CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No 44
on the case-law of the Court
July 2002

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

Statistical information[1]

Judgments delivered	**July**	**2002**
Grand Chamber	4	8
Section I	30(31)	243(245)
Section II	27(31)	109(117)
Section III	7	130(135)
Section IV	7	100(111)
Sections in former compositions	10	37(38)
Total	**85(90)**	**627(654)**

Judgments delivered in July 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4	0	0	0	4
former Section I	3	0	0	1[2]	4
former Section II	0	0	0	0	0
former Section III	3	1	0	0	4
former Section IV	2	0	0	0	2
Section I	19(20)	11	0	0	30(31)
Section II	25(27)	2(4)	0	0	27(31)
Section III	3	3	1	0	7
Section IV	4	3	0	0	7
Total	**63(66)**	**20(22)**	**1**	**1**	**85(90)**

Judgments delivered in 2002					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	7	0	0	1[2]	8
former Section I	10	1	0	1[2]	12
former Section II	0	0	0	3[2]	3
former Section III	11	1	0	0	12
former Section IV	8(9)	1	1	0	10(11)
Section I	200(202)	42	1	0	243(245)
Section II	94(100)	12(14)	3	0	109(117)
Section III	91(93)	37	2(5)	0	130(135)
Section IV	89(100)	10	1	0	100(111)
Total	**510(532)**	**104(106)**	**8(11)**	**5**	**627(654)**

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

[* = Judgment not final]

Decisions adopted		July	2002
I. Applications declared admissible			
Grand Chamber		1(2)	3(4)
Section I		10	154(158)
Section II		12	66
Section III		7	55
Section IV		5	69(71)
Total		**35(36)**	**347(354)**
II. Applications declared inadmissible			
Section I	- Chamber	10	264(303)
	- Committee	214	2200
Section II	- Chamber	7(27)	66(91)
	- Committee	287	2300
Section III	- Chamber	1	43(49)
	- Committee	122	1461
Section IV	- Chamber	13	91(97)
	- Committee	58	1966
Total		**712(732)**	**8391(8467)**
III. Applications struck off			
Section I	- Chamber	5	71(94)
	- Committee	4	56
Section II	- Chamber	1	11(12)
	- Committee	3	32
Section III	- Chamber	3	96(101)
	- Committee	1	12
Section IV	- Chamber	1	15(17)
	- Committee	0	18
Total		**18**	**311(342)**
Total number of decisions[1]		**765(786)**	**9049(9163)**

1. Not including partial decisions.

Applications communicated	July	2002
Section I	15	242(247)
Section II	19	176(180)
Section III	32	210(212)
Section IV	14	180(213)
Total number of applications communicated	**80**	**808(852)**

ARTICLE 3

INHUMAN TREATMENT
Alleged physical and psychological torture and ill-treatment in detention: *communicated*.

MARTINEZ SALA and others - Spain (N° 58438/00)
Decision 2.7.2002 [Section IV]

The 17 applicants, presumed sympathisers of the Catalan independentist movement, were arrested and detained shortly before the Barcelona Olympics in 1992. They were allegedly subjected to physical and psychological ill-treatment during their arrest and detention in Catalonia and at the Guardia Civil headquarters in Madrid. The forensic doctor who examined them found that most of them had wounds or bruises in certain places, and especially handcuff marks on their wrists. Some of the applicants were released on bail by the investigating judge. The applicants lodged a complaint for ill-treatment with the Madrid investigating judge. The investigating judge provisionally dismissed the case on the grounds that, according to the forensic reports, there was no proof that the applicants had been subjected to ill-treatment during their detention. Subsequent appeals were dismissed. One of the applicants had applied to the European Commission of Human Rights, which declared the complaint under Article 3 of the Convention inadmissible for failure to exhaust domestic remedies. On an unspecified date, the investigation proceedings concerning the facts complained of by the applicants were reopened. Again the investigating judge provisionally dismissed the case, a decision which was subsequently confirmed. An *amparo* application was lodged with the Constitutional Court, which stressed that the investigation judge's decision to terminate the proceedings was based on forensic reports finding no signs of violence on the prisoners that could have been the result of a physical assault. The court also noted that the difficulty in identifying the persons allegedly responsible for the facts complained of was due precisely to the content of the complaints lodged by the applicants. In the course of the criminal proceedings against most of the applicants in the *Audiencia Nacional*, on the charges of belonging to or collaborating with an armed gang, possession of explosives, unlawful possession of weapons, and terrorism, the forensic doctor who had examined the applicants was asked by the court to submit an exhaustive report on the facts complained of. Most of the applicants were sentenced to prison terms ranging from one year to ten years for the offences of belonging to or collaborating with an armed gang, possession of explosives, unlawful possession of weapons, and terrorism; three of the applicants were acquitted and two took part in the proceedings as witnesses. The allegations of torture and ill-treatment were not examined as to the merits, although the court gave leave for a referral to the competent courts. The applicants' allegations were examined by the investigating judge who had been responsible for investigating the first complaints lodged for ill-treatment. The investigating judge provisionally dismissed the case on the grounds that, in relation to the decisions already given, there was no fresh evidence of ill-treatment. He referred to the decisions already given on the allegations in question. The applicants' appeals were dismissed.
Communicated under Article 3.

DEGRADING TREATMENT
Conditions of detention: *violation*.

KALASHNIKOV - Russia (Nº 47095/99)
Judgment 15.7.2002 [Section III (former composition)]

Facts: Criminal proceedings were brought against the applicant in February 1995 and he was taken into custody in June 1995. He was convicted of embezzlement in August 1999 and sentenced to a period of imprisonment. He was released in June 2000 following an amnesty. Throughout most of his detention, the applicant was held in detention facility IZ-47/1 in Magadan. The cell in which he was kept, measuring 17m^2 (20.8m^2 according to the Government), was designed for eight inmates but at any given time held at least eleven and normally more (24, according to the applicant), as a result of which inmates had to take turns to sleep in the eight available beds. The applicant claimed that it was impossible to sleep properly, due to the general commotion and the fact that the television and cell light were constantly on. He further claimed that the toilet was not screened off from the living and dining area, that there was no ventilation in the cell, to which he was confined for most of the day along with heavy smokers, and that the cell was infested with cockroaches and ants. During his detention, he contracted a variety of skin diseases and fungal infections and on several occasions detainees with tuberculosis and syphilis were placed in his cell. The Government submitted that the applicant was given systematic medical examinations and care and that he did not risk contracting these diseases.
Law: Article 3 – The Convention entered into force for Russia on 5 May 1998, but in assessing the effect on the applicant of the conditions of detention regard might be had to the overall period during which he was detained. It might be questioned whether the accommodation could be regarded as attaining acceptable standards, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment having set 7m^2 per prisoner as an approximate desirable guideline. The Government acknowledged that, due to general overcrowding, each bed was used by more than one detainee, and it was not necessary to establish the precise numbers involved. The cell was continuously severely overcrowded, which in itself raised an issue under Article 3. Sleeping conditions were further aggravated by the constant lighting, as well as by the general commotion and noise, and the resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant. Moreover, the cell had no adequate ventilation and was infested with pests. Although the applicant received treatment for his skin diseases and fungal infections, their recurrence suggested that the very poor conditions facilitating their propagation remained unchanged and it was a matter of grave concern that he was detained on occasions with persons suffering from tuberculosis and syphilis. An additional aspect of the crammed and unsanitary conditions was the toilet facilities. While major improvements had apparently been made, this did not detract from the wholly unacceptable conditions which the applicant had had to endure at the material time and which were a matter of concern for the trial court. The absence of any positive intention to humilate or debase the applicant could not exclude the finding of a violation. The conditions of detention which he had to endure, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period involved, amounted to degrading treatment.
Conclusion: violation (unanimously).
Article 5(3) – (a) Government's preliminary objection (reservation) – The Russian reservation is framed to exclude from the scope of Article 5(3) the temporary application of specific provisions of the Code of Criminal Procedure concerning the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence. Notwithstanding the reference to the time-limits for detention during the investigative stage, the reservation is concerned with the procedure for applying preventive custody measures, whereas the applicant's complaint related to the length of his detention on remand and not its lawfulness. Therefore, the reservation did not apply in the present case.

(b) Merits – The total period of the applicant's detention amounted to just over four years and one month, of which one year and almost three months lay within the Court's jurisdiction *ratione temporis*, although account could be taken of the fact that he had already spent over two years and ten months in custody. Although the reasons relied on by the courts to justify the applicant's detention were initially relevant and sufficient, they lost that character as time passed. Furthermore, the protracted proceedings were not attributable to either the complexity of the case or the applicant's conduct. Rather, the authorities had not acted with all due expedition.
Conclusion: violation (unanimously).
Article 6(1) – The period to be examined amounted to five years and almost two months and, while the Court's jurisdiction covered only the period after entry into force of the Convention in respect of Russia, account could be taken of the state of the proceedings at that time. The domestic courts had found that the case was not so complex as to justify the delays in the proceedings and, while the applicant could be held responsible for certain delays, his conduct had not contributed substantially to the length. On the other hand, the authorities had failed in their duty of special diligence, in view of the fact that the applicant was detained throughout.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 3,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

EXPULSION
Threatened deportation of Tamils to Sri Lanka: *admissible*.

VENKADAJALASARMA - Netherlands (N° 58510/00)
THAMPIBILLAI - Netherlands (N° 61350/00)
Decisions 9.7.2002 [Section II]

Both applicants belong to the Tamil ethnic group of Sri Lanka and unsuccessfully sought asylum in the Netherlands. They contended that their expulsion to Sri Lanka would expose them to treatment contrary Article 3 due to the hostilities between the Tamil Tigers ("LTTE"), a terrorist organisation fighting for the independence of Tamils, and the Sri Lankan authorities.
Admissible under Article 3: As to the current situation in Sri Lanka, although certain progress has been made towards an agreement between the LTTE and the Government, it is too soon to consider that Tamils are no longer at risk. The Court decided to extend the application of Rule 39.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings before a parliamentary commission: *Article 6 applicable*.

MONTERA - Italy (N° 64713/01)
Decision 9.7.2002 [Section I]
(see below).

RIGHT TO A COURT
Possibility of final court decisions being challenged: *violation*.

SOVTRANSAVTO HOLDING - Ukraine (N° 48553/99)
Judgment 25.7.2002 [Section IV]
(see below).

FAIR HEARING
Lack of legal representation in proceedings concerning child care: *violation*.

P., C. and S. - United Kingdom (Nº 56547/00)
Judgment 16.7.2002 [Section II]
(see Article 8, below).

ADVERSARIAL PROCEEDINGS
Non-communication to appellant of submissions by the Principal Public Prosecutor at the Court of Cassation: *violation*.

GÖÇ - Turkey (Nº 36590/97)
Judgment 11.7.2002 [Grand Chamber]
(see below).

ORAL HEARING
Lack of oral hearing in proceedings concerning a claim for compensation for detention: *violation*.

GÖÇ - Turkey (Nº 36590/97)
Judgment 11.7.2002 [Grand Chamber]

Facts: The applicant lodged a claim for compensation in respect of a period which he had spent in detention. The Assize Court appointed one of its members to investigate the case. He decided that it was unnecessary to hear the applicant and, on the basis of the file, submitted a report recommending that compensation be granted. However, the court awarded a lower amount. The applicant and the Treasury appealed to the Court of Cassation. The Principal Public Prosecutor at the Court of Cassation submitted his opinion on the appeals, recommending that both be rejected. The opinion was not communicated to the applicant. The Court of Cassation, without holding a hearing, upheld the Assize Court's judgment.
Law: Scope of the case – Although the applicant contested the right of the Government to reopen the Chamber's finding that there had been a violation of Article 6 on account of the non-communication of the Principal Public Prosecutor's opinion, since they had made no submissions on that issue in the proceedings before the Chamber, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber, the scope of the Grand Chamber's jurisdiction being delimited solely by the decision on admissibility.
Article 6(1) – (a) Applicability – While the Government had not pleaded this argument in the proceedings before the Chamber, they were not precluded from raising it, given that it was implicitly reserved by the Chamber to the merits stage and accordingly formed part of the case referred to the Grand Chamber. Regardless of the statutory nature of the compensation scheme at issue and its administration on a no-fault basis, the proceedings involved a dispute over the amount of compensation and a "right" to compensation arose in the circumstances. The award of compensation was not at the discretion of the domestic court once it had been established that the statutory conditions had been fulfilled and indeed the Government had not

disputed that the applicant had a right to compensation in the circumstances. As to whether it was a "civil" right, it was sufficient in a case of this nature involving a claim under a statutory compensation scheme that the subject matter of the action was pecuniary and that the outcome of the proceedings was decisive.

(b) Absence of an oral hearing – The Chamber had considered that it was unnecessary to rule on the merits of this complaint, since it had concluded that there had been a breach of the right to an adversarial procedure, but the Grand Chamber considered that the two complaints were distinct and merited separate examination. In proceedings before a court of first and only instance, the right to a "public hearing" entails entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing. In the present case, the applicant did not at any stage have an opportunity to state his case orally before the domestic courts and the Court was not persuaded that a request for an oral hearing under the Code of Civil Procedure would have had any prospects of success, as the relevant procedure appeared to be governed rather by the Code of Criminal Procedure. The crucial issue was whether the applicant should have been afforded an oral hearing before the Assize Court, which was responsible for establishing the facts and assessing the amount of compensation. He could not be considered to have waived his right to an oral hearing by failing to request one before the Court of Cassation, since that court did not have full jurisdiction to substitute its own view of the amount of compensation to be awarded. The Assize Court had discretion as to the amount of compensation to be awarded once it had been established that the case came within one of the relevant grounds and while the fact and length of the applicant's detention, as well as his financial and social status, could be established on the basis of the judge rapporteur's report and without the need to hear the applicant, different considerations applied to the assessment of the emotional suffering which he claimed to have suffered. He should have been afforded an opportunity to explain orally to the Assize Court the damage which his detention had entailed in terms of distress and anxiety. These were not matters of a technical nature which could be dealt with properly on the basis of the case-file alone. This outweighed considerations of speed and efficiency and there were thus no exceptional circumstances that could justify dispensing with an oral hearing.

Conclusion: violation (9 votes to 8).

(c) Non-communication of the Principal Public Prosecutor's submissions – There was no reason to depart from the Chamber's finding that Article 6(1) had been violated on account of the non-communication to the applicant of the Principal Public Prosecutor's opinion. The Chamber had found that the opinion was intended to influence the outcome of the Court of Cassation's decision and that, having regard to the nature of the submissions and to the fact that the applicant was not given an opportunity to reply to them, there had been an infringement of his right to adversarial proceedings. Although the Principal Public Prosecutor also recommended rejecting the Treasury's appeal and this neutral approach may have ensured equality of arms, it remained the case that the applicant disputed the amount of compensation and he was therefore entitled to have full knowledge of any submissions which undermined his prospects. The safeguards identified in the case of Kress v. France (judgment of 7 June 2001) were absent from the present case. Finally, as to the argument that the applicant could have consulted the case-file at the Court of Cassation and obtained a copy of the opinion, this was not in itself a sufficient safeguard: as a matter of fairness, it was incumbent on the registry of the Court of Cassation to inform the applicant that the opinion had been filed and that he could comment on it in writing, but it appeared that this requirement was not secured in domestic law. Moreover, to require the applicant's lawyer take the initiative and inform himself periodically as to whether any new elements had been included in the case-file would amount to imposing a disproportionate burden on him and would not necessarily have guaranteed a real opportunity to comment on the opinion, since he was never made aware of the time-table for the processing of the appeal.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 2,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

IMPARTIAL AND INDEPENDENT TRIBUNAL
Pressure exerted by Executive on courts during proceedings: *violation*.

SOVTRANSAVTO HOLDING - Ukraine (N° 48553/99)
Judgment 25.7.2002 [Section IV]

Facts: The applicant company is a public limited company. Between 1993 and 1997 it held 49% of the shares in another public limited company Sovtransavto-Lugansk (SL). By decisions taken in December 1996, August 1997 and October 1997, SL's managing director increased the company's share capital, each time by one third, and varied its memorandum and articles of association accordingly. Those decisions were ratified by the competent municipal body, Lugansk Executive Council. These increases in SL's share capital enabled its directors to assume sole control of the company's management and assets. The proportion of its shares held by the applicant company fell to 20.7%. In June 1997 the applicant company lodged a complaint with the Lugansk Region Arbitration Tribunal against SL and the Lugansk Executive Council. It sought a declaration that the decisions varying SL's articles of association and the Executive Council's decision of 23 January 1996 ratifying the changes were unlawful. The Arbitration Tribunal rejected the its claim. In September 1997 the applicant company lodged with the President of the Lugansk Region Arbitration Tribunal an application for revision of that decision under the "supervisory review" procedure. In October 1997, the tribunal's vice-president refused that application. In November 1997 the applicant company applied to the Ukrainian Supreme Arbitration Tribunal seeking revision under the "supervisory review" procedure of the two judgments mentioned above. In a judgment of March 1998 the Supreme Arbitration Tribunal set the judgments aside and remitted the case for reconsideration to the Kiev Region Arbitration Tribunal. Meanwhile, after being contacted by the managing-director of SL, the President of Ukraine sent a letter in February 1998 to the President of the Supreme Arbitration Tribunal urging him to "defend the interests of Ukrainian nationals". After the judgment of March 1998 had been adopted, the Chief Executive of the Lugansk Region asked the President to intervene in the case in order to defend the interests of the SL and of Ukrainian nationals. In May 1998 the President once again drew the attention of the President of the Supreme Arbitration Tribunal to the need to protect the State's interests. The President of the Supreme Arbitration Tribunal informed the President of the Kiev Region Arbitration Tribunal of the Ukrainian President's views. In June 1998 the applicant company made a further application against SL and the Lugansk Executive Council to the Kiev Region Arbitration Tribunal, seeking a declaration that certain decisions, and in particular the decisions to increase the share capital, were unlawful. The Region Arbitration Tribunal adjourned the application until after judgment had been given in the first set of proceedings. In June 1998 the Kiev Region Arbitration Tribunal refused the applicant company's application in the first set of proceedings and in a separate judgment, its applications in the second set of proceedings. Various appeals lodged by the applicant company between July 1998 and February 1999 were dismissed. In June 1999 a general meeting of SL's shareholders, organised without the participation of the applicant company, decided to wind SL up. In April 2000 the President of the Supreme Arbitration Tribunal applied under the "supervisory review" procedure to a bench of that court, seeking annulment of all the judgments relating to the cases. The bench of the Supreme Arbitration Tribunal set aside the judgments of June and October 1998 and January 1999 and remitted the cases to the Kiev Region Arbitration Tribunal for reconsideration. In a judgment of April 2001 the Kiev Region Arbitration Tribunal ordered SL's successor company to return to the applicant company part of SL's assets, but refused the applicant's claim against the Lugansk Executive Council. Execution of the judgment was, however, stayed because the defendant company had lodged an application for revision under the "supervisory review" procedure. Following an objection by the Attorney-General's Office after an application under the "supervisory review" procedure by the defendant company, the Kiev Economic Court of Appeal, which had acquired jurisdiction to hear the appeal after a reform of the judicial system, set aside in a judgment of January 2002 the order for restitution of assets to the applicant company and

dismissed all the applicant company's claims. An initial appeal on points of law by the applicant company against that judgment was dismissed by the Economic Supreme Court, without any examination of the merits, on the ground that the applicant company had failed to produce evidence that it had paid the court fee payable on the examination of appeals. Although the applicant company had paid the amount due, the Economic Supreme Court reimbursed that amount and informed the applicant company that it could renew the appeal once it had paid the fee. When the applicant company lodged a fresh appeal, it was again dismissed without any examination of the merits, this time on the ground that it had failed to comply with the one-month time-limit.

Law: Government's preliminary objection – As regards the applicant company's complaints under Article 6(1), the Court noted that the proceedings in issue had begun in June 1997, such that part of those proceedings fell outside its jurisdiction *ratione temporis*. It considered that it had jurisdiction to examine the proceedings from the date of the decision of the vice-president of the Lugansk Region Arbitration Tribunal in October 1997, but decided to take into account events prior to September 1997 when examining the applicant company's complaints. The applicant company's complaint under Article 1 of Protocol No. 1 concerned its loss of control over SL's activity and assets following the devaluation of its shares in that company and the lack of adequate compensation following SL's liquidation. The various stages in the process of devaluation of the applicant company's shares had created a continuing situation which the applicant company still faced, as it had yet to receive adequate compensation. While the Court could only exercise jurisdiction *ratione temporis* to examine the applicant's company's complaint in respect of the third part of the process of devaluation of its shares (November 1997), it would nonetheless take prior events into account when examining the complaint.

Article 6 (1) – As regards the impartiality and independence of the courts and tribunals, the Court noted that at the material time the President of the Supreme Arbitration Tribunal, state counsel and their deputies were empowered by Article 97 of the Code of Arbitration Procedure to challenge final judgments under the supervisory review procedure by lodging an objection (*protest*). That power was discretionary such that final judgments were liable to review indefinitely. In the case before the Court, by a judgment of April 2000 made on an objection by its President, the Supreme Arbitration Tribunal had quashed all the judicial decisions concerning the applicant company and remitted the cases in which it was involved to the first-instance tribunal for a rehearing. Unlike the applicant in the *Brumarescu v. Romania* case, the applicant company had been afforded a fresh opportunity to put forward its case before the tribunals of fact, as, by a judgment of April 2001, the Kiev Region Arbitration Tribunal had held that the decisions of the managing director of SL that had resulted in the devaluation of the applicant company's shares were unlawful and the compensation it had received following the SL's liquidation insufficient. The tribunal had ordered SL's successor company to return to the applicant company part of the assets it had owned at the time. By a judgment of January 2002, following *inter alia* an objection (*protest*) by state counsel's office, which was not a party to the initial proceedings, the Kiev Economic Court of Appeal had set aside the part of the judgment of April 2001 that was favourable to the applicant company and upheld the remainder. The risk under the objection (*protest*) procedure of final judgments being set aside repeatedly was incompatible with the principle of legal certainty that was one of the fundamental aspects of the rule of law for the purposes of Article 6(1). Other features of the case raised serious doubts regarding compliance with the applicant company's right to a fair hearing by an independent and impartial tribunal within the meaning of Article 6(1) of the Convention. Firstly, there were notable differences and on occasion conflicting approaches in the Ukrainian courts' application and interpretation of the domestic law, while the Ukrainian authorities acting at the highest level had intervened in the proceedings on a number of occasions. In view of their content and the manner in which they were made, those interventions were incompatible with the notion of an "independent and impartial tribunal". In the circumstances of the case before the Court, the applicant company could objectively have had concerns as to the independence and impartiality of the tribunals.

On a separate issue, the Supreme Economic Court had not examined the applicant company's appeal on points of law, owing to its failure to comply with the statutory rules, a state of

affairs that might be regarded as showing that the applicant company has failed to exhaust domestic remedies. However, the rule on the exhaustion of domestic remedies had to be applied with some degree of flexibility and without excessive formalism. For the purposes of reviewing whether it had been observed, it was essential to have regard to the circumstances of the individual case. Although the Supreme Economic Court had acknowledged that the applicant company had paid the court fees due, it had nonetheless dismissed its appeal on points of law on the ground that it had failed to produce evidence of payment. In addition, it must have been aware when it informed the applicant company that it could reinstate its appeal once it had complied with the procedural rule concerned that the one-month time-limit for the lodging of appeals would have expired. Consequently, it had dismissed the applicant company's appeal on points of law as being out of time. In view of the stance taken by the Supreme Economic Court and the other domestic courts and tribunals, it would be unduly formalistic for the blame for the failure of its appeal on points of law to be laid on the applicant company. In the light of the foregoing, the applicant company's right to a fair and public hearing had been infringed.
Conclusion: violation (unanimously).
Article 1 of Protocol No. 1 – In the light of the circumstances of the case and having regard to the special nature of the applicant company's possessions, the Court considered that owing to its factual and legal complexity the case could not be classified in any specific category within Article 1 of Protocol No. 1 and had to be examined in the light of the general rule set out in that Article. The manner in which the proceedings in issue had been conducted had had a direct impact on the applicant company's right to the peaceful enjoyment of its possessions, as it was indisputable that the refusal of the tribunals of fact to comply with the instructions of the Supreme Arbitration Tribunal, coupled with the considerable differences of approach by the various levels of jurisdiction to the application and interpretation of the domestic law, had made the repeated reopening of the proceedings in issue possible, thus creating permanent uncertainty about the lawfulness of the decisions of SL and of the Lugansk Executive Council. The Executive's interventions in the proceedings had significantly added to that uncertainty. Lastly, the manner in which the proceedings had ended did not appear to be compatible with the State's obligation to respond appropriately to the situation in which the applicant company found itself. Consequently, the applicant company had had to contend with that uncertainty during the period in which the initial value of its shares had fallen, a factor that had reduced its capacity to manage SL and to control its assets. Ultimately, the manner in which the proceedings in issue had been conducted and the uncertainty faced by the applicant company had upset the fair balance that had to be struck between the general interest and the need to protect the applicant company's right to the peaceful enjoyment of its possessions. The State had therefore failed to comply with its obligation to secure to the applicant company the effective enjoyment of its right of property, as guaranteed by Article 1 of Protocol No. 1. Consequently, there had been a violation of Article 1 of Protocol No. 1.
Conclusion: violation (6 votes to 1).

IMPARTIAL TRIBUNAL
Impartiality of Council of State in a judicial capacity having previously acted in an advisory capacity in respect of the drafting of the law at issue in the proceedings: *relinquishment*.

KLEYN and others - Netherlands (N° 39343/98)
METTLET TOLEDO BV - Netherlands (N° 39651/98)
RAYMAKERS - Netherlands (N° 43147/98)
VERENIGING LANDELIJK OVERLEG BETUWEROUTE - Netherlands (N° 46664/99)
[Section II]
(see Article 30, below).

APPLICABILITY
Tax surcharges: *Article 6 applicable*.

JANOSEVIC - Sweden (Nº 34619/97)
Judgment 23.7.2002 [Section I (former composition)]

Facts: In 1995, following a tax audit of the applicant's taxi firm, the local tax authority drafted a report containing a supplementary tax assessment. After obtaining the applicant's observations, the tax authority increased his tax liability and, as the information supplied in his tax returns was found to be incorrect, also ordered him to pay tax surcharges. The total additional taxes amounted to over one million kronor (including over 160,000 kronor in surcharges). The applicant requested the tax authority to reconsider its decisions and also requested a stay of execution, since neither the request for reconsideration nor an appeal to a court had suspensive effect. The tax authority rejected his request for a stay of execution, as he failed to provide security. The County Administrative Court upheld this decision and the applicant was refused leave for a further appeal. The local Enforcement Office petitioned the District Court for a declaration of bankruptcy and the applicant was declared bankrupt in June 1996. His appeal was dismissed. The bankruptcy proceedings were subsequently terminated due to lack of assets. In February 1999 the tax authority confirmed its decisions concerning the supplementary taxes and surcharges and in December 2001 the County Administrative Court upheld the decisions. An appeal is pending before the Administrative Court of Appeal.
Law: Article 6(1): (a) Applicability – Generally, tax disputes fall outside the scope of "civil rights and obligations", despite the pecuniary effects which they produce. However, the question arose whether the tax surcharges imposed on the applicant involved the determination of a "criminal charge". As regards their domestic classification, they are imposed under various tax laws rather than under the criminal law, are determined by the tax authorities and administrative courts and are apparently characterised as administrative sanctions. Consequently, they could not be regarded as belonging to criminal law in the domestic legal system. As regards the nature of the conduct, surcharges are imposed in accordance with legislation directed towards all taxpayers and not towards a given group with a special status. Moreover, while they are imposed on objective grounds without the need to establish criminal intent or negligence, that does not necessarily deprive an offence of its criminal character. The surcharges are not intended as pecuniary compensation; rather, their main purpose is to exert pressure on taxpayers to comply with their obligations and to punish breaches. The penalties are thus both deterrent and punitive. These elements sufficed to show that the applicant was "charged with a criminal offence", and this was further evidenced by the severity of the potential and actual penalty, notwithstanding the fact that the surcharges could not be converted into imprisonment. Article 6 was therefore applicable.
(b) Access to court – The tax authorities are administrative bodies which cannot be considered to satisfy the requirements of Article 6. However, a system whereby tax authorities are empowered to impose sanctions, even of large amounts, is not incompatible with Article 6 as long as any decision can be brought before a court with full jurisdiction. The administrative courts in Sweden are competent to examine questions relating to tax surcharges and although they consequently sit in proceedings that are of a criminal nature for the purposes of the Convention, despite not having criminal jurisdiction under domestic law, they have jurisdiction to examine all aspects of the matters before them, as well as power to quash decisions appealed against. Therefore, the judicial proceedings in the present case were conducted by courts that afforded the safeguards required by Article 6. However, it remained to be determined whether the application of the rules governing appeals had deprived the applicant of effective access to court. The decisions of the tax authority had serious

implications for the applicant and some of the consequences were difficult to redress should he succeed in having the decisions overturned. Although he would have been declared bankrupt on the basis of the tax debts alone and the surcharges had never been paid, the enforcement measures taken and the situation in which he was placed made it indispensable for the proceedings to be conducted promptly. However, the tax authority did not confirm its decisions until three years after the applicant's request for reconsideration, by which time the enforcement and stay of execution proceedings had been finalised. The facts did not reveal any particular justification for such a delay. Having regard to what was at stake, the tax authority had failed to act with the required urgency and thereby unduly delayed a court determination of the issues, depriving the applicant of effective access to court.
Conclusion: violation (unanimously).
(c) Length of proceedings – The applicant was "substantially affected" when the tax authority drafted its audit report, which was immediately communicated to him. The proceedings were still pending and had therefore lasted almost six years and eight months. They concerned issues of some complexity but were nevertheless pending before the tax authority for three years and before the County Administrative Court for two years and nine months, and there was no indication that the applicant had contributed to the length. The enforcement measures called for a prompt examination and the length had to be attributed to the conduct of the authorities.
Conclusion: violation (unanimously).
Article 6(1) and (2): (a) States may, in principle and under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or negligence. The Swedish system operates a presumption which it is up to the taxpayer to rebut. However, the relevant rules provide certain means of defence based on subjective elements. Regard must also be had to the financial interests of the State: a system of taxation principally based on information supplied by the taxpayer would not function properly without some form of sanction against the provision of incorrect or incomplete information. The presumptions applied by Swedish law were therefore confined within reasonable limits.
(b) Article 6 cannot be seen as excluding, in principle, enforcement measures being taken before decisions on tax surcharges become final, but since early enforcement may have serious implications and adversely affect a subsequent defence in court proceedings, such enforcement must be confined within reasonable limits that strike a fair balance between the interests involved, in particular where they are based on administrative decisions and before a court determination. The financial interests of the State do not in themselves justify the immediate enforcement of tax surcharges, since surcharges are not intended as a separate source of income but are designed to exert pressure on taxpayers. Another factor to be taken into account is whether surcharges can be recovered and the original legal position restored in the event of a successful appeal. While Swedish law makes certain provisions in that connection, reimbursement may not always fully compensate for losses sustained and a system which allows enforcement of considerable amounts before any court determination is open to criticism. In the present case, however, no amount was actually recovered from the applicant, who would in any event have been declared bankrupt on the basis of his tax debt. In these circumstances, the possibility of securing reimbursement constituted a sufficient safeguard of his interests. His right to be presumed innocent had therefore not been violated.
Conclusion: no violation (6 votes to 1).
Article 41 – The Court considered that there was no causal link between the violations and any alleged pecuniary damage. It awarded the applicant 15,000 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

VÄSTBERGA TAXI AKTIEBOLAG and VULIC - Sweden (Nº 36985/97)
Judgment 23.7.2002 [Section I (former composition)]

This judgment deals with the same issue as the Janosevic judgment, above.

APPLICABILITY
Proceedings before a parliamentary committee: *Article 6 not applicable*.

MONTERA - Italy (N° 64713/01)
Decision 9.7.2002 [Section I]

Disciplinary proceedings were brought against the applicant while he was employed as a judge at the Court of Cassation. In the absence of any violation of the rules of professional conduct, the proceedings were terminated. In July 2000, a parliamentary committee set up to investigate the mafia and other similar criminal organisations approved by a majority a progress report on the fight against organised crime in Calabria. Pages 80 to 90 of this report contain references to the applicant, and particularly his connections with a certain X, a member of a criminal organisation based in Calabria. The parliamentary committee pointed out that these connections had been the subject of criminal and disciplinary proceedings, which had ended with the applicant's acquittal. It decided to publish as a footnote a letter in which the applicant set out his defence arguments. The parliamentary committee's report was subsequently made public and was discussed in newspaper articles and on certain television programmes. Copies of the report were sent to many public institutions, local authorities and judicial offices. In July and August 2000, two newspaper articles referred specifically to the applicant. He had a letter published in reply to one of the articles and, in October of that year, submitted a memorial challenging statements about him contained in the parliamentary report, after he had unsuccessfully requested a hearing.
Inadmissible under Article 6: The focus of the parliamentary inquiry had been the mafia phenomenon. The parliamentary committee had not been given the task of deciding whether the applicant had committed an offence or imposing formal sanctions against him. Its role had been confined to examining the mafia phenomenon from the point of view of its legal implications. In this kind of issue, which was of general and genuinely public interest, there was nothing to suggest that the proceedings of the parliamentary committee had in any way constituted a disguised form of criminal prosecution. Since the parliamentary committee had not given an opinion on the applicant's criminal, disciplinary or administrative liability, there was no offence whose nature required consideration. There was no question of any decision on a "criminal charge" against the applicant or on his civil rights and obligations: incompatible *ratione materiae*.
Inadmissible under Article 6(2): Although the applicant had not been "charged with a criminal offence" in the proceedings before the parliamentary committee, consideration should be given to whether the committee's report reflected the belief that the applicant was guilty. At the very most, some passages could be interpreted as describing a state of suspicion, but contained no finding of guilt: manifestly ill-founded.
Inadmissible under Article 8: The publication of the report, some passages in which concerned the applicant's private life and professional conduct, was regarded as "interference". Such interference was in accordance with the law and pursued legitimate aims within the meaning of the convention. Regarding its necessity in a democratic society, the facts concerning the applicant which were mentioned in the report had not been presented in a way that was arbitrary or manifestly at variance with reality. Circumstances that were favourable to the applicant had been mentioned in an objective way. Lastly, the report included a letter by the applicant in which he was able to give his own version of the facts. Accordingly, there were no grounds for taking the view that, by publishing its report, the parliamentary committee had exceeded its margin of appreciation or that the interference was disproportionate: manifestly ill-founded.

ACCESS TO COURT
Dismissal of appeal on points of law on account of appellant's failure to surrender in custody: *violation*.

PAPON - France (N° 54210/00)
Judgment 25.7.2002 [Section I]

Facts: The Assize Court found the applicant guilty of aiding and abetting crimes against humanity and sentenced him to ten years' imprisonment. Having lodged an appeal on points of law against that judgment, the applicant was informed that before his appeal could be considered, he had to comply with the legal obligation to surrender to custody. The relevant provision (Article 583 of the Code of Criminal Procedure) – now repealed – required persons sentenced to a term of imprisonment of more than one year to give themselves in charge at the latest on the day before their appeal was to be considered by the Court of Cassation, unless exempted. Relying on, among other things, his advanced age (89) and his state of health, the applicant applied for exemption from the obligation to surrender to custody. His application was refused on the ground that his health did not appear to preclude detention in a hospital cardiology unit. The applicant failed to surrender to custody and left France to take refuge in Switzerland. It was consequently held that he had forfeited his right of appeal.
Law: Article 6(1) – The Government had submitted that the instant case could be distinguished from the *Khalfaoui* precedent (ECHR 1999-IX), which had related to a prosecution for an intermediate offence (*une procédure correctionnelle*) whereas the present case related to a prosecution for a major offence (*une procédure criminelle*). However, the approach adopted in the *Khalfaoui* judgment had been confirmed by the Court in a case relating to a prosecution for a major offence (see the *Krombach* judgment, ECHR 2001-II). The fact that the applicant had been prosecuted for and convicted of aiding and abetting crimes against humanity did not deprive him of the guarantee of his rights and freedoms under the Convention. Furthermore, the facts of the *Eliazer* v. the Netherlands case (ECHR 2001-X) referred to by the Government had been different, because Mr Eliazer had been under no obligation to surrender to custody in order for the hearing on his objection before the appellate court to be able to take place and, moreover, the possibility of lodging an appeal on points of law had been available to him once he had chosen to appear at the objection proceedings. There was therefore no reason to depart from the Court's conclusion in the *Khalfaoui* judgment. Accordingly, the applicant had suffered excessive interference with his right of access to a court and therefore of his right to a fair trial.
Conclusion: violation (unanimously).
Article 2 of Protocol No. 7 – The Court had already had occasion to recognize that the French system in force at the material time was in principle compatible with Article 2 of Protocol No. 7 (reference to, among other authorities, the *Krombach* judgment, § 96).
Conclusion: no violation (unanimously).
Article 41 – The Court made an award in respect of costs and expenses.

ACCESS TO COURT
Enforcement of tax surcharges prior to court determination of liability: *violation*.

JANOSEVIC - Sweden (Nº 34619/97)
Judgment 23.7.2002 [Section I (former composition)]
(see above).

VÄSTBERGA TAXI AKTIEBOLAG and VULIC - Sweden (Nº 36985/97)
Judgment 23.7.2002 [Section I (former composition)]

This judgment deals with the same issue as the Janosevic judgment, above.

ACCESS TO COURT
Lack of competence of judge to assess the length of civil imprisonment for a customs debt: *no violation*.

GÖKTAN - France (N° 33402/96)
[Section II]
(see Article 4 of Protocol No. 7, below).

FAIR HEARING
Conviction for manslaughter on basis of autopsy carried out illegally: *inadmissible*.

PARRIS - Cyprus (N° 56354/00)
Decision 4.7.2002 [Section I]

In February 1996 the applicant's wife was found dead. The applicant was arrested and charged with manslaughter. He contended that his wife had committed suicide by jumping out of the window of their apartment, which is on the second floor of a block of flats. A post-mortem examination was conducted by two pathologists at the coroner's request. Dr M., a pathologist representing the deceased's family, was present as an observer during the post-mortem. He also carried out an examination of the scene of the incident. The pathologists concluded that a deep fracture of the skull and the inhaling of blood had caused death. They noted that the deceased had received blows in the neck and had thus been unable to scream. Moreover, in view of the bleeding of the respiratory system, they considered that she could not have jumped out of the window of her own free will. After the post-mortem, the coroner issued an order for the immediate burial of the body. However, upon request of the relatives of the victim and with the oral approval of the Attorney General and the police, Dr M. conducted a second post-mortem examination of the body. The cause of death given by Dr M. was strangulation. In March 1997 the applicant was convicted of manslaughter. During the proceedings, he challenged the accuracy of the second post-mortem report and Dr M. was cross-examined. The defence were able to present their own expert. The Assize Court evaluated both reports and relied on the second one to reach its verdict. The Supreme Court dismissed the applicant's appeal on points of law. The court held however that the second report breached both section 15(2) of the Coroners Law and the order for immediate burial of the body. It further stated that it had been carried out with the oral consent of the Attorney General and the police, neither having competence in this matter. It noted that, in spite of this, the applicant had had the opportunity to cross-examine witnesses against him and had enjoyed full equality of arms. Furthermore, the court relied on evidence given by the victim's father, who was in the flat below the one where the incident had taken place.
Inadmissible under Article 6(1): Both post-mortem reports were produced before the Assize Court, which decided to rely on the second one, allegedly obtained in violation of the relevant provisions of the Cypriot law. However, the Supreme Court also took into account the testimony of the victim's father who corroborated Dr M.'s findings and contradicted the applicant's line of defence whereby the victim had committed suicide by jumping out of the window. Moreover, the applicant was able to challenge the accuracy of the second report and its author was cross-examined at length by the defence. Besides, Dr M. carried out an examination of the scene of the incident and participated in the first post-mortem examination; his findings at the time did not exclude the applicant's guilt. Furthermore, the nature and scope of the provision of domestic law which was breached could not be overlooked; section 15(2) of the Coroner's Law forms is primarily intended to ensure respect for the body of the deceased and not the procedural rights of the accused. Finally, the applicant did draw the attention of the domestic courts to a possible violation of Article 6 and the Supreme Court assessed the effect of admission of the evidence on the fairness of the trial. Therefore, the proceedings as a whole could be considered as fair: manifestly ill-founded.

ADVERSARIAL PROCEEDINGS
Non-communication of submissions of the Advocate General at the Court of Cassation and absence of opportunity to respond to them: *violation*.

MEFTAH and others - France (N° 32911/96)
Judgment 26.7.02 [Grand Chamber]
(see below).

ORAL HEARING
Absence of possibility of addressing Court of Cassation orally at hearing, either personally or through a lawyer without rights of audience before the supreme courts: *no violation*.

MEFTAH and others - France (N° 32911/96)
Judgment 26.7.2002 [Grand Chamber]

Facts: The applicants had lodged appeals against conviction with the Court of Cassation. The first applicant represented himself before the Criminal Division of the Court of Cassation. The other two applicants were assisted by a member of the ordinary bar. The Court of Cassation dismissed their appeals.
Law: Article 6 (1) and (3)(c) (fair trial) – The applicants could not be deprived of the right to benefit from the guarantees of paragraph 3 of Article 6 on the ground that, for the purposes of their appeal to the Court of Cassation, they were considered by French law to be "convicted persons" and no longer "persons charged with a criminal offence". The special features of the procedure before the Criminal Division of the Court of Cassation had to be taken into account in determining whether the applicants' right to a fair trial was infringed. The Court of Cassation carried out limited supervision of compliance with the law, including jurisdictional and procedural rules, to the exclusion of any examination of the facts in the strict sense. Save in exceptional cases, the procedure before the Court of Cassation was essentially written, that rule applying also when a party was represented by a member of the *Conseil d'État* and Court of Cassation Bar. Members of the *Conseil d'État* and Court of Cassation Bar did not enjoy an absolute right to make oral observations. In the case before the Court, the appeals to the Court of Cassation had been lodged after the applicants' arguments had been examined by both the trial courts and the courts of appeal, which had had full jurisdiction and, in accordance with the rules laid down by Article 6, had held hearings at which the applicants or their lawyer had appeared and presented their cases. As regards the right for appellants in the Court of Cassation to make oral representations at the hearing, it had to be noted that any legal argument at a hearing before the Criminal Division of the Court of Cassation would be particularly technical and concern only points of law. Thus, in the Court's view, it would be unduly formalistic to interpret the procedural requirements as meaning that the applicants should have been permitted to make oral representations at the hearing before the Court of Cassation. Such an approach would not assist in resolving issues that were essentially in written form and technical. As regards the monopoly enjoyed by members of the *Conseil d'État* and Court of Cassation Bar in proceedings in the Court of Cassation, the right for everyone charged with a criminal offence to be defended by counsel of his own choosing could not be considered to be absolute and, consequently the national courts could override that person's choice when there were relevant and sufficient grounds for holding it to be necessary in the interests of justice. Furthermore, the French system offered litigants a choice as to whether or not to be represented by a member of the *Conseil d'État* and Court of Cassation Bar. However, even in cases in which they were so represented, the written submissions crystallised all the arguments against the impugned decision. Oral submissions were optional and, in practice, members of the *Conseil d'Etat* and the Court of Cassation Bar did not attend hearings, save in very rare cases. Such an option justified a difference in procedure and French law afforded sufficient guarantees regarding the exercise of that option,

notably with respect to establishing whether there had been a waiver of the advantages to be gained from having the assistance of a member of the *Conseil d'État* and Court of Cassation Bar. In any event, Mr Adoud and Mr Bosoni had been assisted by a member of the ordinary bar who was fully competent to inform them of the consequences of their choice which, in the circumstances of the case, had therefore been freely given and conscious. The same applied to Mr Meftah, who had been advised by a citizens advice bureau during the proceedings before the domestic courts. The special nature of proceedings before the Court of Cassation, considered as a whole, could justify specialist lawyers being reserved a monopoly on making oral representations and such a reservation did not deny applicants a reasonable opportunity to present their cases under conditions that did not place them at a substantial disadvantage. Having regard to the Court of Cassation's role and to the proceedings taken as a whole, the fact that the applicants were not given an opportunity to plead their cases orally, either in person or through a member of the ordinary bar, had not infringed their right to a fair trial.
Conclusion: no violation (16 votes to 1).
Article 6(1) (adversarial process) – Since the applicants had chosen not to be represented by a member of the *Conseil d'État* and Court of Cassation Bar, they did not benefit from the practice followed in the Criminal Division of the Court of Cassation, which the Court had held to be compatible with the Convention in the case of *Reinhardt and Slimane-Kaïd* (*Reports of Judgments and Decisions*, 1998-II), whereby the tenor of the advocate-general's submissions was communicated to the accused, who was entitled to reply by a note to the court in deliberations. The applicants had been denied access to the advocate-general's submissions such that, regard being had to what was at stake for them in the proceedings and to the nature of the advocate-general's submissions, their right to adversarial proceedings had been infringed. The applicants had been unable to establish the tenor of the advocate-general's submissions before the hearing in the Court of Cassation and, consequently, to reply thereto by a note to the court in deliberations, whereas they had been entitled to lodge before the hearing a pleading bearing their signature. In addition, notification of the tenor of the advocate-general's submissions could prove desirable to assist appellants in the Court of Cassation to determine their procedural options.
Conclusion: violation (12 votes to 5).
Article 41 – The Court made an award for costs and expenses.

IMPARTIAL TRIBUNAL
Impartiality of judges deciding on merits of case after having previously rejected appeals made by the accused at the investigation stage: *violation*.

PEROTE PELLON - Spain (N° 45238/99)
Judgment 25.7.2002 [Section IV (former composition)]

Facts: Between 1983 and 1991, the applicant, at the time a colonel in the reserve army, held the post of head of operational unit at the National Defence Research Centre, a post which gave him responsibility over a number of classified documents. In 1995, the director of the centre lodged a complaint against him with the military courts for having disclosed official secrets or information relating to security and national defence. A judicial investigation was started against him, in the course of which he was charged and detained on remand. He was found guilty by the central military court, sentenced to seven years' imprisonment and discharged from the armed forces. However, two of the judges of the chamber of the central military court which had found him guilty, namely the presiding judge, R.V., and a reporting judge, R.G., had previously sat on other benches of the same court which had confirmed the order charging the applicant and taken other procedural steps, concerning in particular the extension of the applicant's detention on remand.
Law: Article 6(1) – From a subjective point of view, there was no reason to doubt the personal impartiality of the judges concerned. It remained to be established whether, independently of the conduct of those judges, there were certain verifiable facts which made

the applicant's fears as to their impartiality objectively justified. The applicant's fears were due to the fact that they had sat both on the trial bench and on other benches of the central military court which, in particular, had upheld on appeal the order charging him and had decided to extend his detention on remand. However, the mere fact that a judge had already given decisions prior to a trial could not in itself justify fears as to his or her impartiality. In the instant case, the bench of judges of the central military court which had given a decision on the order charging the applicant had emphasised the provisional nature of that order and pointed out that it was for the trial bench to assess the evidence and decide on the applicant's guilt. However, the terms used by the bench of judges which had heard the appeal against the order, on which R.G. had sat, and those used by the bench which had heard the appeal against the decision ordering his detention on remand, on which R.G. and R.V. had sat, might have given the impression that the benches felt they had sufficient evidence to find the applicant guilty. R.G. and R.V. had subsequently been members of the chamber of the military court which had extended the applicant's detention on remand, in view of the existence of strong reasonable evidence as to his guilt. Lastly, the trial bench of the central military court, including the two judges in question, had found the applicant guilty and sentenced him to a term of imprisonment. Consequently, in the instant case, there could be serious doubts as to the impartiality of the trial bench, bearing in mind that the presiding and judge and one of the reporting judges had been involved in a number of procedural steps, including, in particular, the dismissal of the appeal against the order charging the applicant and the decisions extending his detention on remand. The applicant's fears could therefore be considered objectively justified.
Conclusion: violation (unanimously).
Article 41 – The Court held that the finding of a violation was in itself just satisfaction for the non-pecuniary damage suffered by the applicant. It awarded 10,500 euros in respect of costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Imposition of tax surcharges on basis of objective liability and enforcement thereof prior to court determination: *no violation*.

JANOSEVIC - Sweden (Nº 34619/97)
Judgment 23.7.2002 [Section I (former composition)]
(see Article 6(1), above).

VÄSTBERGA TAXI AKTIEBOLAG and VULIC - Sweden (Nº 36985/97)
Judgment 23.7.2002 [Section I (former composition)]

This judgment deals with the same issue as the Janosevic judgment, above.

PRESUMPTION OF INNOCENCE
Reference to applicant in parliamentary committee report on the fight against the mafia: *inadmissible*.

MONTERA - Italy (N° 64713/01)
Decision 9.7.2002 [Section I]
(see Article 6(1) [criminal], above).

Article 6(3)(c)

CHARGED WITH A CRIMINAL OFFENCE
Refusal to allow convicted prisoners to be legally represented in prison disciplinary proceedings: *violation*.

EZEH and CONNORS - United Kingdom (Nº 39665/98 and Nº 40086/98)
Judgment 15.7.2002 [Section III (former composition)]

Facts: While serving lengthy prison sentences, the applicants were charged with offences under the Prison Rules. The first applicant was charged with threatening to kill a probation officer; the second applicant was charged with assaulting a prison officer. The applicants' requests to be allowed legal representation for their respective adjudication hearings were refused by the Governor. They were both found guilty and were awarded 40 additional days' custody and seven additional days' custody respectively. They were subsequently refused leave to apply for judicial review.
Law: Article 6(3)(c) – With regard to the question of the applicability of Article 6 to the proceedings at issue, it was appropriate to apply the criteria laid down in the Engel case (Series A no. 22). Firstly, as far as the classification of the offences in domestic law was concerned, the parties did not dispute that the offences belonged to disciplinary law. Secondly, as far as the nature of the charges was concerned, while the offence of which the first applicant was convicted did not require certain elements of the equivalent criminal offence to be proven, it could not be excluded that the facts surrounding the charge against him could also lend themselves to criminal prosecution. As to the second applicant, it was undisputed that assault was also an offence under criminal law, although the charge against him involved a relatively trivial incident which might not have led to prosecution outside the prison context. Consequently, these factors, whilst not of themselves sufficient to lead to the conclusion that the offences were "criminal", did give them a certain colouring which did not entirely coincide with that of a purely disciplinary matter. It was therefore necessary to turn to the third criterion, namely the nature and severity of the penalty which the applicants risked incurring. That risk is determined by reference to the maximum potential penalty; while the actual penalty imposed is relevant, it cannot diminish the importance of what was initially at stake. As to the nature of the penalty, while the practice of granting remission created a legitimate expectation of release on a particular date, any "right" to release did not arise until the expiry of any additional days awarded. The legal basis for detention during those days therefore continued to be the original conviction and sentence. Nevertheless, the applicants were detained beyond the date on which they would otherwise have been released and the question arose whether the severity of the punishment was such as to render the guarantees of Article 6 applicable to the disciplinary proceedings. The maximum number of additional days was 42, and the applicants were awarded 40 and seven days respectively. Deprivations of liberty liable to be imposed as a punishment or deterrent, except those which by their nature, duration or manner of execution cannot be appreciably detrimental, belong to the criminal sphere and the presumption was therefore that the charges against the applicants were criminal. As to the nature and manner of execution of the punishment, there was nothing to suggest that the further period of detention would be served other than in a prison and under the same prison regime. As to the duration, the Government's argument that the "appreciably detrimental" element had to be determined by reference to the length of the sentence already being served could not be accepted, since it would result in Article 6 applying to disciplinary proceedings against one prisoner but not to those against another charged with the same offence. It had not been demonstrated that the duration of the awards could be considered sufficiently unimportant or immaterial to displace the presumed criminal nature of the charges. The deprivations of liberty had therefore to be regarded as appreciably detrimental and the presumption that the charges were criminal had not

been rebutted. Article 6 was consequently applicable. It was undisputed that both applicants' requests for legal representation were refused. Moreover, domestic case-law excluded any right to such representation for adjudications. The applicants were thus denied the right to be legally represented in the proceedings, in violation of Article 6(3)(c). It was unnecessary to consider whether the interests of justice required that they be granted free legal assistance.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage. It made awards in respect of costs and expenses.

DEFENCE IN PERSON
Monopoly of lawyers with rights of audience in the Supreme Courts: *no violation*.

MEFTAH and others - France (N° 32911/96)
Judgment 26.7.02 [Grande Chambrer]
(see above).

DEFENCE THROUGH LEGAL ASSISTANCE
Refusal to allow convicted prisoners to be legally represented in prison disciplinary proceedings: *violation*.

EZEH and CONNORS - United Kingdom (Nº 39665/98 and Nº 40086/98)
Judgment 15.7.2002 [Section III (former composition)]
(see above).

LEGAL ASSISTANCE OF HIS OWN CHOOSING
Monopoly of lawyers with rights of audience in the Supreme Courts: *no violation*.

MEFTAH and others - France (N° 32911/96)
Judgment 26.7.02 [Grand Chamber]
(see above).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity to question victim of child sex abuse: *no violation*.

S.N. - Sweden (Nº 34209/96)
Judgment 2.7.2002 [Section I (former composition)]

Facts: The teacher of a 10-year old boy, M., reported suspected sexual abuse by the applicant. M. was interviewed by a police officer; the interview was recorded on video. The applicant was notified of the suspicions and questioned by the police. At the request of the applicant's lawyer, who considered that further information was necessary, M. was interviewed again by a police officer. The lawyer agreed to the interview being conducted in his absence, since M.'s lawyer could not attend. However, an audio recording was made of the interview and the lawyer subsequently confirmed that the issues which he had wished to raise had been covered. At the applicant's trial, the video recording of the first interview was shown and the minutes of the second interview were read out. The applicant's mother and teacher were heard as witnesses; no

request was made for M. to be heard in person. The applicant was convicted and sentenced to eight months' imprisonment. He appealed to the Court of Appeal, which held a hearing at which the video and audio recordings were played. The applicant did not request that M. be heard. The Court of Appeal upheld the conviction but reduced the sentence to three months' imprisonment, finding that there was insufficient evidence in respect of certain of the alleged acts. The Supreme Court refused leave to appeal.

Law: Article 6(1) and (3)(d) – Although M. did not testify in court, he was a "witness" for the purposes of Article 6(3)(d). His statements were virtually the only evidence on which the applicant's conviction was based, the evidence of the witnesses who testified in court being limited to purported changes in M.'s personality. It was necessary to have regard to the special features of criminal proceedings concerning sexual offences, which are often seen as an ordeal by the victim, in particular when he or she is unwilling to confront the defendant. These features are even more prominent when a minor is involved. Account must be taken of the victim's right to respect for private life and the Court therefore accepted that certain measures may be taken for the purpose of protecting the victim, provided they can be reconciled with an adequate and effective exercise of defence rights. In the present case, the applicant's claim that he refrained from requesting that M. be heard in person because such a request would not have been acceded to could be accepted. However, the second police interview was held at the request of the applicant's lawyer, who consented to not being present and accepted the manner in which the interview was conducted. He did not request a postponement or ask for the interview to be recorded on video, both of which possibilities were open to him. Moreover, he was able to put questions through the police officer and was apparently satisfied that the questions had actually been put. There had thus been no violation of the applicant's rights on account of his lawyer's absence during the second interview. Nor could it be said that he was denied his rights on the ground that he was unable to have the evidence given by M. examined during the trial and appeal proceedings. Article 6(3)(d) could not be taken as requiring in all cases that questions be put directly by the accused or his lawyer, through cross-examination or by other means. In the circumstances of the case, the playing of the video and audio tapes or reading out of the minutes had to be considered sufficient to enable the applicant to challenge M.'s statements and his credibility in the course of the criminal proceedings. Indeed, this challenge resulted in the applicant's sentence being reduced on appeal. Evidence obtained from a witness under conditions in which the rights of the defence cannot be secured to the extent normally required by the Convention must treated with extreme care, but in the present case the necessary care had been taken in evaluating M.'s statements.

Conclusion: no violation (5 votes to 2).

ARTICLE 8

PRIVATE LIFE

Absence of legal recognition of change of sex: *violation*.

CHRISTINE GOODWIN - United Kingdom (Nº 28957/95)
Judgment 11.7.2002 [Grand Chamber]

Facts: The applicant, who was registered at birth as male, lived as a woman from 1985 and in 1990 underwent gender reassignment surgery, provided and paid for by the National Health Service. She complains of the lack of legal recognition of her change of sex. In particular, she alleges that her employer was able to trace her identity because the Department of Social Security refused to give her a new National Insurance number, that the department's records still show her sex as male and that her file is marked "sensitive", causing her practical difficulties. She further complains that she did not become ineligible for a State pension at the age of 60, the age of entitlement for women. Finally, she claims that she has had to forgo

certain advantages because she did not wish to present her birth certificate, which records sex at the time of registration.
Law: Article 8 – The Court had previously held that the refusal of the respondent Government to alter the register of births or to issue modified birth certificates could not be considered an interference with the right to respect for private life and that there was no positive obligation to alter the existing system or to permit annotations to the register of births. However, the Court had signalled its consciousness of the serious problems facing transsexuals and stressed the importance of keeping the need for appropriate legal measures under review and therefore decided to assess what was the appropriate interpretation and application of the Convention "in the light of present-day conditions". In the present case, despite having undergone gender reassignment surgery, the applicant remained, for legal purposes, a male, with consequent effects on her life where sex was of legal relevance. The stress and alienation arising from a discordance between the position in society assumed by a post-operative transsexual and the status imposed by law could not be regarded as a minor inconvenience arising from a formality. The applicant's gender reassignment was carried out by the National Health Service and it appeared illogical to refuse to recognise the legal implications of the result. As to countervailing arguments of a public interest nature, the Court was not persuaded that the state of medical science or scientific knowledge provided any determining argument as regards the legal recognition of transsexuals. It also attached less importance to the lack of evidence of a common European approach to the matter than to the clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals. As to the historical nature of the birth registration system, exceptions were already made in the cases of legitimation and adoption and making a further exception in the case of transsexuals would not pose a threat to the whole system or create any real prospect of prejudice to third parties. Moreover, the Government had made proposals for reform which would allow ongoing amendment to civil status data. While the level of daily interference suffered by the applicant was not as great as in other cases, the very essence of the Convention is respect for human dignity and freedom and in the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society could not be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals lived in an intermediate zone was no longer sustainable. The difficulties posed by any major change in the system were not insuperable if confined to post-operative transsexuals. No concrete or substantial hardship or detriment to the public interest had been demonstrated as likely to flow from any change to the status of transsexuals and, as regards other possible consequences, society could reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them. The Government could no longer claim that the matter fell within the margin of appreciation and the fair balance inherent in the Convention tilted decisively in favour of the applicant.
Conclusion: violation (unanimously).
Article 12 – While the first sentence of this provision refers in express terms to the right of a man and woman to marry, the Court was not persuaded that it could still be assumed that those terms had to refer to a determination of gender by purely biological criteria. There had been major social changes in the institution of marriage since the adoption of the Convention, as well as dramatic changes brought about by developments in medicine and science in the field of transsexuality. The Court had found under Article 8 that a test of congruent biological factors could no longer be decisive in denying legal recognition to a change of gender. However, the right under Article 8 did not subsume all the issues under Article 12, where conditions imposed by national laws are accorded a specific mention, and the Court therefore considered whether in the present case the allocation of sex in national law to that registered at birth was a limitation impairing the very essence of the right to marry. In that regard, it was artificial to assert that post-operative transsexuals had not been deprived of the right to marry because they remained able to marry a person of their former opposite sex. The applicant

lived as a woman and would only wish to marry a man but had no possibility of doing so and could therefore claim that the very essence of her right to marry had been infringed. While it was for the Contracting State to determine the conditions in which it could be established that gender reassignment had been properly effected or in which past marriages ceased to be valid and the formalities applicable to future marriages, there was no justification for barring the transsexual from enjoying the right to marry under any circumstances.
Conclusion: violation (unanimously).
Article 14 – The issues had been examined under Article 8 and no separate issue arose under Article 14.
Conclusion: no separate issue (unanimously).
Article 13 – In so far as no remedy existed in domestic law prior to the Human Rights Act 1998 taking effect, Article 13 cannot be interpreted as requiring a remedy against the state of domestic law. Following that date, it would have been possible for the applicant to raise her complaints before the domestic courts.
Conclusion: no violation (unanimously).
Article 41 – The Court considered that the finding of a violation in itself constituted sufficient just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs and expenses.

I. - United Kingdom (Nº 25680/94)
Judgment 11.7.2002 [Grand Chamber]

This case raised issues similar to those in Goodwin v. the United Kingdom, above.

PRIVATE LIFE
Publication by the press of photographs of a princess and her children and companion, taken without their consent: *communicated*.

VON HANNOVER - Germany (N° 59320/00)
[Section III]

Following the publication by German magazines of photos taken by paparazzi without the knowledge of the applicant, the elder daughter of Prince Rainier III of Monaco, showing her in her everyday life with her children and companion, the applicant applied to the German courts for a ban on any further publication of the photos. She relied on her right to the protection of personality under the German Basic Law and her right to protection of her private life and her own image under the German Copyright Act. The case was partly dismissed by the lower courts, in particular on the ground that, as an indisputable "figure" of our time, she should tolerate the publication without her consent of such photos taken in public places. The Federal Court of Justice granted the applicant's request in part, banning any further publication of the photos showing her with her companion on the terrace of a restaurant, on the ground that these photos infringed her right to respect for her private life. According to the Federal Court, even indisputable "figures" of our time were entitled to respect for their private life, which was not confined to the home, but also covered the publication of photos. Outside the home, however, such persons could only claim protection of their private sphere if they had withdrawn to an isolated place where it was objectively clear to everyone that they wished to be alone, and where, believing themselves to be hidden from view, they behaved in a given situation in a way in which they would not have behaved if they had been in a public place. It was therefore an unlawful invasion of privacy to publish photos taken secretly and/or by taking advantage of the surprise of a person who had withdrawn to an isolated place. On the other hand, the Federal Court dismissed the remainder of the application on the ground that, as an indisputable "figure" of our time, the applicant should tolerate the publication of photos of her in a public place, even if they were photos of

scenes from her everyday life and not photos showing her performing her official duties. The public had a legitimate interest in knowing where the applicant was staying and how she behaved in public. The Constitutional Court allowed the applicant's appeal in part, saying that the three photos showing her in the company of her children infringed her right to the protection of personality under the Basic Law, taken together with the further constitutional right of protection of family life. The applicant unsuccessfully initiated two other sets of proceedings.
Communicated under Article 8.

PRIVATE LIFE
Disclosure of a parliamentary committee report relating to the applicant's private and professional life: *inadmissible*.

MONTERA - Italy (N° 64713/01)
Decision 9.7.2002 [Section I]
(see Article 6(1) [criminal], above).

FAMILY LIFE
Removal of child at birth on emergency basis: *violation*.

P., C. and S. - United Kingdom (Nº 56547/00)
Judgment 16.7.2002 [Section II]

Facts: The applicants are a married couple and their daughter, S., born in 1998. During P.'s pregnancy, the local authority was informed that her son from a previous marriage in the United States had been taken into protective custody there in 1994 as a suspected victim of induced illness abuse (Munchausen Syndrome by Proxy) and that she had subsequently been convicted in that connection. The local authority decided to place the unborn child on the Child Protection Register and undertake a full risk assessment. As the parents were uncooperative, the local authority decided in April 1998 to take out an emergency protection order at birth. S. was born on 7 May 1998 by Caesarean section. The same day, the local authority applied for an emergency protection order and, as the hospital confirmed that it could not guarantee the child's safety, the authority decided to serve the order and removed the child. The parents were allowed supervised contact several times a week. The local authority applied for a care order and in November 1998 made an application for S. to be freed for adoption. During the hearing of the application for a care order in the High Court, P.'s legal representatives withdrew from the case. After granting an initial adjournment, the judge refused a further adjournment, considering that P. was able to conduct her own case (C. having withdrawn from the proceedings) and that delay was not in the child's interests. After the hearing, which lasted 20 days, the judge made a care order. One week later, the same judge heard the application for S. to be freed for adoption. He declined to defer the proceedings in order to allow P. and C. to obtain legal representation and, concluding that there was no realistic prospect of returning S. to their care, he issued an order freeing S. for adoption. S. was placed for adoption in September 1999 and an adoption order was made in March 2000. No provision was made for future direct contact between P. and C. and their child, such contact being at the discretion of the adoptive parents.
Law: Article 6(1) – There could be no doubt about the seriousness of the outcome of the proceedings for P. and C. P. was required as a parent to represent herself in proceedings of exceptional complexity and her alleged disposition to harm her own children, along with her personality traits, were at the heart of the case. In view of the complexity, the importance of what was at stake and the highly emotive nature of the subject matter, the principles of effective access to court and fairness required that she receive the assistance of a lawyer. Moreover, while P. and C. were aware that the application for freeing for adoption was likely

to follow within a short time, this did not mean that they were in an adequate position to cope with the hearing on that matter, which also raised difficult points of law and emotive issues. The Court was not convinced that the importance of proceeding with expedition necessitated the draconian action of proceeding to a full and complex hearing within one week of the care order being made. It would have been possible for the judge to impose strict time limits and the possibility of some months' delay in reaching a final conclusion was not so prejudicial to S.'s interests as to justify the brevity of the period between the two procedures. The procedures adopted not only gave the appearance of unfairness but prevented the applicants from putting forward their case in a proper and effective manner. The assistance of a lawyer during the hearings was thus indispensable.

Conclusion: violation (unanimously).

Article 8 – (a) It is not the Court's role to examine domestic law in the abstract and, in any event, since circumstances may be envisaged in which a young baby might be adopted in conformity with Article 8, it could not be considered that the law *per se* was in breach of that provision.

(b) Removal of S. at birth: It was undisputed that there had been an interference and that the interference was in accordance with the law and pursued the legitimate aims of protecting the health and rights of the child. As to the necessity of the interference, the Court was not persuaded that there had been any failure to involve the parents in the investigative procedure conducted by the local authority and, while the applicants complained that they were not properly informed that the authority was going to remove the child at birth, it appeared that they were nonetheless aware that the option was being considered. In fact, no final decision was taken until the day of the birth. Nor could the authority be criticised for not attempting to have an *inter partes* hearing: it was within the the proper role of the authority to take steps to obtain an emergency protection order and there were relevant and sufficient reasons, so that the decision could be regarded as necessary. Nevertheless, consideration also had to be given to the manner of implementation. Following the birth, P. was initially confined to bed and it was not apparent why it was not possible for S. to remain in the hospital and spend at least some time with P. under supervision, since P.'s capacity and the opportunity to cause harm were limited. Indeed, there was no suspicion of life-threatening conduct, making the risk more manageable, and it had not been shown that supervision could not have provided adequate protection. Consequently, the draconian step of removing the child shortly after birth was not supported by relevant and sufficient reasons.

Conclusion: violation (unanimously).

(c) The care and freeing for adoption proceedings: The complexity of the case and the fine balance to be struck between the interests of S. and her parents required that particular importance be attached to the procedural obligations inherent in Article 8. The lack of legal representation, together with the lack of any real lapse of time between the two procedures, deprived the applicants of a fair and effective hearing under Article 6 and, having regard to the seriousness of what was at stake, also prevented them from being involved to a degree sufficient to provide them with the requisite protection of their interests.

Conclusion: violation (6 votes to 1).

Article 12 – This provision relates to the right to found a family and does not concern, as such, the circumstances in which interferences with family life between parents and an existing child may be justified, where Article 8 is the *lex specialis*. Consequently, no separate issue arose.

Conclusion: no separate issue (unanimously).

Article 41 – The Court awarded each of the applicants P. and C. the sum of 12,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

FAMILY LIFE
Procedures concerning care and freeing for adoption orders: *violation*.

P., C. and S. - United Kingdom (Nº 56547/00)
Judgment 16.7.2002 [Section II]
(see above).

EXPULSION
Threatened separation of foreigner from wife and children due to expulsion order following conviction: *violation*.

AMROLLAHI - Denmark (Nº 56811/00)
Judgment 11.7.2002 [Section I]

Facts: The applicant, an Iranian national, left Iran in 1987 and eventually arrived in Denmark, where he was granted a residence permit in 1990 on the ground that he had deserted from the Iranian army. He began cohabiting with a Danish woman, with whom he had a child in 1996. They married in 1997 and had another child in 2001. Shortly after the marriage, the applicant was convicted of drugs offences and sentenced to three years' imprisonment and expulsion from Denmark, with a life-long ban on his return. The applicant unsuccessfully applied for a review of the expulsion order on the basis of his changed family situation. The immigration authorities' finding that the applicant would not risk persecution in Iran was upheld by the Refugee Board in January 2000 and the applicant's subsequent request for a reconsideration of the expulsion order was ultimately dismissed.
Law: Article 8 – The expulsion order constituted an interference with the applicant's right to respect for family life. The interference was in accordance with the law and pursued the legitimate aims of prevention of disorder and crime. As to its necessity, the offence of which he was convicted was serious and the fact that he had no previous convictions did not detract from its gravity. Moreover, since the applicant had left Iran as an adult, had been educated there and spoke the language, he had ties with his country of origin. However, there was nothing to suggest that he had maintained strong links since then. As to his ties in Denmark, they were mainly with his wife and children, who are all Danish nationals, and there was no doubt as to the "effectiveness" of his family life there, so that there were strong ties with Denmark. Even if it was not impossible for the members of his family to live in Iran, it would cause obvious and serious difficulties, and they could not be expected to go there. Moreover, there was no indication that they could obtain authorisation to live in any other country. Consequently, the applicant's expulsion would mean the separation of the family and would thus be disproportionate to the aims pursued.
Conclusion: violation (unanimously).
Article 41 – The applicant did not respond to the Court's invitation to submit his claims for just satisfaction.

EXPULSION
Granting of residence permit on humanitarian grounds: *struck out*.

TASKIN - Germany (N° 56132/00)
Judgment 23.7.2002 [Section IV]

Facts: The applicant, a Turkish national, came to Germany in 1988, under the arrangements governing family reunion, to join her husband, who had been living there since 1981 and held a permanent residence permit. The applicant was granted several temporary residence permits. She has two children, born in Germany in 1989 and 1992, who hold residence

permits valid until 2015. In 1999, the authorities refused to extend the applicant's residence permit pursuant to a provision of the Aliens Act under which a residence permit for family reunion may only be granted if the arriving family member can be supported by the foreign national on the basis of his or her own gainful employment, his or her own assets or other own resources. The applicant's husband has been unemployed since 1998 and state financial assistance, such as the unemployment benefit which he receives, cannot be regarded as constituting such means of support; neither may the financial support which the applicant receives from the public authorities for day-to-day expenses and housing. The administrative court dismissed the application for a stay of execution on the applicant's expulsion. It noted in particular that the decisive factor was that neither the applicant herself nor her husband were in a position to meet the family's needs through their own resources without relying on government aid. It further noted that there was no infringement of the right to protection of family life because it would be conceivable for the applicant and her husband to return to Turkey. In February 2002, the administrative court of appeal upheld this decision. The Aliens Department announced that the applicant would be expelled on 8 March 2000. On 15 March 2000, the Federal Constitutional Court dismissed the appeal. In September 1999, the applicant had been treated in a medical centre and the final medical report referred to a depressive state and a motor disorder. Following a fire in her home in April 2000, the applicant was seriously injured and was treated in a number of different clinics. Since 4 May 2001 she has lived in a convalescent home. She is currently receiving intensive medical care and is under guardianship. The applicant's two children left Germany in May 2000 to go and live with their grandmother in Turkey. Under a partial friendly settlement reached before the Saarland Administrative Court in February 2002, the Saarbrücken metropolitan district council undertook to grant the applicant a residence permit on humanitarian grounds.

Law: In her present state of health, the applicant was no longer able to bring up her children, who were now living in Turkey, and she could not be said to have a family life with her husband in Germany. Furthermore, the threat of expulsion had been removed following the undertaking given in February 2002 by the Saarbrücken metropolitan district council, which, on the applicant's own admission, had settled the dispute relating to her residence in Germany. The purpose of the application had been above all to prevent her expulsion to Turkey so that she would not be separated from her husband and children. The applicant was continuing with her proceedings before the German courts to secure a residence permit so that she could resume her family life with her children in Germany. However, even if the applicant's health permitted her to return to Turkey, there would be nothing to prevent her from continuing her family life with her children in Turkey, where they had been living for two years. Under these circumstances, it was no longer justified to continue the examination of the application.

Conclusion: struck out (unanimously).

ARTICLE 9

MANIFEST RELIGION

Prohibition on wearing Islamic shawl at university: *admissible*.

ŞAHİN - Turkey (N° 44774/98)
Decision 2.7.2002 [Section IV]

In February 1998, the Office of the Rector of the University of Istanbul issued a circular to the effect that female students wearing the Islamic headscarf could not be admitted to lectures, practical training sessions and tutorials. This circular was followed on 13 March 1998 by a memorandum from the Office of the Rector of the University of Istanbul on dress code in higher educational institutions. According to this memorandum, the wearing

of the Islamic headscarf on the premises of higher educational institutions was a disciplinary and criminal offence. The applicant, who wore an Islamic headscarf, was a student at the faculty of medicine of the University of Istanbul at the material time. Before the memorandum from the Rector's Office was circulated, the applicant was refused permission to sit an examination on the ground that she was wearing an Islamic headscarf. On 20 March 1998, she was refused permission to enrol for a class because of her headscarf. On 16 April 1998, for the same reason, she was refused permission to attend another class. On 3 June 1998, the Board of Governors reprimanded her for having infringed the rules relating to dress code by wearing the headscarf. On 10 June 1998, she was again refused permission to sit an examination.
Admissible under Articles 8, 9, 10, 14 in conjunction with 9, and Article 2 of Protocol No.1.

MANIFEST RELIGION
Prohibition on nurse wearing Islamic shawl during practical exercises in nursing school: *admissible*.

TEKİN - Turkey (N° 41556/98)
Decision 2.7.2002 [Section IV]

In 1988, the Board of Higher Education issued a circular on nurses' uniforms, requiring them in particular to wear a special kind of head covering when performing clinical work. The applicant, a student in a nursing college, was reprimanded for having taken part in practical exercises while wearing an Islamic headscarf instead of the regulation head covering. Nevertheless, the applicant continued to wear the headscarf and was excluded from classes for a fortnight; she was told that the university administration did not require her to comply with any dress code, except in the case of practical work, during which all students were required to wear a uniform. The Administrative Court dismissed the applicant's appeal against the penalty which had been imposed on her. The court's decision, against which she had lodged an appeal, was upheld by the State Council.
Admissible under Article 9 of the Convention and Article 2 of Protocol No.1.

ARTICLE 10

FREEDOM OF EXPRESSION
Ban on broadcasting of radio advertisement for religious meeting: *admissible*.

MURPHY - Ireland (N° 44179/98)
Decision 9.7.2002 [Section III]

The applicant is a pastor attached to a Bible-based Christian ministry, the Irish Faith Centre. Relying on section 10(3) of the Radio and Television Act 1988, the authorities banned the broadcast of a short radio advertisement which the Irish Faith Centre had prepared to publicise a forthcoming religious meeting. The applicant appealed against this decision, on the ground either that the Act had been wrongly applied or that it was unconstitutional. The High Court found that the Act had been applied correctly and that in any case it presented a reasonable limitation on the right to communicate and thus could not be deemed unconstitutional. The applicant's subsequent appeal to the Supreme Court was rejected.
Admissible under Articles 9 and 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Imposition of disciplinary sanction on judge on account of previous membership of Freemasons: *admissible*.

MAESTRI - Italy (Nº39748/98)
[Section II]

In November 1993, disciplinary proceedings were commenced against the applicant, acting president of a court, owing to his membership of the freemasons' lodge *Grande Oriente d'Italia di Palazzo Giustiniani* from 1981 to March 1993. The Judicial Service Commission finally gave him a warning. The Court of Cassation dismissed his appeal. The applicant argues that his career has since been blocked: he was found unsuitable for the post of adviser to the Court of Cassation; furthermore, the judicial council for his district said that, because of the warning, it could not give a decision on his suitability for the post of court president.
Admissible under Articles 9, 10 and 11.
[NB: Case comparable to the *N.F. v. Italy* judgment of 2 August 2001 (No.37119/97, to be published in ECHR 2001-IX); see also the *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy* judgment of 2 August 2001 (No. 35972/97, to be published in ECHR 2001-VIII).]

INTERESTS OF MEMBERS
De-recognition of trade unions by employers: *violation*.

WILSON & THE NATIONAL UNION OF JOURNALISTS, PALMER, WYETH & THE NATIONAL UNION OF RAIL, MARITIME & TRANSPORT WORKERS, DOOLAN and others - United Kingdom (Nº 30668/96, Nº 30671/96 and Nº 30678/96)
Judgment 2.7.2002 [Section II]

Facts: Each of the individual applicants belonged to one of the applicant trade unions, which were recognised by the individual applicants' respective employers for the purposes of collective bargaining. The employers offered the individual applicants personalised contracts, including a wage increase, which involved relinquishing all rights to trade union recognition and representation. The applicants refused to sign the contracts, as a result of which their salaries remained at a lower level than those of employees who had accepted personal contracts. The employers subsequently de-recognised the applicant trade unions.
Law: Article 11 – While the matters about which the applicants complained did not involve direct intervention by the State, State responsibility would be engaged if there had been a failure to secure the applicants' rights guaranteed by this provision. The Convention safeguards freedom to protect the occupational interests of trade union members and the State must permit and make possible the conduct and development of trade union action. However, Article 11 does not secure any particular treatment of trade unions and their members. At the material time, the United Kingdom had a voluntary system of collective bargaining, with no legal obligation on employers to recognise trade unions for that purpose. However, collective bargaining is not indispensable for the effective enjoyment of trade union freedom, which does not extend to imposing on an employer an obligation to recognise a trade union. Nevertheless, the union and its members must be free, in one way or another, to seek to persuade the employer to listen to what it has to say on behalf of its members. In the present case, there were other measures available to the unions for furthering their members' interests, in particular the possibility of strike action, which is one of the most important means by which the State may

secure a trade union's freedom to protect its members' interests. Consequently, the absence of an obligation on employers to enter into collective bargaining did not give rise, in itself, to a violation of Article 11. The essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised to take steps, including organised industrial action, with a view to persuading an employer to enter into collective bargaining. Furthermore, it is of the essence of the right to join a trade union that employees should be free to instruct the union to make representations to their employer or to take action in support of their interests. If they are prevented from doing so, freedom to belong to a trade union for the protection of their interests becomes illusory. It is the role of the State to ensure that trade union members are not prevented or restrained from using the union to represent them. In the present case, employers were able to treat less favourably employees who were not prepared to renounce a freedom that was an essential feature of union membership and such conduct constituted a disincentive or restraint on the use by employees of union membership to protect their interests. It was therefore possible for an employer effectively to undermine or frustrate a trade union's ability to strive for the protection of its members' interests. By permitting employers to use financial incentives to induce employees to surrender important union rights, the respondent State failed in its positive obligation to secure the enjoyment of the rights under Article 11, as regards both the applicant unions and the individual applicants.
Conclusion: violation (unanimously).
Article 10: No separate issue arose under this provision that had not already been dealt with under Article 11 and it was not, therefore, necessary to examine the complaint separately.
Conclusion: not necessary to examine (unanimously).
Article 14 in conjunction with Articles 10 and 11: It was unnecessary to examine this complaint.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court rejected the applicants' claim for pecuniary damages but awarded each individual applicant € 7,730 in respect of non-pecuniary damage. It also made awards in respect of costs and expenses.

ARTICLE 12

MARRY
Impossibility for transsexual to marry: *violation*.

CHRISTINE GOODWIN - United Kingdom (Nº 28957/95)
Judgment 11.7.2002 [Grand Chamber]
(see Article 8, above).

MARRY
Impossibility for Muslim Turkish Cypriot to contract civil marriage: *friendly settlement*.

SELIM - Cyprus (Nº 47293/99)
Judgment 16.7.2002 [Section IV]

The applicant, a Cypriot national of Turkish origin, wished to marry a Romanian national. He was informed by the Cypriot authorities that the Marriage Law did not provide the possibility for a Turkish Cypriot professing the Muslim faith to contract a civil marriage. As a result, the applicant had to marry in Romania.
The parties have reached a friendly settlement providing for payment to the applicant of 5,080 Cypriot pounds by way of just satisfaction and 3,000 Cypriot pounds plus VAT by way of legal costs. Furthermore, Law 46(I)/2002, enacted in April 2002, extended the application of the

Marriage Law to the members of the Turkish community, with the effect that they can now contract civil marriage under the provisions of the Marriage Law. Finally, a bill for a new Civil Marriage Law which will apply to all Cypriots without distinction of origin has been laid before Parliament.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
Impartiality of Council of State in a judicial capacity having previously acted in an advisory capacity in respect of the drafting of the law at issue in the proceedings: *relinquishment*.

KLEYN and others - Netherlands (N° 39343/98)
METTLET TOLEDO BV - Netherlands (N° 39651/98)
RAYMAKERS - Netherlands (N° 43147/98)
VERENIGING LANDELIJK OVERLEG BETUWEROUTE - Netherlands (N° 46664/99)
[Section II]

These applications concern the effects of Government decisions to build a railway from Rotterdam to the border with Germany. The applicants complain under Article 6(1) that the Council of State acted in an advisory capacity for the drafting of the Transport Infrastructure Planning Act and in a judicial capacity in the subsequent proceedings concerning the decisions on the construction of the railway which relied on this Act.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES (Croatia)
Failure to exhaust new constitutional remedy concerning length of proceedings: *inadmissible*

SLAVIČEK - Croatia (N° 20862/02)
Decision 4.7.2002 [Section I]

In 1992 the applicant lent sums of money to S.H. and to two companies, which all failed to pay him back in due time. In October 1993 he filed two separate sets of proceedings against each of the two companies. In 1994 he started proceedings against S.H. All three sets of proceedings remain pending.
Inadmissible under Article 6(1): As to whether the applicant has exhausted domestic remedies, according to section 63 of the 2002 Constitutional Act on the Constitutional Court, the Constitutional Court must examine a constitutional complaint even before all legal remedies have been exhausted in cases where a competent court has not decided within a reasonable time a claim concerning the applicant's right and obligations, or a criminal charge against him. This new provision removed the obstacles that were decisive when the Court found in the Horvat v. Croatia judgment (no. 51585/99, judgment of 26 July 2001) that former section 59(4), now replaced by section 63, did not comply with all the requirements to constitute an effective remedy in respect of the length of proceedings. Although the Constitutional Court has not yet issued any decision following the introduction of this new

remedy, the wording of section 63 is clear and indicates that it is specifically designed to address the issue of the excessive length of proceedings before the domestic courts. According to the 2002 Act, any person who considers that the proceedings concerning the determination of his civil rights and obligations or a criminal charge against him have exceeded a reasonable time may file a constitutional complaint. The Constitutional Court must examine such a complaint and if it finds it well-founded it must set a time-limit for deciding the case on the merits and it shall also award compensation for the excessive length of proceedings. This was therefore a remedy which the applicant should have exhausted. While the relevant Act was adopted by Parliament on 15 March 2002 and was published in the Official Gazette on 22 March 2002, the present application was introduced before the Court on 10 May 2002: non-exhaustion.

ARTICLE 43

The Panel accepted a request for referral to the Grand Chamber of the following judgment (see Information Note No. 37):

GORZELIK and others – Poland (Nº 44158/98)
Judgment 20.12.2001 [Section IV (former composition)]

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 41):

VOLKWEIN - Germany (Nº 45181/99)
Judgment 4.4.2002 [Section III]

ERDŐS - Hungary (Nº 38937/97)
Judgment 9.4.2002 [Section II]

ANGHELESCU - Romania (Nº 29411/95)
Judgment 9.4.2002 [Section II]

CISSE - France (N° 51346/99)
Judgment 9.4.2002 [Section II]

PODKOLZINA - Latvia (N° 46726/99)
Judgment 9.4.2002 [Section IV]

YAZAR, KARATAŞ, AKSOY and LE PARTI DU TRAVAIL DU PEUPLE (HEP) - Turkey (Nos 22723/93, 22724/93 and 22725/93)
Judgment 9.4.2002 [Section IV]

ANGELOPOULOS - Greece (Nº 49215/99)
SAKELLAROPOULOS - Greece (Nº 46806/99)
Judgments 11.4.2002 [Section I]

AEPI SA - Greece (Nº 48679/99)
Judgment 11.4.2002 [Section I]

SMOKOVITIS and others - Greece (Nº 46356/99)
Judgment 11.4.2002 [Section I]

HATZITAKIS - Greece (Nº 48392/99)
Judgment 11.4.2002 [Section I]

LALLEMENT - France (Nº 46044/99)
Judgment 11.4.2002 [Section III]

Stés COLAS EST and others - France (N° 37971/97)
Judgment 16.4.2002 [Section II]

S.A. DANGEVILLE - France (N °36677/97)
Judgment 16.4.2002 [Section II]

GOC - Poland (Nº 48001/99)
Judgment 16.4.2002 [Section IV]

MALAMA - Greece (Nº 43622/98)
LOGOTHETIS - Greece (Nº 46352/99)
Judgments (just satisfaction) 18.4.2002 [Section II (former composition)]

FERNANDES - Portugal (Nº 47459/99)
Judgment 18.4.2002 [Section III]

Article 44(2)(c)

On 10 July 2002 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

YAGTZILAR and Others – Greece (N° 41727/98)
Judgment 6.12.2001 [Section II]

TROIANI - Italy (Nº 41221/98)
Judgment 6.12.2001 [Section III]

GEMIGNANI - Italy (Nº 47772/99)
Judgment 6.12.2002 [Section III]

C.G. – the United Kingdom (Nº 43373/98)
Judgment 19.12.2001 [Section III (former composition)]

TSIRIKAKIS - Greece (Nº 46355/99)
Judgment 17.1.2002 [Section I]

SIPAVICIUS - Lithuania (Nº 49093/99)
Judgment 21.2.2002 [Section III]

MATYAR - Turkey (Nº 23423/94)
Judgment 21.2.2002 [Section III]

KUTZNER - Germany (N° 46544/99)
Judgment 21.2.2002 [Section IV (former composition)]

ALBERGAMO - Italy (Nº 44392/98)
Judgment 28.3.2002 [Section III]

OUENDENO - France (Nº 39996/98)
Judgment 16.4.2002 [Section II]

MANGUALDE PINTO - France (Nº 43491/98)
Judgment 9.4.2002 [Section II]

ARTICLE 64

RESERVATION
Russia's reservation in respect of Article 5: *inapplicable*.

KALASHNIKOV - Russia (Nº 47095/99)
Judgment 15.7.2002 [Section III (former composition)]
(see Article 3, above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYEMENT OF POSSESSIONS
Uncertainty as regards peaceful enjoyment of the applicant's possessions due to challenging of final decisions and intervention of Executive in court proceedings: *violation*.

SOVTRANSAVTO HOLDING - Ukraine (N° 48553/99)
Judgment 25.7.2002 [Section IV]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility for applicants to obtain the indexed amounts of their savings in a national savings bank: *inadmissible*.

GAYDUK and others - Ukraine (N^{os} 45526/99, 46099/99, 47088/99, 47176/99, 47177/99, 48018/99, 48043/99, 48071/99, 48580/99, 48624/99, 49426/99, 50354/99, 51934/99, 51938/99, 53423/99, 53424/99, 54120/00, 54124/00, 54136/00, 55542/00 and 56019/00)
Decision 2.7.2002 [Section II]

The applicants had all signed savings agreements with the Savings Bank of Ukraine, whose deposits were guaranteed by the state. Following devaluation due to inflation and currency reform in 1966, the legislation adopted to regulate the repayment of deposits provided for

indexation of the deposits in question according to a fixed ratio between the old and new currencies. The applicants applied to the national courts for repayment of all or part of their indexed deposits, denominated in the new currency. Their cases were dismissed at all levels of jurisdiction. In most of the decisions, the national courts held that the applicants did not have formal title to repayment as defined by the government, which was conditional upon claimants having reached the age of 80. The few applicants who had already reached that age were told that compensation on their deposits was possible only up to the amount of about 10 € and that no provision was made under current legislation for repayment of the full value of these deposits.
Locus standi: The widow and son of the two deceased applicants were entitled to pursue the application in their place (see *Malhous v. Czech Republic* (dec.), No. 33071/96, ECHR 2000-XII).
Preliminary objection by the government (notion of victim): The question of whether an individual could claim to be a "victim" within the meaning of Article 34 of the Convention did not depend on the substance or content of the right at issue, but solely on its link with the person invoking it. In the instant case, the applicants' personal interests (securing repayment of sums deposited in the national bank) were at issue and they were therefore "directly and personally affected" by the behaviour of the national authorities: objection dismissed.
Inadmissible under Article 1 of Protocol No.1: In view of the applicants' failure to exercise their right to withdraw the initial deposits paid into the bank together with the statutory interest, they could not be regarded as "victims". With regard to the sums claimed by the applicants at domestic level, corresponding to the indexed value of their deposits, the right to indexation of savings was not, as such, guaranteed by Article 1 of Protocol No.1. This article was therefore inapplicable: incompatible *ratione materiae*.
Inadmissible under Article 1 of Protocol No.1 taken in isolation or in conjunction with Articles 14 and 13.

PEACEFUL ENJOYMENT OF POSSESSIONS
Allegedly insufficient amount of compensation for handicaps resulting from compulsory inoculation: *inadmissible*.

SALVETTI - Italy (N° 42197/98)
Decision 9.7.2002 [Section I]

In 1971 the applicant became severely disabled following a compulsory inoculation against polio. Pursuant to section 2 of Law no. 210 of 1992, persons who suffered from permanent disabilities by reason of compulsory inoculations were entitled to an allowance from the month that followed their claim and to a lump sum. In January 1993 the applicant claimed the compensation to which she was entitled. In 1996 the Constitutional Court declared section 2 of Law no. 210 unconstitutional on the ground that it did not provide for any compensation between the moment when the cause of action occurred and the award of the allowance. The impugned provision was amended following the judgment of the Constitutional Court to the effect that persons having been injured as a result of compulsory vaccinations were entitled to compensation for the period between the date on which the cause of action arose and the award of the allowance. It represented 30 % of the allowance per year and up to 50 %, the exact proportion having to be determined by decree of the Ministry of Health, for persons suffering from several illnesses. In July 1997 the applicant lodged an application with the County Court alleging that the amended provisions of the law were unconstitutional by reason of the arbitrary reduction of the retrospective compensation and requesting a declaration of her right to obtain it without reduction. In January 1998 the County Court rejected her arguments relating to unconstitutionality.
Inadmissible under Article 8: Having regard to the fact that private life includes a person's physical and psychological integrity, the application had to be examined under Article 8. Compulsory inoculations as non-voluntary medical treatments amount to an interference with

the right to respect for private life. (i) As regards the circumstances relating to the inoculation having taken place in 1971, the recognition of the right of individual petition under Article 34 only took effect in Italy on 1 August 1973 and thus the applicant's complaint relating to this aspect was incompatible *ratione temporis*. (ii) As to the amount of compensation for injury to health resulting from the compulsory inoculation, even assuming that the level of compensation was relevant when examining whether the interference was necessary, this complaint was also incompatible *ratione temporis*.
Inadmissible under Article 1 of Protocol No. 1: The Convention does not guarantee as such social and economic rights. Nor does it grant a right to compensation for injury to health having taken place before it entered into force in respect of a particular State or before the right of individual petition was recognised with regard to that State. In the present case, the applicant was entitled to a specific allowance due to injury to health. However, Article 1 of Protocol No. 1 could not be interpreted as guaranteeing to the applicant an increase in the amount of the allowance. Even if she had a right to compensation, it did not imply compensation of a specific level: incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Dismissal of cassation appeal against a judgment of an Assize Court: *no violation*.

PAPON - France (N° 54210/00)
Judgment 25.7.2002 [Section I]
(see Article 6(1) [criminal], above).

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Conviction for criminal offence and customs offence concerning the same facts: *no violation*.

GÖKTAN - France (N° 33402/96)
Judgment 2.7.2002 [Section II]

Facts: Having been arrested by police and customs officers when he was about to conclude a drug deal, the applicant was found guilty both of breaching the drug trafficking laws, for which he was sentenced to five years' imprisonment, and of committing the customs offence of illegally importing goods, for which he was ordered to pay a customs fine. Imprisonment in default for the statutory period of two years was ordered against him for non-payment of the customs fine. The applicant served his sentence but remained in prison for a further two years in accordance with the imprisonment in default measure. The applicant's subsequent appeals proved unsuccessful.
Law: Article 4 of Protocol No.7 – Imprisonment in default was a "penalty" within the meaning both of Article 7 (Jamil judgment, Series A no. 317-B) and of Article 4 of Protocol No. 7 to the Convention. The notion of penalty should not have different meanings under different provisions of the Convention. In the instant case, the applicant had been convicted, by the same court and for the same criminal act, of two separate offences: a general criminal offence and a customs offence. This was a typical example of a single act constituting various offences (see precedent in the case of Oliveira v. Switzerland, *Reports* 1998-V). In accordance with the case-law, there was no violation of the article relied on. Article 1 of Protocol No. 4 was inapplicable to the system of imprisonment in default because it

prohibited imprisonment for unpaid debts solely in the case of a "contractual obligation". Under French law, customs fines were a hybrid measure (damages and criminal penalty), and this might bring them within the scope of the reservation which France had entered when ratifying Protocol No. 7. The Court could not base its finding on that reservation because it had not been raised and, furthermore, the customs fine had been imposed by a criminal court; according to the text of the aforementioned reservation, France had accepted Article 4 for cases falling within the jurisdiction of such a court.
Conclusion: no violation (unanimously).
Article 6(1) – There was no precedent, under either Article 6 or Article 7, of a decision by the Convention bodies criticising the legislature for laying down a fixed penalty or requiring judges to "vary" that penalty according to the circumstances of the case, irrespective of the size of the customs fine imposed. This applied *a fortiori* to a measure which constituted at one and the same time damages and a criminal penalty.
Conclusion: no violation (6 votes to 1).

Other judgments delivered in July 2002

Articles 2, 3, 6, 13 and 14

ÜLKÜ EKINCI - Turkey (Nº 27602/95)
Judgment 16.7.2002 [Section II]

shooting by unidentified perpetrators and lack of effective investigation – violation (in respect of the lack of an effective investigation and the lack of an effective remedy).

Article 3

AYDIN - Turkey (Nº 29289/95)
Judgment 16.7.2002 [Section II]

YILDIZ - Turkey (Nº 32979/96)
Judgment 16.7.2002 [Section IV]

ÖNDER - Turkey (Nº 31136/96)
Judgment 25.7.2002 [Section III]

alleged ill-treatment in custody – friendly settlement.

Article 5(1)

M.S. - Bulgaria (Nº 40061/98)
Judgment 4.7.2002 [Section I]

lawfulness of detention for examination in a psychiatric hospital – friendly settlement (cf. *Varbanov v. Bulgaria*, no. 31165/95, judgment of 5 October 2000).

Article 5(3)

DACEWICZ - Poland (Nº 34611/97)
Judgment 2.7.2002 [Section IV]

ordering of detention on remand by prosecutor – violation (cf. *Niedbała v. Poland*, no. 27915/95, judgment of 4 July 2000).

Article 6(1)

CAPITANIO - Italy (Nº 28724/95)
Judgment 11.7.2002 [Section I]

prolonged non-enforcement of judicial decision ordering eviction of tenant – violation.

OSU - Italy (Nº 36534/97)
Judgment 11.7.2002 [Section I]

dismissal of appeal against conviction *in absentia* due to failure to comply with time limit – violation.

HAŁKA and others - Poland (Nº 71891/01)
Judgment 2.7.2002 [Section IV]

H.E. - Austria (Nº 33505/96)
Judgment 11.7.2002 [Section I]

ALITHIA PUBLISHING COMPANY - Cyprus (Nº 53594/99)
Judgment 11.7.2002 [Section III]

RAJČEVIĆ - Croatia (Nº 56773/00)
Judgment 23.7.2002 [Section I]

ROSA MARQUES and others - Portugal (Nº 48187/99)
Judgment 25.7.2002 [Section III]

length of civil proceedings – violation.

MARKASS CAR HIRE LTD. - Cyprus (Nº 51591/99)
Judgment 2.7.2002 [Section II]

length of proceedings concerning an *ex parte* interim order – violation.

DAVIES - United Kingdom (Nº 42007/98)
Judgment 16.7.2002 [Section IV]

length of proceedings concerning disqualification of a company director – violation.

KROLICZEK - France (Nº 43969/98)
Judgment 2.7.2002 [Section II]

DELLI PAOLI - Italy (Nº 44337/98)
GAUDENZE - Italy (Nº 44340/98)
CANNONE - Italy (Nº 44341/98)
CARAPELLA and others - Italy (Nº 44347/98)

NAZZARO and others - Italy (Nº 44348/98)
FRAGNITO - Italy (Nº 44349/98)
CECERE - Italy (Nº 44350/98)
PACE and others - Italy (Nº 44351/98)
Judgments 9.7.2002 [Section II]

length of administrative proceedings – violation.

DESMOTS - France (Nº 41358/98)
Judgment 2.7.2002 [Section II]

length of proceedings concerning a request to transfer a notary's office – violation.

RADOŠ and others - Croatia (Nº 45435/99)
Judgment 4.7.2002 [Section I]

length of civil proceedings – friendly settlement (partial).

PEREIRA PALMEIRA and SALES PALMEIRA - Portugal (Nº 52772/99)
Judgment 4.7.2002 [Section III]

BIEGLER BAU GESMBH - Austria (Nº 32097/96)
Judgment 11 July 2002 [Section I]

J.K. - Slovakia (Nº 38794/97)
Judgment 23.7.2002 [Section IV]

length of civil proceedings – friendly settlement.

DEL FEDERICO - Italy (Nº 35991/97)
CASADEI - Italy (Nº 37249/97)
FALCONE - Italy (Nº 37263/97)
BARATTELLI - Italy (Nº 38576/97)
SPINELLO - Italy (Nº 40231/98)
BOLDRIN - Italy (Nº 41863/98)
Andrea CORSI - Italy (Nº 42210/98)
PASCAZI - Italy (Nº 42287/98)
TUMBARELLO and TITONE - Italy (Nº 42291/98 and Nº 42382/98)
Biagio CARBONE - Italy (Nº 42600/98)
Di VUONO - Italy (Nº 42619/98)
ROCCI - Italy (Nº 43915/98)
MUCCIACCIARO - Italy (Nº 44173/98)
Judgments 4.7.2002 [Section I]

length of criminal proceedings – violation.

Articles 6 and 10

SEHER KARATAŞ - Turkey (Nº 33179/96)
Judgment 9.7.2002 [Section II]

independence and impartiality of State Security Court, and conviction for incitement to hatred and hostility – violation.

ÖZLER - Turkey (Nº 25753/94)
Judgment 11.7.2002 [Section III]

independence and impartiality of State Security Court, and conviction for making separatist propaganda – friendly settlement.

Articles 6 and 13

NOUHAUD and others - France (Nº 33424/96)
Judgment 9.7.2002 [Section II]

length of civil and administrative proceedings and lack of effective remedy – violation.

STRATEGIES ET COMMUNICATIONS and DUMOULIN - Belgium (Nº 37370/97)
Judgment 15.7.2002 [Section III (former composition)]

length of criminal proceedings and lack of effective remedy – violation.

Article 6 and Article 1 of Protocol No. 1

PETRESCU and BUDESCU - Romania (Nº 33912/96)
Judgment 2.7.2002 [Section II]

CRETU - Romania (Nº 32925/96)
FALCOIANU - Romania (Nº 32943/96)
BĂLĂNESCU - Romania (Nº 35831/97)
Judgments 9.7.2002 [Section II]

OPREA and others - Romania (Nº 33358/96)
CIOBANU - Romania (Nº 29053/95)
Judgments 16.7.2002 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of the courts' jurisdiction to review nationalisation of property – violation (cf. *Brumărescu v. Romania*, no. 28342/95, judgment of 28 October 1999).

GUAZZONE - Italy (Nº 39797/97)
Judgment 11.7.2002 [Section I]

TACCHINO and SCORZA - Italy (Nº 34714/97)
M.N. and C.D.A. - Italy (Nº 35243/97)
VENTURI - Italy (Nº 36010/97)
PITTINI - Italy (Nº 37007/97)
VIETTI - Italy (Nº 37248/97)
C.M.F. - Italy (Nº 38415/97)
Judgments 18.7.2002 [Section I]

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

Articles 8 and 13

ARMSTRONG - United Kingdom (Nº 48521/99)
Judgment 16.7.2002 [Section IV]

covert audio surveillance by the police and absence of an effective remedy – violation.

Article 10

SÜREK - Turkey (Nº 26976/95, Nº 28305/95 and Nº 28307/95)
Judgment 16.7.2002 [Section II]

convictions for making separatist propaganda – friendly settlement (*ex gratia* payment and statements by Government – cf. Altan v. Turkey judgment of 14 May 2002 and Ali Erol v. Turkey judgment of 20 June 2002).

FREIHEITLICHEN LANDESGRUPPE BURGENLAND - Austria (Nº 34320/96)
Judgment 18.7.2002 [Section I]

award of damages in respect of publication of a caricature in a periodical – friendly settlement.

Article 14 in conjunction with Article 1 of Protocol No. 1

MATTHEWS - United Kingdom (Nº 40302/98)
Judgment 15.7.2002 [Section III*]

different age requirements for men and women in relation to entitlement to elderly person's travel permit – friendly settlement.

Article 41

ZWIERZYŃSKI - Poland (Nº 34049/96)
Judgment 2.7.2002 [Section I (former composition)]

just satisfaction

Article 1 of Protocol No. 1

MOTAIS DE NARBONNE - France (Nº 48161/99)
Judgment 2.7.2002 [Section II]

failure to use property for the purposes for which it was expropriated – violation.

BASACOPOL - Romania (Nº 34992/97)
Judgment 9.7.2002 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised – violation (cf. *Brumărescu v. Romania*, no. 28342/95, judgment of 28 October 1999).

DENLI - Turkey (Nº 68117/01)
Judgment 23.7.2002 [Section III]

delay in payment of compensation for expropriation – violation.

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. 2

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