of his applications had either been dismissed or sent back, he ultimately requested the provincial court to annul the administrative decision to stamp the letter "C" in his passport and sought an award for pecuniary and non-pecuniary damage. The court partly granted his claims, ordering the removal of the mark, but refused to make an award for damage. This final judgment was executed by the stamping of the letter "L" in the applicant's passport.

Law: Inadmissible in respect of the first measure, as the complaint had been lodged out of time, and admissible in respect of the second.
A measure by means of which an individual was dispossessed of an identity document such as a passport amounted to an interference with the exercise of liberty of movement. Although the applicant's passport had not been confiscated he had not been able to make use of that travel document in order to leave the country. He had thus suffered a restriction on the exercise of his right. The impugned measure had to have some basis in domestic law, which had to be accessible to the person concerned and foreseeable as to its effects. The domestic law did not lay down with sufficient precision the conditions in which the preventive measure prohibiting someone from leaving the country could be imposed. The impugned statutory provision was vague as it simply stated that a foreigner against whom criminal proceedings had been brought could only leave the country after discontinuance of the proceedings or acquittal, or, in the event of conviction, after a sentence had been served. It did not identify the authority empowered to impose such a measure. Moreover, although the relevant authorities were empowered to authorise interference with aliens' freedom of movement, the grounds for doing so were not defined with sufficient precision. Interference by the executive authorities with an individual's rights had to be subject to an effective control which should normally be assured by the judiciary, at least in the last resort. Thus, the procedure for applying the preventive measure consisting in an order not to leave the country did not provide such safeguards, since the law did not lay down any review procedure, whether at the time the measure was imposed or afterwards. In reality, the preventive measure in question was an automatic measure applied for an indeterminate period and it thus interfered with the rights of the individual. The domestic law did not indicate with sufficient clarity the extent or conditions of the authorities' power of discretion in the area at issue. Lastly, the law, having been declared unconstitutional, had been superseded by a law providing that all preventive orders prohibiting someone from leaving the country had to be made by a member of the State legal service. The preventive measure, having been imposed by the police, had been in breach of the applicable domestic law, including the Constitution. Admittedly, the provincial court had rescinded the preventive measure barring the applicant from leaving the country because no measure restricting his liberty had been ordered by a member of the State legal service. However, the court had not awarded any compensation for the damage sustained by the applicant as a result of the unlawful extension of the preventive measure. Furthermore, it had not been suggested to the applicant that he could have availed himself of any other domestic remedy in order to seek compensation. Up to the time when the authorities lifted the preventive measure, the infringement of the applicant's freedom of movement had not been "in accordance with the law". In these circumstances the Court did not need to continue with the examination of the applicant's complaint to establish whether the interference had pursued a legitimate purpose and had been necessary in a democratic society.
Conclusion: violation (unanimously)

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

ARTICLE 1 OF PROTOCOL No. 7

EXPULSION OF AN ALIEN
Expulsion of Uzbek national: *communicated*.

MUMINOV - Russia (N° 42502/06)
[Section I]

(see Article 3 above under "Expulsion").

Other judgments delivered in January

N.A. and Others v. Turkey (Nº 37451/97), 9 January 2007 [Section II (former)] (just satisfaction)
Gossa v. Poland (Nº 47986/99), 9 January 2007 [Section IV]
Uoti v. Finland (Nº 61222/00), 9 January 2007 [Section IV]
Beler and Others v. Turkey (Nº 61739/00, Nº 61740/00, Nº 61753/00, Nº 61757/00 and Nº 61760/00), 9 January 2007 [Section II]
Crew v. United Kingdom (Nº 61928/00), 9 January 2007 [Section IV] (friendly settlement)
Rathfelder v. United Kingdom (Nº 63507/00), 9 January 2007 [Section IV] (friendly settlement)
Orel v. Slovakia (Nº 67035/01), 9 January 2007 [Section IV]
Gamble v. United Kingdom (Nº 68056/01), 9 January 2007 [Section IV] (friendly settlement)
Hıdır Kaya v. Turkey (Nº 2624/02), 9 January 2007 [Section II]
Trojańczyk v. Poland (Nº 11219/02), 9 January 2007 [Section IV]
Özkan and Adıbelli v. Turkey (Nº 18342/02), 9 January 2007 [Section II]
Araguas v. France (Nº 28625/02), 9 January 2007 [Section II]
Mihalachi v. Moldova (Nº 37511/02), 9 January 2007 [Section IV]
Niva v. Finland (Nº 37730/02), 9 January 2007 [Section IV] (friendly settlement)
Moğul v. Turkey (Nº 40217/02 and Nº 40218/02), 9 January 2007 [Section II]
SCI Les Rullauds and Others v. France (Nº 43972/02), 9 January 2007 [Section II]
Sito v. Poland (Nº 19607/03), 9 January 2007 [Section IV]
Kříž v. the Czech Republic (Nº 26634/03), 9 January 2007 [Section II (former)]
Mezl v. the Czech Republic (Nº 27726/03), 9 January 2007 [Section II (former)]

Stefanova v. Bulgaria (Nº 58828/00), 11 January 2007 [Section V]
Quattrone v. Italy (Nº 67785/01), 11 January 2007 [Section III]
SWIG v. Russia (Nº 307/02), 11 January 2007 [Section I] (striking out)
Mas v. Ukraine (Nº 11931/02), 11 January 2007 [Section V]
Herbst v. Germany (Nº 20027/02), 11 January 2007 [Section III]
Kunić v. Croatia (Nº 22344/02), 11 January 2007 [Section I]
Shneyderman v. Russia (Nº 36045/02), 11 January 2007 [Section I]
Cornif v. Romania (Nº 42872/02), 11 January 2007 [Section III]
Mazurenko v. Ukraine (Nº 14809/03), 11 January 2007 [Section V]
Kolosay v. Ukraine (Nº 25452/03), 11 January 2007 [Section V]
Smoje v. Croatia (Nº 28074/03), 11 January 2007 [Section I]
Petrova v. Ukraine (Nº 33635/03), 11 January 2007 [Section V]
Parkhomenko v. Ukraine (Nº 5531/04), 11 January 2007 [Section V]
Galimullin and Others v. Ukraine (Nº 7516/04), 11 January 2007 [Section V]
Rakitin v. Ukraine (Nº 7675/04), 11 January 2007 [Section V]
Gorou v. Greece (no. 4) (Nº 9747/04), 11 January 2007 [Section I]
Sukhopar v. Ukraine (Nº 16267/04), 11 January 2007 [Section V]
Guseynova v. Ukraine (Nº 19175/05), 11 January 2007 [Section V]

Bell v. United Kingdom (Nº 41534/98), 16 January 2007 [Section IV]
Wedler v. Poland (Nº 44115/98), 16 January 2007 [Section IV]
Black v. United Kingdom (Nº 56745/00), 16 January 2007 [Section IV]
Terrill and Others v. United Kingdom (Nº 60469/00, Nº 60949/00, Nº 63465/00, Nº 63472/00, Nº 63483/00, Nº 64008/00, and Nº 64115/00), 16 January 2007 [Section IV] (friendly settlement)
Young v. United Kingdom (Nº 60682/00), 16 January 2007 [Section IV]
Atay and Others v. Turkey (Nº 61693/00, Nº 61695/00, Nº 61696/00, Nº 61699/00, Nº 61705/00, Nº 61710/00, Nº 61712/00, Nº 61714/00, Nº 61733/00 and Nº 62627/00), 16 January 2007 [Section II]
Veli Tosun and Others v. Turkey (Nº 62312/00), 16 January 2007 [Section II]

Okuyucu v. Turkey (Nº 65887/01), 16 January 2007 [Section II]
Akgül v. Turkey (Nº 65897/01), 16 January 2007 [Section II]
Halil Gündoğan v. Turkey (no. 2) (Nº 67483/01), 16 January 2007 [Section II]
Avcı (Cabat) and Others v. Turkey (Nº 77191/01), 16 January 2007 [Section II]
Domah v. France (Nº 3447/02), 16 January 2007 [Section II]
Sakçı v. Turkey (Nº 8147/02), 16 January 2007 [Section II]
Eisenchteter v. France (Nº 17306/02), 16 January 2007 [Section II]
Menvielle v. France (no. 2) (Nº 97/03), 16 January 2007 [Section II]
Pruneanu v. Moldova (Nº 6888/03), 16 January 2007 [Section IV]
Wolf v. Poland (Nº 15667/03 and Nº 2929/04), 16 January 2007 [Section IV]
Seidel v. France (no. 3) (Nº 21764/03), 16 January 2007 [Section II]
Trznadel v. Poland (Nº 26876/03), 16 January 2007 [Section IV]
Kranta v. Turkey (Nº 31277/03), 16 January 2007 [Section II]
Bogdanowicz v. Poland (Nº 38872/03), 16 January 2007 [Section IV]
Chiesi SA v. France (Nº 954/05), 16 January 2007 [Section II]

Kaplan v. Austria (Nº 45983/99), 18 January 2007 [Section I]
Rashid v. Bulgaria (Nº 47905/99), 18 January 2007 [Section V]
Stanimir Yordanov v. Bulgaria (Nº 50479/99), 18 January 2007 [Section V]
Bulgakova v. Russia (Nº 69524/01), 18 January 2007 [Section III]
Oberwalder v. Slovenia (Nº 75567/01), 18 January 2007 [Section III]
Kezic v. Slovenia (Nº 76395/01), 18 January 2007 [Section III]
Sedmak v. Slovenia (Nº 77522/01), 18 January 2007 [Section III]
Klimenko v. Russia (Nº 11785/02), 18 January 2007 [Section III]
Silka v. Ukraine (Nº 3624/03), 18 January 2007 [Section V]
Lapinskaya v. Ukraine (Nº 10722/03), 18 January 2007 [Section V]
Kot v. Russia (Nº 20887/03), 18 January 2007 [Section I]
Alliance Capital (Luxembourg) SA v. Luxembourg (Nº 24720/03), 18 January 2007 [Section I]
Alsayed Allaham v. Greece (Nº 25771/03), 18 January 2007 [Section I]
Shchiglitsov v. Estonia (Nº 35062/03), 18 January 2007 [Section V]
Khurkunov v. Ukraine (Nº 5079/04), 18 January 2007 [Section V]
Subinski v. Slovenia (Nº 19611/04), 18 January 2007 [Section III]
Kulikov v. Ukraine (Nº 36367/04), 18 January 2007 [Section V]
Ouzounian Barret v. Cyprus (Nº 2418/05), 18 January 2007 [Section I]
Vasilev v. Greece (Nº 2736/05), 18 January 2007 [Section I]
Zavřel v. the Czech Republic (Nº 14044/05), 18 January 2007 [Section V]
A.J. Hadjihanna Bros. (Tourist Enterprises) Ltd. & Hadjihannas v. Cyprus (Nº 34579/05), 18 January 2007 [Section I]

Çardakçi and Others v. Turkey (Nº 39224/98), 23 January 2007 [Section IV]
Baran v. Turkey (Nº 46777/99), 23 January 2007 [Section IV]
Korkmaz and Others v. Turkey (Nº 47354/99), 23 January 2007 [Section II]
Jagiełło v. Poland (Nº 59738/00), 23 January 2007 [Section IV]
Kepenekliođlu v. Turkey (Nº 73520/01), 23 January 2007 [Section II]
Kondu v. Turkey (Nº 75694/01), 23 January 2007 [Section II]
Çetinkaya and Çağlayan v. Turkey (Nº 3921/02, Nº 35003/02 and Nº 17261/03), 23 January 2007 [Section II]
Kozłowski v. Poland (Nº 23779/02), 23 January 2007 [Section IV]
Lilja v. Sweden (Nº 36689/02), 23 January 2007 [Section II]
Rodoplu v. Turkey (Nº 41665/02), 23 January 2007 [Section IV]
Almeida Azevedo v. Portugal (Nº 43924/02), 23 January 2007 [Section II]
Kurt and Others v. Turkey (Nº 13932/03), 23 January 2007 [Section II]
Falakaoğlu v. Turkey (no. 3) (Nº 16229/03), 23 January 2007 [Section II]
Cretello v. France (Nº 2078/04), 23 January 2007 [Section II]

Vereinigung Bildender Künstler v. Austria (Nº 68354/01), 25 January 2007 [Section I]
Morea v. Italy (Nº 69269/01), 25 January 2007 [Section III]
Iorga v. Romania (Nº 4227/02), 25 January 2007 [Section III]
Aja v. Greece (Nº 22879/02), 25 January 2007 [Section I]
Belyayev v. Russia (Nº 24620/02), 25 January 2007 [Section I]
Hesse v. Austria (Nº 26186/02), 25 January 2007 [Section I]
Carjan v. Romania (Nº 42588/02), 25 January 2007 [Section III]
Andriotis v. Greece (Nº 389/03), 25 January 2007 [Section I]
Makarov v. Russia (Nº 21074/03), 25 January 2007 [Section I]
Denisov v. Russia (Nº 21823/03), 25 January 2007 [Section I]
Eski v. Austria (Nº 21949/03), 25 January 2007 [Section I]
Negoita v. Romania (Nº 9862/04), 25 January 2007 [Section III]
Rompoti v. Greece (Nº 14263/04), 25 January 2007 [Section I]
Tsekouridou v. Greece (Nº 28770/04), 25 January 2007 [Section I]
Elmaliotis v. Greece (Nº 28819/04), 25 January 2007 [Section I]

Çobanoğlu and Budak v. Turkey (Nº 45977/99), 30 January 2007 [Section II]
Boczoń v. Poland (Nº 66079/01), 30 January 2007 [Section IV]
Pielasa v. Poland (Nº 66463/01), 30 January 2007 [Section IV]
Pavlík v. Slovakia (Nº 74827/01), 30 January 2007 [Section IV]
Kazın Gündoğan v. Turkey (Nº 29/02), 30 January 2007 [Section II]
Aslan and Özsoy v. Turkey (Nº 35973/02 and Nº 5317/02), 30 January 2007 [Section II]
Ryckie v. Poland (Nº 19583/05), 30 January 2007 [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 Notes Nos. 89, 90):

Mürvet Fidan and Others - Turkey (Nº 48983/99)
Judgment 26.9.2006 [Section II]

Lickov - Former Yugoslav Republic of Macedonia (Nº 38202/02)
Judgment 28.9.2006 [Section V]

Ben Naceur - France (Nº 63879/00)
Başkaya - Turkey (Nº 68234/01)
Keklik and Others - Turkey (Nº 77388/01)
Courty and Another - France (Nº 15114/02)
Cour - France (Nº 44404/02)
Mehmet Kaplan - Turkey (Nº 6366/03)
Achache - France (Nº 16043/03)
Kalmár - Hungary (Nº 32783/03)
Gajcsi - Hungary (Nº 34503/03)
E.T. - France (Nº 7217/05)
Judgments 03.10.2006 [Section II]

Kuril - Slovakia (Nº 63959/00)
Łuczko - Poland (Nº 73988/01)
Rybczyńscy - Poland (Nº 3501/02)
Judgments 03.10.2006 [Section IV]

Lazarev - Russia (Nº 9800/02)
Stetsenko and Stetsenko - Russia (Nº 878/03)
Müller - Austria (Nº 12555/03)
Zakharov - Russia (Nº 14881/03)
Velskaya - Russia (Nº 21769/03)
Marchenko - Russia (Nº 29510/04)
Bolat - Russia (N° 14139/03)
Moscow Branch of the Salvation Army - Russia (N° 72881/01)
Judgments 05.10.2006 [Section I]

Notarnicola - Italy (Nº 64264/01)
Preziosi - Italy (Nº 67125/01)
Spampinato - Italy (Nº 69872/01)
Gianazza - Italy (Nº 69878/01)
Medici and Others - Italy (Nº 70508/01)
Labbruzzo - Italy (Nº 10022/02)
Popea - Romania (Nº 6248/03)
Penescu - Romania (Nº 13075/03)
Capoccia - Italy (Nº 30227/03)
Fendi and Speroni - Italy (Nº 37338/03)
Messeni Nemagna and Others - Italy (Nº 9512/04)

De Nigris - Italy (no. 1) (Nº 41248/04)
Marcello Viola - Italy (Nº 45106/04)
Judgments 05.10.2006 [Section III]

Sodadjiev - Bulgaria (Nº 58773/00)
Klasen - Germany (Nº 75204/01)
Judgments 05.10.2006 [Section V]

Çomak - Turkey (Nº 225/02)
Mehmet Emin Acar - Turkey (Nº 1901/02)
Halis Doğan - Turkey (no. 3) (Nº 4119/02)
Falakaoğlu - Turkey (Nº 11840/02)
Bonifacio - France (Nº 18113/02)
Nebusová - Hungary and Slovakia (Nº 61/03)
Tutar - Turkey (Nº 11798/03)
Yerebasmaz - Turkey (Nº 14710/03)
S.U. - France (Nº 23054/03)
Judgments 10.10.2006 [Section II]

Fryckman - Finland (Nº 36288/97)
Rybczyńska - Poland (Nº 57764/00)
Kędra - Poland (Nº 1564/02)
Szymoński - Poland (Nº 6925/02)
Kuźniak - Poland (Nº 13861/02)
Lozan and Others - Moldova (Nº 20567/02)
Zasłona - Poland (Nº 25301/02)
Cichla - Poland (Nº 18036/03)
Paulik - Slovakia (Nº 10699/05)
Judgments 10.10.2006 [Section IV]

Aldoshkina - Russia (Nº 66041/01)
Stanislav Zhukov - Russia (Nº 54632/00)
Glazkov - Russia (Nº 10929/03)
Debelić - Croatia (Nº 9235/04)
Tastanidis - Greece (Nº 18059/04)
Estamirov and Others - Russia (Nº 60272/00)
Mubilanzila Mayeka and Kaniki Mitunga - Belgium (Nº 13178/03)
Judgments 12.10.2006 [Section I]

Sebastian Taub - Romania (Nº 58612/00)
Barbu - Romania (Nº 70639/01)
Danulescu - Romania (Nº 70890/01)
Barcanescu - Romania (Nº 75261/01)
Tovaru - Romania (Nº 77048/01)
Orha - Romania (Nº 1486/02)
Patrichi - Romania (Nº 1597/02)
Ruxanda Ionescu - Romania (Nº 2608/02)
Konnerth - Romania (Nº 21118/02)
Ioachimescu and Ion - Romania (Nº 18013/03)
Kaya - Romania (Nº 33970/05)
Judgments 12.10.2006 [Section III]

Staykov - Bulgaria (Nº 49438/99)
Mladenov - Bulgaria (Nº 58775/00)

Tarnavskiy - Ukraine (Nº 6693/03)
Pivnenko - Ukraine (Nº 36369/04)
Judgments 12.10.2006 [Section V]

Yazganoğlu - Turkey (Nº 57294/00)
Danelia - Georgia (Nº 68622/01)
Gurgenidze - Georgia (Nº 71678/01)
Sultan Öner and Others - Turkey (Nº 73792/01)
Öz and Başpinar - Turkey (Nº 41227/02)
Göcmen - Turkey (Nº 72000/01)
Judgments 17.10.2006 [Section II]

Augustyniak - Poland (Nº 5413/02)
Piątkowski - Poland (Nº 5650/02)
Zielonka - Poland (Nº 7313/02)
Gąsiorowski - Poland (Nº 7677/02)
Nowak - Poland (Nº 8612/02)
Czerwiński - Poland (Nº 10384/02)
Chodzyńscy - Poland (Nº 17484/02)
Grabiński - Poland (Nº 43702/02)
Stankiewicz - Poland (Nº 29386/03)
Kwiatkowski - Poland (Nº 4560/04)
Judgments 17.10.2006 [Section IV]

Irina Fedotova - Russia (Nº 1752/02)
Romanenko and Romanenko - Russia (Nº 19457/02)
Kesyan - Russia (Nº 36496/02)
Ceglia - Italy (Nº 21457/04)
Tomasic - Croatia (Nº 21753/02)
Judgments 19.10.2006 [Section I]

Kamer Demir and Others - Turkey (Nº 41335/98)
Selim Yıldırım and Others - Turkey (Nº 56154/00)
M.A.T. - Turkey (Nº 63964/00)
Abdullah Altun - Turkey (Nº 66354/01)
Hikmedin Yıldız - Turkey (Nº 69124/01)
Diril - Turkey (Nº 68188/01)
Gautieri and Others - Italy (Nº 68610/01)
Sağir - Turkey (Nº 37562/02)
Matache and Others - Romania (Nº 38113/02)
Raicu - Romania (Nº 28104/03)
Kök - Turkey (Nº 1855/02)
Judgments 19.10.2006 [Section III]

Mukhin - Ukraine (Nº 39404/02)
Arsov - the former Yugoslav Republic of Macedonia (Nº 44208/02)
Judgments 19.10.2006 [Section V]

Baba - Turkey (Nº 35075/97)
Terece and Others - Turkey (Nº 41054/98)
Ugür Akay - Turkey (Nº 58539/00)
Açıkgöz - Turkey (Nº 76855/01)
Kaya and Others - Turkey (Nº 4451/02)
Kürkçü and Others - Turkey (Nº 7142/02)

Maçin - Turkey (no. 2) (Nº 38282/02)
Üstüncan and Others - Turkey (Nº 11914/03)
Judgments 24.10.2006 [Section II]

Martin - United Kingdom (Nº 40426/98)
Romaniak - Poland (Nº 53284/99)
Baranowksa - Poland (Nº 72994/01)
Orzechowski - Poland (Nº 77795/01)
Kusyk - Poland (Nº 7347/02)
Stevens - Poland (Nº 13568/02)
Sokołowski - Poland (Nº 15337/02)
Zych - Poland (Nº 28730/02)
Szwagrun-Baurycza - Poland (Nº 41187/02)
Stemplewski - Poland (Nº 30019/03)
Żak - Poland (Nº 31999/03)
Central Mediterranean Development Corporation Limited - Malta (Nº 35829/03),
24 October 2006 [Section IV]
Edwards - Malta (Nº 17647/04)
Judgments 24.10.2006 [Section IV]

Lenardon - Belgium (Nº 18211/03)
Judgment 26.10.2006 [Section I]

Emanuele Calandra and Others - Italy (Nº 71310/01)
Novina - Slovenia (Nº 6855/02)
Khudobin - Russia (Nº 59696/00)
Judgments 26.10.2006 [Section III]

Danov - Bulgaria (Nº 56796/00)
Mareš - the Czech Republic (Nº 1414/03)
Friedrich - the Czech Republic (Nº 12108/03)
Chraidi - Germany (Nº 65655/01)
Judgments 26.10.2006 [Section V]

Güner Çorum - Turkey (Nº 59739/00)
Dilek Yılmaz - Turkey (Nº 58030/00)
Karaoğlan - Turkey (Nº 60161/00)
Kahraman - Turkey (Nº 60366/00)
Tüzel - Turkey (no. 2) (Nº 71459/01)
Drăguță - Moldova (Nº 75975/01)
Şahin and Sürgeç - Turkey (Nº 13007/02 and Nº 13924/02)
Pakkan - Turkey (Nº 13017/02)
Aksoy (Eroglu) - Turkey (Nº 59741/00)
Judgments 31.10.2006 [Section IV]

Statistical information[1]

Judgments delivered	January	2007
Grand Chamber	2	2
Section I	32(33)	32(33)
Section II	39(89)	39(89)
Section III	17	17
Section IV	33(40)	33(40)
Section V	19	19
former Sections	5	5
Total	**147(205)**	**147(205)**

Judgments delivered in January 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
Section I	31(32)	0	1	0	32(33)
Section II	39(89)	0	0	0	39(89)
Section III	17	0	0	0	17
Section IV	27(28)	6(12)	0	0	33(40)
Section V	19	0	0	0	19
former Section I	0	0	0	0	0
former Section II	4	0	0	1	5
former Section III	0	0	0	0	0
former SectionIV	0	0	0	0	0
Total	**139(191)**	**6(12)**	**1**	**1**	**147(205)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
Section I	31(32)	0	1	0	32(33)
Section II	39(89)	0	0	0	39(89)
Section III	17	0	0	0	17
Section IV	27(28)	6(12)	0	0	33(40)
Section V	19	0	0	0	19
former Section I	0	0	0	0	0
former Section II	4	0	0	1	5
former Section III	0	0	0	0	0
former SectionIV	0	0	0	0	0
Total	**139(191)**	**6(12)**	**1**	**1**	**147(205)**

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	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		1	1
Section II		0	0
Section III		3	3
Section IV		1(2)	1(2)
Section V		3	3
Total		**8(2)**	**8(2)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	3	3
	- Committee	468	468
Section II	- Chamber	4(21)	4(21)
	- Committee	398	398
Section III	- Chamber	5	5
	- Committee	307	307
Section IV	- Chamber	11	11
	- Committee	466	466
Section V	- Chamber	5	5
	- Committee	439	439
Total		**2106(21)**	**2106(21)**
III. Applications struck off			
Grand Chamber		0	0
Section I	- Chamber	9	9
	- Committee	13	13
Section II	- Chamber	8(15)	8(15)
	- Committee	16	16
Section III	- Chamber	1	1
	- Committee	6	6
Section IV	- Chamber	12	12
	- Committee	6	6
Section V	- Chamber	3	3
	- Committee	2	2
Total		**76(15)**	**76(15)**
Total number of decisions[1]		**2182(36)**	**2182(36)**

[1] Not including partial decisions.

Applications communicated	January	2007
Section I	41	41
Section II	101	101
Section III	80	80
Section IV	63	63
Section V	29	29
Total number of applications communicated	**314**	**314**

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