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LIFE
Disappearance in Chechnya following Russian military commander's instruction to shoot applicant's son, and ineffectiveness of the ensuing investigation: *violation*.

BAZORKINA - Russia (N° 69481/01)
Judgment 27.7.2006 [Section I]

Facts: The applicant, a Russian national in Ingushetia, complained on her own behalf and on behalf of her son, Mr Yandiyev. In 1999 her son had gone to Grozny, Chechnya, and she had not heard from him since. In February 2000, she had seen him being interrogated by a Russian officer in a television news programme about the capturing of the village of Alkhan-Kala. She later obtained a full copy of the recording, made by a reporter for NTV (Russian Independent TV) and CNN. At the end of the questioning the officer in charge gave instructions for the soldiers to "finish off" and "shoot" the applicant's son. The CNN journalists who filmed the interrogation later identified the interrogating officer as Colonel-General Baranov, the commander of the troops which captured Alkhan-Kala. The applicant then began searching for her son, visiting detention centres and prisons and applying to various authorities. In August 2000 she was informed that her son was not being held in any prison in Russia. In November 2000 a military prosecutor issued a decision not to open a criminal investigation into the disappearance in question. A month later the same prosecutor stated that there were no reasons to conclude that military servicemen were responsible for the actions shown in the videotape. In July 2001 a criminal investigation was opened by the Chechnya Prosecutor's Office into the abduction of the applicant's son by unidentified persons. It later transpired that he had been placed on a missing persons list.
In November 2003 the applicant's complaints to the European Court was communicated to the Russian Government. Following the Court's decision on admissibility, the Government submitted a copy of the criminal investigation file. The investigation had established that the applicant's son had been detained on 2 February 2000 in Alkhan-Kala. Immediately after arrest he had been handed over to servicemen of the Ministry of Justice for transportation to a pre-trial detention centre. He had not however arrived at any pre-trial detention centre and his subsequent whereabouts could not be established. Colonel-General Baranov had been questioned twice about the events, and had denied giving an order to "shoot" Mr Yandiyev, but that he had intended to stop his aggressive behaviour and to prevent possible disturbances. The servicemen surrounding him had not been his subordinates and thus could not have taken orders from him. Between July 2001 and February 2006 the investigation was adjourned and reopened six times. The majority of documents in the case file were dated after December 2003. At different stages of the proceedings several orders were issued by the supervising prosecutors, setting out the steps to be taken by the investigators. In particular, in December 2003 one prosecutor, noting that no real investigation had taken place, ordered that action be taken to identify the detachments of federal forces that could have been involved in the special operation in Alkhan-Kala in early February 2000 and to establish what had happened to the detained persons.

Article 2 – *The presumed death of Mr Yandiyev*: The Court recalled that detained persons were in a vulnerable position and that the authorities were under a duty to protect them. The obligation on the authorities to account for the treatment of a detained individual was particularly stringent where that individual died or disappeared after being taken into police custody. It was undisputed that Mr Yandiyev had been detained during a counter-terrorist operation in the village of Alkhan-Kala on 2 February 2000. The Court took into account the videotape and numerous witness statements contained in the criminal investigation file confirming that he had been interrogated by a senior military officer who, at the end of the interrogation, said that he should be executed. The Court finally noted that there had been no reliable news of the applicant's son since that date. In the absence of any plausible explanation by the Government, and taking into account that no information had come to light concerning his whereabouts for more than six years, Mr Yandiyev had to be presumed dead following his unacknowledged detention.

As there had been no attempt to justify the use of lethal force in the instant case, liability was attributable to the Russian Government.
Conclusion: violation (unanimously).

The inadequacy of the investigation: The Court noted that the investigation had been opened a year and five months after the events at issue and had been plagued by inexplicable delays. Furthermore, it appeared to the Court that most of the actions necessary for solving the crime had occurred only after December 2003, when the applicant's complaint had been communicated to the Russian Government. Those delays alone had compromised the effectiveness of the investigation and could not but have had a negative impact on the prospects of arriving at the truth. The Court also noted a number of serious omissions including, in particular, the failure to identify or question some of the servicemen in charge of the detainees. Many of the omissions had been evident to the prosecutors, who had ordered certain steps to be taken. However, their instructions had either not been followed or had been followed with an unacceptable delay. In the light of those circumstances, the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed death of Mr Yandiyev.
Conclusion: violation (unanimously).

Article 3 – Concerning the applicant's complaint regarding the suffering inflicted upon her in relation to her son's disappearance, the Court noted that the applicant was Mr Yandiyev's mother, and had seen her son, on video, being questioned and led off by soldiers following remarks inferring that he would be executed. Furthermore, despite her requests, the applicant had never received any plausible explanation or information as to what became of her son following his detention. Those facts had caused her to suffer distress and anguish and the manner in which her complaints had been dealt with by the authorities could be construed as amounting to inhuman treatment.
Conclusion: violation (unanimously).

Article 5 – Although it had been established that the applicant's son had been detained on 2 February 2000 by the federal authorities, his detention had not been logged in the relevant custody records and there existed no official trace of his subsequent whereabouts or fate. That fact in itself was incompatible with the very purpose of Article 5 and enabled those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the authorities should have been alert to the need to investigate more thoroughly and promptly the applicant's complaints that her son was detained by the security forces and taken away in life-threatening circumstances. Instead they had failed to take prompt and effective measures to safeguard Mr Yandiyev against the risk of disappearance. Moreover, as late as in December 2000 the authorities had continued to deny the involvement of federal servicemen in Mr Yandiyev's apprehension. Accordingly, Mr Yandiyev had been held in unacknowledged detention in the complete absence of the safeguards contained in Article 5.
Conclusion: violation (unanimously).

Article 13 – In view of its findings with regard to Articles 2 and 3, the Court found that the applicant should have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation. However, as the criminal investigation had been ineffective the State had failed in its obligation under Article 13.
Conclusion: violation of Article 13 in connection with Articles 2 and 3 (unanimously).

Article 41 – EUR 35,000 for non-pecuniary damage.

LIFE
Doctor fails to inform applicant that her companion has AIDS: c*ommunicated*.

COLAK and Others - Germany (Nos. 77144/01 and 35493/05)
[Section V]

The first applicant's companion found out in 1992 that he had lymph gland cancer and AIDS. He informed the first applicant about the cancer but concealed his AIDS infection; he also forbade their family doctor to disclose to anybody that he had developed AIDS. When the first applicant consulted the doctor in January 1993, the doctor did not tell her that her companion had AIDS. On 22 December 1994 the first applicant's companion died. Only several months later did the doctor tell the first applicant that her companion had died from AIDS and not – as she had thought until then – from cancer. After a blood test had established that the first applicant was HIV-positive, she sued her doctor for damages. The civil courts dismissed her claim: they found the doctor at fault for not informing the first applicant but could not exclude that she had been infected before the doctor knew about her companion's AIDS infection. In parallel with the civil proceedings, the first applicant attempted to institute criminal proceedings against the doctor but the prosecuting authorities too decided that it could not be excluded beyond reasonable doubt that infection had occurred before 1993.
Communicated under Articles 2, 6(1) and 8.

ARTICLE 3

TORTURE
Ill-treatment in police custody amounting to torture: *violation*.

HÜSEYİN ESEN - Turkey (N° 49048/99)
Judgment 8.8.2006 [Section IV]

(See Article 13 below).

EXTRADITION
Extradition of the applicant to Peru after assurances had been obtained from the Peruvian Government: *no violation*.

OLAECHEA CAHUAS - Spain (N° 24668/03)
Judgment 10.8.2006 [Section V]

(See Article 34 below).

INHUMAN OR DEGRADING TREATMENT
Prolonged detention in solitary confinement: *no violation.*

RAMIREZ SANCHEZ - France (N° 59450/00)
Judgment 4.7.2006 [Grand Chamber]

Facts: The applicant, who had been implicated in a number of terrorist attacks, was sentenced to life imprisonment in 1997 for the murder of three people, two of them police officers. In mid-August 1994 he was placed in solitary confinement in prison, under an order which was extended at three-monthly intervals until mid-October 2002. He was therefore kept in solitary confinement for eight years and two months. Whilst in solitary confinement, he was placed in a one-person cell and was prohibited from any contact with the other prisoners and the prison warders, and from any activity outside his cell other than a

two-hour daily walk each day and an hour in the cardiac-training room. The applicant could read newspapers and watch television in his cell, which was lit with natural light. He received very frequent visits from lawyers. The reasons generally given for his detention in solitary confinement were the need to prohibit all contact with the other prisoners and to maintain order and security in the prison, given that he was under investigation in several terrorism cases. The applicant remained in satisfactory mental and physical health. No appeal lay against the decisions placing him in solitary confinement and prolonging his confinement.

Law: Article 3 – The physical conditions in which the applicant had been detained were proper and complied with the European Prison Rules that had been adopted by the Committee of Ministers of the Council of Europe on 16 January 2006. These conditions had also been considered as "globally acceptable" by the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) in its visit in May 2000. The applicant had received twice-weekly visits from a doctor, a once-monthly visit from a priest and very frequent visits from one or more of his 58 lawyers, including his representative in the proceedings before the Court who was now his wife under Islamic law. He had received more than 640 visits from her over a period of four years and ten months and more than 860 visits in seven years and eight months from his other lawyers. There had been no restrictions on family visits. The applicant had therefore not been in complete sensory isolation or total social isolation, but in partial and relative isolation. The fact remained that it had lasted for over eight years. There were no signs that the applicant's physical or mental health had been adversely affected: he himself had made no such allegation, and had refused the psychological help offered to him. In the present case, the authorities appeared to have sought to find a solution adapted to the applicant's character and the danger he represented. Their concerns that the applicant might use communications either inside the prison or on the outside to re-establish contact with members of his terrorist cell, to seek to proselytise other prisoners or to prepare an escape had also been reasonable.
Conclusion: no violation (twelve votes to five).

Article 13 – There was no remedy available in domestic law that would have allowed the applicant to contest the decisions prolonging his detention in solitary confinement over the eight-year period.
Conclusion: violation (unanimously).

INHUMAN OR DEGRADING TREATMENT
Strip-searching of prisoner; civil action introduced after application: *violation, Article 41 reserved*.

SALAH - Netherlands (N° 8196/02)
BAYBAŞIN - Netherlands (N° 13600/02)
Judgments 6.7.2006 [Section III]

(See Article 41 below).

INHUMAN OR DEGRADING TREATMENT
Continuing detention despite emergence of mental illness and suicidal tendencies: *violation*.

RIVIERE - France (N° 33834/03)
Judgment 11.7.2006 [Section II]

Facts: The applicant was detained in 1978 and was subsequently sentenced to life imprisonment for murder, with ineligibility for parole for fifteen years. Since mid-1991, he has been eligible for day release and release on licence. In 2002 and 2004, his requests for release on licence were turned down on the grounds of his psychiatric problems and the lack of proper support facilities. A psychiatric certificate issued in August 2002 stated that the applicant was psychotic and had suicidal tendencies linked to his difficulty in coping with prison life, and requiring in-patient hospital treatment. In October 2003 three

experts noted that the applicant had developed a psychiatric disorder while in prison and was now suffering from a chronic mental illness which, were it not for his history of serious crime, would call for psychiatric treatment rather than continued detention in prison; he displayed worrying tendencies such as a compulsion towards self-strangulation. The applicant was compulsorily admitted to hospital in August and November 2002 on the grounds of suicidal tendencies which made his continued detention dangerous. He received psychiatric and psychological counselling from October 2001 to September 2004 and in 2005.

Law: Article 3 – The prison authorities had not remained passive and had made efforts to alleviate the applicant's mental disorder from a medical point of view. However, the fact remained that, under domestic law, prisoners with mental disorders could not be held in an ordinary prison but were to be compulsorily admitted to hospital. A Recommendation of the Committee of Ministers of the Council of Europe provided that prisoners suffering from serious mental disturbance should be admitted to hospital. The Court considered that prisoners with serious mental disorders and suicidal tendencies, even if these had not to date been acted upon, required special measures to ensure that they received humane treatment for their condition, regardless of the seriousness of the offence of which they had been convicted. In the instant case, the applicant's continued detention without medical supervision appropriate to his current condition had entailed particularly acute hardship and caused him distress or adversity of an intensity exceeding the unavoidable level of suffering inherent in detention.
Conclusion: violation (unanimously).

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

INHUMAN OR DEGRADING TREATMENT
Severe ill-treatment immediately following arrest, lack of appropriate medical care thereafter: *violation*.

BOICENCO - Moldova (N° 41088/05)
Judgment 11.07.2006 [Section IV]

Facts: The applicant was arrested on 20 May 2005 on suspicion of fraud. He alleges that he was beaten up by police officers following his arrest, as a result of which he lost consciousness; the Government deny this and it is not reflected in any police report. The applicant was taken to a civilian hospital, still unconscious; when he came to, he complained of headaches and nausea. Five days after his arrest, after having been transferred to a prison hospital, the applicant was seen by doctors who found that he had suffered a head trauma followed by loss of consciousness and noted that he had pain in his kidneys and red urine. He was later diagnosed with concussion. During his stay in the prison hospital the applicant never got out of bed. On several occasions the applicant's wife and lawyers requested that an independent doctor be given access to the applicant but received no answer. On 1 September 2005 the applicant was moved to a prison; fifteen days later he was transferred to a psychiatric hospital. Several medical reports issued between September and November 2005 state that the applicant has suffered head trauma; during this period the applicant was in a state of stupor for most of the time. It is not known to the Court whether he has ever recovered.
In late May 2005 one of the applicant's lawyers lodged a complaint with the Public Prosecutor about the ill-treatment. The applicant's wife made several similar complaints between June and August 2005. Only in December 2005 was a decision received, namely a dismissal of the complaint by the same Public Prosecutor who had lodged the charges against the applicant and applied to the court for his remand in custody. An appeal against this decision lodged by one of the applicant's lawyers was unsuccessful.
On various occasions between July and November the applicant's wife and lawyers asked for the applicant to be examined by an independent doctor, the expense to be borne by the applicant's family. These requests were never replied to. It seems that an independent doctor was granted access to the applicant only once, in January 2006, but not thereafter.
The warrant for the applicant's detention on remand expired on 23 July 2005, but the applicant was not released. A request for the applicant's release, lodged several days later *inter alia* on this ground by one of his lawyers, was dismissed.

Law : Exhaustion of domestic remedies – The Government argued that the applicant could have, but did not, make use of the provisions of Article 53 of the Constitution, Article 1405 of the Civil Code and of Law 1545 on compensation for damage caused by the illegal acts of the criminal investigation organs, prosecution and courts. However, an individual is not required to try more than one avenue of redress when there are several available. It clearly appears that the applicant made appropriate complaints to the Public Prosecutor. The Government have not argued that the remedies attempted by the applicant were ineffective and should not have been exhausted by him. *Preliminary objection dismissed*.

Article 3 – The Government argued that the applicant lost consciousness as a result of stress and was not ill-treated, as demonstrated by the absence of bruises on his body. Moreover, the Government expressed their doubts about the diagnosis determined by the doctors from the Prison Hospital concerning the applicant's acute head trauma and concussion. The Court does not see any reason not to trust that diagnosis. In this respect it notes that the diagnosis was determined by the doctors from the Prison Hospital. The Government have not presented any counter medical opinion and, in any event, the diagnosis was subsequently confirmed. Moreover, the applicant also suffered pain in his kidneys and had red urine, for which no explanation other than maltreatment has been put forward, and the Court is well aware that there are methods of applying force which do not leave any traces on a victim's body. Between 20 May 2005 and 20 September 2005, given the lack of any clear diagnosis of the applicant's condition, the only medical assistance possible for him was to keep him alive. However, even that conclusion is open to doubt, given the fact that between 1 and 15 September 2005 the applicant was kept in a regular prison and there is no evidence of any medical care being provided to him there. Accordingly, the Court concludes that the applicant was not provided with proper medical care until 20 September 2005. It is unable to determine on the basis of the material before it whether the treatment following the diagnosis on 20 September 2005 was appropriate and adequate. The investigation into the applicant's alleged maltreatment was the responsibility of the same prosecutor who officially filed criminal charges against the applicant and who applied to the court for the applicant's remand and for prolongations of his remand; his independence is open to doubt. Nor in any case is there any record of any effective investigative measures. The Court finds particularly striking the Public Prosecutor's conclusion that the applicant's ill-treatment would in any event have been justified since he was presumed to have wanted to use a gun during his arrest.
Conclusion: violation (unanimously).

Article 5(3) – Under section 191 of the Moldovan Criminal Procedure Code no release pending trial is possible for persons charged with intentional offences punishable with more than 10 years' imprisonment. It appears that the applicant was charged with such an offence. However, it follows from *S.B.C. v. the United Kingdom* (no. 39360/98, 19 June 2001) that the right to release pending trial cannot in principle be excluded in advance by the legislature. Moreover, both the first-instance court and the Court of Appeal, when ordering the applicant's detention and the prolongation thereof, merely cited the relevant law, without showing the reasons why they considered to be well-founded the allegations that the applicant could obstruct the proceedings, abscond or re-offend. Nor have they attempted to refute the arguments made by the applicant's defence. Their decisions concerning the applicant's detention on remand and its prolongation were not “relevant and sufficient”.
Conclusion: violation (unanimously).

Article 5(1) – After the warrant for the applicant's detention expired on 23 July 2005, no further detention warrant was ever issued by a court. The Government invoked several sections of the Code of Criminal Procedure which in their view constituted a legal basis for the applicant's continued detention. Having analysed those sections, the Court notes that none of them provides for the detention of the applicant without a detention warrant.
Moreover, even assuming that any of the provisions invoked by the Government would have provided for such a detention, this would run counter to Article 25 of the Constitution and section 177 of the Code of Criminal Procedure, both of which state in clear terms that detention is possible only on the basis of a warrant and that it cannot be longer than 30 days.
Conclusion: violation (unanimously).

Article 34 – The essence of the applicant's complaint under this head is that his lawyers wanted to have the applicant's medical condition established by an independent source, notably a private doctor. The applicant's lawyers clearly informed the State authorities that it would be necessary for them and a doctor to see the applicant and his medical file for the purpose of defending his rights before the Court. The request was reasonable in the Court's view and it does not appear that there was any public interest in rejecting it. Moreover, the applicant's lawyers were unable to present their observations in respect of pecuniary damage due to the lack of access to the applicant and to his medical file. The Court concludes that this constituted an interference with the applicant's right of individual petition, which amounted to a failure on the part of the respondent Government to comply with their obligation under Article 34 of the Convention. In addition, the continuing denial of access amounts to an aggravated breach of Article 3. *Conclusion:* violation (unanimously).

Article 41 – Pecuniary damage: not ready for decision; non-pecuniary damage: EUR 40,000.

INHUMAN OR DEGRADING TREATMENT
Forcible administration of emetics to a drug-trafficker in order to recover a plastic bag he had swallowed containing drugs: *violation*.

JALLOH - Germany (N° 54810/00)
Judgment 11.7.2006 [Grand Chamber]

Facts: In October 1993 plain-clothes police officers observed the applicant on several occasions taking tiny plastic bags out of his mouth and handing them over for money. Suspecting that the bags contained drugs, the police officers went over to arrest the applicant. While they were doing so he swallowed another tiny bag he still had in his mouth. As no drugs were found on him, the competent public prosecutor ordered that he be given an emetic to force him to regurgitate the bag. The applicant was taken to hospital, where he saw a doctor. As he refused to take medication to induce vomiting, four police officers held him down while the doctor inserted a tube through his nose and administered a salt solution and Ipecacuanha syrup by force. The doctor also injected him with apomorphine, a morphine derivative which acts as an emetic. As a result the applicant regurgitated a small bag of cocaine. A short while later he was examined by a doctor who declared him fit for detention. When police officers arrived to question the applicant about two hours after he had been given the emetics, he told them in broken English – it then becoming apparent that he could not speak German – that he was too tired to make a statement. The following day the applicant was charged with drug trafficking and placed in detention on remand. His lawyer alleged that the evidence against him had been obtained illegally and so could not be used in the criminal proceedings. He further contended that the police officers and the doctor who had participated in the operation were guilty of causing bodily harm in the exercise of official duties. Finally, he argued that the administration of toxic substances was prohibited by the Code of Criminal Procedure and that the measure was also disproportionate under the Code, as it would have been possible to obtain the same result by waiting until the bag had been excreted naturally. In March 1994 the District Court convicted the applicant of drug trafficking and gave him a one-year suspended prison sentence. His appeal against conviction was unsuccessful, although his prison sentence was reduced to six months, suspended. An appeal on points of law was also dismissed. The Federal Constitutional Court declared the applicant's constitutional complaint inadmissible, finding that he had not made use of all available remedies before the German criminal courts. It also found that the measure in question did not give rise to any constitutional objections concerning the protection of human dignity or prevention of self-incrimination, as guaranteed under the German Basic Law.

Law: Article 3 – The Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny. True, account needed to be taken of the problems confronting States in their efforts to combat the harm caused to their societies through the supply of drugs. However, in the instant case, it had been clear before the

impugned measure was ordered and implemented that the street dealer on whom it was imposed had been storing the drugs in his mouth and could not, therefore, have been offering drugs for sale on a large scale. That had also been reflected in the sentence. The Court was therefore not satisfied that the forcible administration of emetics had been indispensable to obtain the evidence. The prosecuting authorities could simply have waited for the drugs to pass out of the applicant's system naturally, that being the method used by many other member States of the Council of Europe to investigate drugs offences. Neither the parties nor the experts could agree on whether the administration of emetics was dangerous. It was impossible to assert that the method, which had already resulted in the deaths of two people in Germany, entailed merely negligible health risks. Moreover, in the majority of the German *Länder* and in at least a large majority of the other member States of the Council of Europe the authorities refrained from forcibly administering emetics, a fact that tended to suggest that the measure was considered to pose health risks. As to the manner in which the emetics had been administered, the applicant had been held down by four police officers, which suggested a use of force verging on brutality. A tube had been fed through the applicant's nose into his stomach to overcome his physical and mental resistance. This must have caused him pain and anxiety. He had then been subjected to a further bodily intrusion against his will through the injection of another emetic. Account also had to be taken of the applicant's mental suffering while he waited for the emetic substance to take effect and of the fact that during that period he was restrained and kept under observation. Being forced to regurgitate under such conditions must have been humiliating for him, certainly far more so than waiting for the drugs to pass out of the body naturally. As regards the medical supervision, the impugned measure had been carried out by a doctor in a hospital. However, since the applicant had violently resisted the administration of the emetics and spoke no German and only broken English, the assumption had to be that he was either unable or unwilling to answer any questions that were put by the doctor or to submit to a medical examination. As to the effects of the impugned measure on the applicant's health, it had not been established that either his treatment for stomach troubles in the prison hospital two and a half months after his arrest or any subsequent medical treatment he received had been necessitated by the forcible administration of the emetics. In conclusion, the German authorities had subjected the applicant to a grave interference with his physical and mental integrity against his will. They had forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out had been liable to arouse in the applicant feelings of fear, anxiety and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure had entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this had not been the intention, the measure was implemented in a way which had caused the applicant both physical pain and mental suffering. He had therefore been subjected to inhuman and degrading treatment contrary to Article 3.
Conclusion: violation (ten votes to seven).

Article 8 – In view of the finding that there had been a violation of Article 3 of the Convention in respect of the applicant's complaint concerning the forcible administration of emetics to him, no separate issue arose under Article 8 of the Convention.

Article 6(1) – Even if it had not been the authorities' intention to inflict pain and suffering on the applicant, the evidence had nevertheless been obtained by a measure which breached one of the core rights guaranteed by the Convention. Furthermore, the drugs obtained by the impugned measure had proved the decisive element in securing the applicant's conviction. Lastly, the public interest in securing the applicant's conviction could not justify allowing evidence obtained in that way to be used at the trial. Accordingly, the use in evidence of the drugs obtained by the forcible administration of emetics to the applicant had rendered his trial as a whole unfair. As to the applicant's argument that the manner in which the evidence had been obtained and the use that had been made of it had undermined his right not to incriminate himself, what was at issue was the use at the trial of "real" evidence – as opposed to a confession – obtained by forcible interference with the applicant's bodily integrity. While the privilege against self-incrimination was primarily concerned with respecting the will of the defendant to remain silent in the face of questioning and not to be compelled to provide a statement, the Court had on occasion given the principle a broader meaning so as to encompass cases in which coercion to hand over real evidence to the authorities was at issue. Consequently, the principle against self-incrimination was

applicable to the present proceedings. In order to determine whether the applicant's right not to incriminate himself had been violated, several factors had to be taken into account. As regards the nature and degree of compulsion that had been used to obtain the evidence, the Court reiterated that the administration of the emetics amounted to inhuman and degrading treatment. The public interest in securing the applicant's conviction could not justify recourse to such a grave interference with his physical and mental integrity. Further, although German law afforded safeguards against arbitrary or improper use of the measure, the applicant, relying on his right to remain silent, had refused to submit to a prior medical examination and had been subjected to the procedure without a full examination of his physical aptitude to withstand it. Lastly, the drugs thereby obtained had been the decisive evidence supporting his conviction. Consequently, the Court would also have been prepared to find that allowing the use at the applicant's trial of evidence obtained by the forcible administration of emetics had infringed his right not to incriminate himself and therefore rendered his trial as a whole unfair.
Conclusion: violation (eleven votes to six).

Article 41 – EUR 10,000 in respect of non-pecuniary damage and for costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Conditions of detention and lack of medical assistance: *violations*.

POPOV - Russia (N° 26853/04)
Judgment 13.7.2006 [Section I]

Facts: In the context of a murder enquiry the applicant took part in an identification parade where he was identified by two of four schoolboys who had not been eyewitnesses to the murder. In May 2002 he was charged with murder and transferred the next day to remand prison SIZO 77/1 in Moscow. In June 2002 his lawyer filed a complaint with the prosecutor concerning the conduct of the investigation. He alleged, among other things, that the identification parade had been in breach of procedural requirements and that no steps had been taken to verify the applicant's alibi. The prosecutor's allowed the applicant's representative motion to have examined as witnesses Mrs R. the applicant's neighbour, and Mr Kh., a carpenter working at his flat. Their testimonies, however, were never heard. In 2003 the applicant was convicted of murder and sentenced to ten years' imprisonment. Apart from the conflicting account given by the schoolboys, the court relied on other evidence such as the victim's post-mortem reports, crime scene and various other reports without, however, explaining how those items had proved the applicant's guilt.
Since 1994 the applicant has been suffering from cancer of the urinary bladder. In 1999 he underwent a resection of the cancerous tumour and subsequent chemotherapy. While the applicant was in the medical unit of the remand prison, it was recommended that he be examined by an uro-oncologist and undergo a cystoscopy. The examination was scheduled a number of times but did not take place because he had to attend court hearings that coincided with the medical appointments. The applicant was discharged from the medical unit in March 2003. From February to March 2004 the applicant was held in YaCh-91/5 prison in Sarapul. Owing to the constant pain in his loins and stomach he refused to perform certain compulsory work in the prison and consequently was kept in various disciplinary cells. While he was in the prison he underwent certain laboratory tests and an ultrasound scan. On 1 September 2005, under Rule 39 of the Rules of Court, the European Court indicated to the Government that they should secure an independent medical examination of the applicant in a specialised uro-oncological institution. On 16 September 2005 the applicant was examined by an uro-oncologist and underwent a cystoscopy. He was recommended dispensary supervision and a cystoscopy once a year.

Law: Article 3 – *Conditions of detention in the remand prison – Medical assistance*: Having regard to the medical documents before it, the Court concluded that the minimum scope of medical supervision required for the applicant's condition included regular examinations by an uro-oncologist and a cystoscopy at least once a year. However, neither of these had been carried out during the applicant's detention which had lasted one year and nine months. The applicant had not therefore been provided with the medical assistance required for his condition. In addition, Dr M. had not been provided with the

information concerning the neoplasm detected by the ultrasound scan which had made it impossible for him to make an accurate diagnosis of the applicant's condition and recommend appropriate treatment. Since his operation in 1994 the applicant had been well informed about his medical condition and the risks associated with it. He had been informed that in case of further development of the cancer, any delay in diagnosis could have fatal consequences as even surgical treatment would no longer be possible. This must have caused him considerable anxiety, especially as he was aware of a neoplasm in his prostate detected by an ultrasound scan and could not have recourse to a qualified specialist for a conclusive diagnosis.

Material conditions of the detention on remand: Both parties agreed that the cells in which the applicant had been detained had been overpopulated. Apart from the periods when he had been placed in the medical unit, at any given time there had been 0.9 to 2.34 sq. m of space per inmate in his cell and he had been confined to his cell for more than 23 hours a day. The fact that he had been obliged to live, sleep, and use the toilet in the same cell with so many other inmates had been in itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him the feelings of fear, anguish and inferiority capable of humiliating and debasing him.
In sum, the applicant's conditions of detention combined with the length of time for which he had been held and his state of health, exacerbated by the failure to provide him with adequate medical assistance, had amounted to inhuman and degrading treatment.
Conclusion: violation (unanimously).

Conditions of detention in the second prison – Medical assistance: The applicant had been examined by an uro-oncologist and had undergone a cystoscopy a year and a half after his admission to the prison and only after such an examination had been ordered by the Court under Rule 39. Furthermore, from his medical file it should have been clear to the prison doctors that he had not undergone the required examination for the preceding one year and nine months of his detention in the remand prison. That should have prompted the prison authorities to make adequate medical arrangements without undue delay. The applicant had not therefore been provided with the medical assistance required for his condition.

Material conditions of detention: The applicant had spent over a month of his detention in disciplinary cells which measured from 2.03 sq. m to 3 sq. The cells had been equipped in particular with collapsible bunk beds and two narrow benches without backs. Since the bunk beds had only been unfolded for seven hours a day, the applicant, who regularly had complained about pain in his loins and had been diagnosed by the prison doctors as having a number of urological diseases, had to remain in his cell for 23 hours a day, out of which for 16 hours he had been practically confined to a narrow bench with no back.
In conclusion, the applicant's conditions of detention in this prison as well, combined with the time he had spent therein and his physical condition, exacerbated by the failure to provide him with the requisite medical assistance for his condition, had amounted to inhuman and degrading treatment.
Conclusion: violation (unanimously).

Article 6 – In refusing to examine two defence witnesses the trial court had not considered whether their statements could have been important for the examination of the case. However, from the fact that the defence's previous motions to have them examined had been formally granted a number of times both during the preliminary investigation and the court proceedings, it followed that the domestic authorities had agreed that their statements could have been relevant. Taking into account that the applicant's conviction had been founded upon conflicting evidence against him, the domestic courts' refusal to examine the defence witnesses without any regard to the relevance of their statements had limited the defence rights in a manner incompatible with the guarantees of a fair trial enshrined in Article 6.
Conclusion: violation of Article 6(3)(d) in conjunction with Article 6(1) (unanimously).

Article 34 – The Court reiterated that it was of the utmost importance that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The applicant had been contacted a number of times by State officials with regard to his complaints concerning various aspects of the conditions of his detention in YaCh-91/5 prison and his allegations of having received threats from the

officials of the prison administration. The Court found it unacceptable that the applicant had been contacted by officials of the very same prison administration and that such contacts, moreover, had occurred repeatedly. The applicant must have felt intimidated as a result of those contacts, especially as he had been detained and would have to remain in the prison for a lengthy period, which might give rise to a legitimate fear of reprisals. Such contacts had constituted illicit pressure amounting to undue interference with the applicant's right of individual petition.
Conclusion: failure by the Government to comply with its obligations under Article 34 not to hinder the effective exercise of the right of individual petition (unanimously).

Article 41 – EUR 25,000 for non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Three months' detention in a police detention centre not suited to the requirements of continued incarceration: *violation*.

KAJA - Greece (N° 32927/03)
Judgment 27.7.2006 [Section I]

Facts: In February 2002 the applicant, an Albanian national, was sentenced to four years' imprisonment for drug offences. He appealed against the decision and was released. In January 2003 the Salonika Court of Appeal sentenced the applicant to three years' imprisonment in connection with a separate drug-trafficking offence, and ordered that he be deported as soon as he had served his sentence. The applicant was detained in prison. In July 2003 the Criminal Court, noting that the applicant was eligible for release having served more than half his sentence, ordered his release on condition that he left the country. The applicant was released the same day and was immediately placed in detention in a police detention centre with a view to his deportation. Notwithstanding his appeals and at least one suicide attempt (two according to the applicant), he was held in the police detention centre until October 2003, when he was transferred to prison. There was disagreement between the parties as to the conditions of the applicant's detention in the Larissa police detention centre. The applicant maintained that the detention centre was overcrowded, located in the basement and had no windows, and therefore no natural light or ventilation. He alleged that the premises were dirty and had no beds or sanitary facilities; the detainees slept on the floor, sometimes next to their excrement, and there was nowhere for them to take exercise. In addition, detainees were not fed but were obliged to purchase food from the canteen. The Greek Government denied the allegations. In January 2004 the Court of Appeal determined the aggregate length of the applicant's sentences. In February 2004 the Indictment Division of the Criminal Court ordered that he be released, on condition that he left Greece and did not return within three years. The applicant was released the same day and was deported the following day.

Law: Having regard to the observations made by its delegation following its fact-finding visit to the police detention centre in the spring of 2006, the Court observed that several of the applicant's allegations had not been borne out. It considered that the conditions in the centre were acceptable, while noting that it appeared to have been freshly painted and meticulously cleaned in connection with the visit. Nevertheless, the Court considered that the detention centre was not suitable for periods of detention as long as that of the applicant. By its very nature, it was designed to house defendants for short periods, not for a period of three months. The centre possessed certain features liable to produce feelings of isolation among detainees, with no outdoor exercise space, no in-house catering facilities and no radio or television to provide contact with the outside world. While the centre provided conditions which were acceptable for a short period of detention, it was not suited to the requirements of extended periods of imprisonment. In that connection, the Court referred to the recommendations of the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) regarding police detention. In the circumstances, the Court considered that the detention of the applicant for three months in the premises in question amounted to degrading treatment.
Conclusion: violation (unanimously).

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

INHUMAN OR DEGRADING TREATMENT
Anguish and distress resulting from the "disappearance" of the applicant's son and the ineffectiveness of the ensuing investigation: *violation*.

BAZORKINA - Russia (N° 69481/01)
Judgment 27.7.2006 [Section I]

(See Article 2 above).

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Prolongation of detention on remand without lawful order: *violation*.

BOICENCO - Moldova (N° 41088/05)
Judgment 11.7.2006 [Section IV]

(See Article 3 above).

LAWFUL ARREST OR DETENTION
Unrecorded and unacknowledged detention in Chechnya: *violation*.

BAZORKINA - Russia (N° 69481/01)
Judgment 27.7.2006 [Section I]

(See Article 3 above).

Article 5(1)(a)

AFTER CONVICTION
Transfer of a sentenced foreigner to his native country, under the Convention on the Transfer of Sentenced Persons, resulted in a longer *de facto* term of imprisonment: *inadmissible*.

SZABÓ - Sweden (Nº 28578/03)
Decision 27.6.2006 [Section II]

The applicant, a Hungarian national, was convicted of a drugs offence and sentenced to ten years' imprisonment in Sweden. The conviction included a permanent expulsion order from Sweden. Under Swedish Law, the applicant would be eligible for conditional release after six years and eight months. He had been serving his sentence in this country for one year and a half when he was transferred, under the Convention on the Transfer of Sentenced Persons, to his native country to serve the remainder of the sentence. The Hungarian court did not make any fresh assessment of the applicant's guilt, accepted the Swedish courts' findings and converted the sentence into ten years' imprisonment in conformity with Hungarian law, to be served in a strict prison regime. The effect of this condition was that the applicant would become eligible for conditional release after having served eight years. The applicant appealed and

requested, unsuccessfully, to serve his sentence in a normal prison regime which would have made him eligible for release on parole at an earlier date.

Article 5 – Upon his transfer, the applicant is likely to serve a longer period of imprisonment by one year and four months, due to the delay in the date of his possible conditional release. This possibility does not in itself render the deprivation of liberty arbitrary, as long as the sentence to be served does not exceed the sentenced imposed on him in the original criminal proceedings. Yet, a flagrantly longer *de facto* term of imprisonment could give rise to an issue under Article 5. The time the applicant will serve after his transfer remains within the sentence imposed. The likely additional period of detention he will actually have to serve upon his transfer to Hungary corresponds to 20% of the time he could have expected to serve in Sweden, which is not so disproportionate: *manifestly ill-founded*.

Article 6 – The transfer is a measure of execution of a sentence and the additional period of imprisonment resulting from the applicant's transfer is not a consequence of his having received a penalty in new criminal or disciplinary proceedings: *incompatible ratione materiae*.

Article 7 – The "penalty" for the purpose of this Article is the ten-year prison sentence decided by the Swedish courts. This penalty did not exceed the maximum punishment provided for by law, nor has any additional penalty been imposed by virtue of the decisions taken by the Swedish and Hungarian authorities in regard to the transfer: *incompatible ratione materiae*.

(N.B. See also the similar case of *Csoszánszki v. Sweden*, no. 22318/02, decision 27.6.2006, Section II).

Article 5(1)(f)

PREVENT UNAUTHORISED ENTRY INTO COUNTRY
Seven-day detention in reception centre after asylum-seeker had been granted "temporary admission": *no violation*.

SAADI - United Kingdom (N° 13229/03)
Judgment 11.7.2006 [Section IV]

Facts: The applicant, an Iraqi national, fled his country of origin and arrived at London Heathrow Airport on 30 December 2000, where he immediately claimed asylum and was granted "temporary admission". On 2 January 2001, on reporting to the immigration authorities, he was detained and transferred to a reception centre used for asylum-seekers who were not likely to abscond and who could be dealt with by a "fast track" procedure. On 5 January 2001 the applicant's representative telephoned the Chief Immigration Officer and was told that the reason for the detention was that the applicant was an Iraqi who met the criteria to be detained at the centre in question. His asylum claim was initially refused on 8 January 2001 and he was formally refused leave to enter the UK. He was released the next day. He appealed against the Home Office decision and was subsequently granted asylum. He applied in vain for permission for judicial review of his detention, claiming that it had been unlawful under domestic law and under Article 5 of the Convention.

Law: Article 5(1)(f) – The Court firstly examined whether the applicant had been detained in order to prevent his effecting an unauthorised entry into the United Kingdom: although he had applied for asylum and had been granted temporary admission to the country on 30 December 2000, and had been at large until 2 January 2001, his detention from that date had nevertheless been to prevent his effecting an unlawful entry because, lacking formal admission clearance, he had not "lawfully" entered the country. The only requirement under Article 5(1)(f) for the detention of an individual under such circumstances, was that that detention should be imposed as a genuine part of the process to determine whether the individual should be granted immigration clearance and/or asylum, and that it should not otherwise be arbitrary. The applicant's detention at the centre in question had been a *bona fide* application of the policy

on "fast-track" immigration decisions. As to the question of possible arbitrariness, the Court noted that the applicant had been released once his asylum claim had been refused. The detention had lasted a total of seven days, which had not been excessive in the circumstances.
Conclusion: no violation (four votes to three).

Article 5(2) – The Court noted that the applicant's representative had been informed of the reason for the applicant's detention when his client had been in detention for some 76 hours. Such a delay had not been compatible with the requirement that such reasons be given promptly.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation of Article 5(2) constituted sufficient just satisfaction for non-pecuniary damage.

Article 5(2)

INFORMATION ON REASONS FOR ARREST
76-hour delay in informing "temporarily admitted" asylum-seeker of the grounds for his later detention in a reception centre: *violation*.

SAADI - United Kingdom (N° 13229/03)
Judgment 11.7.2006 [Section IV]

(See Article 5(1)(f) above).

Article 5(3)

BROUGHT "PROMPTLY" BEFORE A JUDGE OR OTHER OFFICER
Release after fifteen days but before appeal against custody order is heard: *violation*.

HARKMANN - Estonia (N° 2192/03)
Judgment 11.7.2006 [Section IV]

Facts: Criminal proceedings were instituted against the applicant in 1996 and 2000. The applicant repeatedly failed to appear at the police prefecture when summoned and on many occasions it proved impossible to compel him to appear. The applicant was committed for trial in 2002 and his case was set down for hearing by the County Court. The applicant was eventually taken into custody on the orders of the County Court on 2 October 2002, having failed several times to appear in court. He subsequently lodged a complaint with the Court of Appeal alleging that his custody was unlawful as he had not been presented with a copy of the custody decision which, moreover, had been taken in his absence. The County Court held a hearing on the merits of the case on 17 October 2002 but adjourned it on the ground that the defence was not familiar with the case file; at the same time it released the applicant from custody, having secured his promise to appear when the hearing resumed. On 11 November 2002 the Court of Appeal heard the applicant's appeal against the custody order and dismissed it.

Law: Article 5(1) – The Government argued that the applicant's detention had been justified under Article 5(1)(b) of the Convention: the reason for his detention had not been so much a reasonable suspicion of his having committed a crime, in which cases Article 5(1)(c) applied, but rather his regular non-compliance with the court's orders and the aim of securing the fulfilment of an obligation – namely, attendance in court – prescribed by law. The Court, noting that the applicability of one ground for detention does not necessarily preclude that of another, and taking into account that the applicability of Article 5(1)(c) triggers also the protection provided by Article 5(3), considers it appropriate to analyse first whether this sub-paragraph is applicable to the present case. It goes on to note that there was no other

reason for the authorities to compel the applicant to appear before the court save for the criminal proceedings against him, and concludes that his detention falls within the ambit of Article 5(1)(c): *Article 5(1)(c) applicable*.

Article 5(3) – The applicant chose not to appear before the County Court when the decision concerning his arrest was taken. This fact in itself does not give rise to an issue under Article 5(3), as a requirement cannot be derived from the Convention to the effect that a person who is evading court proceedings should be present at the court hearing where authorisation for his or her arrest is dealt with. However, the applicant had no chance to present the court with possible personal reasons militating against his detention after his actual arrest on 2 October 2002, despite the authorities' obligation under Article 5(3) to give him a possibility to be heard. The applicant was released after a hearing of his criminal case on 17 October 2002, which is before the lawfulness of his detention was examined. Until then, he had been kept in custody for fifteen days. The Court finds that such a period is incompatible with the requirement of "promptness" under Article 5(3).
Conclusion: violation (unanimously).

Article 5(4) – The applicant was released before an issue under Article 5(4) could arise: *Manifestly ill-founded*.

Article 5(5) – The Court finds no reason to doubt the lawfulness of the applicant's detention under Estonian law. In these circumstances it does not appear that a claim for compensation made by the applicant would have had any reasonable prospect of success. Nor did Estonian law provide for a distinct right to compensation for detention in violation of Article 5 of the Convention.
Conclusion: violation (unanimously).

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

DETENTION ON REMAND
Automatic detention on remand: *violation*.

BOICENCO - Moldova (N° 41088/05)
Judgment 11.7.2006 [Section IV]

(See under Article 3 above).

LENGTH OF PRE-TRIAL DETENTION
Unreasonable length of pre-trial detention without relevant and sufficient grounds: *violation*.

HÜSEYİN ESEN - Turkey (N° 49048/99)
Judgment 8.8.2006 [Section IV]

(See Article 13 below).

Article 5(4)

TAKE PROCEEDINGS
Inability to secure an effective examination of the lawfulness of pre-trial detention: *violation*.

HÜSEYİN ESEN - Turkey (N° 49048/99)
Judgment 8.8.2006 [Section IV]

(See Article 13 below).

SPEEDINESS OF REVIEW
Release after fifteen days but before appeal against custody order is heard: *inadmissible*.

HARKMANN - Estonia (N° 2192/03)
Judgment 11.7.2006 [Section IV]

(See Article 5(3) above).

Article 5(5)

COMPENSATION
Detention lawful under domestic law, no provision for compensation for detention in violation of Article 5: *violation*.

HARKMANN - Estonia (N° 2192/03)
Judgment 11.7.2006 [Section IV]

(See Article 5(3) above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Pecuniary dispute between active navy officer and his command: *incompatible ratione materiae*.

KANAYEV - Russia (N° 43726/02)
Judgment 27.7.2006 [Section I]

Facts: The applicant is an active officer of the Russian navy. In March 2002 a military court awarded him arrears for travel expenses, together with an award for legal expenses. The decision having become final the same month, the applicant forwarded the writ of execution to the State treasury office. In April 2002 the writ was returned to him unexecuted. The treasury office explained that the debtor had no available funds which could be used for paying the judgment debt. The applicant was advised to address the writ of execution to the head office of the Ministry of Finance, which the applicant did, to no avail. In August 2002 the Ministry of Finance informed the applicant that the writ of execution had been transmitted to the Ministry of Defence with a view to prepare a budget call for the respective amount. In December 2002 the Ministry of Finance paid the arrears due and in March 2004 the applicant received the sum award for his legal expenses. Before the Court he complained about the lengthy failure to enforce the judgment in his favour, due to lack of State funds.

Law: Article 6 (1) – The question arose whether the Court had competence *ratione materiae* to examine the complaint from the standpoint of this provision. In the *Pellegrin v. France* judgment the Court had adopted a functional test for the purposes of determining the applicability of this provision to employment disputes involving public servants, based on the nature of the employee's duties and responsibilities: an employment dispute is excluded from the scope of Article 6(1) if it concerns a public servant whose duties typify the specific activities of the public service in so far as he or she acts as the depository of public

authority responsible for protecting the general interests of the State. In the present case the applicant was an active officer of the Russian navy, a third rank captain, and thus in this capacity, "wielded a portion of the State's sovereign power" within the meaning that could reasonably be conferred on this notion in the light of the *Pellegrin* judgment. Accordingly, Article 6(1) was not applicable to the dispute between the applicant and his command and the ensuing enforcement proceedings, which must be regarded as an integral part of the "trial" for the purposes of Article 6: *incompatible ratione materiae*.

Article 1 of Protocol No. 1 – In line with the Court's established case-law, it was not open to a State authority to cite lack of funds as an excuse for not honouring a judgment. The Government had not provided any plausible justification for the fact that it had taken the domestic authorities nine and a half months to pay the amount of arrears awarded (in itself arguably a tolerable delay in the circumstances) and almost two years to pay the rest of the judgment debt.
Conclusion: violation (unanimously).

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

CIVIL RIGHTS AND OBLIGATIONS
ACCESS TO A COURT
Admissibility of citizenship claims and civil actions dependent on registration of fixed residence: *admissible*.

SERGEY SMIRNOV - Russia (N° 14085/04)
Decision 6.7.2006 [Section I]

(See Article 35(1) (effective remedy) below).

CIVIL RIGHTS AND OBLIGATIONS
Osho movement (Shree Rajneesh or Bhagwan movement) called a "sect" in a Government warning: *communicated*.

LEELA FÖRDERKREIS e.V. and Others - Germany (N° 58911/00)
[Section V]

(See Article 9 below).

RIGHT TO A COURT
State's refusal, on grounds of State immunity, to request enforcement of decisions restoring to the applicants their property assigned to a foreign Embassy: *inadmissible*.

TRESKA - Albania and Italy (No 26937/04)
Decision 29.6.2006 [Section III]

The applicants, two Albanian nationals, were allocated by final decisions of the judicial and administrative authorities, property rights over a villa in Albania, which had been unlawfully confiscated from their father without compensation, the right to recover it, and an order of restitution. Meanwhile, however, the property title had been transferred to the Italian Government through an inter-State agreement by which Italy purchased the property. The building was assigned to be the private residence of the Italian Ambassador in Albania. The applicants instituted proceedings in order to recover possession of their property, but the competent Albanian Court held that it did not have jurisdiction to deal with the case. The Embassy was ordered to pay the applicants a monthly rental fee for use of the plot of land by a final and binding Albanian decision, but failed to comply with the judgment. The Albanian authorities did

not act in order to have the final decision enforced. The Albanian Constitutional Court dismissed the applicants' appeal, the reason being that the immunity of the Italian Embassy and the inviolability of its premises gave rise to a circumstance where the Court's decision could not be enforced in practice. The Italian courts rejected the applicants' request for the validation of the Albanian judgment which had decided on the Embassy's obligation to pay them a rental fee.

Complaint under Article 1 Protocol No. 1 against Italy: The applicants complained of the Albanian authorities' refusal to execute the court decision in their favour and to take enforcement measures. Italy did not exercise any jurisdiction over the applicants; the proceedings in issue were conducted exclusively in Albanian territory; the Albanian courts were the only bodies with sovereign power over the applicants; and the Italian authorities had no direct or indirect influence over the decisions and judgments delivered in Albania. Hence, Italy's responsibility cannot be engaged: *incompatible ratione personae*.

Complaint under Article 6(1) against Albania: The property allocated to the applicants is assigned to be the private residence of the Italian Ambassador in Albania and accordingly constitutes "premises of mission" within the meaning of the Vienna Convention on Diplomatic Relation. Regard being had to the rules of international law on sovereign immunity, the Albanian Government cannot be required to override against their will the rule of State immunity, which is designed to ensure the optimum functioning of diplomatic missions and to promote comity and good relations between sovereign States. Hence, the decisions in which the national courts refused to order the administrative authorities to take measures of constraint with regard to the property possessed by the Italian Embassy in Albania can be regarded as a justified restriction on the applicants' right of access to a court: *manifestly ill-founded*.

Complaint under Article 1 Protocol No 1 against Albania: Italy had notified the Albanian authorities that it had title to the building in issue, which title has not been invalidated by any final judicial decision. No domestic court has invalidated the applicants' title to the properties in issue, which title cannot expire with the passing of time; on the contrary, it can be converted into a title for future compensation to be paid pursuant to the domestic law relating to the compensation of former owners. Hence, the Albanian authorities' failure to take steps to restore to the applicants' possession of the property - on grounds of "public-interest" directly linked to observance of the principle of State immunity - did not upset the requisite fair balance: *manifestly ill-founded*.

ACCESS TO COURT
Domestic court's failure to examine a civil action, and apparent loss of its case-file: *violation*.

DUBINSKAYA - Russia (N° 4856/03)
Judgment 13.7.2006 [Section I]

In May 1995 the applicant, who had been severely injured in a traffic accident in Moscow, brought a civil action against the car owner and driver seeking compensation for damage. In October 1995 the district court, in an interim decision which was submitted to the Moscow Bureau for forensic medical examinations, ordered a medical examination of the applicant. According to the Government, the court had repeatedly asked the applicant's lawyer to produce additional medical information requested by the Bureau. In the absence of any reply, the court had discontinued the proceedings. The applicant maintained that neither she nor her lawyer had received any such requests and that they had not been informed that the court had closed the proceedings. Only in 2002 was she informed that as she had failed to present the requested medical information her claim had never been registered and no medical examination had ever been carried out.

Law: It was undisputed that the district court had accepted her claim for examination in May 1995 and had ordered an expert examination in October 1995. The Court found no evidence that a decision on discontinuation of the proceedings had been taken. The right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court. This right would be illusory if a Contracting State's legal system allowed an individual to bring a civil action

before a court without ensuring that the case would be determined by a final decision in the judicial proceedings. The applicant had not been notified of any decision in her case, if such a decision had ever been made. When she had inquired about the state of the proceedings in 2002, the domestic authorities had denied the registration of the claim. The Government's submissions had shed little light on the developments in the case and had not enabled the Court to establish what happened to the case file and the applicant's claim. It would place an excessive and unreasonable burden on the applicant to require her to re-submit her action ten years after she had validly introduced it for the first time and more than thirteen years after the circumstances that had given rise to that claim had occurred. Accordingly, the failure of the domestic authorities to determine the applicant's claim had deprived her of the right of access to a court.
Conclusion: violation (unanimously).

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

ACCESS TO COURT
Trade union unable to challenge competition authority's decision impacting on a collective labour agreement to which the union was a party: *struck out under Article 37(1)(c)*.

SWEDISH TRANSPORT WORKERS UNION - Sweden (N° 53507/99)
Judgment 18.7.2006 [Section II]

Facts: The applicant union had a collective labour agreement with the Swedish Association of Newspaper Publishers which included a clause to the effect that any company hiring a contractor had to draw up a separate contract with the union. A company belonging to the association then hired a contractor to distribute newspapers in a district previously distributed by a union member. The union successfully sued the association and the company before the Labour Court. The company complained to the Swedish Competition Authority which found that the inclusion of the relevant clause in the collective labour agreement had impaired free and fair competition, and ordered the association and its member companies to no longer apply that clause, rendering it effectively invalid. The applicant union had been able to submit observations to the Competition Authority without formally being a party to the proceedings. Under section 60 of the Competition Act, however, only a company affected by its decision could lodge an appeal.
Before the European Court the applicant union complained about its lack of access to a court to challenge the Competition Authority's decision. After the application had been declared admissible the Government submitted that a legislative review of the limitations on access to a court implied by section 60 of the Competition Act was being conducted and was due to be concluded by 1 November 2006. The review was being made with specific reference to the decision given in the applicant's case and the Government's acknowledgment that it had given rise to a violation of Article 6(1).
The Court noted the aforementioned facts along with the Government's preparedness to pay the applicant union compensation for the violation, and considered it no longer justified to continue the examination application. The applicant union had objected to the Government's request to strike out the application.
Conclusion: struck out (unanimously).

ACCESS TO COURT
Refusal of employment permits for foreign nationals, oral hearing and intended employee's access to a tribunal: *violation*.

JURISIC and COLLEGIUM MEHRERAU - Austria (N° 62539/00)
COORPLAN-JENNI GmbH and HASCIC - Austria (N° 10523/02)
Judgments 27.7.2006 [Section I]

Facts: Collegium Mehrerau, an Austrian monastery, wished to employ Mr Jurisic, a national of Bosnia and Herzegovina, as a farmhand. In February 1998 the applicants lodged a request with the Bregenz Labour Market Service for the grant of an employment permit to Mr Jurisic; this was refused on the

ground that the maximum quota for foreign workers had already been exceeded. The applicants each lodged an appeal with the Vorarlberg Labour Market Service; both appeals were met with a refusal. The applicants each lodged a complaint with the Administrative Court and requested an oral hearing. Mr Jurisic's complaint was rejected on the ground that none of his rights had been violated, the refusal to grant the employment permit requested not being based on reasons related to his personal circumstances; Collegium Mehrerau's complaint was dismissed as unfounded in law.
Coorplan-Jenni GmbH, an Austrian limited liability company, employed Mr Hascic, also a national of Bosnia and Herzegovina, until advised by the Labour Market Service that an employment permit was required. In April 1998 the applicants lodged a request with the Feldkirch Labour Market Service for the grant of such a permit; this was refused on the ground that the maximum quota for foreign workers had already been exceeded. The applicants each lodged an appeal with the Vorarlberg Labour Market Service; both appeals were met with a refusal. The applicants each lodged a complaint with the Administrative Court and requested an oral hearing. Mr Hascic's complaint was rejected on the ground that none of his rights had been violated, as it was in principle for the employer to request that an employment permit be issued; Coorplan-Jenni GmbH's complaint was dismissed as unsubstantiated and unfounded in law.
A hearing was not held in either case, the Administrative Court taking the view, firstly, that a hearing was unlikely to contribute to the clarification of the case and, secondly, that Article 6 of the Convention was in any event inapplicable.

Law: Applicability of Article 6 – As regards Collegium Mehrerau and Coorplan-Jenni GmbH, it is not in dispute that there was a "dispute". An employment permit for a specific foreign employee is granted to the employer upon request, provided that specified conditions are met, important public or economic interests are not harmed and the situation and evolution of the labour market allow; consequently, the proposed employers could, at least on arguable grounds, claim the "right" to an employment permit. Finally, the validity of an employment contract concluded between an employer and a foreign employee is in principle dependent on the grant of an employment permit; therefore, the outcome of the proceedings at issue has to be considered directly decisive for the proposed employers' relations under the civil law; it thus concerned their "civil" rights.
Conclusion: Article 6 applicable (unanimously).

As regards Mr Jurisic and Mr Hascic, the Court notes that they had no locus standi in the proceedings concerning the issue of an employment permit. Since the applicants agreed on the employment contracts and in each case jointly applied for an employment permit, and since Collegium Mehrerau and Coorplan-Jenni GmbH could and actually did claim a right to the issue of an employment permit, the Court finds that Mr Jurisic and Mr Hascic must be taken to have also had a right, derived from their prospective employers' right, to adjudication on their requests for an employment permit. The fact that the domestic legislation precluded them from making the request for an employment permit to the domestic authorities personally does not affect the existence of that right but is only a procedural bar. Having regard to its findings above, the Court further considers that Mr Jurisic's and Mr Hascic's right to conclude a valid employment contract was arguable, and that the disputes they wished to bring before the domestic tribunals were both directly decisive for this "civil" right and genuine and serious.
Conclusion: Article 6 applicable (5 votes to 2).

Compliance with Article 6 – As regards Collegium Mehrerau and Coorplan-Jenni GmbH, the Court finds that the applicant company was in principle entitled to a public oral hearing before the first and only tribunal to examine its case, unless there were exceptional circumstances which justified dispensing with such a hearing. The Court has accepted such exceptional circumstances in cases where proceedings concerned exclusively legal or highly technical questions. However, the Court does not consider that the subject matter of the proceedings before the Administrative Court in the present case was of such a highly technical or exclusively legal nature as to justify dispensing with the obligation to hold a hearing.
Conclusion: violation (6 votes to 1).

Mr Jurisic and Mr Hascic were prevented by law from bringing their claims before the domestic tribunal. Their right of access to a court has been violated.
Conclusion: violation (5 votes to 2).

FAIR HEARING
Failure by the domestic courts to examine a relevant and important ground of appeal by the applicant: *violation*.

PRONINA - Ukraine (N° 63566/00)
Judgment 18.7.2006 [Former Section II]

Facts: In March 2000 the applicant lodged a claim with the Yalta City Court against the local social welfare department, challenging the refusal of the latter to award her a higher pension. In support of her claim the applicant maintained, among other things, that under Article 46 of the Constitution her pension should not be lower than the minimum living standard. Her complaint was rejected by the Yalta City Court and later, on appeal, by the Supreme Court. Neither court considered her arguments under Article 46 of the Constitution.

Law: The domestic courts had made no attempt to analyse the applicant's claim under Article 46 of the Constitution, despite explicit references she had made before every judicial instance. By ignoring the point altogether, even though it was specific, pertinent and important, the courts had fallen short of their obligations under Article 6(1).
Conclusion: violation (unanimously).

Article 41 – EUR 1,500 in respect of non-pecuniary damage.

FAIR HEARING
Applicant's inability to appear in person before the Constitutional Court in collective proceedings: *inadmissible*.

GAVELLA - Croatia (N° 33244/02)
Decision 11.7.2006 (Section I)

(See Article 1 of Protocol No. 1 below).

FAIR HEARING
Doctor fails to inform applicant that her companion has AIDS: *communicated*.

COLAK and Others - Germany (Nos. 77144/01 and 35493/05)
[Section V]

(See Article 2 above).

Article 6(1) [criminal]

APPLICABILITY
Proceedings under the Convention on the Transfer of Sentenced Persons: *inadmissible*.

SZABÓ - Sweden (Nº 28578/03)
Decision 27.6.2006 [Section II]

(See Article 5 above).

FAIR HEARING
Use in evidence of a plastic bag containing drugs obtained by the forcible administration of emetics: *violation*.

JALLOH - Germany (N° 54810/00)
Judgment 11.7.2006 [GC]

(See Article 3 above).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Court's refusal to hear defence witnesses despite earlier granting of motions to that effect: *violation*.

POPOV - Russia (N° 26853/04)
Judgment 13.7.2006 [Section I]

(See Article 3 above).

ARTICLE 7

HEAVIER PENALTY
Transfer of a sentenced foreigner to his native country, under the Convention on the Transfer of Sentenced Persons, resulted in a longer *de facto* term of imprisonment: *inadmissible*.

SZABÓ - Sweden (N° 28578/03)
Decision 27.6.2006 [Section II]

(See Article 5 above).

ARTICLE 8

PRIVATE LIFE
No effective remedy to discover the identity of the author of a defamatory text posted on the Internet in the name of a minor: *admissible*.

K.U. - Finland (N° 2872/02)
Decision 27.6.2006 [Section IV]

In 1999 an unknown person or persons placed an advertisement on a dating site on the Internet in the name of the applicant, who was then 12 years old, without his knowledge. The advertisement mentioned his age and year of birth, gave a detailed description of his physical characteristics, a link to the web page he had at the time with his picture on it, as well as his phone number, which was accurate save for one digit. In the advertisement, it was claimed that he was looking for an intimate relationship with a boy of his age or older. The applicant became aware of the announcement on the Internet when he received an answer from a man, offering to meet up with him. The applicant's father requested the police to identify the person who had placed the advertisement in order to bring charges against that person. The service provider however refused to divulge the identity of the holder of the so-called dynamic IP address in question, regarding itself bound by the confidentiality of telecommunications as defined by law. The police then asked the district court to oblige the service provider to divulge the said information pursuant

to the Criminal Investigations Act. The district court found no explicit legal provision authorising it to order the service provider to disclose telecommunications identification data in breach of its professional secrecy. The district court's position was upheld on appeal. By virtue of the Coercive Measures Act the police had the right to obtain telecommunications identification data in cases concerning certain offences, notwithstanding the obligation to observe secrecy. However, calumny was not such an offence.
The person who answered the dating advertisement and contacted the applicant was identified and appropriate charges were brought. The managing director of the company which provided the Internet service could not be charged, because the prosecutor found, in April 2001, that the alleged offence had become time-barred. The alleged offence was a violation of the Personal Information Act, i.e. that the service provider had published a defamatory announcement on its website without verifying the identity of the sender.
Before the Court the applicant complains under Articles 8 and 13 of the Convention that an invasion of his private life had taken place and that no effective remedy existed to discover the identity of a person who had put a defamatory text on the Internet in his name.

PRIVATE LIFE
Doctor fails to inform applicant that her companion has AIDS: *communicated*.

COLAK and Others - Germany (Nos. 77144/01 and 35493/05)
[Section V]

(See Article 2 above).

PRIVATE LIFE
Strategic monitoring of telecommunications, follow-up case to *Klass v. Germany*: *inadmissible*.

WEBER and SARAVIA - Germany (N° 54934/00)
Decision 29.6.2006 [Section III]

In 1994 the Act of 13 August 1968 on Restrictions on the Secrecy of Mail, Post and Telecommunications (*Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses*), also called "the G 10 Act" (See *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28) was amended to accommodate the so-called strategic monitoring of telecommunications, that is, collecting information by intercepting telecommunications in order to identify and avert serious dangers facing the Federal Republic of Germany, such as an armed attack on its territory or the commission of international terrorist attacks and certain other serious offences. The changes notably concern the extension of the powers of the Federal Intelligence Service (*Bundesnachrichtendienst*) with regard to the recording of telecommunications in the course of strategic monitoring, as well as the use of personal data obtained thereby and their transmission to other authorities. The first applicant, a German national, is a freelance journalist; the second applicant, a Uruguayan national, took telephone messages for the first applicant and passed them on to her. In 1995 the applicants lodged a constitutional complaint with the Federal Constitutional Court challenging the new amendments. In a judgment of 14 July 1999, the Federal Constitutional Court held that the second applicant had no *locus standi* but upheld the first applicant's complaint in part. The application is based on the applicants' remaining complaints. A new version of the G 10 Act entered into force on 29 June 2001.

Article 8 – Restating earlier case-law, the Court notes that the mere existence of legislation which allows a system for the secret monitoring of communications entails a threat of surveillance for all those to whom the legislation may be applied. This threat necessarily strikes at freedom of communication between users of the telecommunications services and thereby amounts in itself to an interference with the exercise of the applicants' rights under Article 8, irrespective of any measures actually taken against them. The transmission of data to and their use by other authorities, which enlarges the group of persons with knowledge of the personal data intercepted and can lead to investigations being instituted against the

persons concerned, constitutes a further separate interference with the applicants' rights under Article 8. Moreover, the impugned provisions interfere with these rights in so far as they provide for the destruction of the data obtained and for the refusal to notify the persons concerned of surveillance measures taken in that this may serve to conceal monitoring measures interfering with the applicants' rights under Article 8 which have been carried out by the authorities. As to whether these interferences are "in accordance with the law", the Court notes that the term "law" within the meaning of the Convention refers back to national law, including rules of public international law applicable in the State concerned; as regards allegations that a respondent State has violated international law by breaching the territorial sovereignty of a foreign State, the Court requires proof in the form of concordant inferences that the authorities of the respondent State have acted extraterritorially in a manner that is inconsistent with the sovereignty of the foreign State and therefore contrary to international law. The impugned provisions of the amended G 10 Act authorise the monitoring of international wireless telecommunications, that is, telecommunications which are not effected via fixed telephone lines but, for example, via satellite or radio relay links, and the use of data thus obtained. Signals emitted from foreign countries are monitored by interception sites situated on German soil and the data collected are used in Germany. In the light of this, the Court finds that the applicants failed to provide proof in the form of concordant inferences that the German authorities, by enacting and applying strategic monitoring measures, have acted in a manner which interfered with the territorial sovereignty of foreign States as protected in public international law. As to the statutory basis of the amended G 10 Act, the Court accepts the judgment of the Federal Constitutional court that it satisfies the Basic Law and finds no arbitrariness in its application. As to the quality of the law, firstly, its accessibility raises no problem; secondly, the Court concludes that the impugned provisions of the G 10 Act, seen in their legislative context, contained the minimum safeguards against arbitrary interference as defined in the Court's case-law and therefore gave citizens an adequate indication as to the circumstances in which and the conditions on which the public authorities were empowered to resort to monitoring measures, and the scope and manner of exercise of the authorities' discretion. The "legitimate aims" pursued were to safeguard national security and/or to prevent crime. As to whether the interferences were "necessary in a democratic society", the Court recognises that the national authorities enjoy a fairly wide margin of appreciation in choosing the means for protecting national security. Nevertheless, in view of the risk that a system of secret surveillance for the protection of national security may undermine or even destroy democracy under the cloak of defending it, the Court must be satisfied that there exist adequate and effective guarantees against abuse. As to strategic monitoring *per se*, although the amended G 10 Act broadens the range of subjects in respect of which it can be carried out, safeguards against abuse were spelled out in detail and the Federal Constitutional Court in fact raised the threshold in respect of at least one crime; the Court is satisfied that there was an administrative procedure designed to ensure that measures were not ordered haphazardly, irregularly or without due and proper consideration. As regards supervision and review of monitoring measures, the system of supervision was essentially the same as that found by the Court in its *Klass and Others* judgment not to violate the Convention; there is no reason to reach a different conclusion in the present case. As to the transmission of non-anonymous personal data obtained by the Federal Intelligence Service to the Federal Government, the Court accepts that transmission of personal – as opposed to anonymous – data might prove necessary. The additional safeguards introduced by the Federal Constitutional Court, namely that the personal data contained in the report to the Federal Government were marked and remain connected to the purposes which had justified their collection, are appropriate for the purpose of limiting the use of the information obtained to what is necessary to serve the purpose of strategic monitoring. As to the transmission of personal data to, among other authorities, the Offices for the Protection of the Constitution, the Court notes that the crimes for which this was possible were limited to certain designated serious criminal offences and that following the Federal Constitutional Court's judgment such transmission, which had to be recorded in minutes, was only possible if the suspicion that someone had committed such an offence was based on specific facts as opposed to mere factual indications; the safeguards against abuse, as thus strengthened by the Federal Constitutional Court, were adequate. As to the destruction of personal data, an acceptable procedure for verifying whether the conditions were met was in place; moreover, the Federal Constitutional Court had ruled that data which were still needed for court proceedings could not be destroyed immediately and had extended the supervisory powers of the G 10 Commission to cover the entire process of using data up to and including their destruction. Finally, as to the notification of persons whose communications had been monitored, this was to be done as soon as possible without jeopardising the purpose of the monitoring;

rules contained in the judgment of the Federal Constitutional Court prevented the duty of notification from being circumvented, save in cases where the data were destroyed within three months without ever having been used. *Manifestly ill-founded*.

Article 10 – The first applicant submitted that the amended G 10 Act prejudiced the work of journalists investigating issues targeted by surveillance measures. She could no longer guarantee that information she received in the course of her journalistic activities remained confidential. In the Court's view, the threat of surveillance constitutes an interference to her right, in her capacity as a journalist, to freedom of expression. The Court finds, on the reasons set out under Article 8, that this interference is prescribed by law and pursues a legitimate aim. As to necessity in a democratic society, the Court notes that strategic surveillance was not aimed at monitoring journalists; generally the authorities would know only when examining the intercepted telecommunications, if at all, that a journalist's conversation had been monitored. Surveillance measures were, in particular, not directed at uncovering journalistic sources. The interference with freedom of expression by means of strategic monitoring cannot, therefore, be characterised as particularly serious. It is true that the impugned provisions of the amended G 10 Act did not contain special rules safeguarding the protection of freedom of the press and, in particular, the non-disclosure of sources, once the authorities had become aware that they had intercepted a journalist's conversation. However, the Court, having regard to its findings under Article 8, observes that the impugned provisions contained numerous safeguards to keep the interference with the secrecy of telecommunications – and therefore with the freedom of the press – within the limits of what was necessary to achieve the legitimate aims pursued. In particular, the safeguards which ensured that data obtained were used only to prevent certain serious criminal offences must also be considered adequate and effective for keeping the disclosure of journalistic sources to an unavoidable minimum. *Manifestly ill-founded*.

Article 13 – No arguable claim under Article 8 or Article 10; Article 13 is therefore not applicable. *Manifestly ill-founded*.

PRIVATE AND FAMILY LIFE
Refusal to authorise a DNA test on a deceased person requested by putative son wishing to establish his parentage with certainty: *violation*.

JÄGGI - Switzerland (N° 58757/00)
Judgment 13.7.2006 [Section III]

Facts: The applicant was born outside marriage. His putative biological father admitted having had sexual relations with the applicant's mother, but contested his paternity. He refused to submit to medical tests. A blood-type analysis carried out shortly after his death did not rule out his being the applicant's father. The applicant took legal steps in order to establish with certainty that the man was in fact his father, as his mother had told him. His request for a DNA test of his putative father's remains, in order to establish his paternity once and for all, was dismissed by the domestic court on the ground that such a test would make no difference to the applicant's civil status and that his personality and mental well-being were not seriously threatened by any remaining uncertainty as to his parentage. In addition, there was no public interest at stake and the legitimate family of the deceased, who were opposed to the test, had to be protected.

Law: Article 8 – The right to establish one's ancestry was an integral part of the notion of "private life", and the proceedings instituted by the applicant were aimed solely at establishing whether a biological link existed between him and his putative father and were not concerned with the applicant's inheritance rights. There was therefore a direct link between the applicant's wish to discover his parentage and his private life, and Article 8 was applicable. In weighing up the different interests at stake, consideration had to be given on the one hand to the applicant's right to establish his ancestry and on the other hand to the right of third parties to the inviolability of the deceased's body, the right to respect for the dead and the public interest in the protection of legal certainty. In the instant case, the interests at stake were not of sufficient

weight to justify depriving the applicant of his right to establish his ancestry. Although the applicant, now aged 67, had been able to develop his personality even in the absence of certainty as to the identity of his biological father, an individual's interest in discovering his parentage did not disappear with age. Moreover, the applicant had shown a real interest in discovering his father's identity, since he had tried throughout his life to obtain reliable information on the subject. Such conduct implied moral and mental suffering, even though this had not been medically attested. The family of the deceased had not cited any religious or philosophical reasons for opposing exhumation for the purpose of taking a DNA sample, which was a relatively unintrusive measure. Such exhumation would already have taken place had the applicant not (at his own expense) renewed the lease on the deceased man's grave. Further, the taking of a DNA sample did not constitute interference with the private life of a deceased person. Finally, under domestic law, the recognition of biological paternity did not affect an individual's civil status.
Conclusion: violation (five votes to two).

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

PRIVATE AND FAMILY LIFE
Forcible entry in order to search a house at an address indicated by a suspect without proper police verification as to its current residents: *violation*.

KEEGAN - United Kingdom (N° 28867/03)
Judgment 18.7.2006 [Section IV]

Facts: The applicants are a couple with four children. A previous tenant of their house had been the mother of a person questioned by the police following a series of armed robberies and who had often indicated the address of the house in question as his own. A detective obtained a warrant to search the house in question for cash stolen during the robberies, having sworn on oath that he had reasonable cause to believe that such stolen cash was in the possession of the occupier of the property. In 1999 at approximately 7 a.m. the police, mistakenly believing that an armed robber lived there, forcibly gained entry into the applicants' home and carried out a search of the premises. They used a metal ram to make a hole in the door. On finding no one but the applicants in the house, the police sergeant apologised and arranged for repairs to be made to their front door.
The applicants brought proceedings against the chief constable for, among other things, the tort of maliciously procuring a search warrant. They alleged that they had been caused terror, distress and psychiatric harm. Finding against the applicants, a county court judge found that the police had been investigating serious and violent offences and had not acted with reckless indifference to the lawfulness of their acts, which element was necessary for the tort of maliciously procuring a search warrant. The court of appeal agreed. While Lord Justice Kennedy found that if proper enquiries had been made and the results properly reported, there would have been no reasonable or probable cause to apply for a search warrant, he held that the requirement of malice was not made out as there was no evidence of any improper motive (incompetence or negligence did not suffice).

Law: Article 8 – The applicants had been living at the address for about six months and they had no connection whatsoever with any suspect or offence. As the county court judge had noted, it was difficult to conceive that enquiries had not been made by the police to verify the residents of the address which the suspected robber had been known to give and that if such enquiries had been properly made they would not have revealed the change in occupation. The loss of the police notes rendered it impossible to deduce whether it had been a failure to make the proper enquiries or a failure to transmit or properly record the information obtained that had led to the mistake that was made. In any event, as found by the domestic courts, although the police had not acted with malice and indeed with the best of intentions, there was no reasonable basis for their action in breaking down the applicants' door early one morning while they were in bed. Put in Convention terms, there might have been relevant reasons, but, as in the circumstances they were based on a misconception which could, and should, have been avoided with proper precautions, they could not be regarded as sufficient. The fact that the police did not act maliciously was not decisive under

the Convention which is geared to protecting against abuse of power, however motivated or caused. Neither could the Court agree that a limitation of actions for damages to cases of malice was necessary to protect the police in their vital functions of investigating crime. The exercise of powers to interfere with home and private life must be confined within reasonable bounds to minimise the impact of such measures on the personal sphere of the individual guaranteed under Article 8 which is pertinent to security and well-being. In a case where basic steps to verify the connection between the address and the offence under investigation were not effectively carried out, the resulting police action, which had caused the applicants considerable fear and alarm, could not be regarded as proportionate. That finding did not imply that any search, which turned out to be unsuccessful, would fail the proportionality test, only that a failure to take reasonable and available precautions would do so. In the present case the balance had not been properly struck.
Conclusion: violation (unanimously).

Article 13 – While it was true that the applicants had taken domestic proceedings seeking damages for the forcible entry and its effect on them, they had been unsuccessful. The courts had held that it was in effect irrelevant that there had been no reasonable grounds for the police action as damages only lay where malice could be proved, and negligence of this kind did not qualify. The courts had been unable to examine issues of proportionality or reasonableness and, as various judges in the domestic proceedings had noted, the balance had been set in favour of protection of the police in such cases. In these circumstances the applicants had not had available to them a means of obtaining redress for the interference with their rights under Article 8.

Article 41 – Separate awards for non-pecuniary damage ranging from EUR 2,000 to EUR 3,000.

PRIVATE AND FAMILY LIFE
Lack of legislation allowing a transsexual to complete gender reassignment surgery and to marry as a male: *admissible*.

L. - Lithuania (N° 27527/03)
Decision 6.7.2006 [Section II]

At birth the applicant was registered as a girl with a clearly female name under the rules of the Lithuanian language. From an early age he became aware of his male mental sex, thus acknowledging the conflict between his mental and genital gender. In May 1997 the applicant consulted a micro-surgeon about the possible gender reassignment procedure. In December 1997 a doctor at the University Hospital confirmed the applicant's chromosomal sex as female, and diagnosed him as a transsexual. In January 1998 the University Hospital opened the applicant's medical file and administered to him a hormone treatment for a period of two months. In 1999 the applicant's general medical practitioner refused to prescribe hormone therapy in view of the legal uncertainty as to whether or not full gender reassignment could be carried out. Thereafter the applicant continued the hormone treatment "unofficially". In 1999, the applicant requested that his name on all official documents be changed to reflect his male identity; that request was refused. Only the university administration exceptionally agreed to enter the applicant into the register of students under the male name chosen by him. In May 2000 the applicant underwent "partial gender reassignment surgery", namely a breast removal procedure. The doctors chose to carry out the surgery in view of the adoption of the new Civil Code and given the medical necessity to protect his life. The applicant agreed with the doctors that a further surgical step would be carried out upon the adoption of laws governing the conditions and procedure thereof. In 2000, with the assistance of a Member of Parliament, the applicant's birth certificate and passport were changed. In order not to disclose his gender, the applicant chose the name and surname of Slavic origin for his new identity, since the Lithuanian names or surnames are all gender-sensitive. Nevertheless, the applicant's personal numerical code in his new birth certificate and passport remains the same and discloses his gender as female. As a result, he allegedly faces a vast amount of daily embarrassment and difficulties.
Currently, there is no law on gender reassignment, and there is no indication when such law will be adopted.

Admissible under Articles 3, 8, 12 and 14 of the Convention.

PRIVATE AND FAMILY LIFE
Abortion laws obliging applicant to have an abortion abroad despite accepted fatal foetal abnormality: *inadmissible (non-exhaustion of domestic remedies)*.

D. - Ireland (N° 26499/02)
Decision 27.6.2006 [Section IV]

In late 2001 the applicant, an Irish national, became pregnant with twins. In early 2002 an amniocentesis indicated that one foetus had stopped developing at eight weeks and that the second foetus had a chromosomal abnormality known as Trisomy 18 (or Edward's Syndrome) which she was given to understand was a fatal abnormality. A second amniocentesis confirmed those findings. The applicant therefore decided that she could not carry the pregnancy to term. Unable to obtain an abortion in Ireland, she travelled to the United Kingdom where the abortion was performed. She could not remain in the United Kingdom for counselling on, among other things, the genetic implications for future pregnancies, although she was given some statistical information about the recurrence of the abnormality. As a result of the abortion, she required follow-up medical treatment in Ireland: she explained to the hospital and to her own family doctor that she had had a miscarriage.
Before the Court the applicant complained about the lack of abortion services in Ireland in the case of lethal foetal abnormality. She maintained that the devastating impact of the diagnosis was unnecessarily exacerbated by the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995 which limits what a doctor can tell a pregnant woman with a lethal foetal abnormality and prohibits that doctor from making proper arrangements, or a full referral, for a therapeutic abortion abroad. She also complained that she had been discriminated against.
The parties disagreed as to whether the applicant had complied with the requirement to exhaust domestic remedies laid down in Article 35(1). The Court emphasised that it is an established principle, that in a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and, in a common law system, to allow the domestic courts to develop those rights by way of interpretation. A declaratory action before the High Court, with a possibility of an appeal to the Supreme Court, constitutes the most appropriate method under Irish law of seeking to assert and vindicate constitutional rights. As to the accessibility of this remedy, the applicant had not argued that she would have been unable to obtain legal representation in what would have been a landmark case. Moreover, a declaration by the Supreme Court that a self-executing provision of the Constitution allowed an abortion in Ireland in the applicant's case, accompanied by a mandatory order, would have been capable of providing redress. Since abortions (in the case of a "real and substantial risk" to the mother's life) were already available in Ireland and since the Masters of the main obstetric hospitals were not against terminations in the case of a fatal foetal abnormality, the Court found unsubstantiated the suggestion that the relevant declaratory and mandatory orders would not have been implemented in good time.
The Court then examined whether the proposed remedy could be considered adequate and effective in the circumstances of the applicant's case, whether there were special circumstances absolving the applicant from so exhausting and, more generally, whether it can be concluded that she did everything that could be reasonably expected of her in the circumstances to satisfy the exhaustion requirements of Article 35 (1). The applicant considered that she could not have been reasonably expected to undertake the proposed constitutional remedy for a number of reasons: she pointed to the delay any such proceedings would involve; she maintained that the proceedings could lead to her identification and that she would be unable to cope with the inevitable publicity her case would attract; and maintained that her costs exposure would be too high.
The Court accepted that a constitutional remedy had been in principle available to the applicant but that some uncertainty had attached to three relevant matters arising from the novelty of the substantive issue and the procedural imperatives of the applicant's position – the chances of success, the timing of the proceedings and the guarantees of the confidentiality of the applicant's identity. Having regard to the potential and importance of the constitutional remedy in a common law system especially as regards the

matter at issue the applicant could reasonably have been expected to have taken certain preliminary steps towards resolving the above - noted uncertainties. In the Court's view, she should have obtained legal advice on those substantive and procedural uncertainties and issued a Plenary Summons allowing her to apply for an urgent, preliminary and *in camera* hearing to obtain the High Court's response to her timing and publicity concerns. The Court was satisfied on the evidence that such preliminary steps could have been completed without disclosing the applicant's identity and in a matter of days and, further, that the evolution of those initial steps would have elucidated some of the uncertainties and allowed her to assess the effectiveness of the remedy in her situation as the days went by. She had not therefore complied with the requirement to exhaust domestic remedies as regards the availability of abortion in Ireland in the case of fatal foetal abnormality.

HOME
Allegedly illegal search of the applicant's home: *violation*.

H.M. - Turkey (N° 34494/97)
Judgment 8.8.2006 [Section IV]

Facts: At the time of the events the applicant was a primary-school teacher and one of the leaders of the local branch of a trade union for employees in public-sector education. On several occasions between 1995 and 1996 he was prosecuted for criminal offences or instituted proceedings against police officers in connection with his trade-union activities. On 15 March 1996, at about half past midnight, four individuals in civilian clothing, who introduced themselves as police officers, went to the applicant's home, where his wife and two sons were also present. Accusing the applicant and one of his sons of illegal activities and of harbouring criminals, they searched the house without presenting a search warrant. Considering that he had been subjected to an unlawful search, the applicant lodged a complaint on the same day; a public prosecutor took a statement from him immediately. On 20 March 1996 the prosecutor ruled that there was no case to answer, given the "absence of an act constituting any offence", on the ground that, according to information provided by the police department, no search of property or persons had been carried out at the applicant's home. The applicant appealed unsuccessfully against that decision. In June 2003, after the European Court of Human Rights had communicated the application to the Turkish Government, the public prosecutor invited the police authorities concerned to identify the officers likely to have conducted the search of the applicant's home. The authorities replied that the alleged incident was not imputable to members of the security forces, that the investigations previously carried out into the matter had resulted in a finding that there was no case to answer and that, in the meantime, the statutory limitation period had expired. The applicant was accordingly informed that his case had been discontinued.

Law: The essential object of Article 8 was to protect the individual against arbitrary interference by the public authorities. However, it could also imply an obligation on the authorities to conduct an investigation where that was the only legal way to shed light on the events in question, to maintain public confidence and to prevent any appearance of collusion in or tolerance of unlawful acts by the public authorities. The case file contained no evidence enabling the Court to conclude with certainty that a search had been carried out at the applicant's home. The question remained whether the inability to reach any such conclusion resulted from a failure by the Turkish authorities to respond adequately to the applicant's allegations. In that respect, having regard to the applicant's past, during which he had been prosecuted several times on account of his trade-union activities and had made accusations against members of the local police force, the prosecutor, who was certainly aware of that situation, might have been expected to examine whether, given the applicant's tendency to challenge the status quo, he was likely to have been subjected to acts of intimidation. In any event, it would have sufficed for the prosecutor to take witness statements from members of the applicant's family in order to substantiate the "arguable" nature of the allegations before him, given that those witness statements, as submitted to the Court, appeared sincere, credible and consistent. Yet no such action had been taken, and the doubt raised in the case had not been dispelled by the alleged investigation, which the prosecutor had closed in five days. Accepting without reservation the information submitted by the police authorities, that officer had concluded that, contrary to

what the applicant alleged, no State agent had been involved in the alleged incident. Having regard to the obligation to carry out an investigation laid down by Article 8, the Court considered that, once application had been made to it, the public prosecution service ought to have examined the applicant's complaint in such a way as to demonstrate at least a willingness to establish the facts, then to identify those responsible. In those circumstances, the applicant could claim to be a victim of a failure to protect his right to respect for his home and there had therefore been a procedural violation of Article 8 on account of the inadequate nature of the investigation.
Conclusion: violation (unanimously).

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

CORRESPONDANCE
Strategic monitoring of telecommunications, follow-up case to *Klass v. Germany*: *inadmissible*.

WEBER and SARAVIA - Germany (N° 54934/00)
Decision 29.6.2006 [Section III]
(See above, under Article 8, "Private life").

ARTICLE 9

FREEDOM OF RELIGION
MANIFEST RELIGION OR BELIEF
Osho movement (Shree Rajneesh or Bhagwan movement) treated as a "sect": *communicated*.

LEELA FÖRDERKREIS e.V. and Others - Germany (N° 58911/00)
[Section V]

The applicants, all associations registered under German law, are religious associations or meditation associations belonging to the Osho movement, formerly known as the Shree Rajneesh or Bhagwan movement. State agencies have issued warnings against movements including that of the applicants. The focus of concern was the potential danger that these groups could represent for adolescents' personal development and social relations, leading to their dropping out of school and vocational training, radical changes in personality, individual forms of dependence, lack of initiative and difficulties of communication, often aggravated by the group structure characteristic of certain communities, but also to material losses and psychological harm. In October 1984 the applicants, claiming to be part of an authentic religious movement, brought proceedings against the Government in the administrative courts. Judgments were given by the Cologne Administrative Court (January 1986), the Administrative Court of Appeal of North Rhine-Westphalia (May 1990) and the Federal Administrative Court (March 1991). The applicants lodged a constitutional appeal with the Federal Constitutional Court in May 1992, which on 26 June 2002 gave judgment upholding the applicants' appeal in part but holding for the remainder that the Government were entitled to refer to the applicants' movement as "sect", "youth sect", "youth religion" and "psycho sect".
Communicated under Article 6(1) (length of proceedings) and 9.

ARTICLE 12

RIGHT TO MARRY
Lack of legislation allowing a transsexual to complete gender reassignment surgery and to marry as a male: *admissible*.

L. - Lithuania (N° 27527/03)
Decision 6.7.2006 [Section II]

(See Article 8 above).

ARTICLE 13

EFFECTIVE REMEDY
Absence of a remedy in domestic law permitting a detainee to contest his placement in solitary confinement: *violation*.

RAMIREZ SANCHEZ - France (N° 59450/00)
Judgment 4.7.2006 [Grand Chamber]

(See Article 3 above).

EFFECTIVE REMEDY
Effectiveness of criminal proceedings that had resulted in the conviction of police officers but which were subsequently discontinued under the statute of limitations: *violation*.

HÜSEYİN ESEN - Turkey (N° 49048/99)
Judgment 8.8.2006 [Section IV]

Facts: On 9 September 1996 the applicant was arrested on suspicion of belonging to an illegal armed organisation and was taken into custody at police headquarters. The applicant alleged that, while in police custody, he had been subjected to various forms of ill-treatment by police officers attempting to extract a confession from him. He had then signed under duress a statement confessing to membership of the illegal organisation and involvement in its activities. On 18 September 1996 the applicant was examined by a doctor from the Institute for Forensic Medicine, who noted several bruises and lesions to his chest and armpits. The doctor prescribed seven days' sick leave for the applicant. The marks in question were consistent with the allegations of ill-treatment made by the applicant. On the same day the applicant was brought before a judge, who ordered his detention pending trial. Criminal proceedings were instituted against the applicant, who was charged with involvement in armed action aimed at destroying the constitutional order and replacing it with a State based on Marxist-Leninist principles. The applicant made several requests to be released. These were rejected by the state security court, which based its decisions on the contents of the case file, the evidence and the nature of the offence. The applicant was eventually granted provisional release on 30 January 2002. On 31 January 2003 the state security court found the applicant guilty as charged and sentenced him to 12 years and six months' imprisonment. That decision was set aside by the Court of Cassation, which referred the case to an assize court, before which it is still pending. In the meantime, in 1996, the applicant and 16 co-defendants lodged complaints alleging ill-treatment by the police officers who had questioned them in police custody. In April 2002 the assize court characterised the acts as torture and sentenced the police officers to terms of imprisonment ranging

from 11 months and 20 days to one year and two months, and ordered that they be suspended from their posts. In May 2004, however, the Court of Cassation declared the criminal prosecution time-barred.

Law: Article 3 – The medical report drawn up at the end of the applicant's time in police custody had reported signs of ill-treatment and prescribed seven days' sick leave for the applicant. In addition, the assize court had characterised the acts to which the applicant had been subjected as torture. In those circumstances, the violence inflicted on the applicant, taken as a whole and having regard to its duration and purpose, had been particularly serious and cruel and capable of causing "severe" pain and suffering. It could therefore be characterised as torture.
Conclusion: violation (unanimously).

Article 13 – An investigation had been launched in response to the complaint lodged by the applicant, which had resulted in the conviction of the police officers concerned for torture. However, the criminal prosecution had become time-barred after five years, with the result that the police officers' convictions had been quashed. The Court therefore had to determine whether the investigation and the criminal proceedings had been conducted with diligence and whether the judicial proceedings could be said to have been "effective" or not. In that connection, the Court noted that the assize court had waited almost five years after the complaint was lodged before delivering its judgment convicting the police officers, while the Court of Cassation had taken two years to examine the case. The Turkish Government had not produced any evidence to justify the lack of headway made by the proceedings. The Court considered that the judicial authorities had a duty to do everything in their power to ensure that the criminal proceedings were completed before the limitation period expired. A prompt response by the authorities in cases involving allegations of ill-treatment could generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. In the applicant's case, however, the police officers had been able to act with complete impunity in spite of the tangible evidence against them established by the court of first instance. In the circumstances, the Turkish authorities could not be considered to have acted promptly to ensure that the police officers implicated did not enjoy virtual impunity.
Conclusion: violation (unanimously).

Article 5(3) – The Court noted that the applicant had been held in detention pending trial for five years and four months. However, in the grounds of the orders for his continued detention, the judicial authorities had omitted to state exactly why the risk that the applicant might abscond or destroy evidence was still present after all that time. Furthermore, although "the state of the evidence" could be understood as indicating the existence and persistence of serious indications of guilt and, in general, those circumstances could be relevant factors, they could not on their own justify the continuation of the detention for such a long period.
Conclusion: violation (unanimously).

Article 5(4) – All the applicant's requests for release had been rejected for identical reasons. He had therefore not had an effective remedy by which to challenge the lawfulness of his detention pending trial.
Conclusion: violation (unanimously).

Article 6(1) – The proceedings in issue had lasted for more than nine and a half years to date. Although they were relatively complex, no explanation had been provided as to why they had lasted so long. Having regard to the circumstances of the case, the length of the proceedings did not satisfy the "reasonable-time" requirement.
Conclusion: violation (unanimously).

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

EFFECTIVE REMEDY
Courts unable to examine issues of proportionality or reasonableness in proceedings for damages for a forcible entry and search allegedly conducted with malice: *violation*.

KEEGAN - United Kingdom (N° 28867/03)
Judgment 18.7.2006 [Section IV]

(See above, under Article 8, "Private and family life").

EFFECTIVE REMEDY
No effective remedy to discover the identity of the author of a defamatory text posted on the Internet in the name of a minor: *admissible*.

K.U. - Finland (N° 2872/02)
Decision 27.6.2006 [Section IV]

(See above, under Article 8, "Private life").

ARTICLE 14

DISCRIMINATION (Article 8)
Lack of legislation allowing a transsexual to complete gender reassignment surgery: *admissible*.

L. - Lithuania (N° 27527/03)
Decision 6.7.2006 [Section II]

(See Article 8 above).

DISCRIMINATION (Article 1 of Protocol no. 1)
Exclusion of non-nationals from pension rights in respect of the years of working abroad: *admissible*.

ANDREJEVA - Latvia (N° 55707/00)
Decision 11.7.2006 [Section III]

The applicant entered Latvian territory in 1954, at the age of 12, at a time when the territory was one of the fifteen "Soviet Socialist Republics" and hence *de facto* part of the Soviet Union. She has been permanently resident there ever since. In 1966 she took up employment in a Latvian factory. From 1973 until November 1990 the applicant, although physically present on Latvian soil, worked for Soviet public bodies whose head offices were in Russia and Ukraine and which paid her salary every month by post office giro transfer. From November 1990 until her retirement in 1997 the applicant worked for employers based in Latvia.
In August 1991 Latvia regained full independence. In December 1991 the Soviet Union, of which the applicant had previously been a national, broke up. The applicant was left without any nationality and was granted the status of "permanently resident non-citizen". In 1997 the Social Security Directorate calculated the applicant's retirement pension without taking into account the 17 years during which she had worked for organisations based in Ukraine and Russia since, under the relevant legislation, only years spent working for Latvian employers could be taken into consideration in calculating the entitlement of foreign nationals and stateless persons living in Latvia. Latvian citizens, on the other hand, were entitled to a pension in respect of all periods of time worked, including those worked outside Latvian territory and irrespective of their social security contributions.

Following an unsuccessful administrative appeal, the applicant applied to the court of first instance and then to the regional court. Both rejected her application on the ground that her years of work on Latvian territory for employers located abroad were to be considered as equivalent to an extended mission and could not give rise to any entitlement to a State pension. Acting on the applicant's behalf, a public prosecutor lodged an appeal on points of law with the Senate of the Supreme Court. The Supreme Court registry notified the applicant of the exact date and time of the public hearing. However, the hearing began earlier than scheduled and the Senate decided to examine the case before the parties had arrived. After hearing the opinion of the prosecutor the Senate dismissed the appeal, having observed that, according to law, anyone employed by a Latvian taxpayer was covered by the country's compulsory insurance scheme. The applicant was not covered since her employers, who were based in Ukraine and Russia, did not pay taxes in Latvia. As she had been unable to participate in the hearing, the applicant requested the Senate to re-examine the case. The Senate refused the request with apologies.
In 2000 the Social Security Agency informed the applicant that, in accordance with the agreement concluded between Ukraine and Latvia in 1999, her pension had been recalculated to take account of the years she had worked for employers in Ukraine.
Admissible under Article 14 taken in conjunction with Article 1 of Protocol No. 1 and Article 6(1) (early start of the hearing before the Senate of the Supreme Court).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Failure to comply with an indication by the Court not to extradite the applicant: *failure to comply with obligations under Article 34*.

OLAECHEA CAHUAS - Spain (N° 24668/03)
Judgment 10.8.2006 [Section V]

Facts: On 3 July 2003 the applicant, against whom an international arrest warrant had been issued on the grounds of his presumed membership of the "Shining Path" (*Sendero Luminoso*), was arrested in Spain during a routine check. Peru requested his extradition for a terrorist offence and the applicant was taken into custody with a view to his extradition. When invited to comment on the question of his extradition, in accordance with the Treaty concerning Extradition of 28 June 1989 between Peru and Spain, he agreed to "simplified extradition" (to be returned immediately to the requesting country) with the benefit of the speciality rule (to be tried only in respect of the offence for which extradition is requested). Noting that the Peruvian Government was bound by international standards in the field of the protection of fundamental rights, such as the American Convention on Human Rights, and that it had undertaken not to sentence the applicant to the death penalty or life imprisonment, the *Audiencia Nacional* granted the applicant's extradition on 18 July 2003. The applicant lodged an appeal against that decision, which was dismissed by the investigating judge on 4 August 2003. The applicant lodged an application with the European Court of Human Rights, which indicated to the Spanish Government on 6 August 2003 that they should not extradite him to Peru before the examination of the case on 26 August 2003. The following day, however – on 7 August 2003 – the applicant was extradited to Peru. He was conditionally released in November 2003 on account of the lack of sufficient evidence that he was a member of the "Shining Path". In February 2004 the *Audiencia Nacional* allowed the Peruvian authorities to extend the extradition charges so that the applicant could be tried in Peru on the charge of funding the "Shining Path" terrorist group from abroad. An *amparo* appeal lodged by the applicant against that decision is pending before the Constitutional Court.

Law: Article 3 – The applicant had been extradited after guarantees had been obtained from the Peruvian Government that he would not be sentenced to death or life imprisonment. Moreover, it had been specified that the guarantees provided by the Peruvian Government reflected the fact that they were bound by international standards in the field of the protection of fundamental rights, one of which was the scrutiny of the Inter-American Court of Human Rights. In the light of the material in its possession,

including in particular the information obtained after the applicant's extradition to Peru, the Court concluded that there was insufficient evidence to make out the existence of treatment contrary to Article 3 in the applicant's case. Spain's failure to comply with the indication given under Rule 39 of the Rules of Court, which had prevented the Court from assessing whether there existed an actual risk in the manner it considered appropriate in the circumstances of the case, fell to be examined under Article 34.
Conclusion: no violation (unanimously).

Article 5(1) – It was indisputable that extradition proceedings had been under way against the applicant when he was taken into custody pending a ruling on his extradition. Moreover, both the central investigating judge and the *Audiencia Nacional* had reviewed and established the lawfulness of the proceedings in question under Spanish law. Hence, the entire period of the applicant's detention had been covered by the exception provided for in Article 5(1)(f).
Conclusion: no violation (unanimously).

Article 6(1) – Although, in the light of the available information, there might at the time of the applicant's extradition have been some doubts about the fairness of the trial that he would face in Peru, there was insufficient evidence that the possible flaws in the trial would amount to a "flagrant denial of justice".
Conclusion: no violation (unanimously).

Article 34 – An interim measure was by definition a temporary one, the necessity of which was assessed at a precise moment in time based on the existence of a risk that might hinder the effective exercise of the right of petition guaranteed by Article 34. If the State concerned complied with the decision to apply the interim measure, the risk was averted and any future hindrance of the right of petition eliminated. If it did not comply with the interim measure, however, the risk of hindering the effective exercise of the right of petition continued and it was the facts occurring after the Court's decision and the Government's non-compliance which determined whether the risk had materialised or not. Even if it did not, the interim measure had to be regarded as having binding force. A State's decision whether to comply with the measure could not be put off pending confirmation that a risk existed. The mere fact of non-compliance with an interim measure decided by the Court on the basis of the existence of a risk was, in itself, a serious hindrance, at that precise point in time, of the effective exercise of the right of individual petition. By failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Spain had not fulfilled its obligations under Article 34.
Conclusion: violation (unanimously).

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

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Prisoner intimidated by illicit pressure from State officials: *failure to comply with obligations under Article 34*.

POPOV - Russia (N° 26853/04)
Judgment 13.7.2006 [Section I]

(See Article 3 above).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Denial of access to detained applicant and his medical file: *failure to comply with obligations under Article 34*.

BOICENCO - Moldova (N° 41088/05)
Judgment 11.7.2006 [Section IV]

(See Article 3 above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Strip-searching of prisoner; civil action introduced after application: *violation, Article 41 reserved*.

SALAH - Netherlands (N° 8196/02)
BAYBAŞIN - Netherlands (N° 13600/02)
Judgments 6.7.2006 [Section III]

(See Article 41 below).

EXHAUSTION OF DOMESTIC REMEDY
Effectiveness of a request to set the case down for trial; failure to comply with domestic procedure: *inadmissible*.

UGILT HANSEN - Denmark (N° 11968/04)
Decision 26.6.2006 [Section V]

The applicant owned and managed two private limited companies which each ran two freshwater fish farms. In September 1993 the applicant was charged with intentionally exceeding the feed quotas fixed by the 1989 Act. An indictment was issued in October 1993; it was subsequently amended on several occasions, in response to changes in the law. In June 1994, while the applicant's case was still pending at first instance, another court delivered a judgment in a similar case, ruling on questions of principle which were also important to the applicant's case. An appeal was filed against that judgement.This other case being a test case, the applicant's case was adjourned until a judgment on appeal had been delivered; this happened in September 1995. Then, in January 1996, a defendant in another test-case alleged that the 1989 Act was anti-competitive and therefore in conflict with EU law. Eventually, in November 1996, the High Court ruled that it found no reason to refer to question to the European Court of Justice. In the meantime, in the spring of 1996 in yet another test-case, a defendant had alleged in vain that the relevant legislation was contrary to the Danish Constitution. In response to this, the prosecuting authorities circulated a memorandum providing an account of the latest development in the cases concerning fish farms and urging subordinate prosecuting authorities to expedite them. The applicant's trial eventually took place in September 1998; in October 1998 the applicant was convicted. On appeal, the applicant argued that the relevant domestic legislation had not been notified to the European Commission, as required by a Council Directive; the case was then adjourned to await the outcome of two appeals pending before the Supreme Court in which an identical argument had been made. The Supreme Court dismissed these appeals in February 2001. The applicant's appeal was heard in January 2003 and on 6 November 2003 the appellate court gave judgment upholding the applicant's conviction but reducing the sentence somewhat. The applicant applied for leave to appeal on 26 March 2004; this was refused on the ground that the request had been lodged out of time.

Inadmissible for non-exhaustion: The Government argued, firstly, that the applicant could have asked for the case to be set down for trial on the evidence available (section 840 of the Administration of Justice Act). The Court finds that it need not rule in general whether that is a remedy to be exhausted. Moreover, in the present case the length of the proceedings was primarily caused by the various adjournments awaiting the outcome of the so-called test-cases whose outcome most likely would have had significant influence on the charges against the applicant and might even have led to his acquittal: the Government have not shown that section 840 of the Administration of Justice Act would, in such circumstances, have been an effective remedy. The Government argued, secondly, that the application was inadmissible for non-exhaustion of domestic remedies because the applicant failed to comply with the procedural requirements when, after the expiry of the ordinary time-limit, he requested leave to appeal. In the present case the High Court, being the appellate court, found that the length of the proceedings had not exceeded the "reasonable time" requirement within the meaning of Article 6 of the Convention. Accordingly, had the applicant complied with the procedural rules for requesting leave to appeal against the judgment of 6 November 2003 and had the Leave-to-Appeal Board granted his request, the Supreme Court would have examined the length-of-proceedings complaint, and in case of a finding of a failure to observe the reasonable time requirement, it could have granted redress therefore by, for example, exempting the applicant from paying legal costs or reducing his sentence. The applicant did request leave to appeal against the High Court judgment of 6 November 2003, but not until after the expiry of the normal procedural time-limit. Besides, in his request the applicant failed to complain about the length of the proceedings in form or in substance.

EFFECTIVE DOMESTIC REMEDY (Russia)
Admissibility of civil action in domestic courts dependent on registration of fixed residence: *admissible*.

SERGEY SMIRNOV - Russia (N° 14085/04)
Decision 6.7.2006 [Section I]

The applicant, a resident of Moscow, was sentenced to a term of imprisonment in 1986. His residence registration in Moscow was cancelled as a consequence. Upon his release, in 1991, he was issued with a new USSR identity document that contained no stamp of residence registration. The applicant returned to live in Moscow. In January 2002 the applicant tried to exchange his USSR identity document for a Russian one. This was refused on the ground that the applicant could not establish his residence in Russia on the key date 6 February 1992 and thus his Russian citizenship. The applicant unsuccessfully challenged this decision before the courts. He next instituted non-contentious proceedings seeking to establish a fact of legal significance, namely the fact of his residence in Russia on 6 February 1992. This application was declared inadmissible; however, on the ground that since the applicant did not have temporary or permanent legal residence in Moscow, the Moscow courts had no territorial jurisdiction. In parallel, the applicant was refused services by two private companies on the ground that he had no fixed residence; he took both companies to court but was met with rejections of his claims on the ground that he could not give a registered address.

Exhaustion of domestic remedies: The Government submitted that the applicant had not challenged the relevant provision of domestic procedure (currently Article 131 § 2 of the new Code of Civil Procedure) before the Constitutional Court of the Russian Federation. The Court, for its part, observes that the Russian Constitutional Court is competent to examine individual complaints lodged to challenge the constitutionality of a law. An individual constitutional complaint can only be lodged against a law which infringes constitutional rights and freedoms and which has been applied or may be applicable in an individual case. Thus, the procedure of constitutional complaint cannot serve as an effective remedy if the alleged violation resulted only from erroneous application or interpretation of a statutory provision which, in its content, is not unconstitutional. The applicant does not contest the compatibility of Article 131 with the Constitution, rather he questions the way in which the domestic courts applied the requirements contained in that Article to his case. It appears that in those circumstances an application to the Constitutional Court would have had no prospects of success. Therefore, the application cannot be rejected for non-exhaustion of domestic remedies.

Article 6(1):
a) The applicant sought to establish the fact of his residence in Russia in order to confirm his Russian citizenship and to obtain a Russian passport. The Court notes that neither a right to citizenship nor a right to a passport is a civil right, given that it is not of a pecuniary or otherwise of a private character. *Incompatible ratione materiae*.
b) Proceedings against two private companies, complaint about lack of access to a court: *admissible*.

EFFECTIVE DOMESTIC REMEDY (Ireland)
Declaratory action before the High Court, with a possibility of an appeal to the Supreme Court, constitutes the most appropriate method under Irish law of seeking to assert and vindicate constitutional rights: *inadmissible*.

D. - Ireland (N° 26499/02)
Decision 27.6.2006 [Section IV]

(See above under Article 8, "Private and family life").

ARTICLE 37

Article 37(1)

CONTINUED EXAMINATION NOT JUSTIFIED
Legislative review of limitations on access to court, and Government's acknowledgment of a violation and offer to pay the applicant compensation: *struck out*.

SWEDISH TRANSPORT WORKERS UNION - Sweden (N° 53507/99)
Judgment 18.7.2006 [Section II]

(See above, under Article 6(1), "Access to court").

Article 37(1)

CONTINUED EXAMINATION NOT JUSTIFIED
Friendly settlement under the terms of which the Government give certain undertakings and are required to pay compensation to the applicants: *struck out*.

ASSOCIATION RELIGIEUSE « TÉMOINS DE JÉHOVAH - ROUMANIE » and Others - Romania (N°s 63108/00, 62595/00, 63117/00, 63118/00, 63119/00, 63121/00, 63122/00, 63816/00, 63827/00, 63829/00, 63830/00, 63837/00, 63854/00, 63857/00 and 70551/01)
Decision 11.7.2006 [Section III]

The first applicant is a religious association and the other applicants are Jehovah's Witness ministers. Following the collapse of the Communist regime, under which the Jehovah's Witnesses had been banned, the association was duly registered in accordance with the Associations and Foundations Act. In the years that followed, it became an important Christian group in Romania and operated without hindrance until 25 March 1997. On that date the State Secretary for Religion sent the local authorities a list of the religious groups recognised by the State. The name of the applicant association was not on the list. On that basis, various local and central authorities refused to grant the association certain rights conferred on

State-recognised religious groups. The applicant association detailed a range of similar measures which prevented the Jehovah's Witnesses from exercising their religion freely. In view of the authorities' attitude, it decided to amend its statutes, inserting a statement in the first article to the effect that the Jehovah's Witnesses were a "Christian religious group". However, the State Secretary for Religion refused to recognise the amended statutes, whereupon the applicant association instituted administrative proceedings seeking to have its statutes recognised. The Supreme Court of Justice granted its request in a final judgment of 7 March 2000. Following another set of administrative proceedings, the Minister for Culture and Religion – who had replaced the State Secretary for Religion – recognised the status of the Jehovah's Witnesses as a Christian religious group, in a ministerial decree of 22 May 2003. The applicant association submitted that, in spite of that decision, some local authorities still refused to exempt it from property tax on its places of worship and lands. It further maintained that it had encountered difficulties in providing spiritual support to a number of Jehovah's Witness ministers in detention, and complained of the content of a brochure on sects published by a county police force which portrayed it as a dangerous sect.

Meanwhile, in a judgment of 14 June 2000, the Military Court of Appeal imposed suspended prison sentences on the other 14 applicants for refusing to perform alternative civilian service because they were ministers of religion. In decisions given in 2002 and 2003 the Supreme Court of Justice acquitted the applicants, finding that their refusal to perform alternative civilian service did not fall within the scope of the provisions of the Criminal Code governing refusal to perform military service.

The Court noted that the parties had reached a friendly settlement under the terms of which the Government acknowledged that the Jehovah's Witnesses association was a recognised religious group and as such was subject to all the rights and obligations conferred by Romanian law on State-recognised religious groups. They also undertook to ensure that spiritual support in detention centres was provided without discrimination, particularly with regard to Jehovah's Witness ministers. The Government further acknowledged that the initial conviction of the other applicants for refusing to perform military service or alternative civilian service could have infringed their rights under the Convention, and undertook to pay compensation to the applicant association and to pay the other applicants the damages awarded to them by the domestic courts. Lastly, the Court's judgment endorsing the friendly settlement was to be published in the Romanian Official Gazette.

The Court considered that the friendly settlement was based on respect for human rights as defined in the Convention and its Protocols and saw no other public-policy grounds for continuing its examination of the application. It therefore decided unanimously to join the cases and strike them out of its list.

ARTICLE 41

JUST SATISFACTION

Strip-searching of prisoner; civil action introduced after application: *violation, Article 41 reserved*.

SALAH - Netherlands (N° 8196/02)
BAYBAŞIN - Netherlands (N° 13600/02)
Judgments 6.7.2006 [Section III]

Facts: The applicant Salah is serving a twenty-year prison sentence in the Netherlands; he is also wanted for serious crimes in other countries. From 11 May 1998 until 12 May 2003 he was held in the maximum security institution (*Extra Beveiligde Inrichting*, "EBI") in Vught, Netherlands, where he was subjected to the detention regime described in *Van der Ven v. the Netherlands*, no. 50901/99, ECHR 2003-II, which included weekly routine strip-searches. He lodged an application with the Court on 13 February 2002, complaining about these searches; it was communicated to the respondent Government under Articles 3 and 8 of the Convention.

The applicant Baybaşın is serving life imprisonment. He was detained in the EBI from 26 June 1998 until 24 December 2003. He too lodged an application with the Court complaining about the strip-searches, on 28 February 2002, which was communicated under Articles 3 and 8 of the Convention.

On 10 August 2004 the applicant Baybaşın brought civil proceedings in tort against the Netherlands State, seeking compensation for non-pecuniary damage suffered under the EBI regime. These proceedings are still pending. On 11 July 2005 the applicant Salah and a number of other former EBI detainees sought leave to join these proceedings; like the proceedings themselves, this leave request is still pending. Civil courts in the Netherlands have in the past entertained claims in tort brought by former applicants to the European Court of Human Rights; on several occasions they have awarded damages additional to the awards made by the Court under Article 41 (or its predecessor provision, former Article 50).

Admissibility: Exhaustion of domestic remedies: The Government pointed to the applicant's request for leave to join pending civil proceedings in tort, which proceedings remain pending. The Court points out that an ordinary remedy for challenging a decision to transfer to, or prolong detention in, the EBI existed, of which the applicant in fact availed himself. There is no indication that a civil action against the State has ever been entertained by a domestic civil court on the basis of a finding that this specific remedy before the Appeals Board did not offer sufficient guarantees of fair proceedings or that in such appeal proceedings fundamental legal principles had been breached. Consequently, the Court has found no reason for concluding that, for the purposes of Article 35(1) of the Convention, the applicant should have turned to the civil courts after his appeals to the Appeals Board were rejected. This finding is not altered by the fact that proceedings concerning the applicant's request for leave to join a civil action brought by another former EBI detainee, filed by the applicant on 11 July 2005, are currently pending before the Regional Court, as these proceedings concern a claim for compensation in respect of non-pecuniary damage comparable to a claim under Article 41 of the Convention.
Conclusion: Preliminary objection dismissed (majority).

Law: Article 3 – Applying its existing case-law, the Court finds that the weekly routine strip-searches complained of amount to treatment contrary to Article 3 of the Convention.
Conclusion: violation (unanimously).

Article 8 – Not necessary to consider the question under this provision also.

Articles 41 and 46 – The unusual situation has arisen whereby an applicant is attempting to bring proceedings in a domestic court aimed at securing a monetary award in respect of non-pecuniary damage for a violation of the Convention even before the Court itself has given judgment, notwithstanding the fact that in the light of the Court's findings in the cases of *Van der Ven* and *Lorsé and Others*, cited above, the instant case can be qualified as a repetitive or "clone" case. As regards claims for damage arising from a violation of a Convention provision, the Court cannot allow proceedings before it and proceedings in a domestic court aimed at precisely the same intended result to be actively pursued in parallel. It makes little difference in this respect whether such parallel domestic proceedings are already pending at the time when the application is lodged with the Court, in which case the application is inadmissible under Article 35(1) of the Convention, or whether the application is lodged with the Court first. The Court's decision, however, cannot be the same in both cases: the Convention does not contain any provision corresponding to Article 35(1) covering the latter eventuality. For the sake of clarity it is worth noting that the rule that domestic remedies should be exhausted does not apply to just satisfaction claims submitted to the Court under Article 41 of the Convention. In deciding how to address the situation that the applicant has created, the Court must have regard to the object and purpose of the Convention, which are stated in the Preamble to the Convention (most significantly in its fifth paragraph), and to its own task, which is set by Article 19 of the Convention. Under Article 41 of the Convention, the Court may afford just satisfaction to a party injured by a violation of the Convention or its Protocols if the internal law of the High Contracting Party concerned does not allow complete reparation to be made. However, the Court is enjoined to do so only "if necessary". Consequently, although the Court is sensitive to the effect which its awards under Article 41 may have and makes use of its powers under that Article accordingly, the awarding of sums of money to applicants by way of just satisfaction is not one of the Court's main duties but is incidental to its task of ensuring the observance by States of their obligations under the Convention. Seen in this light, there can be no doubt of the greater importance of Article 46 of the Convention in comparison with Article 41. Under Article 46, the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, the execution being supervised by the

Committee of Ministers. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. One of the effects of this is that where the Court finds a violation, the respondent State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. At the individual level as at the level of general measures, the Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, neither the Court nor for that matter the Committee of Ministers having the power or the practical possibility of doing so themselves. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. It should be observed at this point that the Court makes, under Article 41, such awards as in its view constitute "just satisfaction" for the violations which it has found. Once the Court's judgment has been executed in accordance with Article 46 – that is, once the necessary general and individual measures have been taken to put an end to the violation found and provide redress for its effects – any additional awards over and above those made by the Court are at the discretion of the competent domestic authorities. Such voluntary additional compensatory measures, however, do not have any basis in Article 41 or 46 of the Convention nor in any other provision of the Convention and its Protocols. In the present case only an award for non-pecuniary damage – to be determined on an equitable basis – can be envisaged. However, before examining the claim for compensation in respect of non-pecuniary damage submitted by the applicant under Article 41, the Court examines what consequences may be drawn from Article 46 for the respondent State in the instant case. It is noted that the new practice as regards strip-searches in the EBI, as applied since 1 March 2003, was found in *Baybaşın v. the Netherlands* (dec.), no. 13600/02, 6 October 2005, to be compatible with Article 3. Although it is not for the Court, but for the Committee of Ministers, to determine whether such measures are sufficient for the purposes of Article 46, it considers that these measures are likely to prevent further admissible applications to the Court stemming from the same cause. For the remainder, the applicant's request to join civil proceedings for compensation are still pending, and the Court wishes to take into account – in case it must determine the applicant's claim under Article 41 for compensation in respect of non-pecuniary damage – the compensation for non-pecuniary damage that the applicant may obtain under domestic law; the question of non-pecuniary damage is therefore not ready for decision. Costs and expenses: information incomplete.
Conclusion: Question reserved (unanimously).

JUST SATISFACTION
Damage suffered by villagers deprived of access to their village for nearly ten years: *monetary award*.

DOĞAN and Others - Turkey (Nos. 8803-8811/02, 8813/02 and 8815-8819/02)
Judgment 13.7.2006 [Section III] (just satisfaction)

Facts: For nearly ten years between 1994 and 2003, the authorities refused the applicants any access to their village on the ground of terrorist incidents in and around that place. This deprived the applicants of all resources from which they derived their living. In a judgment delivered on 29 June 2004 ("the principal judgment"), the Court held that there had been a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1. More specifically, as regards Article 1 of Protocol No. 1, the Court held that, as a result of their inability to have access to their possessions, the applicants had had to bear an individual and excessive burden which had upset the fair balance which should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of one's possessions.

Article 41 – Pecuniary damage: The Court considers that the ability of the applicants to return to Boydaş and compensation of the loss sustained by them during the period in which they were denied access to their homes and land would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1 and Article 8 of the Convention. However, it appears from the parties' submissions that the applicants are no longer willing to return to their homes and land and to start a new life in their village. Thus, in the circumstances of the present case, the award of compensation for the pecuniary loss in question seems to be the most appropriate just satisfaction for the applicants. In this connection, the Court cannot accept the Government's argument that the applicants should be required at this stage of the proceedings to apply to the competent compensation commissions in order to seek reparation for their damages. It points out that the parties failed to reach an agreement on the issue of just satisfaction and the proceedings have already lasted a very long time. In view of the foregoing, the Court will determine the amount of the pecuniary damage to be paid to each of the applicants. In assessing the pecuniary damage sustained by the applicants, the Court will, as far as appropriate, take into account the estimates provided by the parties. Nevertheless, given the divergent nature of the evidence put forward under Article 41, the Court's assessment will inevitably involve a degree of speculation.
a) Damage resulting from deterioration or lack of care of property: Only established in respect of eight applicants. The Court awards them EUR 1,000 each.
b) Loss of earnings: in determining the compensation, the level of comparable awards made by the compensation commissions should be taken into account. However, in assessing the amounts it should be borne in mind that the applicants continued their economic activities, albeit in poor conditions, in their new places of living. The Court awards each applicant EUR 13,500.
c) Cost of alternative accommodation: Claimed by thirteen of the fifteen applicants. One is awarded EUR 4,200, the others EUR 5,400.

Non-pecuniary damage: In view of the measures taken by the authorities of the respondent State to remedy the situation of the applicants and other internally displaced persons subsequent to the adoption of the principal judgment, the principal judgment in itself constitutes sufficient just satisfaction for any non-pecuniary damage arising from the violations established.

ARTICLE 46

EXECUTION OF A JUDGMENT
Strip-searching of prisoner; civil action introduced after application: *violation, Article 41 reserved*.

SALAH - Netherlands (N° 8196/02)
BAYBAŞIN - Netherlands (N° 13600/02)
Judgments 6.7.2006 [Section III]

(See Article 41 above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
State's refusal, on grounds of State immunity, to request enforcement of decisions restoring to the applicants their property assigned to a foreign Embassy: *inadmissible*.

TRESKA - Albania and Italy (No 26937/04)
Decision 29.6.2006 [Section III]

(See Article 6(1) (civil) above).

DEPRIVATION OF PROPERTY
Judgment of the Constitutional Court depriving the applicant of a right of pre-emption over nationalised flats: *inadmissible*.

GAVELLA - Croatia (N° 33244/02)
Decision 11.7.2006 (Section I)

Under the Act on Restitution of and Compensation for Property taken during the Yugoslav Communist Regime ("the Denationalisation Act"), which entered into force in 1997, nationalised flats in respect of which third persons had acquired specially protected tenancies were not to be restored to their former owners. The tenants had a right to purchase the flats on favourable terms from a special compensation fund, while the former owners or their heirs had the right to financial compensation in respect of the properties in question. In addition, if a tenant who had bought a flat in this way decided to dispose of it subsequently, the former owner had a right of pre-emption over the property, which had to be offered to him at the same price at which it had been purchased from the compensation fund.
In 2001 the applicant, as his mother's sole heir, was granted entitlement to compensation in respect of 27 flats located in buildings that had been nationalised. Previously, in 1999, the Constitutional Court, following applications brought by a group of MPs and by various individuals, had delivered a judgment in which it held that certain provisions of the Denationalisation Act were unconstitutional, in particular the provision on pre-emption rights for former owners. Consequently, the applicant lost any entitlement to pre-emption in respect of the nationalised buildings which had belonged to his family. The amendments to the Denationalisation Act repealing the provisions found by the Constitutional Court to be unconstitutional entered into force on 5 July 2002. On 19 August 2002 the applicant challenged the constitutionality of the amendments before the Constitutional Court, which has not yet given a ruling.

Inadmissible under Article 1 of Protocol No. 1: The applicant's pre-emption rights in respect of the flats were "claims" rather than "existing possessions". Under the Denationalisation Act, pre-emption rights had been granted to individuals in two phases. First, the individual's status as former owner of a nationalised property had to be recognised, which by law gave him a right of pre-emption in the event of a sale. The applicant's status as former owner was recognised in 2001. As for the second phase, the decision to sell was at the sole discretion of the former tenants (and current owners), who might equally well choose not to sell. The sale of the flats was therefore an event which, although possible, was not certain to arise. In the present case, there was nothing to suggest that some of the owners of the flats in question had decided to sell their property prior to the alleged interference, that is, before July 2002. Accordingly, the applicant had never had a currently enforceable claim against the owners. As to the applicant's argument that his pre-emption rights were entered in the land register, the Court was unable to attach particular importance to that fact, given that the legal effects of the annotation envisaged by the Denationalisation Act were not clearly defined. The applicant did not therefore have "possessions" within the meaning of Article 1 of Protocol No. 1, as his prospects of benefiting from his right of pre-emption were dependent on a condition which it was not in his power to bring into being. Accordingly, the applicant, at the time of the alleged interference, could not have had a "legitimate expectation" that his claims would be realised: *incompatible ratione materiae*.

Inadmissible under Article 6(1): With regard to the applicant's complaint that the proceedings before the Constitutional Court had been unfair it was true that, given the particular features of the abstract constitutional review proceedings before the Constitutional Court, the applicant had been effectively barred from appearing in person before that court. However, the Court had already held that in proceedings involving a large number of individuals, notably those conducted before constitutional courts following a challenge to legislation, it was not always required or even possible for every individual concerned to be heard before the court. The Court saw no reason to depart from that conclusion in the present case: *manifestly ill-founded*.

Inadmissible under Article 13: Article 13 related exclusively to those cases in which the applicant alleged, on arguable grounds, that one or more of his rights or freedoms set forth in the Convention has been

violated. As the Court had found that it was not competent *ratione materiae* to examine the applicant's complaint under Article 1 of Protocol No. 1, his complaint under Article 13 was also incompatible with the Convention *ratione materiae*.

Other judgments delivered in July - August

Uyanık v. Turkey (Nº 49514/99), 4 July 2006 [Section II]
Kutlu v. Turkey (Nº 65914/01), 4 July 2006 [Section II]
Blagovestnyy v. Russia (Nº 72558/01), 4 July 2006 [Section II]
Karaman and Beyazıt v. Turkey (Nº 73739/01), 4 July 2006 [Section II]
Dzyruk v. Poland (Nº 77832/01), 4 July 2006 [Section IV]
Rylski v. Poland (Nº 24706/02), 4 July 2006 [Section IV]
Mehmet Yılmaz v. Turkey (Nº 12068/03), 4 July 2006 [Section II]
Yayabaşi v. Turkey (Nº 12083/03), 4 July 2006 [Section II]
Kamile Uyanık v. Turkey (Nº 12087/03), 4 July 2006 [Section II]
Erkan v. Turkey (Nº 12091/03), 4 July 2006 [Section II]
Zarb v. Malta (Nº 16631/04), 4 July 2006 [Section IV]

Kavak v. Turkey (Nº 53489/99), 6 July 2006 [Section I]
Zhigalev v. Russia (Nº 54891/00), 6 July 2006 [Section I]
Telecki v. Poland (Nº 56552/00), 6 July 2006 [Section III]
Erbakan v. Turkey (Nº 59405/00), 6 July 2006 [Section I]
Keklik v. Turkey (Nº 60574/00), 6 July 2006 [Section I]
Rosca v. Romania (Nº 75129/01), 6 July 2006 [Section III] (friendly settlement)
Campello v. Italy (Nº 21757/02), 6 July 2006 [Section III]
Rizova v. the former Yugoslav Republic of Macedonia (Nº 41228/02), 6 July 2006 [Section V]
Sehur v. Slovenia (Nº 42246/02), 6 July 2006 [Section III]
Ciaramella v. Italy (Nº 6597/03), 6 July 2006 [Section III]
Sylla v. Netherlands (Nº 14683/03), 6 July 2006 [Section III]
Grossi and Others v. Italy (Nº 18791/03), 6 July 2006 [Section III]
Beka-Koulocheri v. Greece (Nº 38878/03), 6 July 2006 [Section I]
Andoniadis v. Greece (Nº 10803/04), 6 July 2006 [Section I]
Papa v. Greece (Nº 21091/04), 6 July 2006 [Section I]

Bastone v. Italy (Nº 59638/00), 11 July 2006 [Section II]
Maselli (no. 2) v. Italy (Nº 61211/00), 11 July 2006 [Section IV]
La Rosa and Alba v. Italy (no. 5) (Nº 63239/00), 11 July 2006 [Section IV]
Sarl du Parc d'Activités de Blotzheim v. France (Nº 72377/01), 11 July 2006 [Section II]
Aliuţă v. Romania (Nº 73502/01), 11 July 2006 [Section II]
Teslim Töre (no. 2) v. Turkey (Nº 13244/02), 11 July 2006 [Section II]
Campisi v. Italy (Nº 24358/02), 11 July 2006 [Section IV]
Gurov v. Moldova (Nº 36455/02), 11 July 2006 [Section IV]

S.S. and M.Y. v. Turkey (Nº 37951/97), 13 July 2006 [Section III]
Okatan v. Turkey (Nº 40996/98), 13 July 2006 [Section III] (friendly settlement)
Fuchser v. Switzerland (Nº 55894/00), 13 July 2006 [Section III]
İmrek v. Turkey (Nº 57175/00), 13 July 2006 [Section III] (friendly settlement)
Nichifor v. Romania (Nº 62276/00), 13 July 2006 [Section I]
Shamina v. Russia (Nº 70501/01), 13 July 2006 [Section V]
Bahçeyaka v. Turkey (Nº 74463/01), 13 July 2006 [Section III]
Obrovnik v. Slovenia (Nº 76438/01), 13 July 2006 [Section III]
Farange S.A. v. France (Nº 77575/01), 13 July 2006 [Section III]
Kristan v. Slovenia (Nº 77778/01), 13 July 2006 [Section III]
Blagojevič v. Slovenia (Nº 77809/01), 13 July 2006 [Section III]
Zupanc v. Slovenia (Nº 1411/02), 13 July 2006 [Section III]
Beriša v. Slovenia (Nº 1459/02), 13 July 2006 [Section III]
Vincenzo Taiani v. Italy (Nº 3638/02), 13 July 2006 [Section III]

Radojčič v. Slovenia (Nº 4562/02), 13 July 2006 [Section III]
Falnoga v. Slovenia (Nº 5110/02), 13 July 2006 [Section III]
Boškič v. Slovenia (Nº 5158/02), 13 July 2006 [Section III]
Podjaveršek v. Slovenia (Nº 5176/02), 13 July 2006 [Section III]
Lušničkič v. Slovenia (Nº 5186/02), 13 July 2006 [Section III]
Kuzmin v. Slovenia (Nº 8756/02), 13 July 2006 [Section III]
Vasylyev v. Ukraine (Nº 10232/02), 13 July 2006 [Section V]
Svetlin v. Slovenia (Nº 10299/02), 13 July 2006 [Section III]
Guzej v. Slovenia (Nº 14619/02), 13 July 2006 [Section III]
Zacharakis v. Greece (Nº 17305/02), 13 July 2006 [Section I]
Ressegatti v. Switzerland (Nº 17671/02), 13 July 2006 [Section III]
Radakovič v. Slovenia (Nº 20290/02), 13 July 2006 [Section III]
Siliny v. Ukraine (Nº 23926/02), 13 July 2006 [Section V]
Grenko v. Slovenia (Nº 29891/02), 13 July 2006 [Section III]
Agga (no. 3) v. Greece (Nº 32186/02), 13 July 2006 [Section I]
Agga (no. 4) v. Greece (Nº 33331/02), 13 July 2006 [Section I]
Housing Association of War Disabled and Victims of War of Attica and Others v. Greece (Nº 35859/02), 13 July 2006 [Section I]
Lafargue v. Romania (Nº 37284/02), 13 July 2006 [Section III]
Stork v. Germany (Nº 38033/02), 13 July 2006 [Section V]
SC Magna Holding SRL v. Romania (Nº 10055/03), 13 July 2006 [Section III]
Galatalis v. Greece (Nº 36251/03), 13 July 2006 [Section I]
Allushi v. Greece (Nº 3525/04), 13 July 2006 [Section I]
Zaffuto and Others v. Italy (Nº 12894/04), 13 July 2006 [Section I]
Lo Bue and Others v. Italy (Nº 12912/04), 13 July 2006 [Section I]
Kovalenko v. Russia (Nº 21410/04), 13 July 2006 [Section V]
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Terekhova v. Russia (Nº 21425/04), 13 July 2006 [Section V]
Vasilyeva v. Russia (Nº 21430/04), 13 July 2006 [Section V]
Matrena Polupanova v. Russia (Nº 21447/04), 13 July 2006 [Section V]
Kortessi v. Greece (Nº 31259/04), 13 July 2006 [Section I]
Nikas and Nika v. Greece (Nº 31273/04), 13 July 2006 [Section I]
Lazaridi v. Greece (Nº 31282/04), 13 July 2006 [Section I]

Zich and Others v. Czech Republic (Nº 48548/99), 18 July 2006 [Section II (former)]
Efimenko v. Ukraine (Nº 55870/00), 18 July 2006 [Section II (former)]
Šimonová v. Czech Republic (Nº 73516/01), 18 July 2006 [Section II (former)]
Štefanec v. Czech Republic (Nº 75615/01), 18 July 2006 [Section II (former)]
Hostein v. France (Nº 76450/01), 18 July 2006 [Section II]
Baltacı v. Turkey (Nº 495/02), 18 July 2006 [Section II]
Balšán v. Czech Republic (Nº 1993/02), 18 July 2006 [Section II (former)]
Jakumas v. Lithuania (Nº 6924/02), 18 July 2006 [Section II]
Ratajczyk v. Poland (Nº 11215/02), 18 July 2006 [Section IV]
Tamar v. Turkey (Nº 15614/02), 18 July 2006 [Section II]
Kozik v. Poland (Nº 25501/02), 18 July 2006 [Section IV]
Fiala v. Czech Republic (Nº 26141/03), 18 July 2006 [Section II (former)]
Pedovič v. Czech Republic (Nº 27145/03), 18 July 2006 [Section II (former)]
Cosson v. France (Nº 38498/03), 18 July 2006 [Section II]
Jaczkó v. Hungary (Nº 40109/03), 18 July 2006 [Section II]
Reslová v. Czech Republic (Nº 7550/04), 18 July 2006 [Section II (former)]
Bíró v. Hungary (Nº 15652/04), 18 July 2006 [Section II]

Pio and Ermelinda Taiani v. Italy (Nº 3641/02), 20 July 2006 [Section III]
Theodorakis and Theodorakis - Tourism and Hotels Ltd. v. Greece (Nº 71511/01), 20 July 2006 [Section I] (friendly settlement)
Bartos v. Romania (Nº 12050/02), 20 July 2006 [Section III]
Pietro and Others v. Romania (Nº 8402/03), 20 July 2006 [Section III]
Radu v. Romania (Nº 13309/03), 20 July 2006 [Section III]
Vajagić v. Croatia (Nº 30431/03), 20 July 2006 [Section I]
Sokurenko and Strygun v. Ukraine (Nº 29458/04 and Nº 29465/04), 20 July 2006 [Section V]
Koudelka v. Czech Republic (Nº 1633/05), 20 July 2006 [Section V]

Çapan v. Turkey (Nº 71978/01), 25 July 2006 [Section II]
Halis Doğan v. Turkey (no. 2) (Nº 71984/01), 25 July 2006 [Section II]
Ahmet Kiliç v. Turkey (Nº 38473/02), 25 July 2006 [Section II]
Mehmet Sait Kaya v. Turkey (Nº 17747/03), 25 July 2006 [Section II]

İhsan Bilgin v. Turkey (Nº 40073/98), 27 July 2006 [Section II]
Fadin v. Russia (Nº 58079/00), 27 July 2006 [Section III]
Güzel v. Turkey (no. 2) (Nº 65849/01), 27 July 2006 [Section II]
Gubler v. France (Nº 69742/01), 27 July 2006 [Section II]
Gök and Others v. Turkey (Nº 71867/01, Nº 71869/01, Nº 73319/01 and Nº 74858/01), 27 July 2006 [Section II]
Davtyan v. Georgia (Nº 73241/01), 27 July 2006 [Section II]
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CED Viandes and SOCINTER-SOCOPA International v. France (Nº 77240/01), 27 July 2006 [Section I]
Ferhat Berk v. Turkey (Nº 77366/01), 27 July 2006 [Section II]
Varelas v. France (Nº 16616/02), 27 July 2006 [Section II]
Klement and Others v. Hungary (Nº 31701/02), 27 July 2006 [Section II]
Efstathiou and Others v. Greece (Nº 36998/02), 27 July 2006 [Section I]
Belyatskaya v. Russia (Nº 40250/02), 27 July 2006 [Section I]
Rabinovici v. Romania (Nº 38467/03), 27 July 2006 [Section III]
Adelfoi Io. Verri A.e. Choirotrofiki Epicheirisi v. Greece (Nº 2544/04), 27 July 2006 [Section I]
Von Hoffen v. Liechtenstein (Nº 5010/04), 27 July 2006 [Section III]
Iosub Caras v. Romania (Nº 7198/04), 27 July 2006 [Section III]

Vidic v. Slovenia (Nº 54836/00), 3 August 2006 [Section III]
Janes Carratù v. Italy (Nº 68585/01), 3 August 2006 [Section III]
Schützenhofer v. Slovenia (Nº 1419/02), 3 August 2006 [Section III]
Imširovič v. Slovenia (Nº 16484/02), 3 August 2006 [Section III]
Prljanović v. Slovenia (Nº 22172/02), 3 August 2006 [Section III]
Capozzi v. Italy (Nº 3528/03), 3 August 2006 [Section III]
Stingaciu and Tudor v. Romania (Nº 21351/03), 3 August 2006 [Section III]

Eskelinen and Others v. Finland (Nº 43803/98), 8 August 2006 [Section IV]
D.A. and B.Y. v. Turkey (Nº 45736/99), 8 August 2006 [Section IV]
Yilmaz and Others v. Turkey (Nº 47278/99), 8 August 2006 [Section IV]
Stornaiuolo and Others v. Italy (Nº 52980/99), 8 August 2006 [Section IV]
Türkoğlu v. Turkey (Nº 58922/00), 8 August 2006 [Section IV]
Sitarski v. Poland (Nº 71068/01), 8 August 2006 [Section IV]
Dağ v. Turkey (Nº 74939/01), 8 August 2006 [Section IV]
Cabała v. Poland (Nº 23042/02), 8 August 2006 [Section IV]
Ermicev v. Moldova (Nº 42288/02), 8 August 2006 [Section IV]
Cegłowski v. Poland (Nº 3489/03), 8 August 2006 [Section IV]

Yanakiev v. Bulgaria (Nº 40476/98), 10 August 2006 [Section V]
Padalov v. Bulgaria (Nº 54784/00), 10 August 2006 [Section V]
Dobrev v. Bulgaria (Nº 55389/00), 10 August 2006 [Section V]
Toshev v. Bulgaria (Nº 56308/00), 10 August 2006 [Section V]
Babichkin v. Bulgaria (Nº 56793/00), 10 August 2006 [Section V]
Yordanov v. Bulgaria (Nº 56856/00), 10 August 2006 [Section V]
Nalbant v. Turkey (Nº 61914/00), 10 August 2006 [Section V]
Acun and Yumak v. Turkey (Nº 67112/01), 10 August 2006 [Section V]
Kır and Others v. Turkey (Nº 67145/01), 10 August 2006 [Section V]
Erin v. Turkey (Nº 71342/01), 10 August 2006 [Section V]
Schwarzenberger v. Germany (Nº 75737/01), 10 August 2006 [Section V]
Kukharchuk v. Ukraine (Nº 10437/02), 10 August 2006 [Section V]
Vandaele and Acker v. Belgium (Nº 19443/02), 10 August 2006 [Section I]
Yavorskaya v. Ukraine (Nº 20745/02), 10 August 2006 [Section V]
Lyashko v. Ukraine (Nº 21040/02), 10 August 2006 [Section V]
Gubenko v. Ukraine (Nº 22924/02), 10 August 2006 [Section V]
Mehmet Ali Gündüz v. Turkey (Nº 27633/02), 10 August 2006 [Section V]
Andrusenko and Others v. Ukraine (Nº 41073/02), 10 August 2006 [Section V]
Grisha v. Ukraine (Nº 1535/03), 10 August 2006 [Section V]
Kretinin v. Ukraine (Nº 10515/03), 10 August 2006 [Section V]
Karpenko v. Ukraine (Nº 10559/03), 10 August 2006 [Section V]
Kirilo v. Ukraine (Nº 19037/03), 10 August 2006 [Section V]
Gerogiannakis v. Greece (Nº 30173/03), 10 August 2006 [Section I]
Aistov v. Ukraine (Nº 1743/04), 10 August 2006 [Section V]
Cheenysheva v. Ukraine (Nº 22591/04), 10 August 2006 [Section V]
Mitzina v. Ukraine (Nº 28181/04), 10 August 2006 [Section V]

Rišková v. Slovakia (Nº 58174/00), 22 August 2006 [Section IV]
Greenhalgh v. United Kingdom (Nº 61956/00), 22 August 2006 [Section IV] (friendly settlement)
Hyde v. United Kingdom (Nº 63287/00), 22 August 2006 [Section IV] (friendly settlement)
Walker v. United Kingdom (Nº 37212/02), 22 August 2006 [Section IV]
Nierojewska v. Poland (Nº 77835/01), 22 August 2006 [Section IV]
Majchrzak v. Poland (Nº 1524/02), 22 August 2006 [Section IV]
Nowak and Zajączkowski v. Poland (Nº 12174/02), 22 August 2006 [Section IV]
Chyb v. Poland (Nº 20838/02), 22 August 2006 [Section IV]
Barrow v. United Kingdom (Nº 42735/02), 22 August 2006 [Section IV]
Beshiri and Others v. Albania (Nº 7352/03), 22 August 2006 [Section IV]
Pearson v. United Kingdom (Nº 8374/03), 22 August 2006 [Section IV]

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:

D.H. and Others v. Czech Republic (Nº 57325/00), 7 February 2006 [Section II]
Evans v. United Kingdom (Nº 6339/05), 7 March 2006 [Section IV]

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (See Information Notes Nos. 85 and 86):

Sukhovetskyy - Ukraine (N° 13716/02)
Judgment 28.3.2006 [Section II]

Kubicz - Poland (N° 16535/02)
Jaworski - Poland (N° 25715/02)
Judgments 28.3.2006 [Section IV]

Sari and Colak - Turkey (N° 42596/98 and N° 42603/98)
Bodur and Others - Turkey (Nº 42911/98)
Güzel (no. 1) - Turkey (Nº 54479/00)
Karaaslan - Turkey (Nº 72970/01)
Demir - France (Nº 3041/02)
Kobtsev - Ukraine (Nº 7324/02)
Pomazanyy and Shevchenko - Ukraine (Nº 9719/02)
Pachman and Mates - Czech Republic (Nº 14881/02)
Vojáčková - Czech Republic (Nº 15741/02)
Lisyanskiy - Ukraine (Nº 17899/02)
Heřmanský - Czech Republic (Nº 20551/02)
Sergey Vasilyevich Shevchenko - Ukraine (Nº 32478/02)
Bitton (no. 2) - France (Nº 41828/02)
Magyar (no. 2) - Hungary (Nº 442/03)
Maršálek - Czech Republic (Nº 8153/04)
Judgments 4.4.2006 [Section II]

Malik - Poland (Nº 57477/00)
Corsacov - Moldova (Nº 18944/02)
Judgments 4.4.2006 [Section IV]

Stankiewicz - Poland (N° 46917/99)
Malisiewicz-Gasior - Poland (N° 43797/98)
Rahbar-Pagard - Bulgaria (Nº 45466/99 and Nº 29903/02)
Gavrielidou and Others - Cyprus (Nº 73802/01)
Chatzibyrros and Others - Greece (Nº 20898/03)
Judgments 6.4.2006 [Section I]

Mazzei - Italy (Nº 69502/01)
Prekoršek - Slovenia (Nº 75784/01)
Krznar - Slovenia (Nº 75787/01)
Ibrahimi - Slovenia (Nº 75790/01)
Klaneček - Slovenia (Nº 75798/01)
Bastič - Slovenia (Nº 75809/01)
Huseinović - Slovenia (Nº 75817/01)
Cekuta - Slovenia (Nº 77796/01)
Ferlič - Slovenia (Nº 77818/01)
Deželak - Slovenia (Nº 1438/02)
Jenko - Slovenia (Nº 4267/02)

Gaber - Slovenia (Nº 5059/02)
Drozg - Slovenia (Nº 5162/02)
Belošević - Slovenia (Nº 7877/02)
Jurkošek - Slovenia (Nº 7883/02)
Gradič - Slovenia (Nº 9277/02)
Repas - Slovenia (Nº 10288/02)
Ramšak - Slovenia (Nº 16263/02)
Žlender - Slovenia (Nº 16281/02)
Pažon - Slovenia (Nº 17337/02)
Mrkonjič - Slovenia (Nº 17360/02)
Kotnik - Slovenia (Nº 19894/02)
Kukovič - Slovenia (Nº 20300/02)
Lesjak - Slovenia (Nº 33553/02)
Divkovič - Slovenia (Nº 38523/02)
Bizjak Jagodič - Slovenia (Nº 42274/02)
Judgments 6.4.2006 [Section III]

Uçar - Turkey (Nº 52392/99)
Mehmet Emin Yildiz and Others - Turkey (Nº 60608/00)
Cabourdin - France (Nº 60796/00)
Sevgi Yilmaz - Turkey (Nº 62230/00)
Brasilier - France (Nº 71343/01)
Şevk - Turkey (Nº 4528/02)
Bazil - Czech Republic (Nº 6019/02)
Duhamel - France (Nº 15110/02)
Kristóf - Hungary (Nº 23992/02)
Çağdaş Şahin - Turkey (Nº 28137/02)
Mehmet Kiliç - Turkey (Nº 28169/02)
Kalló - Hungary (Nº 30081/02)
Oberling - France (Nº 31520/02)
Vondratsek - Hungary (Nº 39073/02)
Société au Service du Développement - France (Nº 40391/02)
Kocsis - Hungary (Nº 2462/03)
Ratalics - Hungary (Nº 10501/03)
Mohai - Hungary (Nº 30089/03)
Judgments 11.4.2006 [Section II]

Mut - Turkey (Nº 42434/98)
Emin Yaşar - Turkey (Nº 44754/98)
Dicle (no. 2) - Turkey (Nº 46733/99)
Kekil Demirel - Turkey (Nº 48581/99)
Erçikdi and Others - Turkey (Nº 52782/99)
Fikri Demir - Turkey (Nº 55373/00)
Karakaş and Bayır - Turkey (Nº 74798/01)
Judgments 11.4.2006 [Section IV]

Sukhobokov - Russia (Nº 75470/01)
Vaturi - France (Nº 75699/01)
Tsonev - Bulgaria (Nº 45963/99)
Alekhina - Russia (Nº 22519/02)
Mouzoukis - Greece (Nº 39295/02)
Kunqurova – Azerbaijan (Nº 5117/03) (striking out)
Šundov - Croatia (Nº 13876/03)
Agibalova - Russia (Nº 26724/03)
Judgments 13.4.2006 [Section I]

Kosteski - "the former Yugoslav Republic of Macedonia" (Nº 55170/00)
Ožek - Slovenia (Nº 1423/02)
Marinović - Slovenia (Nº 1461/02)
Goričan - Slovenia (Nº 4507/02)
Muratovič - Slovenia (Nº 6799/02)
Rober - Slovenia (Nº 7210/02)
Zemljič - Slovenia (Nº 9301/02)
Hriberšek - Slovenia (Nº 10296/02)
Lorbek - Slovenia (Nº 17321/02)
Kotnik - Slovenia (Nº 17330/02)
Zentar - France (Nº 17902/02)
Rozman - Slovenia (Nº 20254/02)
Pavlovič - Slovenia (Nº 20543/02)
Jurkošek - Slovenia (Nº 20610/02)
Soleša - Slovenia (Nº 21464/02)
Witmajer - Slovenia (Nº 22235/02)
Požin - Slovenia (Nº 22266/02)
Blatešič - Slovenia (Nº 23571/02)
Stradovnik - Slovenia (Nº 24784/02)
Zakonjšek - Slovenia (Nº 24896/02)
Rupnik - Slovenia (Nº 24897/02)
Bedi - Slovenia (Nº 24901/02)
Škrablin - Slovenia (Nº 25053/02)
Pfeiffer - Slovenia (Nº 25055/02)
Avdič - Slovenia (Nº 26881/02)
Judgments 13.4.2006 [Section III]

Katar and Others - Turkey (Nº 40994/98)
Chadimová - Czech Republic (Nº 50073/99)
Mora do Vale and Others - Portugal (Nº 53468/99) (just satisfaction)
Tanrikulu and Deniz - Turkey (Nº 60011/00)
Tariq - Czech Republic (Nº 75455/01)
Patta - Czech Republic (Nº 12605/02)
Roseiro Bento - Portugal (Nº 29288/02)
Kozák - Czech Republic (Nº 30940/02)
Zbořilová and Zbořil - Czech Republic (Nº 32455/02)
Karácsonyi - Hungary (Nº 37494/02)
Metzová - Czech Republic (Nº 38194/02)
Judgments 18.4.2006 [Section II]

I.H. and Others - Austria (Nº 42780/98)
Raichinov - Bulgaria (Nº 47579/99)
De Sciscio - Italy (Nº 176/04)
Patrono, Cascini and Stefanelli - Italy (Nº 10180/04)
Judgments 20.4.2006 [Section I]

Başlik and Others - Turkey (Nº 35073/97)
Uzun - Turkey (Nº 48544/99)
Çelik and Others - Turkey (Nº 56835/00)
Ibrahim Yayan - Turkey (Nº 57965/00)
Milošević - "the former Yugoslav Republic of Macedonia" (Nº 15056/02)
Mehmet Kökmen (no. 1) - Turkey (Nº 35768/02)
Judgments 20.4.2006 [Section III]

Ahmet Mete - Turkey (Nº 77649/01)
Roux - France (Nº 16022/02)
Sabri Taş - Turkey (Nº 21179/02) (revision)
Bekir Özdemir - Turkey (Nº 23321/02)
Ibrahim Halil Yiğit - Turkey (Nº 23322/02)
Çerkez Kaçar - Turkey (Nº 23323/02)
Halil Kendirci - Turkey (Nº 23324/02)
Özdemir and Others - Turkey (Nº 23325/02)
Zaveczky - Hungary (Nº 11213/03)
Keszthelyi - Hungary (Nº 14966/03)
Làszló Kocsis - Hungary (Nº 32763/03)
Judgments 25.4.2006 [Section II]

Dammann - Switzerland (Nº 77551/01)
Puig Panella - Spain (Nº 1483/02)
Bruncrona - Finland (Nº 41673/98) (just satisfaction)
Prodan - Moldova (Nº 49806/99) (just satisfaction - striking out)
Gołek - Poland (Nº 31330/02)
Macovei and Others - Moldova (Nº 19253/03, Nº 17667/03, Nº 31960/03, Nº 19263/03, Nº 17695/03 and Nº 31761/03)
Judgments 25.4.2006 [Section IV]

Novosets - Ukraine (Nº 32021/03)
Zubko and Others - Ukraine (Nº 3955/04, Nº 5622/04, Nº 8538/04 and Nº 11418/04)
Judgments 26.4.2006 [Section V]

Zasurtsev - Russia (Nº 67051/01)
Kefalas and Others - Greece (Nº 40051/02)
Casse - Luxembourg (Nº 40327/02)
Inexco - Greece (Nº 11720/03)
Mohd - Greece (Nº 11919/03)
Basoukos - Greece (Nº 7544/04)
Horomidis - Greece (Nº 9874/04)
Koleci - Greece (Nº 14309/04)
Judgments 27.4.2006 [Section I]

Ataman - Turkey (Nº 46252/99)
Soner and Others - Turkey (Nº 40986/98)
Varli and Others - Turkey (Nº 57299/00)
Fazilet Partisi and Kutan - Turkey (Nº 1444/02) (striking out)
Krajnc - Slovenia (Nº 27694/02)
Antolič - Slovenia (Nº 27946/02)
Kunstič - Slovenia (Nº 28922/02)
Đaković - Slovenia (Nº 32964/02)
Šolinc - Slovenia (Nº 33538/02)
Hribar - Slovenia (Nº 33541/02)
Ovniček - Slovenia (Nº 33561/02)
Zgonjanin - Slovenia (Nº 35063/02)
Hriberšek - Slovenia (Nº 36054/02)
Višnjar - Slovenia (Nº 36550/02)
Gashi - Slovenia (Nº 37057/02)
Dragovan - Slovenia (Nº 37289/02)
Radanović - Slovenia (Nº 37296/02)

Draganović - Slovenia (Nº 38310/02)
Grušovnik - Slovenia (Nº 38333/02)
Ješič - Slovenia (Nº 38341/02)
Rodič - Slovenia (Nº 38528/02)
Šimek Hudomalj - Slovenia (Nº 38933/02)
Fonda - Slovenia (Nº 39137/02)
Stropnik - Slovenia (Nº 39160/02)
Benedejčič and Tratnik - Slovenia (Nº 39178/02)
Mandir - Slovenia (Nº 40125/02)
Kočevar - Slovenia (Nº 40128/02)
Radivojević - Slovenia (Nº 41511/02)
Judgments 27.4.2006 [Section III]

Aydın Tatlav - Turkey (Nº 50692/99)
Saint-Adam and Millot - France (Nº 72038/01)
De Luca - France (Nº 8112/02)
Judgments 2.5.2006 [Section II]

Vasko Yordanov Dimitrov - Bulgaria (Nº 50401/99)
Judgment 3.5.2006 [Section V]

Shacolas - Cyprus (Nº 47119/99)
Ekdoseis N. Papanikolaou A.E. - Greece (Nº 13332/03)
Mantzila - Greece (Nº 25536/04)
Filippos Mavropoulos - Pan. Zisis O.E. - Greece (Nº 27906/04)
Judgments 4.5.2006 [Section I]

Kadikis (no. 2) - Latvia (Nº 62393/00)
Judgment 4.5.2006 [Section III]

Ergin (no. 6) - Turkey (Nº 47533/99)
Alınak and Others - Turkey (Nº 34520/97)
Mehmet Ertuğrul Yılmaz and Others - Turkey (Nº 41676/98)
Akkurt - Turkey (Nº 47938/99)
Maçin - Turkey (Nº 52083/99)
Saygılı - Turkey (Nº 57916/00)
Rüzgar - Turkey (Nº 59246/00)
Jenčová - Slovakia (Nº 70798/01)
Michta - Poland (Nº 13425/02)
Miszkurka - Poland (Nº 39437/03)
Celejewski - Poland (Nº 17584/04)
Judgments 4.5.2006 [Section IV]

Pereira Henriques - Luxembourg (Nº 60255/00)
Judgments 9.5.2006 [Section IV (former)]

C. - Finland (Nº 18249/02)
Bogacz - Poland (Nº 60299/00)
Lungu - Moldova (Nº 3021/02)
Judgments 9.5.2006 [Section IV]

Różański - Poland (Nº 55339/00)
Judgments 18.5.2006 [Section I]

Fodor - Hungary (Nº 4564/03)
Varga - Hungary (Nº 3360/04)
Suyur - Turkey (Nº 13797/02)
Judgments 23.5.2006 [Section II]

Grant - United Kingdom (Nº 32570/03)
Kiper - Turkey (Nº 44785/98)
Hasan Ceylan - Turkey (Nº 58398/00)
Mattila - Finland (Nº 77138/01)
Judgments 23.5.2006 [Section IV]

Riener - Bulgaria (Nº 46343/99)
Kounov - Bulgaria (Nº 24379/02)
Judgments 23.5.2006 [Section V]

Article 44(2)(c)

On 3 July 2006 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Nicolau v. Romania (1295/02), 12 January 2006 [Section III]
Vesque v. France (3774/02), 7 March 2006 [Section II]
Dumanovski v. "the former Yugoslav Republic of Macedonia" (13898/02), 8 December 2005 [Section III]
Klepetář v. the Czech Republic (19621/02), 21 February 2006 [Section II]
Šroub v. the Czech Republic (5424/03), 17 January 2006 [Section II]
Keser and Others v. Turkey (33238/96 & 32965/96), 2 February 2006 [Section III]
Artun and Others v. Turkey (33239/96), 2 February 2006 [Section III]
Ağtas v. Turkey (33240/96), 2 February 2006 [Section III]
Sayli v. Turkey (33243/96), 2 February 2006 [Section III]
Öztoprak and Others v. Turkey (33247/96), 2 February 2006 [Section III]
Kumru Yilmaz and Others v. Turkey (36211/97), 2 February 2006 [Section III]
Ademyilmaz and Others v. Turkey (41496/98, 41499/98, 41501/98, 41502/98, 41959/98, 42602/98, 43606/98), 21 March 2006 [Section II]
Bayrak and Others v. Turkey (42771/98), 12 January 2006 [Section III]
Georgiev v. Bulgaria (47823/99), 15 December 2005 [Section I]
Erikan Bulut v. Turkey (51480/99), 2 March 2006 [Section III]
Stăngu and Scutelnicu v. Romania (53899/00), 31 January 2006 [Former Section II]
Biç and Others v. Turkey (55955/00), 2 February 2006 [Section III]
Elli Poluhas Döbsbo v. Sweden (61564/00), 17 January 2006 [Section II]
Malejčik v. Slovakia (62187/00), 31 January 2006 [Section IV]
Farcaş and Others v. Romania (67020/01), 10 November 2005 [Section III]
Lukenda (no. 2) v. Slovenia (16492/02), 13 April 2006 [Section III]
Sezen v. the Netherlands (50252/99), 31 January 2006 [Former Section II]
Rodrigues Da Silva and Hoogkamer v. the Netherlands (50435/99), 31 January 2006 [Former Section II]
Odabasi and Koçak v. Turkey (50959/99), 21 February 2006 [Section IV]
Mürsel Eren v. Turkey (60856/00), 7 February 2006 [Section II]
Albanese v. Italy (77924/01), 23 March 2006 [Section III]

Vitiello v. Italy (77962/01), 23 March 2006 [Section III]
Campagnano v. Italy (77955/01), 23 March 2006 [Section III]
Chizzotti v. Italy (15535/02), 2 February 2006 [Section III]
Genovese and Others v. Italy (9119/03), 2 February 2006 [Section III]
Dolgova v. Russia (11886/05), 2 March 2006 [Section I]

Statistical information[1]

Judgments delivered	July	2006
Grand Chamber	2	25(26)
Section I	32	164(170)
Section II	44(47)	256(274)
Section III	45(59)	300(318)
Section IV	13	139(153)
Section V	13(14)	41(45)
former Sections	0	6
Total	**149(167)**	**931(992)**

Judgments delivered	August	2006
Grand Chamber	0	25(26)
Section I	2	166(172)
Section II	0	256(274)
Section III	7	307(325)
Section IV	21	160(174)
Section V	25	66(70)
former Sections	0	6
Total	**55**	**986(1047)**

Judgments delivered in July 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
Section I	31	1	0	0	32
Section II	43(46)	0	1	0	44(47)
Section III	41	3	0	1(15)	45(59)
Section IV	13	0	0	0	13
Section V	13(14)	0	0	0	13(14)
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**143(147)**	**4**	**1**	**1(15)**	**149(177)**

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

Judgments delivered in August 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	2	0	0	0	2
Section II	0	0	0	0	0
Section III	7	0	0	0	7
Section IV	21	0	0	0	21
Section V	25	0	0	0	25
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**55**	**0**	**0**	**0**	**55**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	20(21)	3	0	2	25(26)
Section I	163(169)	2	1	0	166(172)
Section II	248(266)	3	3	2	256(274)
Section III	294(298)	10	1	2(16)	307(325)
Section IV	152(165)	5(6)	1	2	160(174)
Section V	66(70)	0	0	0	66(70)
former Section I	1	0	0	0	1
former Section II	3	0	0	0	3
former Section III	0	0	0	0	0
former Section IV	2	0	0	0	2
Total	**949(995)**	**23(24)**	**6**	**8(22)**	**986(1047)**

Decisions adopted		July	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		5(9)	100(106)
Section II		1	26(27)
Section III		2	18(21)
Section IV		0	34(35)
Section V		1	9(11)
Total		**9(13)**	**187(200)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	3	31
	- Committee	0	3690
Section II	- Chamber	4	48(51)
	- Committee	78	2827
Section III	- Chamber	3	674(696)
	- Committee	100	3468
Section IV	- Chamber	3	113(114)
	- Committee	376	4233
Section V	- Chamber	6	24
	- Committee	299	1399
Total		**872**	**16507(16533)**
III. Applications struck off			
Section I	- Chamber	5	68
	- Committee	0	30
Section II	- Chamber	2	77
	- Committee	0	60
Section III	- Chamber	5(19)	44(58)
	- Committee	1	38
Section IV	- Chamber	5	50(51)
	- Committee	7	53
Section V	- Chamber	5	45
	- Committee	4	23
Total		**34(48)**	**488(503)**
Total number of decisions[1]		**915(933)**	**17182(17236)**

[1] Not including partial decisions.

Applications communicated	July	2006
Section I	22	402
Section II	31	356(363)
Section III	8	449
Section IV	26	291
Section V	11	146
Total number of applications communicated	**98**	**1644(1651)**

Decisions adopted		August	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		3	103(109)
Section II		1	27(28)
Section III		1	19(22)
Section IV		0	34(35)
Section V		2	11(13)
Total		**7**	**194(207)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	1	32
	- Committee	0	3690
Section II	- Chamber	0	48(51)
	- Committee	112	2939
Section III	- Chamber	3	677(699)
	- Committee	0	3468
Section IV	- Chamber	1	114(115)
	- Committee	404	4637
Section V	- Chamber	2	26
	- Committee	299	1698
Total		**822**	**17329(17355)**
III. Applications struck off			
Section I	- Chamber	0	68
	- Committee	0	30
Section II	- Chamber	1	78
	- Committee	7	67
Section III	- Chamber	1	45(59)
	- Committee	0	38
Section IV	- Chamber	1	51(52)
	- Committee	7	60
Section V	- Chamber	5	50
	- Committee	4	27
Total		**26**	**514(529)**
Total number of decisions[1]		**855**	**18037(18091)**

[1] Not including partial decisions.

Applications communicated	August	2006
Section I	37	439
Section II	19	375(382)
Section III	150	599
Section IV	14	305
Section V	6	152
Total number of applications communicated	**226**	**1870(1877)**

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1 :	Abolition of the death penalty

Protocol No. 7

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