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COUR EUROPÉENNE DES DROITS DE L'HOMME

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BRANKO TOMAŠIĆ and Others - Croatia (N° 46598/06)
Judgment 15.1.2009 [Section I]

Facts: The applicants are the relatives of M.T. and her infant child, V.T., who were both killed in August 2006 by M. M., the child's father. M.T. and M.M. had lived together in the home of M.T.'s parents until July 2005, when M.M. had moved out after disputes with the members of the household. In January 2006 M.T. had lodged a criminal complaint against M.M. for death threats he had allegedly made. In the ensuing proceedings, the authorities had obtained a psychiatric opinion which stated that M.M. was likely to repeat similar offences in the future and stressed the need for his psychiatric treatment. On 15 March 2006 the Municipal Court had found M.M. guilty of repeatedly threatening to kill himself, M.T. and their child with a bomb. He was sentenced to five months' imprisonment and, as a security measure, was ordered to have compulsory psychiatric treatment during his imprisonment and afterwards as necessary. On 28 April 2006 the second-instance court had reduced that treatment to the duration of his prison sentence. M.M. served his sentence and was released on 3 July 2006. On 15 August 2006 he shot M.T. and V.T. dead, before committing suicide by turning the gun on himself.

Law: The findings of the domestic courts and the conclusions of the psychiatric examination undoubtedly showed that the authorities had been aware that the threats made against the lives of M.T. and V.T. were serious and that all reasonable steps should have been taken to protect them. The Court noted several shortcomings in the authorities' conduct. Firstly, no search of M.M.'s premises or vehicle had been carried out during the initial criminal proceedings against him, despite the fact that he had repeatedly threatened to use a bomb. In addition, although the psychiatric report drawn up for the purposes of the criminal proceedings had stressed the need for M.M.'s continued psychiatric treatment, the Government had failed to prove that such treatment was actually and properly administered. The documents submitted showed that his treatment in prison had consisted of conversational sessions with prison staff, none of whom was a psychiatrist. Further, neither the relevant regulations nor the court's judgment ordering compulsory psychiatric treatment had provided sufficient details on how the treatment was to be administered. Indeed, the general rules provided for in the Enforcement of Prison Sentences Act did not properly address the issue of the enforcement of obligatory psychiatric treatment as a security measure, thus leaving it completely to the discretion of the prison authorities to decide how to act. In the Court's view, such regulations needed to be sufficient in order to ensure that the purpose of criminal sanctions was properly satisfied. Lastly, M.M. was not examined prior to his release from prison in order to assess whether he still posed a risk to M.T. and V.T. The Court therefore concluded that the relevant domestic authorities had failed to take adequate measures to protect the lives of M.T. and V.T.
Conclusion: violation (unanimously).

Article 41 – EUR 40,000 in respect of non-pecuniary damage.

POSITIVE OBLIGATIONS
Disappearance of applicant's husband following interior-department decision to release him into the hands of his abductors in life-threatening circumstances: *violation*.

MEDOVA - Russia (N° 25385/04)
Judgment 15.1.2009 [Section I]

Facts: The applicant alleged that her husband had been abducted in 2004 by a group of armed men who had identified themselves as Federal Security Service ("FSB") officers. The cars in which the men were travelling were later stopped by police at a checkpoint near the internal border with Chechnya. They found the applicant's husband and a fellow captive hidden in the boots of the cars. The men refused to produce proper identification and so were taken with the applicant's husband and his fellow captive to the local department of the interior office ("ROVD"), where enquiries were made. The men were then allowed to proceed across the Chechen border with their two captives. The applicant's husband has not been seen since.

Law: Article 2 – The abduction of the applicant's husband by a group of armed men in life-threatening circumstances and the subsequent absence of any news of him for four years corroborated the assumption that he was dead. Although the evidence submitted was not sufficient to establish to the requisite standard of proof that his abductors were federal servicemen, that did not necessarily exclude State responsibility under Article 2 as the State was required not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard life. This could imply a positive obligation to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of others. For such a positive obligation to arise, it had to be established that the authorities knew or ought to have known that there existed a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take reasonable measures within the scope of their powers to avoid that risk.
The applicant's husband had been abducted by four armed men and put in a car which was stopped at a checkpoint. Following the captors' refusal to present their identity documents, they were taken to an ROVD. Although the ROVD officers might not have perceived the situation as life-threatening since the armed men had presented FSB identity papers and documents authorising the detention, they must have been alarmed by the men's suspicious behaviour, as they had immediately sought instructions from the district prosecutor's office. The prosecutor's office had confirmed the validity of the identity papers and the lawfulness of the detention, with the result that the armed men and their captives were released from the ROVD.
The prosecuting authorities did not, however, verify whether the men were indeed FSB officers or obtain from the FSB any written confirmation of the validity of the operation. For their part, the ROVD officers did not make copies of the documents presented by the men or log their detention in any official records. Accordingly, the authorities' decision to release the armed men with their captives, with the result that the applicant's husband disappeared, constituted a breach of the State's positive obligation to take preventive measures to protect a person whose life was at risk from the criminal acts of others.
Conclusion: violation (unanimously).

The Court also found a violation of the procedural limb of Article 2, violations of Articles 5 and 13 and a failure by the State to comply with Article 38 § 1 (a) of the Convention. It found no violations of Articles 3 and 34.

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

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Refusal to remove handcuffs from prisoner brought in for gynaecological examination and presence of male guards in the consultation room: *violation*.

FİLİZ UYAN - Turkey (N° 7496/03)
Judgment 8.1.2009 [Section II]

Facts: The applicant was convicted for being a member of a terrorist organisation and sentenced to twenty-two years imprisonment. In 2001, following a prison doctor's referral, she was handcuffed and taken to a public hospital by three male and one female security officers in order to undergo a gynaecological scan. The consultation room where the applicant was taken was situated on the ground floor of the hospital and had no bars on the windows. The applicant's handcuffs were not removed and the male security officers refused to leave the consultation room for security reasons although they did agree to stand behind a folding screen. The applicant refused to be examined in such circumstances. She subsequently instituted proceedings against the male security officers for misconduct, arbitrary treatment and insulting behaviour, but the competent authorities dismissed her complaints.

Law: The security officers had acted in compliance with the domestic legislation, which provided that for security reasons all prisoners convicted for terrorist-related offences were not to be left alone in consultation rooms and were to remain handcuffed at all times. While recognising the security risk in the applicant's case, the Court considered that the insistence on the use of handcuffs during the examination as well as the presence of three male security officers in the consultation room had been disproportionate. It noted the existence of other practical alternatives, such as the female officer staying in the room with the applicant and one of the male officers being posted outside the unsecured window of the consultation room. The authorities had chosen to apply the strict measures prescribed under the domestic law rather than to allow a more flexible approach depending on the particular risk presented by the prisoner and the type of medical examination to be performed. The security measures used must have caused the applicant humiliation and distress beyond that inevitably associated with the treatment of a prisoner and were capable of undermining her personal dignity.
Conclusion: violation (four votes to three).

INHUMAN OR DEGRADING TREATMENT
Pre-trial detention of minor in adult prison: *violation*.

GÜVEÇ - Turkey (N° 70337/01)
Judgment 20.1.2009 [Section II]

Facts: In 1995 the applicant, a fifteen year old, was arrested on suspicion of having links to the PKK. Although he was still a minor, a state-security-court judge ordered his detention in an adult prison pending the institution of criminal proceedings and he was subsequently charged with undermining the territorial integrity of the State, an offence which at the time was punishable by death and could only be tried by a state security court. For the first six and a half months after his arrest the applicant had no legal representation. A lawyer acting for one of his co-accused then informed the court that she would represent him, but she failed to attend most of the hearings. About 18 months after his arrest, the charges against the applicant were reduced, in view of disparities in the prosecution case, to the non-capital offences of membership of an illegal organisation and criminal damage. In October 1997 the applicant was convicted of those charges and given a prison sentence. However, his conviction was quashed by the Court of Cassation on appeal and the case was remitted for a retrial. Owing to ill-health, the applicant failed to attend a number of hearings. In view of the absence of his lawyer, his cell mates wrote to the court in July 2000 to inform it of the situation and appended a note from a prison doctor explaining that the applicant had been admitted to a psychiatric hospital. The applicant's health continued to deteriorate and the prison

doctor subsequently reported that, in view of serious psychiatric problems and two suicide attempts, one of which had left him with serious burns, the applicant needed specialist hospital treatment. Following a change of lawyer, the applicant was finally released on bail pursuant to an order of July 2000. A subsequent psychiatric report concluded that he had been suffering from major depression, a condition that had begun and deteriorated during his detention. At his retrial the applicant was convicted of membership of an illegal organisation and given an eight-and-a-half-year prison sentence. His conviction was upheld on appeal.
The practice of detaining minors in adult prisons pending trial in Turkey has been criticised in reports by a number of international monitoring bodies including the United Nations Committee on the Rights of the Child, the European Committee of Social Rights and the European Committee for the Prevention of Torture. Article 37 of the UN Convention on the Rights of the Child requires the detention of children to be used only as a measure of last resort and for the shortest appropriate period and for the child to be separated from adults unless it is in its best interests not to be. It also guarantees detained children a right to prompt legal assistance.

Law: Article 3 – (a) *Admissibility (exhaustion of domestic remedies)*: Not only had the Government not demonstrated the effectiveness of the proposed remedies, the applicant was in the special circumstances of the case, absolved from the exhaustion requirement in view of his acute medical problems, his lack of adequate legal representation for considerable periods and the judiciary's complete disregard of the rules applicable to minors.
Conclusion: objection dismissed (unanimously).

(b) *Merits*: The applicant had been detained at the age of 15 in an adult prison, in breach of domestic law and Turkey's international obligations. His psychological problems had begun in prison and worsened there. Following his detention, he had spent the next five years in the company of adult prisoners. He had had no access to legal advice for the first six and a half months and no adequate legal representation for some five years. These circumstances, coupled with the fact that for a period of over 18 months he had been charged with an offence carrying the death penalty, must have caused him total uncertainty and been at the origin of the psychological problems which had led to his repeated attempts to take his own life. The national authorities were directly responsible for the applicant's problems and had manifestly failed to provide him with adequate medical care. Given his age, the length of his detention with adults and the authorities' failure to provide adequate medical care or to take steps to prevent his repeated suicide attempts, the applicant had been subjected to inhuman and degrading treatment.
Conclusion: violation (unanimously).

Article 5 § 3 – The length of the pre-trial detention included both the period from the applicant's arrest until his initial conviction and the period from the quashing of that conviction by the Court of Cassation until his release on bail and came to more than four and a half years. The applicant had remained a "victim" for Convention purposes notwithstanding the fact that the time he had spent in pre-trial detention was subsequently deducted from his prison sentence. There had been no genuine public-interest requirement necessitating such lengthy pre-trial detention and no indication that the courts had considered alternative methods or used detention as a last resort as required by both domestic and international law. In at least three previous judgments concerning Turkey, the Court had found violations of Article 5 § 3 for considerably shorter periods than that in the applicant's case. The length of his detention on remand was thus excessive.
Conclusion: violation (unanimously).

Article 6 § 1 in conjunction with Article 6 § 3 (c) – The applicant's case raised important issues concerning the right of minors to effective participation in their trial and to legal assistance. Despite his very young age, the applicant had initially been charged with a capital offence under legislation which at the time precluded his being tried by a juvenile court or having a lawyer assigned to him by the State. He could not be considered to have effectively participated in the proceedings as he had had no legal representation when he was questioned by the police, the prosecution and a duty judge and, on account of his health problems, had been unable to attend almost half of the hearings.

The fact that he had subsequently been represented could not alter that conclusion as the lawyer first appointed to defend him had failed to attend most of the hearings and he had been completely without legal assistance during the crucial final stages of the retrial until the second lawyer took over the conduct of his defence. The Court accepted that the State could not normally be held responsible for the conduct of an accused's lawyer unless the lawyer was appointed under the legal-aid scheme and had manifestly failed to provide effective representation. However, although it noted that the applicant's first lawyer had not been appointed under such a scheme, it found that there were a number of factors in the applicant's case – his age, the seriousness of the charges, the contradictions in the prosecution case, the manifest lack of proper representation by the first lawyer and the applicant's many absences from hearings – that should have led the trial court to consider that adequate representation was urgently required. That lack of adequate representation had exacerbated the consequences of the applicant's own inability to participate in his trial effectively and infringed his right to due process.
Conclusion: violation (unanimously).

Article 41 – EUR 45,000 in respect of non-pecuniary damage, in view of the particularly grave circumstances and the nature of the multiple violations.

INHUMAN OR DEGRADING TREATMENT
Inadequate medical care and conditions of detention of remand prisoner suffering from serious mental disorders: *violation*.

SŁAWOMIR MUSIAŁ - Poland (N° 28300/06)
Judgment 20.1.2009 [Section IV]

Facts: The applicant had suffered from epilepsy since early childhood and had also been diagnosed with schizophrenia and other serious mental disorders. He had attempted suicide and received in-patient treatment in a psychiatric hospital. In 2005 he was arrested on suspicion of robbery and battery and was thereafter detained in various remand centres without psychiatric facilities. His condition continued to require psychiatric supervision. On several occasions he was taken to a psychiatric hospital for emergency treatment following hallucinations and suicide attempts. He was twice admitted to psychiatric units for periods of several weeks for observation. In his application to the European Court, he made various complaints about the detention facilities, including of overcrowding, insanitary conditions, infestation and a lack of recreational facilities. The Government contested most of his allegations, but acknowledged problems of overcrowding. The applicant further complained of inadequate medical care and treatment for someone in his condition and submitted that he should have been held in a proper psychiatric institution instead of a detention facility.
In two recommendations (R(98)7 and Rec(2006)2) the Committee of Ministers of the Council of Europe stressed the need for prisoners whose mental health is incompatible with detention in prison to be held in suitably equipped facilities. While the recommendations are not binding on member States, the European Court has in recent judgments (*Rivière v. France*, 11 July 2006, Information note no. 88; and *Dybeku v. Albania*, 18 December 2007, Information note no. 103) drawn attention to the importance of complying with them.

Law: Article 3 – (a) *Admissibility (exhaustion of domestic remedies)*: The applicant's psychiatric problems were such that he could not be expected or required to follow the procedures scrupulously. Even though he had not lodged formal complaints under the relevant provisions, the penitentiary authorities had been aware of his situation as he had raised the matter of his medical care and detention conditions in each of his numerous applications to the courts for release and in a separate application to the Ombudsman, all of which had been dismissed as unfounded. The applicant had thus made sufficient attempts to bring his situation to the attention of the authorities.
In any event, a formal complaint would not have had sufficient prospects of success as overcrowding had been identified by the Constitutional Court as a structural problem affecting a large part of the prison population and the prison governors, while acknowledging the existence of the problem, had nevertheless decided to reduce the minimum space requirement. An action in the civil courts could only have afforded

a financial remedy and would not have changed the applicant's situation. Lastly, a complaint to the Constitutional Court would not have been effective as, although that court had recently ruled that it was unconstitutional for prisoners to be held indefinitely in cramped conditions, the applicant's main complaint was of inadequate medical care and of the need for a transfer to a specialised psychiatric institution. Only a remedy able to address his complaint in its entirety, not just selected aspects thereof, could offer realistic redress.
Conclusion: objection dismissed (unanimously).

(b) *Merits*: The conditions – overcrowding, limited access to exercise and recreation, poor hygiene and sanitary facilities – were not appropriate for ordinary prisoners, still less for a person with a history of mental disorder and in need of specialised treatment. Detained persons suffering from a mental disorder were more susceptible to a feeling of inferiority and powerlessness. Accordingly, increased vigilance was called for when reviewing compliance with the Convention in such cases. The very nature of the applicant's psychological condition had made him more vulnerable than the average detainee and his distress, anguish and fear may have been exacerbated by his detention in unsatisfactory conditions. Above all, the authorities' failure during most of the applicant's time in detention to hold him in a suitable psychiatric hospital or a detention facility with a specialised psychiatric ward had unnecessarily exposed him to a risk to his health and must have resulted in stress and anxiety. It also ignored the Committee of Ministers recommendations in respect of prisoners suffering from serious mental-health problems. In sum, the inadequate medical care and inappropriate conditions in which the applicant was held had clearly had a detrimental effect on his health and well-being. Owing to its nature, duration and severity, the treatment to which he was subjected had to be qualified as inhuman and degrading.
Conclusion: violation (unanimously).

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

Article 46 – *General measures*: In view of the seriousness and structural nature of the problem of overcrowding and resultant inadequate living and sanitary conditions in Polish detention facilities, the necessary legislative and administrative measures were to be taken rapidly in order to secure appropriate conditions of detention, in particular, for prisoners in need of special care because of their state of health.
Individual measures: Poland was required to secure at the earliest possible date the applicant's transfer to a specialised institution capable of providing him with the necessary psychiatric treatment and constant medical supervision.

INHUMAN OR DEGRADING TREATMENT
Pre-trial detention in humiliating and unfair conditions: *violation*.

RAMISHVILI and KOKHREIDZE - Georgia (N° 1704/06)
Judgment 27.1.2009 [Section II]

(See below, under Article 5 § 4).

INHUMAN OR DEGRADING TREATMENT
Use of excessive force by police to break up a peaceful demonstration: *violation*.

SAMÜT KARABULUT - Turkey (No 16999/04)
Judgment 27.1.2009 [Section II]

Facts: The applicant took part with 30-35 other people in a peaceful demonstration organised in Istanbul by a Turkish human-rights association to protest against Israeli operations in Palestine. The organisers had not given the authorities prior notification of the demonstration as they were required to do by law (Article 10 of Law no. 2911) and were asked repeatedly by the police to disperse. Although most of the demonstrators complied with the police's request almost immediately, the applicant intervened verbally

when he saw a fellow demonstrator being arrested. In allegations that were contested by the Government, he said that he was then arrested by 5 or 6 officers who punched and kicked him and also hit him on the head and back with a truncheon. The applicant and the other arrested demonstrator were taken to the police station before being released about an hour and a half later. The police took the applicant to see a doctor that evening and he saw a forensic doctor the following day. Both noted swelling to the head. Following a complaint by the applicant, the public prosecutor found that the police had not used excessive force to effect the arrest. That decision was upheld by the courts.

Law: Article 3 – There was no evidence in the contemporaneous medical reports to support the applicant's allegations that he had been subjected to a brutal attack by the arresting officers. Had the applicant wished to challenge the veracity of those reports, he could have obtained a further report from a doctor of his choice. The findings of the medical reports were, however, consistent with his having been hit on the head and the Government had not denied the use of force during the arrest. Accordingly, the burden of proof was on the Government to show that the force used was indispensable and not excessive. In the absence of evidence suggesting that the police had encountered violent or active physical resistance by the applicant during the arrest which would explain the injury and in particular its location, the Government had failed to discharge that burden.
Conclusion: violation (five votes to two).

Article 11 – The police intervention was prescribed by law and pursued the legitimate aims of preventing disorder and protecting public safety. In the absence of prior notification, the demonstration was unlawful. However, the unlawfulness of the demonstration did not *per se* justify an infringement of freedom of assembly and regulations in this sphere were not to be used as a hidden obstacle to the exercise of that freedom. The Government had not shown that the demonstrators represented a danger to public order or public safety and, in the absence of violence on their part, the authorities were expected to show a degree of tolerance. The demonstrators had in fact dispersed fairly quickly after being prompted by the police and the applicant had thus been forced to leave the scene without being given sufficient time to manifest his views. The police's intervention was therefore disproportionate.
Conclusion: violation (unanimously).

Article 41 – EUR 3,000 in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Applications relating to the August 2008 conflict between Georgia and Russia: *communicated*.

ABAYEVA – Georgia (N° 52196/08 et al.)
BEKOYEVA - Georgia
BOGIYEV - Georgia
BAGUSHVILI - Georgia
TEKHOVA - Georgia
TEDEYEV - Georgia
KONOVALOV - Georgia
14.1.2009 [Section V]

The applications were lodged by Russian nationals and concern the conflict that broke out between Georgia and the Russian Federation in early August 2008. They belong to a group of more than 3,300 cases with a similar factual background which have been lodged with the Court since then. The applicants complain of moral and physical suffering, the deaths of their family members and/or of damage or destruction of their property.
Communicated under Articles 2, 3, 8, 13 and 14 of the Convention and under Article 1 of Protocol No. 1 to the Convention. The applications were given priority under Rule 41 of the Rules of Court and questions about the exhaustion of domestic remedies and suitability for the "pilot judgment" procedure were put to the Government.

POSITIVE OBLIGATIONS
Failure by authorities properly to assess loss sustained by victim of police brutality: *violation*.

IRIBARREN PINILLOS - Spain (N° 36777/03)
Judgment 8.1.2009 [Section III]

Facts: The applicant was seriously injured during violent clashes in Pamplona in December 1991 by a smoke bomb that had been fired by riot police. A criminal investigation ensued, but was twice provisionally discontinued and the applicant's appeals were dismissed. Ultimately, however, the *Audiencia Provincial* overturned the impugned decisions in part, after finding "due evidence of an offence of assault occasioning bodily harm" by the security forces but that it was not possible to establish the identity of the officer who had fired the device. Subsequently, the applicant was awarded permanent invalidity benefit at 37% of the maximum rate.
The applicant also lodged a claim for damages from the authorities with the Ministry of the Interior. The investigating official advised that the applicant's claim should be allowed in part, but with reduced damages to take into account the applicant's involvement in the clashes and the dangerous situation he had put himself in. Despite a favourable opinion from the Ministry of the Interior's legal department, the Council of State, to which the matter had been referred for an opinion, considered that the applicant's claim should be dismissed as the identity of the person who had fired the smoke bomb was unknown and the applicant had taken part in the clashes in which it was fired. The Council of State therefore concluded in their report that the authorities were not responsible for the damage caused and that the applicant's claim failed under the general rule prohibiting the abuse of legal process. The Ministry of the Interior dismissed the applicant's claim.
The applicant then lodged an administrative complaint with the *Audiencia Nacional*, which granted his claim in part. It found that the authorities were responsible for his injuries which had been caused by the disproportionate acts of a police officer and that there was a clear causal link between the injuries and the officer's act. In its assessment of the damages to be paid to the applicant, the *Audiencia Nacional* took into account the applicant's presence and participation in the clashes and public disturbances in which the police had had to intervene, the applicant's age, the significant aesthetic damage the applicant had suffered and the long-term effects on his occupational and personal life. The Supreme Court quashed that judgment on the grounds that the security forces' response had not been disproportionate and that the applicant's injuries were the result of chance so that he had to bear the damage himself. The applicant lodged an *amparo* appeal with the Constitutional Court, but this was declared inadmissible on 21 October 2003.

Law: Article 3 – It was not disputed between the parties, and indeed had been established by the criminal courts, that the applicant had been injured by a police officer during violent clashes with the security forces. Although the ensuing investigation had not identified the officer who had fired the smoke bomb, the fact remained that the *Audiencia Provincial* had found that the police had committed an offence of assault occasioning bodily harm. The Spanish State's responsibility for the damage sustained by the applicant had, therefore, been established.
As to whether adequate reparation had been available to the applicant for the damage, the Court noted that he had had reasonable prospects of winning an action against the authorities as the administrative proceedings he had taken would in principle have enabled him to put forward the substance of his complaints of serious injury and to afford him appropriate redress for a violation of Article 3.
As to whether that remedy was effective in practice, the Court noted that the criminal courts had not established or sought to establish whether the applicant shared any responsibility for the damage he had sustained and that the administrative courts had not carried out any further investigation with a view to determining his share of liability. The applicant could not be required to bear the financial consequences of being hit by the smoke-bomb alone, as the use of such a device had necessarily entailed a risk to the physical integrity and even the lives of those present. In their decisions rejecting the applicant's claims for compensation, the domestic courts had not given sufficient consideration to the gravity and after-effects of his injuries, and had failed to determine whether the security forces' use of the device was strictly necessary and proportionate to the legitimate aim of putting an end to the disturbances. The Supreme Court had failed to take into account the authorities' responsibility for the events as established by the

criminal courts and had not properly examined whether the applicant had suffered actual, quantifiable damage or whether there was a causal link between the act and the damage. Lastly, no inquiries had been made and no reasons had been put forward to explain the difference between the Supreme Court's finding and the finding of the criminal courts.
Conclusion: violation (unanimously).

Article 6 § 1 – The period to be taken into consideration had started on 15 December 1991, when the applicant sustained his injuries and the criminal investigation began, and had ended on 21 October 2003 with the decision of the Constitutional Court. The period under consideration was thus 11 years and 10 months. In arriving at that conclusion the Court noted that the criminal proceedings instituted to identify those responsible for the injuries were a condition *sine qua non* to the establishment of the State's liability. Further, over and beyond the rule requiring civil proceedings to await the outcome of the criminal trial, the Court considered that the period to be taken into consideration in the instant case had to include all the steps taken by the applicant to identify the offenders in the criminal proceedings and to obtain compensation in administrative proceedings for the damage he had sustained as a result of the actions of a member of the security forces.
Although the case had been somewhat complex, this could not explain such lengthy proceedings. As to the applicant's conduct, there was nothing before the Court to suggest that he had been responsible for any substantial delays. Accordingly, the proceedings had not taken place within a "reasonable time".
Conclusion: violation (unanimously).

Article 41 – EUR 100,000 for pecuniary damage (unanimously) and EUR 40,000 in respect of non-pecuniary damage (four votes to three).

ARTICLE 5

Article 5 § 1

LAWFUL ARREST OR DETENTION
Arrest of witness in order to put pressure on his fugitive brother and lack or inadequacy of reasons for pre-trial detention: *violations*.

GIORGI NIKOLAISHVILI - Georgia (N° 37048/04)
Judgment 13.1.2009 [Section II]

Facts: In July 2003 photographs of the applicant, his brother and two other men were posted on "wanted persons" boards in police stations. The four men were identified by name and stated to be wanted in connection with a murder. In subsequent correspondence between the applicant's lawyer and the Ministry of the Interior, it emerged that the only wanted man was the applicant's brother and that operational measures were being taken to interview the applicant as a witness in view of his repeated refusals to appear before the district prosecutor. In March 2004 the applicant decided to attend the district prosecutor's office voluntarily. However, upon his arrival and without being examined as a witness, he was arrested on suspicion of firearms charges based on evidence that had been obtained in the course of the murder investigation. He was remanded in custody for three months by a district court. That decision was upheld by a regional court, which stated, *inter alia*, that the applicant's release might hamper the establishment of the truth in the murder case to which his own case might be related. Although the applicant's pre-trial detention expired on 30 June 2004 and was not renewed until the committal hearing before the district court on 24 January 2005, he remained in custody throughout that period. As with the initial detention order, the district court gave standard, pre-printed reasons for remanding him in custody.

Law: Article 5 § 1 – (a) *Arrest*: According to the record, the authorities had not intimated at any stage prior to his voluntary appearance as a witness in the unrelated murder case that there was any possibility of criminal proceedings being brought against the applicant, despite the fact that the evidence on the

firearms charge had been obtained many months before. In short, they had misled the applicant about the real reason for their interest in him which was to put pressure on his fugitive brother. Such opaque methods were liable to undermine legal certainty, instil insecurity in persons summoned as witnesses and undermine public respect for and confidence in the prosecution authorities. Even if formally consistent with domestic law, the applicant's arrest had served to acquire additional leverage over the unrelated criminal proceedings, an aim that was extraneous to Article 5 § 1 (c). The authorities' misleading methods, with the prospect of detention being used to exert moral pressure, had accordingly resulted in arbitrariness and a failure to safeguard the applicant from undue threats to his liberty.
Conclusion: violation (unanimously).

(b) *Detention from June 2004 to January 2005*: Following the expiry of the initial detention order on 30 June 2004 the applicant's pre-trial detention was not covered by any further court order until 24 January 2005, when his continued detention was authorised at the committal hearing. The problem stemmed from a deficiency the Court had previously noted in the Georgian criminal procedure in that the Code of Criminal Procedure did not require a court order for the defendant's detention between the end of the investigation and the committal proceedings, or specify any statutory periods for that phase of detention. This had resulted in the practice of defendants being detained, as in the applicant's case, for months without any judicial decision.
Conclusion: violation (unanimously).

Article 5 § 3 – The domestic courts had failed to give sufficient or relevant reasons for the applicant's pre-trial detention. In its two decisions, the district court had simply used standard forms containing pre-printed reasoning in abstract terms. For its part, the regional court had sought to justify the applicant's pre-trial detention by reference to the interests of the investigation into the completely unrelated murder case pending against his brother. This was alien to Convention objectives and circumvented the very essence of the exception under Article 5 § 1 (c) of the Convention. Lastly, the fact that the applicant's pre-trial detention had lasted some ten months showed that the authorities had failed to deal with the case with the special diligence required.
Conclusion: violation (unanimously).

The Court also found violations of Article 5 § 4 (in respect of the applicant's inability to contest the prosecution's submissions on the issue of detention at the committal stage) and of Article 8 (as the posting of the applicant's photograph on the wanted board was not accordance with domestic law).

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

Article 5 § 3

LENGTH OF PRE-TRIAL DETENTION
Pre-trial detention of minor in adult prison for four and a half years: *violation*.

GÜVEÇ - Turkey (N° 70337/01)
Judgment 20.1.2009 [Section II]

(See Article 3 above).

GUARANTEES TO APPEAR FOR TRIAL
RELEASE PENDING TRIAL
Level of recognizance required to secure release on bail of a ship's captain in maritime pollution case: *no violation*.

MANGOURAS - Spain (N° 12050/04)
Judgment 8.1.2009 [Section III]

Facts: The applicant was the captain of a vessel, the Prestige, which while sailing off the Spanish coast in November 2002 released into the Atlantic Ocean 70,000 tonnes of fuel oil when the hull sprang a leak. The spillage caused an environmental catastrophe whose effects on marine flora and fauna lasted for several months and spread as far as the French coast.
A criminal investigation was opened and the investigating judge remanded the applicant in custody with bail fixed at EUR 3,000,000. The investigating judge noted that the applicant may have committed criminal offences through the damage the ship had caused to natural resources and the environment and by failing to obey instructions from the port authorities. In the investigating judge's opinion, the gravity of the charges and the applicant's foreign nationality and lack of any particular connection with Spain justified bail being fixed in such a large amount. The applicant applied for release and, in the alternative, for a reduction in the amount of bail. The investigating judge dismissed that application on the ground that his continued detention was justified by the gravity of the charges. With regard to the level of bail, the judge reiterated the reasons that had been given previously and stated that the applicant's attendance at the trial was essential in order to establish the sequence of events after the leak appeared in the ship's hull. An application to have that decision set aside and an appeal by the applicant were dismissed.
The investigating judge subsequently ordered the applicant's release on bail subject to certain conditions following the deposit of the bank guarantee in the requisite amount. An *amparo* appeal by the applicant to the Constitutional Court contesting the level at which bail had been fixed was declared inadmissible.
The Spanish authorities later authorised the applicant's return to his country of origin, where he is now living, on condition that the Greek authorities ensured that he was subject to the same periodic supervision as in Spain. That meant his reporting every two weeks to the police station on the island where he was born, or in Athens. The criminal proceedings against him are still pending.

Law: The applicant had been deprived of his liberty for 83 days and had been released against the provision of a bank guarantee for EUR 3,000,000, that being the amount of bail demanded.
The Court accepted that the level fixed for bail was high, but noted that it had been paid by the insurance company acting for the owner of the vessel – who was also the applicant's employer – under an insurance policy covering civil liability for damage arising from pollution caused by the ship, and thus in accordance with the contractual legal relation between the owner and the insurers. After payment of the sum concerned the applicant had returned to Greece, where he reported regularly to the police. The main purpose for which bail was fixed – to ensure his attendance at the trial – therefore continued to subsist.
In these circumstances, the Court could not disregard the growing and legitimate concern, both in Europe and internationally, about environmental offences. It noted in that connection the States' powers and obligations regarding the prevention of marine pollution and the unanimous determination among States and European and international organisations to identify those responsible and to ensure that they stood trial and were punished.
The special nature of offences committed in the context of the "hierarchy of responsibilities" that was specific to the law of the sea and, in particular, to cases involving damage to the maritime environment, had to be taken into account and distinguished the applicant's case from other length-of-pre-trial detention cases. The seriousness of the case had justified the Spanish courts' concern to allocate responsibility for what was a natural catastrophe, and they had accordingly acted reasonably in seeking to ensure the applicant's attendance at the trial by fixing a high level of bail. Consequently, the national authorities had sufficiently demonstrated that the level of bail the applicant had been required to put up was proportionate and had sufficiently taken into account his personal circumstances, in particular the fact that he was an employee of the vessel's owner which, in turn, was insured against this type of risk. The amount of bail demanded, though high, had not been disproportionate, regard being had to the legal interest being

protected, the seriousness of the offence and the catastrophic consequences, both environmental and economic, caused by the spillage of the ship's cargo.
Conclusion: no violation (unanimously).

Article 5 § 4

PROCEDURAL GUARANTEES OF REVIEW
Review of lawfulness of pre-trial detention in humiliating and unfair conditions: *violation*.

RAMISHVILI and KOKHREIDZE - Georgia (N° 1704/06)
Judgment 27.1.2009 [Section II]

Facts: The applicants were co-founders and shareholders of a television channel. The first applicant enjoyed a wider reputation as anchorman of a popular TV talk-show. Both applicants were on trial for the offence of extortion for allegedly demanding payment in exchange for not disclosing an embarrassing documentary about an allegedly corrupt parliamentarian. The court remanded them in custody and they appealed. The regional court dismissed their appeal at an oral hearing. In an extremely overcrowded hearing room the applicants were kept in a barred dock, surrounded by several guards. During his pre-trial detention, the first applicant was transferred to a punishment cell as a disciplinary measure. He shared the cell, which measured 5.65 square metres and was intended for solitary confinement, with one other person. He complained to the authorities about the conditions of his detention in that cell, explaining that it was infested with cockroaches and rats, had no window or ventilation and was extremely damp, as tap water ran non-stop 24 hours a day. Furthermore, a narrow pipe in the corner served as a toilet, which was not separated from the rest of the cell, and a stench hung in the air permanently. He was obliged to share a 120 cm wide bed, infested with vermin, with a stranger and could not even relieve himself in "the toilet" without being observed. He was not allowed to take outdoor exercise. His complaint was dismissed. The second applicant was placed in a cell with 12 beds, where 29 to 35 prisoners were kept at different points in time. In 2006 both applicants were convicted as charged.

Law: Article 3 – The applicants were people enjoying social esteem and had been on trial for the first time. During the judicial review of the issue of their detention, the public had seen them in a barred dock which looked very much like a metal cage, separated from the rest of the court room. Heavily armed guards wearing black hood-like masks had been present in the court room. The hearing had been broadcast live throughout the country. Such a harsh and hostile appearance of judicial proceedings could have led an average observer to believe that "extremely dangerous criminals" had been on trial. Apart from undermining the principle of the presumption of innocence, the disputed treatment in the court room had humiliated the applicants in their own eyes, if not in those of the public. The special forces in the courthouse had aroused in them feelings of fear, anguish and inferiority. Nothing in the case file suggested that there had been the slightest risk that the applicants, who were well-known and apparently quite harmless, might have absconded or resorted to violence. The Government had failed to provide any justification for such stringent and humiliating measures.
Conclusion: violation (unanimously)

The Court found further violations of Article 3 on account of the applicants' conditions of detention.

Article 5 § 4 – The Court deplored the manner in which the judicial review of the lawfulness of the applicants' detention had been held. During the hearing, they had been placed in a caged dock at the far end of the court room in complete disorder and surrounded by guards. They were hardly able to communicate with their lawyers, could not be properly heard by the prosecutor and the judge and their submissions were barely audible due to the turmoil in the room. They had had to stand on a chair in the barred dock, hanging on to the metal side bars, and shout. Communication in the court room had been constantly hampered by the unsolicited interruptions of journalists, the unabated ringing of mobile telephones, and persons vehemently arguing and swearing. The judge had been either unwilling or unable

to establish order. Unlike the prosecutor, the applicants' advocates, when making their defence statements, had been dazzled by camera flashes and halogen camera lights. Their statements had been hardly audible. By contrast, due to the immediate proximity of the prosecutor's seat to the judge, the dialogue of questions and answers between them had been unaffected and had presented no comparable obstacle of audibility. An oral hearing in such chaotic conditions could hardly have been conducive to a sober judicial examination. The Court could not accept the Government's argument that the possibility of written applications could have palliated the turmoil in the court room. Oral hearings should create conditions such that verbal responses and audio-visual exchanges between the parties and the judge in a court room flow in a decent, dynamic and undisturbed manner. The applicants' confinement inside the barred dock which looked like a metal cage and the presence of "special forces" in the courthouse had been detrimental to their powers of concentration which were indispensable for conducting an efficient defence. Such humiliating and unjustifiably stringent measures of restraint during the public hearing, which was broadcast throughout the country, had tainted the presumption of innocence. The personal conduct of the judge could not be said to have been devoid of bias. He had visibly been aiding the prosecutor during the hearing by either directly responding to the questions of the defence instead of the latter or rephrasing the questions in a manner more advantageous to the prosecutor. Given the high number of undercover government agents and even "special forces" present at the hearing, the court could not be said to have given the appearance of independence. These agents had seemed to be more in control of the situation in the court room than the judge himself. The latter's deliberation room, which should have been private and inviolable, had been easily accessed by strangers. The judicial review of the lawfulness of the applicant's detention had therefore lacked the fundamental requisites of a fair hearing. *Conclusion*: violation (unanimously).

For more information, see Press release no. 64.

ARTICLE 6

Article 6 § 1 [civil]

ACCESS TO COURT
Inability of local employee at foreign embassy to bring action for unlawful dismissal in the host country: *relinquishment in favour of Grand Chamber*.

ČUDAK - Lithuania (N° 15869/02)
[Section II]

The applicant claimed compensation as a result of her dismissal from the post of call-receptionist at the Polish embassy in Vilnius. The Lithuanian courts discontinued the proceedings for lack of jurisdiction.

For more information, see the decision on admissibility in HUDOC and a summary thereof in Information Note no. 84.

See also *Sabeh El Leil v. France* in Information Note no. 114, and *Fogarty v. the United Kingdom* [GC] in Information Note no. 36.

FAIR HEARING
Refusal to hear expert evidence in case concerning liability for medical costs incurred in connection with sex-change operation: *violation*.

SCHLUMPF - Switzerland (N° 29002/06)
Judgment 8.1.2009 [Section I]

Facts: The applicant was registered at birth under the name Max Schlumpf, of male sex. According to an expert medical report in 2004, the applicant decided in 2002 to change sex and from then on had lived her daily life as a woman. She began hormonal therapy in January 2003 and had been receiving psychiatric and endocrinological treatment since May 2003. The doctor confirmed the diagnosis of male-female transsexualism and stated that the applicant satisfied the conditions for a sex-change operation.
In 2004 the applicant asked her health insurers to pay the costs of the sex-change operation. They refused on the ground that under the case-law of the Federal Insurance Court the mandatory clause which health-insurance policies were required to include for reimbursement of the costs of a sex-change operation applied only in cases of "true transsexualism", which could only be established after a two-year observation period during which the patient was required to receive psychiatric and endocrinological treatment.
Following an operation, which was successful, the applicant asked her health insurers to issue a decision against which an appeal would lie, but they refused. She unsuccessfully appealed against that decision. In the meantime, the applicant's civil status was modified to reflect her sex-change and she was registered under the forename of Nadine.
The applicant appealed to the cantonal insurance court, which set aside the health-insurers' refusal to pay the costs of the sex-change operation after accepting that the diagnosis of the applicant's transsexualism was certain. The insurance company appealed to the Federal Insurance Court. The applicant explicitly asked the Federal Insurance Court for a public hearing and requested that it call expert witnesses to answer questions on the treatment of transsexualism. The Federal Court refused her request for a public hearing, partly on the grounds that the relevant issues were legal questions, so that a public hearing was not necessary. It also reaffirmed the pertinence of the two-year observation period, noting that despite the views expressed by the experts during the proceedings and advances in medical knowledge, it was still necessary to exercise caution, particularly as the operation was irreversible and it was important to avoid unjustified operations. The Federal Insurance Court found that at the time of the operation the applicant had been under psychiatric observation for less than two years so that the health-insurers had been justified in refusing to reimburse the costs.

Law: Article 6 § 1 – (a) *Right to a fair hearing*: It had been disproportionate not to accept expert opinions especially as it was not in dispute that the applicant was ill. By refusing to allow the applicant to adduce such evidence, on the basis of an abstract rule which had its origin in two of its own earlier decisions, the Federal Insurance Court had substituted its own view for that of the doctors and psychiatrists, even though the European Court had previously ruled that determination of the need for sex-change measures was not a matter for judicial assessment. Consequently, the applicant had not had a fair hearing before the Federal Insurance Court.
Conclusion: violation (unanimously).

(b) *Right to a public hearing*: In the light of the foregoing conclusions concerning the right to a fair hearing, determination of the need for a sex change could not be regarded as a purely legal issue. Further, determination of the need for a sex-change operation was not so technical a process as to justify an exception to the right to a public hearing, especially as the parties did not agree on the need for an observation period. Moreover, domestic law expressly granted the President of the Federal Insurance Court the right to direct the conduct of the hearing. The applicant had thus been denied a public hearing before the domestic courts.
Conclusion: violation (unanimously).

Article 8 – The proceedings instituted by the applicant in the domestic courts concerned her freedom to decide on her gender identity. While the Convention did not guarantee any right to the reimbursement of

medical costs incurred for a sex change and nobody had prevented the applicant from having a surgical operation, the two-year wait imposed by the insurance company contrary to the clear views of the specialists was, in the light notably of the applicant's relatively advanced age, liable to influence her decision whether to have the operation. The applicant could therefore claim victim status for the purposes of Article 34 of the Convention.
The central issue in the case was the manner in which the Federal Insurance Court had applied the criteria governing the reimbursement of medical costs when called upon to decide the applicant's claim for the reimbursement of the costs of her sex-change operation. It had relied on a criterion without any statutory basis which it had established in its own case-law. When insisting on compliance with the two-year observation period, the Federal Court had refused to carry out an analysis of the specific circumstances of the applicant's case or to weigh up the various competing interests. The domestic authorities should have taken the specialists' opinions into account in order to determine whether an exception should be made to the two-year rule, in particular in view of the applicant's relatively advanced age and her interest in having an operation without delay. Further, the Federal Insurance Court had failed to take into account the medical advances that had been made in identifying "genuine" transsexualism since its two leading judgments in 1988. Respect for the applicant's private life would have necessitated the medical, biological and psychological facts, which had been unequivocally explained by the medical experts, to be taken into account to avoid the mechanical application of the two-year observation period. In view of the applicant's very particular situation – she had been over 67 years old when she requested the State to pay for the operation – and the respondent State's limited margin of appreciation in relation to a question concerning one of the most intimate aspects of private life, the Court concluded that a fair balance had not been struck between the insurance company's and the applicant's interests.
Conclusion: violation (five votes to two).

Article 41 – EUR 15,000 for non-pecuniary damage (five votes to two).

PUBLIC HEARING
Lack of public hearing in case concerning liability for medical costs incurred in connection with sex-change operation: *violation*.

SCHLUMPF - Switzerland (N° 29002/06)
Judgment 8.1.2009 [Section I]

(See above).

ADVERSARIAL TRIAL
Refusal by the Court of Justice of the European Communities to authorise a third party to respond to the Advocate General's opinion: *inadmissible*.

COOPERATIEVE PRODUCENTENORGANISATIE VAN DE NEDERLANDSE KOKKELVISSERIJ U.A - the Netherlands (N° 13645/05)
Decision 20.1.2009 [Section III]

In July 1999 and July 2000, the applicant association obtained licences which would allow it to fish for cockles in an area protected under European Community environmental legislation.
In 2001 two environmentalist non-governmental organisations (NGOs) instituted court proceedings, arguing that mechanical cockle fishing caused long-term and possibly irreversible damage to ecologically vulnerable areas. The domestic tribunal sought a preliminary ruling from the Court of Justice of the European Communities (ECJ) under Article 234 of the EC Treaty. The NGOs, the applicant association, the respondent Government and the European Commission all submitted observations to the ECJ. Following proceedings in writing, the ECJ held an oral hearing. At a later date, the Advocate General's advisory opinion was read out in public. The applicant association requested permission to submit a written response to that opinion; in the alternative, an order for the reopening of the oral proceedings; and

in the further alternative, some other opportunity to revisit the advisory opinion. The ECJ dismissed these requests, noting, *inter alia*, that the applicant association had not submitted any precise information showing that it was either useful or necessary to reopen the oral proceedings. In 2004 the ECJ gave its preliminary ruling, opining that as a matter of Community law the respondent Government could grant a licence for mechanical cockle fishing to the applicant association provided that it was shown beyond reasonable scientific doubt that such fishing would not adversely affect the natural habitat in the area concerned. The domestic tribunal allowed the participants in the proceedings before it to respond in writing to the judgment of the ECJ and held a further hearing before giving its judgment. Finding it established, in the absence of scientific evidence to the contrary, that the impact of mechanical cockle fishing on the natural habitat appeared likely to be "significant", it annulled the cockle-fishing licences issued to the applicant association. The latter complained that its right to adversarial proceedings had been violated as a result of the refusal of the ECJ to allow it to respond to the Opinion of the Advocate General.

Inadmissible: The Court proceeded on the assumption that Article 6 was applicable to the preliminary ruling procedure before the ECJ. In so far as the applicant's complaints had to be understood as directed against the European Community itself, which had separate legal personality as an international intergovernmental organisation and was not a party to the Convention, the application was incompatible with the provisions of the Convention *ratione personae.*

However, the responsibility of the Kingdom of the Netherlands as a respondent Party was engaged, given that the applicant's complaint was based on an intervention of the ECJ sought by a domestic court in proceedings pending before it (contrast with *Boivin v. France*, in Information Note no. 111). The interpretation which the ECJ had given of Community law was authoritative and could not have been ignored by the domestic court. However, there was a presumption that a Contracting Party had not departed from the requirements of the Convention where it had taken action in compliance with legal obligations flowing from its membership of an international organisation to which it had transferred part of its sovereignty as long as the relevant organisation protected fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which could be considered at least equivalent to that for which the Convention provides (see *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Şirketi ("Bosphorus Airways") v. Ireland* [GC] in Information Note no. 76). As a corollary, this presumption applied not only to actions taken by a Contracting Party but also to the procedures followed within the international organisation itself and, in particular, to the procedures of the ECJ. In that respect, such protection did not have to be identical to that provided by Article 6 of the Convention; the presumption could be rebutted only if, in the circumstances of a particular case, it was considered that the protection of Convention rights had been manifestly deficient. In examining whether the procedure before the ECJ had ensured equivalent protection of the applicant's rights, the Court gave weight to the possibility offered by Rule 61 of the ECJ's Rules of Procedure – a possibility which had to be accepted as realistic and not merely theoretical – to order the reopening of the oral proceedings after the Advocate General had read out his or her opinion if the ECJ found it necessary to do so and to the fact that requests by one of the parties to reopen the proceedings were considered on their merits. Furthermore, the domestic court could have submitted a further request for a preliminary ruling to the ECJ if it had found itself unable to decide the case on the basis of the first such ruling. In the light of these considerations, the applicant association had failed to rebut the presumption that the procedure before the ECJ provided equivalent protection of its rights: *manifestly ill-founded*.

See also *Emesa Sugar N.V. v. the Netherlands*, in Information Note no. 71.

Article 6 § 1 [criminal]

ACCESS TO COURT
Obligation on foreign association without a head office in France to make a declaration to the prefecture in order to be able to take part in court proceedings: *violation*.

LIGUE DU MONDE ISLAMIQUE and ORGANISATION ISLAMIQUE MONDIALE DU SECOURS ISLAMIQUE - France (N° 36497/05)
Judgment 15.1.2009 [Section V]

Facts: The two applicant associations each lodged a complaint for defamation and applied to join the proceedings as civil parties. Their complaints followed the circulation in France of an article from an Egyptian daily newspaper on the civil actions that had been brought in the United States by nine American law firms on behalf of relatives of the victims of the attacks of 11 September 2001 against various categories of defendants, including the two applicant associations, which the article said were accused of providing material support for terrorism. The public prosecutor asked the investigating judge at the *tribunal de grande instance* to hear representations from the applicant associations and to invite them to produce documentary evidence that, in their capacity as foreign associations, they had taken the steps required by law to obtain capacity to take part in legal proceedings in France. The applicant associations produced evidence that they were duly declared in their country of origin and so had legal personality and capacity to take part in proceedings. The investigating judge declined to investigate either association's complaint. The applicant associations appealed. The indictments division overturned the investigating judge's orders and reclassified them as a ruling that the complaints were inadmissible. The applicant associations appealed on points of law, but their appeals were dismissed on the grounds that they had not complied with the statutory procedure which all associations, both French and foreign, were required to follow to obtain capacity to take part in judicial proceedings.

Law: Questions relating to the formation of associations and the recognition of their legal capacity through a prior declaration to the prefecture were governed by the Law of 1 July 1901. Section 5, paragraph 3, of that statute provided that where the association's head office was located abroad, the prior declaration required to obtain legal capacity had to be made at the prefecture for the *département* where its main office in France was located. The wording of that subsection indicated that it was intended to apply to foreign associations who wished to establish themselves in France in order to carry on an activity. It did not expressly address the question of how an association which, like the applicant associations, had its head office abroad and did not carry on any activity in France could obtain capacity to take part in legal proceedings there to defend its civil rights. The courts had required a declaration to be made at the prefecture where the main office was based. However, the applicant associations did not have such an office in France. Moreover, the ambiguity of the requirement to make a declaration in the locality where the main office was situated was heightened by the fact that, following the courts' decisions, the Ministry of Foreign Affairs had informed the applicant associations' lawyer that foreign associations had to make the declaration at the prefecture for the locality where they had elected domicile whereas, in a letter to the same lawyer, the police had required the association to open a main office in France. The Court noted in this connection that neither the relevant legislation nor the related case-law referred to the notion of elected domicile. Moreover, although the applicant associations had in fact elected domicile at their lawyer's office, this had been for the purposes of the proceedings they had instituted in the French courts. That election of domicile could not constitute a fictitious main office for the purposes of complying with the legal requirements. Accordingly, by requiring the declaration prescribed by law, the French authorities had not only penalised the failure to comply with a simple formal step that was necessary to protect public order and third parties, they had also imposed an actual restriction on the applicant associations that was not sufficiently foreseeable and infringed the very essence of their right of access to court.
Conclusion: violation (unanimously).

RIGHT TO A COURT
Quashing of final judgment by way of supervisory review for serious deficiencies in criminal proceedings: *no violation*.

LENSKAYA - Russia (N° 28730/03)
Judgment 29.1.2009 [Section I]

Facts: In 2000 the authorities instituted criminal proceedings against Mr Ch., the applicant's former husband, on the basis of her allegation that he had assaulted her. On 15 July 2002 the district court found Mr Ch. guilty of assault, sentenced him to six months correctional labour suspended on probation and awarded the applicant damages for pecuniary and non-pecuniary loss. The conviction was upheld on appeal. On Mr Ch.'s request, the President of the regional court instituted supervisory-review proceedings. The court held a hearing at which the applicant was present and able to submit her arguments. On 11 December 2002 the Presidium of the regional court quashed the final judgment against Mr Ch. and acquitted him because the courts in the original proceedings had, without a proper assessment of the evidence, presumed that the applicant's injuries had been inflicted by Mr Ch. without proving his guilt and thereby violating the presumption of innocence.

Law: The rule of law being one of the fundamental principles of legal certainty, no party should be entitled to seek the reopening of proceedings merely for the purpose of obtaining a rehearing and a fresh decision on the case. Departures from that principle might be justified only when made necessary by circumstances of a substantial and compelling character. In Mr Ch.'s case, the trial courts had failed to establish with certainty that the criminal act he had been accused of had actually taken place, so that by finding him guilty, they had violated his right to be presumed innocent. In such circumstances, the Presidium's decision to quash the final judgments, flawed as they were, did not appear unreasonable or arbitrary. Having examined the entire case file, the Presidium found that the lower courts had committed a miscarriage of justice by subjecting Mr Ch. to an unmerited conviction, which was sufficient in nature and effect to warrant the reopening of the proceedings. Recalling that the Convention in principle permitted the reopening of a final judgment to enable the States to correct miscarriages of criminal justice, the Court considered that leaving errors such as those committed in Mr Ch.'s case uncorrected would seriously affect the fairness, integrity and public reputation of judicial proceedings. Furthermore, there was nothing to indicate that the Presidium's evaluation of the facts and evidence presented in the supervisory-review proceedings had been contrary to the requirements laid down by Article 6 of the Convention. The applicant had not only attended the supervisory-review hearing, she had also been provided with ample opportunities to present her arguments and challenge the submissions of her adversary. In the particular circumstance of the case, the Court thus concluded that the quashing of the judgment of 15 July 2002 had not deprived the applicant of her "right to a court" under Article 6 § 1 of the Convention.
Conclusion: no violation (unanimously).

Having regard to the conclusion under Article 6, the Court further found that there had been no violation of Article 1 of Protocol No. 1 to the Convention.

FAIR HEARING
Lack of reasoning in assize court judgment convicting defendant: *violation*.

TAXQUET - Belgium (N° 926/05)
Judgment 13.1.2009 [Section II]

Facts: In 2003 the applicant and seven co-accused stood trial in an assize court on charges of murdering a government minister, A.C., and attempting to murder the minister's partner, M-H J., in 1991. A person described by the applicant as an anonymous witness had given certain information to the investigators in 1996, but had never been interviewed by the investigating judge. The information, which was set out in 15 points, stated that A.C.'s murder had been planned by 6 people, including the applicant and a senior political figure. In 2004 the assize court convicted the applicant and sentenced him to 20 years'

imprisonment, after the jury had been asked to answer 31 questions from the president of the assize court, 4 of which concerned the applicant. The assize court made 13 interlocutory orders during the trial, which was marked by a number of incidents. The applicant appealed on points of law against both his conviction by the assize court and the interlocutory orders, but his appeal was dismissed by the Court of Cassation.

Law: Article 6 § 1 – *Lack of reasoning in assize court judgment*: While it was acceptable for a higher court to a set out the reasons for its decisions succinctly by reference to the reasoning of the court below, the same was not necessarily true of a criminal court sitting at first instance. In the applicant's case, the assize court's judgment was based on 31 questions that had been put to the jury at the trial, 4 of which concerned the applicant. The jury had answered all the questions in the affirmative. Moreover, identical questions had been put to the jury in respect of all 8 accused rather than of each accused individually. The questions had been asked in such a way that the applicant could legitimately complain that he did not know why affirmative answers had been given each question when he had denied all personal involvement in the alleged offences. Such laconic answers to what were vague and general questions could have conveyed to the applicant an impression of arbitrary justice lacking in transparency. Since he had not been given so much as a summary of the assize court's main reasons for finding him guilty, he was unable to understand – or, therefore, to accept – its decisions. This was particularly significant because the jury did not reach its verdict on the basis of the case file but on the basis of the evidence it heard at the hearing. It had therefore been important in order to explain the verdict to the accused and to public opinion – the "people" in whose name the decision was taken – for the considerations that had persuaded the jury of the accused's guilt or innocence to be explained and for the precise reasons for the positive or negative replies to each of the questions to be indicated. In these circumstances, the Court of Cassation had been prevented from carrying out an effective review and from identifying issues such as whether the reasoning was defective or inconsistent.
Conclusion: violation (unanimously).

Article 6 §§ 1 and 3 (d) – *Failure to examine the anonymous witness*: The applicant submitted that his conviction had been based to a decisive extent on the statements of an anonymous witness whom he had not been able to examine or to have examined at any stage of the proceedings. The witness's identity had not been disclosed to the assize court and he had not been examined by the investigating judge. He had provided information that was noted down by two non-commissioned officers of the gendarmerie. The information concerned the planning of A.C.'s murder had been set out in 15 points, only one of which referred to the applicant, with his name featuring as one of a group of people who were said to have planned the murder. In the Court's view, it was desirable in the interests of the proper administration of justice for anonymous statements to be examined by a judge who knew the identity of the witness, had verified the reasons for anonymity and had been able to express an opinion on the witness's credibility in order to establish whether there was any animosity between the witness and the accused. Further, it was unclear from the case file whether the conviction of the applicant, who had consistently denied the charges, was based on objective evidence, solely on the information provided by the anonymous witness or, as indicated in the indictment, solely on the statement of one of the co-accused incriminating the applicant. As the applicant had been unable to examine the anonymous witness or to have him examined at any stage of the proceedings and since there had been no assessment of the reliability of the witness's evidence by an investigating judge, the applicant's fears regarding the use that had been made of the witness's statements could be regarded as justified. In these circumstances, the procedure before the assize court in the applicant's case taken both as a whole and as regards its specific features, had hindered the exercise of his defence rights. He had not, therefore, had a fair trial.
Conclusion: violation (unanimously).

Article 41 – EUR 4,000 in respect of non-pecuniary damage.

FAIR HEARING
Inability of minor defendant to participate effectively in his criminal trial and lack of adequate legal representation: *violation*.

GÜVEÇ - Turkey (N° 70337/01)
Judgment 20.1.2009 [Section II]

(See Article 3 above).

FAIR HEARING
Alleged procedural defects in proceedings concerning tax penalties: *admissible*.

OAO NEFTYANAYA KOMPANIYA YUKOS - Russia (N° 4902/04)
Decision 29.1.2009 [Section I]

The applicant was a holding company established by the Russian Government in 1993 to own and control a number of stand-alone entities specialised in oil production. It had been fully State-owned until 1995-1996 when, through a series of tenders and auctions, it was privatised. On 14 April 2004, the Tax Ministry ordered the applicant company to pay tax arrears for the year 2000 as well as default interest and a fine in the amount of EUR 2.89 billion. On the same day, the Ministry applied to the Moscow City Commercial Court requesting the seizure of the applicant company's assets as security for the claim. The court issued an injunction prohibiting the applicant company from disposing of its assets pending the outcome of the litigation, but the injunction did not concern goods produced by the company and related cash transactions. The domestic courts for the most part upheld the Ministry's decision and the court judgment in this respect became enforceable on 29 June 2004. On the following day the court issued a writ of execution and the bailiffs commenced the enforcement, seized the applicant company's assets and gave it five days to pay the debt voluntarily. Analogous proceedings were conducted in respect of the applicant company's 2001-2003 tax assessment. The applicant company eventually went bankrupt and in 2007 it ceased to exist.

Law: Since the applicant company had been liquidated by a domestic court decision of 12 November 2007, the Government had requested the Court to discontinue the examination of the case. The Court noted that the various alleged breaches of the Convention in the applicant company's case concerned tax assessments and enforcement proceedings which had eventually resulted in its bankruptcy and ceasing to exist as a legal person. Striking the application out of the list under such circumstances would have undermined the very essence of the right of individual applications by legal persons, as it would have encouraged governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality. The Government's request was therefore rejected.

Admissible under Article 6 § 1 (concerning the 2000 tax assessment), Article 7 of the Convention (concerning the lack of a proper legal basis, selective and arbitrary prosecution and the imposition of double penalties in the 2000-2003 tax assessments) and under Article 1 of Protocol No. 1 taken alone and in conjunction with Articles 1, 13, 14 and 18 of the Convention (concerning the lawfulness and proportionality of the 2000-2003 tax assessments and their subsequent enforcement).

REASONABLE TIME
Length of proceedings to determine questions of liability and quantum in police brutality case: *violation*.

IRIBARREN PINILLOS - Spain (N° 36777/03)
Judgment 8.1.2009 [Section III]

(See Article 3 above).

Article 6 § 3 (d)

EXAMINATION OF WITNESSES
Inability of defendant in criminal proceedings to question an anonymous witness and failure by investigating judge to assess reliability of the witness's evidence: *violation*.

TAXQUET - Belgium (N° 926/05)
Judgment 13.1.2009 [Section II]

(See Article 6 § 1 above).

EXAMINATION OF WITNESSES
Inability of the accused to question a rape victim who had committed suicide after making a statement to the police: *inadmissible*.

MIKA - Sweden (N° 31243/06)
Decision 27.1.2009 [Section III]

In 2004 the applicant started working in the same factory building as a Mrs K. One evening, when K. was working late, she was found by a security guard claiming that she had been raped by an unknown man. Two days later, K. gave a statement to the police claiming that the unknown man had come to her from behind and forced her to have intercourse with him. She said that she had seen the man some days before in the factory, gave a description of him and stated that she was "quite sure" that she recognised her assailant from a photograph which was not of the applicant. Four days later, K. committed suicide. Almost a year later the applicant was arrested and charged with the rape of K. A blood sample taken from the applicant matched sperm which had been found in K's vagina and underwear after the rape. The applicant denied all charges. During the proceedings, the district court heard evidence from several witnesses and took into account K's statement given to the police before her suicide. The court convicted the applicant to two and a half years' imprisonment and his conviction was upheld on appeal.

Inadmissible: The applicant had complained that he had not had a fair trial, in particular since he had not been given the opportunity to question K. The Court found, however, that since K. had died only a few days after the rape and before any charges had been brought against the applicant, the authorities could not be held responsible for failing to ensure her presence at the trial or for the fact that the applicant never had the opportunity to question her. The domestic courts' decision to allow K's statement in evidence was therefore not in itself contrary to Article 6. It was however necessary to determine whether the applicant's conviction was based solely, or in a decisive manner, on that statement in such a way that his right to a fair trial was violated. In this connection, the Court noted that the national courts had heard several witnesses and examined other written evidence, so K's statement had not been the only relevant evidence. Further, the applicant had had the opportunity to dispute K's statement and to give his own account of events, an account which was later considered improbable and contradictory to the technical evidence available. The applicant had apparently never requested the police officer who interviewed K to be called to testify so that he could be questioned about his written report and give his impression and opinion of K and what she had told him. Instead, he had asked for another witness to be called to give evidence before the appeal court, and that request had been granted. In light of the above, the Court concluded that the national courts had carried out a detailed analysis of all the evidence presented in the case and that K's statement had been corroborated by other evidence and had thus not been decisive for the applicant's conviction: *manifestly ill-founded*.

ARTICLE 7

Article 7 § 1

NULLUM CRIMEN SINE LEGE
Retrospective application of law through the applicant's conviction of war crimes for his part in a punitive military expedition on villagers during the Second World War: *case referred to the Grand Chamber*.

KONONOV - Latvia (N° 36376/04)
Judgment 24.7.2008 [Section III]

In 2004 the applicant was convicted of war crimes and given an immediate custodial sentence of one year and eight months. The European Court was called upon to examine whether on 27 May 1944 his acts had constituted offences that were defined with sufficient accessibility and foreseeability under national or international law. The applicant's prison sentence was imposed for war crimes under the former Latvian Criminal Code. Although the Code contained a summary list of the criminal acts, it referred directly to the relevant treaty provisions for a precise definition. The applicant's conviction was therefore based on international rather than on domestic law.
The Chamber of the Court found by four votes to three that there had been no violation of Article 7, as on 27 May 1944 the applicant could not reasonably have foreseen that his acts constituted a war crime within the meaning of the *jus in bello* at that time. There was no plausible legal basis in international law for convicting him of such an offence. Even supposing that he had committed one or more offences under the general domestic law, their prosecution had been time-barred under the statute of limitations for a considerable time already. Accordingly, domestic law could not have served as a basis for his conviction either.
The case was referred to the Grand Chamber at the Government's request.

For further information, please see Information Note no. 110 and press release no. 94 of 9 February 2009.

NULLUM CRIMEN SINE LEGE
Penalty adjudged arbitrary as based on provision that did not have "quality of law": *violation*.

SUD FONDI SRL and Others - Italy (N° 75909/01)
Judgment 20.1.2009 [Section II]

Facts: The three applicant companies were the owners of the land and buildings that were the subject of the application in the instant case. In 1993 they agreed on a building project with the municipality. Planning permission was granted in 1995. In 1996 a public prosecutor started a criminal investigation and, considering the development illegal, made a temporary possession order in respect of all the buildings. In 1997 the Court of Cassation set aside that order and ordered the return of all the buildings to the owners on the grounds that the development plan did not contain any prohibition on building on the site. In a judgment of 1999 a criminal court held that the buildings had been built illegally. However, as the local authority had granted planning permission, it found that the accused had not been guilty of negligence and had not had any unlawful intent and so acquitted them for lack of mens rea. However, it ordered confiscation of all the land and buildings and their transfer to the municipality. In a judgment of 2000 a court of appeal held that the grant of planning permission was lawful and acquitted the accused on the grounds that the substantive elements of the offence had not been proved. It also quashed the confiscation order in respect of all the land and buildings. In 2001 the Court of Cassation reversed that decision without remitting the case for further consideration. It found that the building project was materially unlawful as the land was the subject of a total ban on building and to statutory restrictions designed to protect the environment. It acquitted the accused on the grounds that they had not been guilty of negligence and had had no unlawful intent to commit the offences, which were the result of an "inevitable and excusable error" in the interpretation of "vague and poorly formulated" regional regulations which

interfered with the national law. The Court of Cassation also took into account the conduct of the administrative authorities. It noted, in particular, that (i) on obtaining the planning permission the applicant companies had received assurances from the director of the municipal office; (ii) that the covenants protecting the site did not appear on the development plan; and (iii) that the competent national authority had not intervened. Lastly, the Court of Cassation urged against conjecture in the absence of an inquiry into the reasons for the authorities' conduct. It also ordered the confiscation of all the buildings and land. In 2001 the municipal authority informed the applicant that further to the Court of Cassation's judgment the ownership of the land had been transferred to the municipality. The applicant companies sought judicial review of that decision in an attempt to prevent the enforcement of the judgment of the Criminal Division of the Court of Cassation, which had made the confiscation order. Their application was dismissed. A subsequent appeal to the Court of Cassation was likewise rejected on 27 January 2005. The State also made an application for judicial review, which the Court of Cassation dismissed in 2005. In 2006 the buildings erected by the applicant companies were demolished.

Law: Article 7 – The Court of Cassation had acquitted the applicant companies' representatives on the grounds that they had made an inevitable and excusable error in the interpretation of the regulations that had been broken. In this context, which was both legal and factual, the accused's error as to the legality of the building projects had, in the Court of Cassation's view, been inevitable. It was not for the Court to reach a different conclusion, still less to engage in speculation about the reasons that had led the municipal authority to treat such an important issue in that manner or for for the lack of an effective inquiry by the public prosecutor. Since the statutory basis for the offence did not satisfy the criteria of clarity, accessibility and foreseeability, it had been impossible to foresee that a penalty would be inflicted. Further, for the purposes of Article 7, a legislative framework that did not enable an accused to know the meaning and scope of the criminal law was deficient not only as regards the general conditions pertaining to the "quality" of the "law", but also as regards the specific requirements of legality in the criminal law. Consequently, the confiscation of the properties had not been prescribed by law for the purposes of Article 7 and amounted to an arbitrary penalty.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – The confiscation of the land and buildings owned by the applicant companies constituted interference with their right to the peaceful enjoyment of their possessions. However, the offence for which their properties had been confiscated had no basis in law for the purposes of the Convention and the penalty imposed on them was arbitrary (see the finding under Article 7 above). Consequently, the interference with the applicant companies' right to the peaceful enjoyment of their possessions was arbitrary and violated Article 1 of Protocol No 1.
However, in view of the gravity of the matters complained of, the Court also considered it necessary to examine whether the requisite balance had been struck between the demands of the general interest of the community and the need to protect the fundamental rights of the individual, bearing in mind the need for a reasonable and proportionate relationship between the means employed and the aim pursued.
The Court noted, firstly, that the fact that the applicant companies had acted in good faith and without negligence had not been seen as relevant and the applicable procedures had taken no account of the degree of responsibility or recklessness or, at least, of the relationship between the companies' conduct and the offence. Further, confiscation on that scale without compensation was not justified by the stated aim of bringing the land concerned into conformity with the urban development regulations. Lastly, it was the very municipality which had granted the illegal planning permission which, paradoxically, had become the owner of the confiscated land. In the light of these considerations, a fair balance had not been struck.
Conclusion: violation (unanimously).

Article 41 – EUR 10,000 in respect of non-pecuniary damage for each applicant company; the question of pecuniary damage was reserved.

ARTICLE 8

PRIVATE LIFE
Photographing of a newborn baby without prior agreement of parents and retention of the negatives: *violation*.

REKLOS and DAVOURLIS - Greece (N° 1234/05)
Judgment 15.1.2009 [Section I]

Facts: The applicants were the parents of a new-born baby who was placed in a sterile unit to which only medical staff at the clinic had access. The following day the mother was presented with photographs of the baby taken face on. The applicants protested about the intrusion of a professional photographer working in the clinic into an environment to which only medical staff should have had access, and the possible annoyance caused to the infant by taking photographs from the front and, above all, without their prior consent. In view of the clinic's indifference to their complaints and its refusal to hand over the negatives of the photographs, the applicants brought an action for damages in the court of first instance. The action was dismissed as unfounded. That decision was upheld by a court of appeal and the Court of Cassation dismissed an appeal on points of law on the ground that it was too vague.

Law: Article 6 § 1 – The facts of the case as established by the court of appeal had been brought to the attention of the Court of Cassation. To declare the applicants' only ground of appeal inadmissible on the grounds that they had not set out in their appeal on points of law the facts on which the court of appeal had relied when dismissing their appeal from the court of first instance amounted to excessive formalism and had prevented the applicants from having the merits of their appeal examined by the Court of Cassation. Consequently, the Court dismissed the Government's preliminary objection of a failure to exhaust domestic remedies.
Conclusion: violation (unanimously).

Article 8 – The applicants had not at any stage given their consent for the photograph to be taken to either the management of the clinic or to the photographer. The person photographed was a minor and his right to control his image was exercised by his parents. Consequently, the applicants' prior consent to their son's picture being taken was essential to enable the circumstances in which it would be used to be determined. However, instead of seeking the applicants' consent, the authorities at the clinic had actually allowed the photographer to enter a sterile environment, to which only doctors and nurses from the clinic had access, to take the photographs. The photographer had also been permitted to keep the negatives despite an express request by the applicants, who had parental authority, for them to be handed over. Although the photographs showed the baby only from the front and not in a state which could be considered demeaning or was otherwise liable to damage his personality, the overriding consideration was not whether the photographs were harmless but the fact that the photographer had kept them without obtaining the applicants' consent. The baby's image had been captured by the photographer in a form in which it could be identified and had subsequently been used in a manner that was contrary to its and/or its parents' wishes. The domestic courts had not taken into account the lack of parental consent for the photographs to be taken or for them to be kept by the photographer and had, thus failed sufficiently to guarantee the child's right to the protection of its private life.
Conclusion: violation (unanimously).

PRIVATE AND FAMILY LIFE
Balancing of competing interests of applicant and her insurers in case concerning liability for medical costs incurred in connection with a sex-change operation: *violation*.

SCHLUMPF - Switzerland (N° 29002/06)
Judgment 8.1.2009 [Section I]

(See Article 6 § 1 above).

PRIVATE AND FAMILY LIFE
Breach by State of its obligations to assess risks and consequences of hazardous industrial process and to keep the public informed: *violation*.

TATAR - Romania (N° 67021/01)
Judgment 27.1.2009 [Section III]

Facts: At the material time the applicants lived in the town of Baia Mare, in a residential area near an extraction facility and Săsar Pond that formed part of the mining concession of the Aurul company. The company used a process in which gold and silver was extracted from low-grade ore by spraying it with sodium cyanide. An environmental impact assessment was carried out in 1993 in order to obtain an environmental compliance certificate. Baia Mare was described as an industrial town that had already suffered pollution as a result of intensive industrial activity, particularly in the mining industry. In their analysis of the effects of sodium cyanide on health, the specialists from the institute that carried out the assessment said that there was no risk of poisoning provided the relevant norms were complied with and there were no accidents, but expressed uncertainty about the impact of the process on the environment. The specialists' findings were based on the aforementioned economic and social advantages and on the fact that the activity could not influence "to any significant extent the current characteristics of the region". In 1998 the Ministry of Labour and the Ministry of Health authorised Aurul to use sodium cyanide and other chemical substances in the extraction process. In 1999 the municipality of Baia Mare authorised the company to carry on its activity subject to obtaining an environmental compliance certificate. The certificate was issued in December 1999 and Aurul then officially started up its activity. Copies of two reports of November and December 1999 on the public debate on the question of compliance were produced to the Court. At the first debate, questions were asked about the health and environmental dangers of the process, but the organisers do not appear to have given any answers. The second report indicated that the representatives of the environmental protection authority had assured participants that there was no evidence that any particles remained in suspension in the atmosphere. No environmental impact assessment was presented during the debates.
On 30 January 2000 a large quantity of polluted water containing sodium cyanide and other substances was leaked into various rivers and travelled 800 kilometres in 14 days crossing several borders. Various reports were drawn up including one by the Task Force Baia Mare in December 2000 at the request of the European Union Environment Commissioner. The accident had a significant impact on the environment and the socio-economic situation.
In 2000, following the accident, the first applicant lodged a series of complaints with various administrative authorities concerning the risks to which he and his family were being exposed by Aurul's use of sodium cyanide in the extraction process. He received a number of replies including one from the Ministry of the Environment informing him that the company's activities did not constitute a health hazard and that the technology was also used in other countries. The first applicant also lodged criminal complaints. In 2001 the county court prosecutor ruled that there was no case to answer in respect of the accident of 30 January 2000 as no offence had been committed under the Romanian Criminal Code. In 2002 the Supreme Court of Justice declined jurisdiction to hear the case and dismissed the complaints. In two orders of 2002 the public prosecutor at the Supreme Court of Justice transferred the first applicant's complaints to the public prosecutor at the court of appeal for investigation. The first applicant lodged a fresh complaint in 2005 concerning the danger the extraction process constituted to the health and safety of the population, but no order was made. Meanwhile, in 2002 the county court prosecutor started an

investigation into the accident of his own motion. The public prosecutor at the Supreme Court of Justice overturned the order of 2001 discontinuing the proceedings and ordered the public prosecutor at the court of appeal to re-examine the case. In 2002 the public prosecutor at the court of appeal found that Aurul's managing director had no case to answer as the accident had been caused by force majeure owing to adverse weather conditions. In 2003 the chief public prosecutor at the Supreme Court of Justice overturned that order and invited the public prosecutor to resume the proceedings.
A second environmental impact assessment was carried out in 2001 at Aurul's request by the Cluj Environmental and Health Centre, the Bucharest Institute for Public Health, the Bucharest Institute of Research and Development for Industrial Ecology and the Cluj-Napoca Medicine and Environmental Office.
Meanwhile, in December 2001, the National Agency for Mineral Resources drew up a rider to the initial licence changing the name of the licence holder to S.C. Transgold S.A. Three compliance certificates were issued to that company by the Ministry of the Environment.
In 1996 the second applicant developed the first symptoms of asthma. The applicants said that his condition deteriorated in 2001 on account of the pollution caused by Aurul.

Law: The findings of the official reports and aforementioned environmental assessments indicated that the pollution caused by the plant's activity may have resulted in a deterioration in the local population's quality of life and, in particular, affected the applicants' welfare and deprived them of the enjoyment of their home, so affecting their private and family life.
The existence of a substantial, serious risk to the applicants' health and welfare imposed on the State an obligation to adopt reasonable and adequate measures to protect their right to respect for their private life and home and, more generally, their right to the enjoyment of a healthy and safe environment. The authorities had been under that obligation both before the commencement of the plant's operations and after the accident of January 2000.
Under Romanian law, the right to a healthy environment was protected by the Constitution. Further, States were advised by the precautionary principle not to delay in adopting effective and proportionate measures to avert the risk of serious irreversible damage to the environment in the absence of scientific or technical certainty. There was, however, nothing in the case file to indicate that the Romanian authorities had debated the risks which the industrial activity entailed for the environment and for the health of the local population. Further, the risk to the environment and to the welfare of the local population had, in the applicants' case, been foreseeable. In addition to the domestic legislative machinery that had been set up by the law on the protection of the environment, specific international regulations existed which the Romanian authorities could have applied. They had, however, failed to carry out a satisfactory prior assessment of the possible risks entailed by the activity or to take adequate measures to protect the applicants' right to respect for their private life and home and, more generally, to the enjoyment of a healthy and safe environment.
As regards the State's positive obligations under Article 8 of the Convention, the public's right to information was of primary importance. In that connection, there had been a failure to comply with the domestic regulations on public debates as the participants in the debates, which had taken place in November and December 1999, were not given access to the findings of the study that had served as the basis for the issue of the compliance certificates to the company or to any other official information on the subject.
As to the events after the accident in January 2000 the material before the Court indicated that the authorities had not put a stop to the industrial activity concerned and that the same processes had remained in use. The domestic authorities' positive obligation to ensure effective respect for private and family life had also continued, and indeed increased, after the accident. As a result of the health and environmental effects of the environmental accident as noted in the international assessments and reports, the applicants along with other the inhabitants of Baia Mare must have been in a state of anxiety and uncertainty. This had been compounded by the inertia of the national authorities, who were under a duty to provide proper detailed information on the past, present and future effects of the accident on their health and the environment, and on the preventive measures and support that would be available to populations at risk of like incidents in the future. The situation had been made worse by the fear induced by the continuation of the activity and risk of a possible recurrence of the accident in the future.

The first applicant had set a number of administrative and criminal procedures in motion without success in an attempt to establish the potential risks to which he and his family had been exposed by the accident of January 2000 and to bring those responsible to account. The material before the Court indicated that, in that same context, the domestic authorities had failed to comply with their duty to provide the requisite information to the local population and, in particular, the applicants. The applicants had been unable to establish what measures if any had been taken to avoid similar accidents or what action they should take in the event of further accident. Consequently, the respondent State had not discharged its obligation to safeguard the applicants' right to respect for their private and family life within the meaning of Article 8 of the Convention.
Conclusion: violation (unanimously).

FAMILY LIFE
Refusal of courts to grant a woman married in a religious ceremony benefit of the social security and pension rights of her deceased husband, the father of her children: *no violation*.

ŞERİFE YİĞİT - Turkey (N° 3976/05)
Judgment 20.1.2009 [Section II]

Facts: The applicant married her partner, Ö.K., at a religious ceremony. Following his death she brought an action in her own and her daughter's name to have the marriage recognised and their daughter entered in the civil register as his. The district court rejected the request for the registration of the marriage but granted the request for Ö.K. to be registered as his daughter. No appeal was lodged and the judgment became final.
The applicant then made an unsuccessful request to the retirement-pension fund to have Ö.K.'s retirement pension and health-insurance benefits transferred to her and her daughter. She subsequently applied to the employment tribunal to have that decision set aside. The tribunal dismissed that application in part, after finding, on the basis of the district court's judgment, that the applicant's marriage had not been validated and that in the absence of legal recognition she could not be subrogated in the deceased's rights. The employment tribunal did, however, set aside the pension fund's decision in respect of her daughter, to whom it transferred her deceased father's rights to a pension and health-insurance benefits. The employment tribunal's decision was upheld by the Court of Cassation following an appeal by the applicant.

Law: In the special circumstances of the applicant's case, the Court had to examine whether the employment tribunal's decision had violated her family life. There was a current social trend, supported by the legislature, in certain member States of the Council of Europe towards the acceptance and even the recognition of stable forms of union such as cohabitation or civil partnership alongside the traditional marital bond. However, outside civil marriage, Turkish law did not provide for a union based on law creating a civil partnership that would allow two people of the same or opposing sexes to have rights identical or similar to those of a married couple. Having regard to the margin of appreciation afforded to the High Contracting Parties to the Convention in this sphere, the Court could not require them to legislate. In the applicant's case, the religious ceremony celebrated by the imam did not under the domestic law in force create any commitment vis-à-vis third parties or the State. Irrespective of the applicant's arguments, the decisive element was the existence of a commitment consistent with a bundle of rights and obligations of a contractual nature, rather than the length or stability of the relationship. In the absence of any legally binding agreement, it was not unreasonable for the Turkish legislature to afford protection solely to civil marriages. As the Court had previously stated, marriage remained an institution widely recognised as conferring a particular status on those who entered into it. Further, Article 8 could not be interpreted as requiring the establishment of a special regime for a specific category of unmarried couples. Thus, the difference in treatment between married and unmarried couples with regard to survivors' benefits pursued a legitimate aim and was based on objective and reasonable grounds, namely the protection of the traditional family based on the bonds of marriage.
Conclusion: no violation (four votes to three).

HOME
Lack of procedural safeguards in proceedings for eviction of the applicant: *violation*.

ĆOSIĆ - Croatia (N° 28261/06)
Judgment 15.1.2009 [Section I]

Facts: In 1984 the applicant, a school teacher, was granted a flat temporarily leased from its then owner, the Yugoslav People's Army. The lease expired in 1990. In 1991, by taking over all Army property, the State became the owner of the flat. Since she had not been provided with alternative accommodation, the applicant remained in the flat and continued to pay rent. In 1999 the State brought proceedings for her eviction. In 2002 the first-instance court granted the State's claim and ordered the applicant's eviction even though she had nowhere else to live. The applicant's further appeals were dismissed.

Law: Even though the applicant had not been evicted by the date of the Court's judgment, the court decision obliging her to vacate the flat nonetheless amounted to an interference with her right to respect for home. In this connection, the Court recalled that the proportionality requirement under paragraph 2 of Article 8 raised questions of procedure as well as of substance. In particular, the decision-making process leading to measures interfering with rights protected under Article 8 needed to be fair and to afford due respect for the interests safeguarded to the individual by that provision. The Court further recalled that any person at risk of being deprived of home should in principle be able to have the proportionality and reasonableness of such a drastic measure determined in light of the relevant Convention principles, notwithstanding that under domestic law his or her right of occupation had come to an end. In the applicant's case the domestic courts' findings were limited to the conclusion that under applicable domestic law the applicant had lost any legal entitlement to occupy the flat and that she therefore had to vacate it. While recognising the applicant's difficult situation, the first-instance court expressly stated that its decision had to be based exclusively on the applicable laws. The national courts thus failed to analyse the proportionality of the measure to be applied against the applicant despite their duty not to interpret or apply the provisions of domestic law in a manner incompatible with Croatia's obligations under the Convention. In conclusion, the Court considered that in the proceedings for her eviction, the applicant had not been afforded adequate procedural safeguards.
Conclusion: violation (unanimously).

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

ARTICLE 9

FREEDOM OF RELIGION
Unjustified State interference in the internal leadership dispute of a divided religious community by assisting one of the opposing groups to gain full control: *violation*.

HOLY SYNOD OF THE BULGARIAN OTHODOX CHURCH (METROPOLITAN INOKENTIY) and Others - Bulgaria (N^{os} 412/03 and 35677/04)
Judgment 22.1.2009 [Section V]

Facts: The first applicant, the Holy Synod presided over by the Metropolitan Inokentiy ("the alternative Synod"), is one of the two rival leaderships of the divided Bulgarian Orthodox Church (the Church). The remaining applicants are employees of the alternative Synod. Soon after the democratic changes of 1989, a number of Christian Orthodox believers, who subsequently became popularly known as the "alternative Synod", sought to replace the existing leadership of the Bulgarian Orthodox Church. They considered that Patriarch Maxim, who had been leading the Church since 1971 and had been nominated by the Communist Party, had been proclaimed Patriarch in violation of traditional canons and the statute of the Church. In 1992 the Government intervened in the internal organisation of the Church by appointing an interim council pending the holding of a Church Convention to elect a new Patriarch. The

Bulgarian courts found that that intervention was unlawful. In the following years, the leadership dispute within the Church continued. Each of the two leaderships had its supporters among the clergy and the believers and held religious conventions and congregations with the aim of uniting the Bulgarian Orthodox Church and having its leader recognised as the sole legitimate Head of the Church. In the ensuing judicial proceedings for registration the courts issued contradictory decisions. Following a change in Government, the majority's political leaders publicly supported Patriarch Maxim. A new law - the Religious Denominations Act 2002 (the 2002 Act) - was introduced with a view to putting an end to the divisions in the Church. It provided, *inter alia*, for the *ex lege* recognition of the Church. It also introduced a provision which stated that the Church "is headed by the Holy Synod and is represented by the Bulgarian Patriarch ..." The Act prohibited religious denominations from having the same name and stated that persons who had seceded from a registered religious institution were not entitled to use its name or assets. In 2003, the alternative Synod was refused registration of most of its local church councils throughout the country. The main argument of the courts for their refusal was that registration could only be granted if requested by the person representing the Church. In their view, Patriarch Maxim was "publicly known and internationally recognised" as the head of the Church. Following a complaint filed by Patriarch Maxim, in 2004 local prosecutors throughout the country issued orders for the eviction of persons "unlawfully occupying" churches and religious institutions. As a result the police blocked more than 50 churches and monasteries in the country, evicted the religious ministers and staff who identified themselves with the alternative Synod, and formally transferred the possession of the buildings to representatives of the rival leadership. Patriarch Maxim's leadership enjoyed international support from Orthodox Churches and other religious organisations worldwide. The applicant organisation has never had significant international support from Orthodox Churches outside Bulgaria.

Law: (a) *Applicability*: The events complained of concerned State action which, in the context of an ongoing dispute between two groups claiming leadership of the Church, had had the effect of terminating the autonomous existence of one of the two opposing groups and providing the other group with exclusive representative power and control over the affairs of the whole religious community. The impugned State actions therefore fell to be examined under Article 9. The Court's task was to examine whether the enactment of the 2002 Act and its implementation constituted an unlawful and unjustified State interference with the internal organisation of the Church and the applicants' rights. It was not the Court's task, and indeed it was not the task of any authority outside the Bulgarian Christian Orthodox community and its institutions, to assess the validity under canon law of the opposing claims to legitimacy made by the rival leaderships.

(b) *Existence of State interference*: Contrary to what the Government had submitted, the authorities' involvement had not been limited to mere recognition of the Church's leadership that was legitimate under canon law. The question of which leadership was canonical had been in dispute within the religious community itself and there had been no authoritative decision by the community settling this dispute. Despite these realities, the 2002 Act had declared the *ex lege* recognition of the Church as a single legal person led by a single leadership and had forced the religious community under one of the two existing leaderships. The authorities had thus taken sides in an unsettled controversy deeply dividing the religious community. The fact that the applicants could have founded a new religious organisation under a different name from that of the Bulgarian Orthodox Church could not lead to the conclusion that there had been no State interference with the internal organisation of the Church.

(c) *Necessity of interference*: The ongoing dispute in the Church had generated legal uncertainty. In particular, each of the rival leaderships had endeavoured to obtain control over places of worship and Church assets and it had often been difficult to ascertain the representatives of parishes. A number of judicial decisions concerning the Church's leaderships and their representative powers had been issued over the years, some of them contradictory. All this had engendered difficulties not only within the religious community but also for persons and institutions having relations with the Church. Therefore, the Bulgarian authorities had had good reasons to consider action to help overcome the conflict in the Church. On the other hand, the Court could not accept the view that the applicants had been nothing more than persons occupying churches unlawfully. The Church conventions which supported the two rival leaderships had each been attended by hundreds of representatives of local parishes and other clergy and

believers, and that was how the applicant organisation had obtained control over certain Church assets and temples. While it was likely that but for the unlawful State acts of 1992 the applicants would have probably gained less influence, the relevant fact was that by 2002, when the State authorities had undertaken the impugned action to "unite" the Church, it had been *de facto* and genuinely divided for more than ten years, on the basis of arguments which were not frivolous or untenable. In such conditions, the legitimate aim of remedying the injustices could not warrant the use of State power to take sweeping measures, imposing a return to the *status quo ante* against the will of a part of the religious community. The need to restore legality, on which the Government had relied, could only justify neutral measures ensuring legal certainty and foreseeable procedures for the settling of disputes. In the present case, however, the State authorities had gone far beyond the restoration of justice and undertaken actions directly forcing the community under one of the two rival leaderships and suppressing the other. Hundreds of clergy and believers had thus been evicted from their temples, which had amounted to an unlawful intervention by the prosecutors and the police in a private law dispute which should have been examined by the courts. Such measures had to be regarded as disproportionate. The disproportionate nature of these measures had been exacerbated by the fact that the 2002 Act had not met the Convention standards of quality of the law, in so far as its provisions had been formulated with a false appearance of neutrality and had disregarded the fact that the Church had been deeply divided, which was tantamount to forcing the believers to accept a single leadership against their will. In particular, the issue of legal representation of the Church had been left open to arbitrary interpretation. Some domestic courts and the prosecuting authorities had relied essentially on the views of the majority in Parliament and the Government that Patriarch Maxim was the sole legitimate representative of the Church. However, neither the unity of the Church, even though it was a matter of the utmost importance for its adherents and for Bulgarian society in general, nor the Government's purported aim of securing respect for the precepts of religious canon could justify State action imposing such unity by force and disregarding the position of numerous Christian Orthodox believers in Bulgaria who supported the applicant organisation. In sum, despite the wide margin of appreciation left to the national authorities, they had interfered with the organisational autonomy of the Church and the applicants' rights under Article 9 of the Convention in a manner which could not be accepted as lawful and necessary in a democratic society.
Conclusion: violation (unanimously).

ARTICLE 10

FREEDOM OF EXPRESSION
Excessively broad scope of interlocutory injunction prohibiting a journalist from reporting on an accident involving a judge and on the court proceedings in connection therewith: *violation*.

OBUKHOVA - Russia (N° 34736/03)
Judgment 8.1.2009 [Section I]

Facts: The applicant, a journalist, published an article about a civil action for compensation instituted by a judge in connection with a road traffic accident. The article reproduced a letter from the other party's spouse, who alleged that the judge was "taking advantage of her office and connections in the judiciary". Subsequently, the judge sued the newspaper, the applicant and the author of the letter for defamation. On her request, the court issued an interlocutory injunction restraining the newspaper from publishing anything relating to the accident or the court proceedings pending its judgment in the defamation proceedings. An appeal against the injunction was dismissed. The court subsequently found that the article was defamatory and ordered publication of an apology in the newspaper.

Law: The applicant had been directly affected by the injunction which constituted a lawful interference with her right to freedom of expression. The injunction had remained effective throughout the entire duration of the defamation proceedings. Its purpose was to enable the defamation action to be heard without the plaintiff's rights in the meantime being prejudiced. However, although the domestic courts had held the injunction to be justified as a means of protecting the reputation of others and maintaining the

authority of the judiciary, the reasons given by way of justification did not appear sufficient to the Court. As regards the order restraining the publication of information on the factual circumstances of the accident, the Court noted that the applicant had not presented any single version of the accident as being the true or only possible one but had reported the various accounts given by the parties, the police and the eyewitnesses. None of these versions had been contested in the defamation proceedings, the scope of which was limited to the statement about the judge's connections in the judiciary. In issuing the injunction, the court had merely referred to the fact that expert evidence had been commissioned, without explaining why it considered that further reports on the factual circumstances of the accident would be prejudicial. Moreover, since the judge had been involved in the accident as a private individual, the injunction restraining further reports on the accident could not have been for the purpose of maintaining the authority of the judiciary. As regards the prohibition on further reporting of the claim for damages, the Court accepted that the allegation – that the judge had taken advantage of her office and connections in the judiciary – could have been damaging to her reputation and to the authority of the judicial system. Nevertheless, although the injunction corresponded to the legitimate aim it had sought to achieve, its scope was excessively broad and disproportionate. It was not limited to the impugned statement, but prevented, in a general and unqualified manner, all possibility of publishing materials on the proceedings. The Court was unable to accept that such a sweeping prohibition was "necessary in a democratic society". Indeed, the injunction had done a disservice to the authority of the judiciary by reducing transparency and raising doubts about the court's impartiality. Furthermore, the Russian legal system had no equivalent of the *sub judice* rule so that the right to report on proceedings in open court was not in principle restricted. It was also a matter of particular concern that the injunction should have listed as one of its purposes the need to prevent the newspaper from publishing materials "stating the opposite view". In sum, the terms of the injunction were excessively broad and the domestic authorities had overstepped the limited margin of appreciation they were afforded in cases concerning prior restraints on publication.
Conclusion: violation (unanimously).

Article 41 – EUR 1,000 in respect of non-pecuniary damage.

FREEDOM OF EXPRESSION
Conviction of book publishers on charge of condoning war crimes: *violation.*

ORBAN, DE BARTILLAT and ÉDITIONS PLON - France (N° 20985/05)
Judgment 15.1.2009 [Section V]

Facts: The first and second applicants were the chairman and managing director of the applicant company. In 2001 the company published a book entitled *Services Spéciaux Algérie 1955-1957*, in which the author, General Aussaresses, a former member of the special services, described torture and summary executions carried out during the war in Algeria. The back cover described the author as a "Free French veteran" who had been "dispatched by General de Gaulle on the most sensitive secret missions" and "was considered a living legend". The author's account was preceded by a "publisher's foreword". The public prosecutor summoned the first and second applicants and the author to appear before a criminal court to answer charges of publicly defending war crimes in the case of the first applicant, and of aiding and abetting that offence in the cases of the second applicant and the author. The criminal court found the defendants guilty and imposed fines of EUR 15,000 on each of the applicants and of EUR 7,500 on the author. It also found that the applicant company had incurred civil liability. The criminal court's judgment was upheld by a court of appeal and the Court of Cassation dismissed an appeal on points law by the applicants.

Law: Article 17 – There was no doubt that statements unequivocally seeking to justify war crimes such as torture or summary executions were characteristic of an attempt to divert Article 10 from its intended purpose. However, without expressing any view on whether the offence of defending war crimes as defined by the Law of 29 July 1881 was made out in the instant case, the Court could not find that the work published by the applicants had been directed at such an aim. The content of the book indicated that its author, who had served as an intelligence officer in Algeria between the end of 1954 and the autumn of

1957, had sought to contribute to what the applicants referred to as an "historic debate" and to offer direct testimony on a subject – the use of torture and summary executions by the French authorities during the war in Algeria – which, though sensitive and controversial, was without doubt a matter of public interest. In these circumstances, it could not be said that, by publishing *Services Spéciaux Algérie 1955-1957*, the applicants had used their right to freedom of expression for purposes that were contrary to the letter and spirit of the Convention or in order to divert Article 10 from its intended purpose. Article 17 could not, therefore, come into play.

Article 10 – The applicants' conviction had interfered with their right to freedom of expression. That interference pursued the legitimate aims of preventing disorder or crime and was prescribed by law. It had been "reasonably foreseeable" to the applicants as professional publishers that the publication of such a work would expose them to a risk of prosecution. The legal basis for their prosecution and subsequent conviction was to be found in clear and accessible provisions which, *inter alia*, made it an offence to defend war crimes in a written work intended for sale. Although that concept was not defined by domestic law, it had been foreseeable that the domestic courts would refer to international law for the interpretation of the aforementioned provisions of the criminal law and would accordingly find them applicable to the defence of torture or summary executions in "armed conflict".
On the question whether the interference had been "necessary in a democratic society", the Court observed that the authorities had had only a limited margin of appreciation, which was circumscribed by the interest of a democratic society in enabling the press to impart information and ideas on all matters of public interest and guaranteeing the public's right to receive them. Those principles also applied to the publication of books in so far as they concerned matters of public interest.
The Court regarded the book above all as a witness account by a former special services officer who had served in Algeria and who had been directly involved in practices such as torture and summary execution in the course of his duties. The publication of a witness account of this kind unquestionably formed part of a debate on a matter of public concern which was of singular importance for the collective memory. The fact that the author had not taken a critical stance with regard to these horrifying practices and that, instead of expressing regret, had claimed to have been acting in accordance with the mission entrusted to him, formed an integral part of that witness account. Accordingly, there had been no justification for the court of appeal's criticism of the applicants, in their capacity as publishers, for not distancing themselves from the general's account.
Further, it had not been shown in what sense the back cover had tended to glorify the author so as to justify finding the applicants guilty of a criminal offence.
The Court also observed that although the author's statements had not lost their capacity to bring back memories of past suffering, the lapse of time meant that it was not appropriate to judge them with the same degree of severity that might have been justified 10 or 20 years earlier. Penalising a publisher for having assisted in the dissemination of a witness account written by a third party concerning events which formed part of a country's history would seriously hamper contribution to the discussion of matters of public interest and should not be envisaged without particularly good reason.
Lastly, the nature and severity of the penalties imposed also had to be taken into consideration in assessing whether the interference had been proportionate. The first and second applicants had each been ordered to pay a fine that was, to say the least, high in the circumstances, and which was twice as much as the fine imposed on the author of the statements at issue.
In the light of the foregoing and, in particular, of the singularly important public debate to which the publication of *Services Spéciaux Algérie 1955-1957* had contributed, the Court concluded that the reasons given by the domestic courts were not sufficient to persuade it that the applicants' conviction had been "necessary in a democratic society".
Conclusion: violation (unanimously).

Article 41 – EUR 33,041 in respect of pecuniary damage.

FREEDOM OF EXPRESSION
Refusal of courts to allow the respondent in a libel case to prove the veracity of his statements because of the manner in which they had been made: *violation*.

CSÁNICS - Hungary (N° 12188/06)
Judgment 20.1.2009 [Section II]

Facts: The applicant, who was employed with company G, was the chairman of a trade union representing its members in numerous companies. In 1999 the applicant was dismissed from work, but his dismissal was subsequently found to have been unlawful by the competent courts. At one of the company meetings, the managing director S.K. had accused the applicant of allegedly "supporting criminals who had worked in the company". Following a complaint by the applicant, S.K. was found guilty of defamation. In 2002 company G sought to buy another company D, where the trade union had also been active. Dissatisfied with the planned takeover, company D's employees asked the trade union to organise a demonstration against it, in relation to which the applicant – as the trade union chairman – gave several newspaper interviews. In one of them he stated that company G had "trampled on its employees' constitutional and labour rights" and called its employees criminals. S.K. then brought proceedings against the applicant claiming that his statements had damaged his reputation. During the proceedings, the district court refused the applicant's request to take evidence or hear witnesses who might have been able to prove the veracity of his assertions. Finding his statements in any event exaggerated and offensive, the court concluded that the applicant had tarnished the plaintiff's reputation, and ordered him to publish a rectification and to pay costs. On appeal, the regional court upheld the lower court's judgment concluding that the applicant's statements had been expressed in a wholly unlawful manner since he had articulated his views in an "insulting, offensive and harsh way".

Law: The domestic courts found that the applicant's impugned statements had been expressed in such a harsh and exaggerated way that they had given rise to a violation of the plaintiff's personality rights irrespective of their veracity. In the Court's view, however, although part of the applicant's remarks merely assessed the general conduct of company G towards its employees and clearly amounted to a value judgment, the statement that company G had called its employees criminals was one of fact, which had at least in part been susceptible of proof. The Court was therefore struck by the fact that the national courts gave the applicant no opportunity to prove the veracity of either of his statements. Given that he had previously been illegally dismissed from work, that the plaintiff had been convicted of defamation on account of accusing him of supporting "criminals" within the company and that company G had indeed had numerous labour proceedings pending against it at the material time, it was more than likely that the applicant's statements were well-founded or at least had been imparted in good faith. Therefore, the domestic courts should have at least provided him with the opportunity to substantiate his statements. Indeed, allowing a restriction on the expression of substantiated statements solely on the basis of the manner in which they were voiced would be contrary to the very spirit of Article 10 of the Convention. Moreover, the impugned statements had been made in the context of a public debate concerning a collective labour dispute, which often resulted in heated discussion and required a high level of protection under Article 10. In view of the foregoing, the Court concluded that the domestic courts had erred in finding that the applicant had overstepped the limits of acceptable criticism. They had thereby failed to strike a fair balance between the need to protect his right to freedom of expression and the need to protect the plaintiff's reputation.
Conclusion: violation (unanimously).

Article 41 – EUR 3,000 in respect of non-pecuniary damage.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Police intervention to break up a peaceful demonstration that had not been notified to the authorities: *violation*.

SAMÜT KARABULUT - Turkey (No 16999/04)
Judgment 27.1.2009 [Section II]

(See Article 3 above).

FREEDOM OF ASSOCIATION
Dissolution of a public association for negating the ethnic identity of the Macedonian people: *violation*.

ASSOCIATION OF CITIZENS RADKO and PAUNKOVSKI - "the Former Yugoslav Republic of Macedonia" (N° 74651/01)
Judgment 15.1.2009 [Section V]

Facts: The applicants are an association and its chairman. The association, named after Ivan Mihajlov-Radko (leader of the Macedonian Liberation Movement from 1925 to 1990), was officially registered in 2000. Its articles of association defined it as an independent, non-political and public organisation whose aim was to "popularise the objectives, tasks and ideas of the Macedonian Liberation Movement". The association sought to achieve that aim through its own newspaper, publications, library and website and by organising seminars, conferences and fora. There was a high-profile campaign in the media against the association, both before and after its official launch, condemning its foundation and functioning as being contrary to the Macedonian national identity. In 2001 the Constitutional Court declared the association's articles and programme null and void. According to the Constitutional Court, the Association's true objectives were the revival of Ivan Mihajlov-Radko's ideology according to which Macedonian ethnicity had never existed on the territory, but belonged to the Bulgarians from Macedonia and the recognition of Macedonian ethnicity was the biggest crime committed by the Bolshevik regime during its existence. It declared the Association's Articles and Programme unconstitutional as all the Association's activities were in reality directed towards the violent destruction of the constitutional order of the Republic, the incitement of national or religious hatred or intolerance and the denunciation of the free expression of the national affiliation of the Macedonian people. The association was dissolved.

Law: The Constitutional Court had not characterised the applicant association as "terrorist" or concluded that it or its members would use illegal or anti-democratic means to pursue their aims. Indeed, there was nothing in the association's founding acts to indicate that it advocated hostility. Nor had the Constitutional Court explained why it considered the negation of Macedonian ethnicity to be tantamount to violence or to the violent destruction of the constitutional order. For its part, the Court accepted that the creation and registration of the association under the name of Ivan Mihajlov-Radko had generated a degree of tension as his ideology was generally perceived by the Macedonian people not only as offensive and destructive, but as denying their right to claim their national (ethnic) identity. However, the mere naming of an association after a person who was perceived negatively by the majority of the population could not by itself constitute a present and imminent threat to public order. There was no concrete evidence to show that by choosing that name the association had opted for a policy that represented a genuine threat to Macedonian society or the State. The association's choice of name could not, by itself, justify its dissolution. To judge by its constitutive acts, its objective was to provoke a public debate on certain issues and to find solutions. It had sought to realise that objective through publications, conferences and cooperation with similar associations. Nor could it be held to task for its acts, as it was dissolved shortly after being formed. It had thus been penalised for conduct relating solely to the exercise of freedom of expression. It was not the Court's role to examine the correctness of the applicants' ideas and therefore irrelevant that the applicants had not distanced themselves explicitly from what the Constitutional Court

had established as the association's real aim. In sum, the reasons invoked by the authorities to dissolve the Association were not relevant and sufficient and the interference could not therefore be deemed to have been necessary in a democratic society.
Conclusion: violation (six votes to one).

Article 41 – EUR 5,000 in respect of non-pecuniary damage.

ARTICLE 17

PROHIBITION OF ABUSE OF RIGHTS
Publication of book describing torture and summary executions in the Algerian War: *Article 17 did not come into play.*

ORBAN, DE BARTILLAT and ÉDITIONS PLON - France (N° 20985/05)
Judgment 15.1.2009 [Section V]

(See Article 10 above).

ARTICLE 35

Article 35 § 1

SIX-MONTH PERIOD
Effect of intervening extraordinary remedy on six-month time-limit: *running of time interrupted only in relation to Convention issues examined by review body*.

SAPEYAN - Armenia (N° 35738/03)
Judgment 13.1.2009 [Section III]

In his application on 28 August 2003 the applicant raised various complaints in connection with his conviction by a district court more than six months earlier (on 26 February 2003). The district court's decision was final and the applicant had no further sufficiently accessible and effective remedies, including extraordinary remedies, to exhaust. He nevertheless submitted an appeal to the criminal and military court of appeal whose president decided on 2 March 2003 to review the district court's decision and reduce the sentence. In order to determine whether the applicant's complaints complied with the six-month time-limit imposed by Article 35 of the Convention, the European Court had to decide whether the court of appeal's decision in the extraordinary proceedings had restarted the running of the six-month period.

Inadmissible, except for Article 11 complaint: Decisions rejecting a request to reopen the domestic proceedings would not normally be considered "final decisions" for the purpose of calculating the starting point for the running of the six-month time-limit under Article 35 § 1 of the Convention. However, the position might be different if the request to reopen the proceedings was, in fact, successful. This did not mean that the mere fact of reopening proceedings would automatically restart the running of the six-month period, as it could not be excluded that a case would be reopened on grounds unrelated to the applicant's Convention complaints. Accordingly, in cases where proceedings were reopened or a final decision was reviewed, the running of the six-month period would be interrupted only in relation to those Convention issues which served as a ground for such reopening or review and were the object of examination before the extraordinary appeal body.
Of the applicant's complaints to the European Court, the only one that had been raised, either explicitly or in substance, in his extraordinary appeal was of the alleged unlawfulness of the interference with his right

to freedom of assembly. The remaining complaints had not been the object of examination by the court of appeal and the grounds on which that court decided to review the final decision of the district court could not be seen as in any way related to them. Accordingly, the court of appeal's extraordinary review of the final decision of the district court did not restart the running of the six-month period in respect of those complaints: *out of time*.

Different considerations applied to the Article 11 complaint, as even if it had been pursued through an extraordinary remedy which the Court had previously found to be ineffective, the request for review had actually led to the re-examination of his case on that particular ground and a new decision on the merits: *admissible*.

Article 35 § 3

COMPETENCE *RATIONE PERSONAE*
Failure of representative to submit a form of authority signed by the applicant: *inadmissible*.

POST - the Netherlands (N° 21727/08)
Decision 20.1.2009 [Section III]

In 2007 the applicant was arrested and held in detention on suspicion of murder. She complained that she had been unlawfully deprived of her liberty contrary to Article 5 of the Convention. The application to the Court was lodged by facsimile on 2 May 2008 by the applicant's representative. In reply, the applicant's representative was asked to complete the application form and return it to the Court within six months along with supporting documents and power of attorney. On 13 November 2008 the Court received a completed application form signed by the applicant's representative and copies of supporting documents. However, the documents received did not include an authority for representation because the representative had been unable to obtain it, but stated that she would send it as soon as she received it. No authority was subsequently received by the Court.

Inadmissible: The applicant had never been in direct contact with the Court and had introduced her application through her representative. However, where applicants choose to be represented by a lawyer, Rule 45 § 3 of the Rules of Court requires them to submit a duly signed power of attorney. In reply to her introductory letter of 2 May 2008 the applicant was informed that she needed to send the requisite authority form within a non-extendible period of six months. However, even after the expiry of that time-limit, no such authority was received. The case file therefore contained no document in which the applicant herself indicated that she wished her lawyer to lodge an application with the Court on her behalf. It also lacked any explanation why it had been impossible for the applicant or her representative to respect the six-month time limit fixed for the submission of the requisite power of attorney. Bearing in mind the essential nature of the requirement for the representative to demonstrate that he or she had received specific and explicit instructions from the alleged victim within the meaning of Article 34 of the Convention, the Court concluded that the case must be rejected for lack of an “applicant”: *inadmissible* ratione personae.

ARTICLE 41

JUST SATISFACTION
Assessment of pecuniary damage for *de facto* expropriation: *case referred to the Grand Chamber*.

GUISO-GALLISAY - Italy (N° 58858/00)
Judgment 21.10.2008 [Section II]

The authorities occupied land owned by the applicants with a view to expropriating it and began construction works. Since there had been no formal expropriation and they had not been paid compensation the applicants brought an action in damages for the unlawful occupation of their land.
In a judgment of 8 December 2005, the European Court held that there had been a violation of Article 1 of Protocol No. 1, but that the question of the application of Article 41 was not ready for decision.
In a Chamber judgment of 21 October 2008 the Court reversed its doctrine on the question of the application of Article 41 in constructive expropriation cases. The method that had been used up to that point had been to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of not deriving earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the State plus the value of the land at current prices. However, that method of compensation was not justified and could lead to unequal treatment between applicants, depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. In order to assess the loss sustained by the applicants, it was necessary to take into consideration the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned. The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount. In the instant cases, the Court awarded the three applicants 1,803,374 euros (EUR) jointly in respect of pecuniary damage and EUR 45,000 in respect of non-pecuniary damage.

On 26 January 2009 the case was referred to the Grand Chamber at the applicants' request.

For further information, see Information Note no. 112 and press release no. 94 of 9 February 2009.

JUST SATISFACTION
Authorities' persistent failure to enforce domestic judgments in the applicant's favour without delay despite previous finding of violation by the Court in his case – practice incompatible with the Convention: *non-pecuniary damage award increased*.

BURDOV – Russia (no. 2) (N° 33509/04)
Judgment 15.1.2009 [Section I]

(See below under Article 46).

ARTICLE 46

EXECUTION OF A JUDGMENT
Respondent State required to introduce an effective remedy securing redress for non-enforcement or delayed enforcement of judgments and to grant redress to all victims in pending cases of this kind.

BURDOV - Russia (no. 2) (N° 33509/04)
Judgment 15.1.2009 [Section I]

Facts: From 1997 onwards the applicant repeatedly sued the competent State authorities, seeking payment of social benefits in connection with his participation in emergency operations at the site of the Chernobyl nuclear plant disaster. The courts granted his claims but a number of their judgments remained unenforced for various periods of time. In 2000 the applicant lodged a first complaint with the European Court about the non-enforcement of domestic judicial decisions. In 2002 the Court found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 (see *Burdov v. Russia*, in Information Note no. 42). In a resolution of 2004 the Committee of Ministers of the Council of Europe indicated that the Government had paid the applicant the sum of just satisfaction provided for in the judgment of 2002 within the time allowed. It further noted the measures taken in respect of the category of persons in the applicant's position and concluded that it had exercised its functions under Article 46 § 2 of the Convention in this case. It recalled at the same time that the more general problem of the non-execution of domestic court decisions in Russia was being addressed by the authorities, under the Committee's supervision, in the context of other pending cases. In the meantime the applicant had obtained further judgments in his favour. They were fully enforced, but some of them with delays ranging from one to almost three years.

Law: The Court found violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 on account of the State's prolonged failure to enforce three domestic judgments ordering monetary payments by the authorities to the applicant.

Article 13 – There was no effective domestic remedy, either preventive or compensatory, that allowed for adequate and sufficient redress in the event of violations of the Convention on account of prolonged non-enforcement of judicial decisions delivered against the State or its entities.
Conclusion: violation (unanimously).

Article 46 – *Practice incompatible with the Convention*: It was appropriate to apply the pilot-judgment procedure in this case, given the recurrent and persistent nature of the underlying problems, the large number of people affected and the urgent need for speedy and appropriate redress at the domestic level. The important concerns voiced and the findings of various authorities and institutions at the domestic and international level were consonant with some 200 judgments of the Court highlighting the structural problems at issue. These problems did not affect only Chernobyl victims, as in the present case, but also other large vulnerable groups of the Russian population: non-enforcement very frequently occurred in cases concerning the payment of pensions, child allowances and compensation for damage sustained during military service or for wrongful prosecution. Approximately 700 cases concerning similar facts were currently pending and in some instances could lead to the Court finding a second set of violations of the Convention in respect of the same applicants. It was a matter of grave concern that the violations found in the present judgment had occurred several years after its first judgment in the applicant's case, notwithstanding Russia's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers, the necessary remedial and preventive measures. The breaches found thus reflected a persistent structural dysfunction and a practice incompatible with the Convention.

Introduction of an effective domestic remedy: The problems that had led the Court to find violations of Article 6 and Article 1 of Protocol No. 1 required the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various authorities at both

federal and local level. The Committee of Ministers was better placed and equipped to monitor the necessary reforms. As regards the violation of Article 13, the Court's findings clearly called for the setting up of an effective domestic remedy or a combination of remedies that would allow adequate and sufficient redress to be granted to the large numbers of people affected by such violations. The Court therefore required the respondent State to introduce a remedy which secured genuinely effective redress for the violations of the Convention on account of the State authorities' prolonged failure to comply with judicial decisions delivered against the State or its entities. Such a remedy should conform to the Convention principles as laid down notably in the instant judgment and be available within six months from the date on which the judgment became final.

Adjournment of proceedings on new applications: The Court further decided to adjourn the proceedings on all new applications lodged after the delivery of the present judgment in which the applicants complained solely of the non-enforcement and/or delayed enforcement of domestic judgments ordering monetary payments by State authorities. The adjournment would be effective for a period of one year after the present judgment became final.

Redress to be granted in pending cases: As to applications lodged before the delivery of the instant judgment, the respondent State was required to grant adequate and sufficient redress, within one year from the date on which the judgment became final, to all victims of the non-payment or unreasonably delayed payment by State authorities of a domestic judgment debt in their favour. In the Court's view, such redress might be achieved through implementation *proprio motu* by the authorities of an effective domestic remedy in these cases or through *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements This would apply to all those who had lodged their applications with the Court before the delivery of the present judgment and whose applications had been communicated to the Government. Pending the adoption of domestic remedial measures by the authorities, the adversarial proceedings in all these cases would be adjourned for one year from the date on which the judgment became final.

Article 41 – The Court determined the size of awards for non-pecuniary damage by reference to such factors as the applicant's age, personal income, the nature and size of the domestic court awards, the length of the enforcement proceedings and other relevant aspects. The applicant's health was also taken into account, as well as the number of judgments that were not properly and/or timeously enforced. Such awards were, in principle, directly proportionate to the period during which a binding and enforceable judgment remained unenforced. In its judgment of 2002 the Court had awarded the same applicant EUR 3,000 in respect of non-pecuniary damage sustained on account of delays ranging between one and three years and concerning three domestic judgments. In the instant case, the same applicant had suffered from comparable delays in respect of similar awards under three other domestic judgments. However, his distress and frustration had been exacerbated by the authorities' persistent failure to honour their debts under the domestic judgments notwithstanding the previous finding of violations by the Court in his case. As a result, the applicant had had no choice but again to seek relief through time-consuming international litigation before the Court. In view of this important element, an increased award of EUR 6,000 in respect of non-pecuniary damage was appropriate.

For more information, see Press release no. 24.

EXECUTION OF A JUDGMENT
Indication of measures to remedy systemic defects in legislation on the restitution of land and in the application of that legislation.

FAIMBLAT - Romania (N° 23066/02)
Judgment 13.1.2009 [Section III]

KATZ - Romania (N° 29739/03)
Judgment 20.1.2009 [Section III]

Facts (*Faimblat*): A property belonging to the applicants' father was confiscated by the State and subsequently nationalised. The applicants brought administrative proceedings before the town council, in accordance with the provisions of Law no. 10/2001 on the legal rules applicable to real property wrongfully nationalised between 1945 and 1989, with a view to recovering possession of the property. Concurrently, they applied to the court of first instance for a declaration that the nationalisation had been illegal. Their action was declared inadmissible on the ground that they were required to follow the administrative procedure provided for by Law no. 10/2001. That judgment was upheld on appeal. The town council also said that the property could not be returned, as it had been demolished, and that the applicants were entitled to compensation of equivalent value. The applicants then brought an action for compensation, but after staying the proceedings to await the outcome of the administrative proceedings, the court ruled that the action was time-barred.

Facts (*Katz*): The applicant's parents owned immovable property which they handed over to the State in December 1966. The State then sold the property to S.M., who had been occupying it as a tenant since its donation to the State. The applicant lodged a request with the municipal authority for restitution of the property under Law no. 10/2001. The request had not been examined by the authorities by the date of the Court's judgment. The applicant subsequently brought an action before a court of first instance seeking to have the 1966 donation declared null and void for lack of consent. He also sought to establish his title to the property and to have the contract of sale rescinded. The court declared the donation of the property null and void, but rejected the other two requests on the ground that S.M. had acted in good faith in signing the contract of sale. The applicant appealed unsuccessfully against the court's decision.

Law (*Faimblat*): Article 6 § 1 – The applicants' access to the procedure made available by Law no. 10/2001 remained theoretical since no compensation had been obtained seven years after the action was brought.
Conclusion: violation (unanimously).

Law (*Katz*): Article 1 of Protocol No. 1 – In the context of the Romanian legislation governing actions brought in relation to property nationalised under the communist regime, the sale by the State of another's property to a third party purchasing in good faith amounted to a deprivation of property. The *Proprietatea* fund, which was in charge of payment of compensation on the basis of Law no. 10/2001, did not operate effectively. Lastly, the legislation, including the amending legislation, did not take into account the damage resulting from individuals' inability to make use of property returned to them by a final decision and from the failure to obtain compensation over a long period. Accordingly, the frustration of the applicant's right of ownership, combined with the complete absence of compensation for over six years, had infringed his right to the peaceful enjoyment of his possessions.
Conclusion: violation (unanimously).

Article 46 (*Faimblat*) – The finding of a violation of Article 6 § 1 revealed a systemic problem resulting from shortcomings in the legislation governing the restitution of nationalised properties and the application of that legislation by the administrative authorities. The Court was satisfied that the problem of the differing interpretations of Law no. 10/2001 had been resolved; however, it could not disregard the fact that the many legislative amendments that had been made had not thus far resulted in any improvement in the situation to which that statute had given rise. It noted with concern that some 50 similar cases were already pending before it. This appeared to indicate a widespread practice among

the administrative authorities of not responding within the statutory time-limit or, at least, within a reasonable time, as that expression had been interpreted by the Court, to requests for restitution of nationalised properties. The shortcomings that had been identified in these cases might, furthermore, result in many well-founded applications being made to the Court in the future. The Court considered that the failure by the Romanian State to put its legislative system in order had not only aggravated the State's responsibility under the Convention in respect of past and present situations, but also constituted a threat to the future effectiveness of the machinery that had been put in place by the Convention. First and foremost, the State had to take the necessary legislative measures to ensure that persons requesting the restitution of property received definitive answers from the administrative authorities within a reasonable time. The State was also required to remove any legal obstacles to the rapid execution of final decisions of the administrative authorities and of the courts concerning nationalised property to enable former owners to obtain either restitution of their property or adequate compensation without delay for their losses. The aforementioned measures were to be taken at the earliest opportunity.

Article 46 (*Katz*) – The finding of a violation of Article 1 of Protocol No. 1 revealed the existence of a widespread problem with regard to the Romanian legislation on restitution of nationalised immovable property sold by the State to third parties purchasing in good faith (see, among the other cases, *Străin v. Romania*, 57001/00, 21 July 2005, Information Note no. 77). In view of that structural problem, general measures at the national level were required. Thus, first and foremost the State had to take the necessary legislative measures to prevent situations arising in which two titles to the same property coexisted. This had occurred in the applicant's case as a result of the implied recognition of the applicant's right of property without any corresponding cancellation of the third party's title. The State was also required to remove any legal obstacles preventing former owners from obtaining adequate compensation without delay for their losses. In particular, the State needed to amend the procedure that had been put in place by the laws on reparation to ensure that it became genuinely coherent, accessible, rapid and foreseeable both generally and as regards the method for choosing which files would be dealt with by the central committee. The new system had to enable those concerned to receive compensation and/or, if they preferred, shares in *Proprietatea*, within a reasonable time. Despite the three years that had elapsed since the *Străin* judgment and the repeated amendments that had been made to Law no. 10/2001, the restitution procedure was still not effective. The Government were therefore required to make visible improvements to the system at the earliest opportunity.

Article 41 (*Faimblat*) – EUR 6,000 in respect of non-pecuniary damage to be paid within three months from the date the judgment became final.

Article 41 (*Katz*) – Respondent State to return the property in issue to the applicant within three months from the date the judgment became final or, in default, to pay EUR 50,000 in respect of pecuniary damage.

EXECUTION OF A JUDGMENT
State required to secure applicant's transfer to a specialised institution and, generally, to secure appropriate conditions of detention for prisoners in need of special care.

SŁAWOMIR MUSIAŁ – Poland (N° 28300/06)
Judgment 20.1.2009 [Section IV]

(See Article 3 above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Confiscation order adjudged arbitrary as based on provision that did not have "quality of law": *violation*.

SUD FONDI SRL and Others - Italy (N° 75909/01)
Judgment 20.1.2009 [Section II]

(See Article 7 above).

Relinquishment in favour of the Grand Chamber

Article 30

ČUDAK - Lithuania (N° 15869/02)
[Section II]

(See Article 6 § 1 above).

Referral to the Grand Chamber

Article 43 § 2

The following cases have been referred to the Grand Chamber in accordance with Article 43 §2 of the Convention:

KONONOV - Latvia (N° 36376/04)
Judgment 24.7.2008 [Section III]

(See Article 7 § 1 above).

GUISO-GALLISAY - Italy (N° 58858/00)
Judgment 21.10.2008 [Section II]

(See Article 41 above).

Judgments having become final under Article 44 § 2 (c)[1]

Article 44 § 2 (c)

On 26 January 2009 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

VIDAL ESCOLL and GUILLÁN GONZÁLEZ – Andorra (N° 38196/05)
DRUŽSTEVNÍ ZÁLOŽNA PRIA and Others – Czech Republic (N° 72034/01)
CHELMI – Greece (N° 48701/06)
MEZEY – Hungary (N° 7909/05)
SCOPPOLA – Italy (N° 50550/06)
BACKES – Luxembourg (N° 24261/05)
CZUWARA – Poland (N° 36250/06)
BERCARU – Romania (N° 8870/02)
CRĂCIUN – Romania (N° 5512/02)
DUȚĂ – Romania (N° 29558/02)
GHEORGHE and MARIA MIHAELA DUMITRESCU – Romania (N° 6373/03)
MARIA PETER and Others – Romania (N° 54369/00)
ANTONOVA – Russia (N° 25749/05)
FILONENKO – Russia (N° 22094/04)
GALICH – Russia (N° 33307/02)
GLUKHOVA and BRAGINA – Russia (N° 28785/04)
NADROSOV – Russia (N° 9297/02)
POLUFAKIN and CHERNYSHEV – Russia (N° 30997/02)
PROTSENKO – Russia (N° 13151/04)
TAKHAYEVA and Others – Russia (N° 23286/04)
VLADIMIR ROMANOV – Russia (N° 41461/02)
ZAKHAROV – Russia (N° 35932/04)
ÇIRAK and Others – Turkey (N° 33433/02)
FOKA – Turkey (N° 28940/95)
KÖKTEPE – Turkey (N° 35785/03)
SARI and Others – Turkey (N° 13767/04)
TURGUT and Others – Turkey (N° 1411/03)
LEONTYUK – Ukraine (N° 3687/05)

[1] The list of judgments having become final pursuant to Article 44(2)(b) of the Convention has been discontinued. Please refer to the Court's database HUDOC which will indicate when a given judgment has become final.

Annual Report 2008 now available

In previous years the Case-Law Information and Publications Division produced an annual Survey of Activities in time for the opening of the new judicial year. In addition, the Grand Chamber and the Sections each prepared their own activity reports. For the year 2008 these various documents have been replaced by a provisional version of the Annual Report (about 140 pages) which is now available on the Court's Internet site in a PDF version at:
http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/

The Annual Report contains notably a wealth of statistical and substantive information such as the Jurisconsult's short survey of the main judgments and decisions delivered by the Court in 2008.

Press release issued by the Registrar

Press conference with the President of the European Court of Human Rights

Strasbourg, 29.01.2009 - At a press conference in Strasbourg today the President of the Court, Jean-Paul Costa, said that on the occasion of the Court's 50th anniversary this year a very positive assessment could be made of the Court's impact over the last fifty years. Looking to the future, he called upon the member States of the Council of Europe to reaffirm their commitment to human rights and their support for the Court's work, while at the same time reflecting with the Court on how to adapt the protection mechanism to the needs of the 21st century.

He stressed the size of the current caseload (nearly 100,000 cases pending), which is constantly increasing, and noted that, regrettably, the various reform proposals had reached an apparent impasse, even if he remained hopeful that the different obstacles could be surmounted. At the same time the Court could not simply go on increasing its staff and resources indefinitely, although it would still be necessary to provide the Court with additional means in the short to medium term.

Mr Costa said that something had to be done to safeguard the long-term effectiveness of the system. The main lines of the reform were clear: comprehensive implementation of the Convention standards at domestic level; effective execution of the Court's judgments by Member States to ensure that the Court was not overloaded with large numbers of similar cases and a re-structured protection mechanism allowing the Court's efforts to be concentrated as a matter of priority on the important well-founded cases.

The President stated that the Court had delivered 1,543 judgments in 2008, 3% up on 2007, and 30,163 decisions, 11% up. He explained that this considerable activity had not reduced the backlog, as some 50,000 new applications had been allocated to a judicial formation in 2008, 20% more than in 2007.

He also pointed out that 57% of applications had been lodged against just four States (the Russian Federation, Turkey, Romania and Ukraine), with the remaining 43% covering the other 43 Member States.

While this high caseload showed the confidence that the European public placed in the Court, it carried with it a risk of saturation. The Court had to work together with the Council of Europe and national authorities on improving the information available to the public with a view to getting across to them a clearer message about what the Convention and therefore the Court could do for them and what fell outside their reach.

Also at this press conference, the Court's annual table of violations per country was published for 2008. It shows that Turkey was the country that gave rise to the greatest number of judgments (257) in which at least one violation of the Convention was found, followed by Russia (233), Romania (189), Poland (129) and Ukraine (110).