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

INFORMATION NOTE No. 55
on the case-law of the Court
July 2003

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

Statistical information[1]

Judgments delivered	**July**	**2003**
Grand Chamber	3	8(14)
Section I	38	133(137)
Section II	27(30)	119(124)
Section III	14(15)	61(64)
Section IV	25(26)	102(103)
Sections in former compositions	1	11
Total	**108(113)**	**434(453)**

Judgments delivered in July 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	1	0	0	0	1
Section I	32	5	0	1[4]	38
Section II	21(24)	4	2	0	27(30)
Section III	12(13)	2	0	0	14(15)
Section IV	13(14)	12	0	0	25(26)
Total	**82(87)**	**23**	**2**	**1**	**108(113)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	7(13)	0	0	1[3]	8(14)
former Section I	4	0	0	0	4
former Section II	1	0	0	0	1
former Section III	4	0	0	0	4
former Section IV	1	0	0	1[4]	2
Section I	102(106)	28	0	3[5]	133(137)
Section II	94(99)	17	4	4[6]	119(124)
Section III	55(58)	5	0	1[2]	61(64)
Section IV	70(71)	29	3	0	102(103)
Total	**338(357)**	**79**	**7**	**10**	**326(340)**

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.
3. Preliminary issue.
4. Revision.
5. Two revision judgments and one just satisfaction judgment.
6. Two revision judgments and two just satisfaction judgments.

Decisions adopted		July	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		4	74(76)
Section II		9(10)	76(84)
Section III		9(11)	58(61)
Section IV		15	100(136)
former Sections		0	1
Total		**37(40)**	**309(358)**
II. Applications declared inadmissible			
Section I	- Chamber	2	40
	- Committee	220	2833
Section II	- Chamber	9	50(51)
	- Committee	404	2746
Section III	- Chamber	3(11)	49(59)
	- Committee	63	1250
Section IV	- Chamber	2(4)	58(60)
	- Committee	277	1991
Total		**980(988)**	**9017(9030)**
III. Applications struck off			
Section I	- Chamber	1	16
	- Committee	0	19
Section II	- Chamber	4	26
	- Committee	3	27
Section III	- Chamber	8	38
	- Committee	2	11
Section IV	- Chamber	2	69(87)
	- Committee	1	21
Total		**21**	**227(245)**
Total number of decisions[1]		**1038(1049)**	**9553(9633)**

1. Not including partial decisions.

Applications communicated	July	2003
Section I	6	202(207)
Section II	37(38)	214(216)
Section III	18(26)	326(342)
Section IV	12(13)	195(233)
Total number of applications communicated	**73(83)**	**937(998)**

ARTICLE 2

POSITIVE OBLIGATIONS
Effectiveness of investigations into shooting allegedly carried out with collusion of security forces: *violation*.

FINUCANE - United Kingdom (Nº 29178/95)
Judgment 1.7.2003 [Section IV]

Facts: The applicant's husband was shot dead by two masked men in Northern Ireland in 1989. Responsibility was claimed by an illegal paramilitary group. A forensic examination was carried out, photographs were taken and maps made, a post mortem was conducted and many suspected members of the paramilitary group were detained and interviewed. One of the weapons used was found and three members of the group were convicted of unlawful possession of weapons. A further suspect, S., was arrested in connection with the murder but in 1991 it was decided that there was insufficient evidence to prosecute. In the meantime, an inquest had been held, at which the Coroner had refused to allow the applicant to make a statement concerning death threats which had allegedly been made against her husband by officers of the Royal Ulster Constabulary (RUC). The Chief Constable of the RUC subsequently appointed a senior police officer from England to investigate allegations of collusion between members of the security forces and loyalist paramilitaries. The report was not made public. As a result of the inquiry, a former undercover agent who the authorities maintained had got out of hand was convicted on five charges of conspiracy to murder. While in prison, he allegedly admitted being involved in the murder of the applicant's husband. The Director of Public Prosecutions (DPP) asked the Chief Constable of the RUC to conduct further inquiries. Following a second investigation by the same senior officer, the DPP issued a direction of "no prosecution", having concluded that there was insufficient evidence to prosecute anyone. In 1999, the same officer was appointed by the Chief Constable of the RUC to conduct an independent investigation into the murder of the applicant's husband. He submitted a report to the DPP in April 2003 and an overview was made public, indicating that there had been collusion and that the murder could have been prevented. In the meantime, S. had been charged with the murder but found not guilty in the absence of evidence.
Law: Article 2 – An investigation into alleged unlawful killing by State agents must be independent, both institutionally and practically, and it must be capable of leading to a determination of whether the use of force was justified, as well as to the identification and punishment of those responsible. It must also be instituted promptly and conducted with reasonable expedition and there must be a sufficient element of public scrutiny and involvement of the next-of-kin to the extent necessary to safeguard their interests.
(i) The police investigation was started immediately and involved the necessary steps to secure evidence and a number of suspects were interviewed. However, it was conducted by officers who were part of the police force suspected by the applicant of issuing threats and in the circumstances there was a lack of independence raising serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued.
(ii) The inquest did not involve any inquiry into the allegations of collusion and the applicant was refused permission to make a statement about the alleged threats to her husband. The inquest therefore failed to address serious and legitimate concerns and could not be regarded as having provided an effective investigation.
(iii) Of the three independent inquiries, it was not apparent that the first two were concerned with investigating the death of the applicant's husband with a view to bringing a prosecution and in any event the reports were not made public, so that the decisive elements of public

scrutiny and involvement of the family were missing. While the third inquiry was concerned with the murder, the Government admitted that it could not comply with the requirements of promptness and expedition. Moreover, it was not apparent to what extent the report would be made public.
(iv) The DPP was not required to give reasons for his decisions not to prosecute and there was no possibility in Northern Ireland to challenge such decisions by way of judicial review. No reasons had been given for the decisions not to prosecute in the present case and no information had been provided to reassure the applicant and the public that the rule of law had been respected.
In conclusion, there had been a failure to comply with the procedural obligation imposed by Article 2.
Conclusion: violation (unanimously).
Article 41 – The Court was unable to make the declaration or clarifications requested by the applicant and, as she had stated that in that event she did not seek damages, the Court proceeded on the basis that her claim was withdrawn. It made an award in respect of costs and expenses.

POSITIVE OBLIGATIONS
Alleged lack of effective investigation by the authorities into the disappearance and death of a political journalist: *communicated.*

GONGADZE - Ukraine (N° 34056/02)
[Section II]

The applicant is the wife of a deceased journalist, who was well known for his independent political views and denunciation of corruption cases. The applicant's husband disappeared in September 2000 in circumstances which have not yet been established by the Ukrainian authorities. The body of an unidentified person was found on 8 November 2000 and a first forensic examination concluded that the time of death corresponded to that of the disappearance of the applicant's husband. A few days later some relatives recognised the body as that of the journalist. However, all documents relating to the first forensic examination were confiscated, and the authorities announced that contrary to the first findings, the body which had been discovered had been buried for two years. The applicant's request to be recognised as a civil party and to participate in the identification of the body was refused for a long time. When a new forensic examination of the body was organised, Russian and American specialists participating in the examination concluded that it was highly probable that the body found was that of the missing journalist. However, the Prosecutor General announced that this could not be confirmed, as there were witnesses who had seen him alive after his disappearance. In February 2001, the Prosecutor General's office informed the applicant that on the basis of additional evidence it was now accepted that the body found was that of her husband. The applicant filed a complaint for negligence in the investigation, but the claim was not registered and later could not be found. In May 2001, the authorities announced that the applicant's husband had presumably been murdered by two drug-users, and that the crime was therefore not politically motivated.
Communicated under Articles 2, 3 and 13.

ARTICLE 3

INHUMAN TREATMENT
Expulsion to country of origin and risk of suffering genital mutilation: *struck out*.

ABRAHAM LUNGULI - Sweden (N° 33692/02)
Decision 1.7.2003 [Section IV]

The applicant is a Tanzanian national who fled to Sweden with a false passport in 1999 for fear of being subjected to female genital mutilation (female circumcision) by her father. She applied for asylum and a residence permit but both applications were rejected by the Migration Board. Following several appeals and applications for a residence permit, in December 2002 the applicant was granted a residence permit and the order to expel her was quashed (on the basis of a report from the Swedish Embassy in Tanzania indicating that there were legitimate reasons for believing that the applicant could be subjected to female genital mutilation if returned to Tanzania).
Article 3: Given that the applicant's lawyer had not submitted any comments on the Government's request that the Court strike the application off, the Court concluded that the applicant did not intend to pursue the application. Since she had been granted a residence permit and the expulsion order had been quashed, the threat of her suffering inhuman treatment had been removed and the matter had been resolved.

EXPULSION
Expulsion to country of origin of an HIV-positive drug offender: *inadmissible*.

ARCILA HENAO - Netherlands (N° 13669/03)
Decision 24.6.2003 [Section II]

The applicant is a Colombian national who was convicted of a drugs offence in 1997. On the basis of that conviction he was declared an undesirable alien, entailing a 10-year exclusion order, and expelled. He returned to the Netherlands in 1998 and was convicted of a new drugs offence. Whilst serving the two-year prison sentence, the applicant was found to be HIV-positive. Prior to his release from prison, he requested the lifting of the order declaring him an undesirable alien and applied for a residence permit on the basis of the medical treatment which he required. The residence permit was not granted since, as long as the decision declaring him an undesirable alien was valid, the applicant was ineligible for residence. Despite a number of reports from a Medical Advice Bureau indicating that if treatment was stopped a health relapse was likely, and that possible delays in treatment could be expected in Colombia, the State Secretary held that it was not possible to lift the exclusion order (since the applicant had not resided out of the Netherlands for 10 years and had re-offended), and concluded that as treatment was available in Colombia there was no life-threatening situation outweighing public order considerations. Two appeals filed by the applicant were rejected by the Regional Court, which held that only in cases of advanced, incurable and life-threatening disease and when no medical facilities were available in the country of destination could expulsion be regarded as contrary to Article 3.
Inadmissible under Article 3: Although the situation in Colombia would be less favourable for the applicant, his condition did not appear to have reached an advanced or terminal stage, and treatment was in principle available in Colombia. The circumstances were not of such an exceptional nature that expulsion would amount to treatment proscribed by Article 3: manifestly ill-founded.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Detention exceeding the period applicable under domestic law: *violation*.

GRAVA - Italy (N° 43522/98)
Judgment 10.7.2003 [Section I]

Facts: In October 1994, the Trieste Court of Appeal sentenced the applicant to four years' imprisonment for fraudulent bankruptcy. This decision became final in October 1995. The applicant applied for two years' remission of his sentence pursuant to Presidential Decree no. 394 of 1990. His application was refused, notably because he had been granted remissions of sentences imposed for other criminal offences. However, by judgment of May 1998, the Court of Cassation held that only the sentence which had become final in October 1995 could be enforced and that, accordingly, the fact that he had been convicted of other offences did not prevent the grant of the remission of sentence applied for; the case was sent back to the Court of Appeal. In August 1998, the applicant applied for provisional release. He claimed that, taking into account the principles referred to by the Court of Cassation and the possibility of obtaining two years' remission, the total period during which he had been deprived of his freedom exceeded the penalty to be served. The applicant was released on 14 August 1998, when he had served a total sentence of two years, two months and four days. The time remaining to be served was therefore one year, nine months and twenty six days, or less than the maximum remission to which he was entitled under the Presidential Decree. In December 1998, the Court of Appeal, to which the case had been sent back, declared that the remainder of the applicant's sentence was remitted in full.
Law: Article 5(1)(a) – The applicant was lawfully detained after being convicted by a competent court within the meaning of that article. However, he served a prison sentence of two months and four days longer than that resulting from the sentence pronounced against him and the remission to which he was entitled under the applicable Presidential Decree. According to that decree, the authorities are required to remit penalties to the extent determined by law. The final decision on the applicant's application for remission of his sentence was taken at too late a stage, i.e. after he had been released and when he had already served a longer sentence than the one which would have resulted had he been granted remission. Although the applicant was responsible for delays in the proceedings, those delays, which occurred following his release, had no influence on the total period during which he was deprived of his liberty. In short, the additional period of imprisonment which the applicant was required to serve cannot be analysed as lawful detention within the meaning of the Convention.
Conclusion: violation (unanimous).
Article 13 – The Court concludes unanimously that there is no need to examine this complaint separately.
Article 7(1) – The sentence of four years' imprisonment imposed on the applicant by the Court of Appeal did not exceed the statutory maximum sentence applicable to the offence with which the applicant was charged at the time when it was committed. Accordingly, there is no problem from the aspect of Article 7. Furthermore, the question of remission provided for by the Presidential Decree of 1990 relates to the enforcement of the penalty and not to the

penalty itself. Accordingly, the "penalty" imposed was not heavier than that provided for by law.
Conclusion: no violation (unanimous).
Article 41 – The Court awards the applicant €8,000 for non-pecuniary damage.

Article 5(1)(f)

EXTRADITION
Alleged unlawful detention and extradition – subsequent return to Russia and continued placement in a pre-trial detention centre: *communicated*.

GARABAYEV - Russia (N° 38411/02)
[Section I]

The applicant is a national of Russia and of Turkmenistan, who was employed as an accountant in the Central Bank of Turkmenistan. In August 2002 he quit his job and moved to Moscow. He was detained in Moscow at the request of the Prosecutor General of Turkmenistan in September 2002, on charges of large scale embezzlement of State property. His lawyer contested the legality of the applicant's detention and extradition, since he had not been charged with a criminal offence in Russia, and, under national legislation, extradition of a Russian citizen is illegal. Despite the intervention of a human rights NGO and a member of the State Duma before the Prosecutor General, both making reference to the risk of torture which the applicant faced and the lack of impartiality and independence of the judiciary in Turkmenistan, the applicant was extradited in October 2002. He was detained and allegedly beaten in Turkmenistan. Following a request for information from the Court and several complaints and appeals by his lawyer, the City Court found that the decision to extradite him had been unlawful, as had been the detention. The applicant was returned to Russia in February 2003. Whilst the applicant was still in Turkmenistan, the Prosecutor General's office initiated two sets of proceedings against him: the first questioning the validity of his Russian nationality on the grounds that his marriage to a Russian national – which had enabled him to obtain Russian nationality – had been dissolved (proceedings on this are pending), the second being criminal proceedings against him on charges of illegal transfer of money from the Central Bank of Turkmenistan. An arrest warrant was issued against him and on his return to Russia he was immediately arrested and placed in a pre-trial detention centre. The courts refused to release him from detention, where he presently remains. Given the threat of a fresh extradition to Turkmenistan, the Court in April 2003 requested the Government not to extradite or deport the applicant until further notice.
Communicated under Articles 3, 5(1), 5(3), 5(4) and 13.

Article 5(3)

REASONABLENESS OF PRE-TRIAL DETENTION
Length of detention on remand – repeated periods of detention: *violation*.

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Judgment 24.7.2003 [Section III]
(see Article 8, below).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Procedure for changing name in the French administrative courts: *Article 6 applicable*.

MUSTAFA - France (N° 63056/00)
Judgment 17.6.2003 [Section II]

Facts: In December 1992, the applicant lodged an application to change his patronymic. The proceedings before the administrative courts ended in January 2003.
Law: The Court dismisses the respondent Government's objection that Article 6(1) is not applicable: although a change of patronymic is not unrestricted in France, Article 61 of the Civil Code provides that "anyone showing a legitimate interest" may apply to change his surname. Where the authorities refuse permission, the person concerned may bring proceedings before the administrative courts for abuse of power and obtain a judicial review of the lawfulness of the decision. The administration's powers in that regard are not entirely discretionary: where they refuse permission, they must state the reasons why the person concerned has no "legitimate interest" within the meaning of Article 61 of the Civil Code and the courts have a certain power of review. The Court concludes that the "dispute" ("*contestation*") concerned a "defensible right" in domestic law. This right is a "civil" right, since a person's state forms part of his civil rights for the purposes of Article 6(1). The Court recalls that as a means of personal identification and of belonging to a family, a person's surname concerns his private and family life; that is not affected by the fact that the State and society have an interest in regulating the use of the surname, since those public-law aspects can be reconciled with private life conceived as encompassing, to a certain extent, the individual's right to form and develop relations with his fellows.
The Court rejects the objection of non-exhaustion of domestic remedies: the Government maintain that two judgments of the Paris Administrative Court of 1999 show that the excessive length of administrative proceedings may engage the responsibility of the State for gross negligence and that the applicant may therefore obtain compensation. However, the Court is of the view that these two decisions alone, which, moreover, were delivered by a court of first instance, do not suffice to prove that the remedy relied on by the respondent Government is effective and accessible.
The Court refers to the importance of what was at stake for the applicant and concludes that the length of the proceedings, ten years and more than one month, is excessive.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant €6,000 for non-pecuniary damage.

RIGHT TO A COURT
Supervisory review – annulment of final and binding judgment: *violation*.

RYABYKH - Russia (Nº 52854/99)
Judgment 24.7.2003 [Section I]

Facts: In 1997 the District Court made an award to the applicant in respect of the State's failure to revalue her savings in order to offset the effects of inflation, as she claimed it was required to do by 1995 legislation. After the judgment had been set aside on appeal, the

District Court delivered a similar judgment, awarding the applicant almost 134,000 roubles. This judgment became final in June 1998. However, in 1999 the Regional Court, on an application for supervisory review lodged by its President, set aside the judgment and dismissed the applicant's claims. In 2001 the Supreme Court granted an application for supervisory review of the Regional Court's judgment and remitted the case to the District Court, which again found in the applicant's favour. The Regional Court having set that judgment aside, the District Court gave a further judgment in the applicant's favour. The Regional Court also set that judgment aside and remitted the case to the District Court which, in a different composition, dismissed the applicant's claims. The Regional Court upheld this judgment. However, the Regional Court's judgment was quashed following an application for supervisory review by its President. The District Court then granted the applicant's claim in part and the Regional Court upheld this judgment. The applicant subsequently reached a settlement with the authorities and the Government purchased a flat for her at a price of 330,000 roubles.
Law: Article 6(1) – Although it appeared that the State had made efforts to remedy the applicant's situation (the judgment granting her claim and the purchase of a flat), it was not the failure to revalue her savings which was at the heart of her complaint under Article 6, which concerned rather the effect of the supervisory review procedure. The fact that the applicant's claims were ultimately granted did not by itself remove the effects of the legal uncertainty which she had had to endure for three years after the original judgment in her favour had been quashed. She could therefore continue to claim to be a victim in that respect. The supervisory review procedure resulted in the entire judicial process which had culminated in a legal binding decision being set at naught. The procedure was set in motion by the President of the Regional Court, who was not a party to the proceedings, and there was no time-limit on the exercise of his power. The right to a court was illusory if a final binding and binding judicial decision could be quashed on an application by a State official and in the present case the Regional Court, by using the supervisory review procedure, had infringed the principle of legal certainty and the applicant's right to a court. In those circumstances, it was unnecessary to examine whether the procedural guarantees of Article 6 had been respected in the supervisory review proceedings.
Conclusion: violation (unanimously).
Article 6(1) – In the circumstances, it was unnecessary to examine whether the procedural guarantees of Article 6 had been respected in the supervisory review proceedings.
Conclusion: not necessary to examine (unanimously).
Article 1 of Protocol No. 1 – Under the settlement which was reached, the State had provided the applicant with a flat which was worth significantly more than the amount which she had initially been granted. Moreover, Article 1 of Protocol No. 1 does not require the State to maintain the purchasing power of investments and the 1995 legislation, as interpreted by the domestic courts, did not establish an enforceable obligation for the State to compensate for losses caused by inflation.
Conclusion: no violation (unanimously).
Article 41 – The applicant had not made any claims within the specified time limits.

ACCESS TO A COURT
Restrictions on the right to litigate during excessively lengthy bankrupcty proceedings: *violation*.

LUORDO - Italy (N° 32190/96)
Judgment 17.7.2003 [Section I]
(see Article 1 of Protocol No. 1, below).

IMPARTIAL TRIBUNAL
Composition of a Labour Court by a majority of lay judges – alleged lack of impartiality: *admissible*.

<u>KURT KELLERMANN - Sweden</u> (N° 41579/98)
Decision 1.7.2003 [Section IV]

The applicant is a company which was not a member of any employers' association and thus not bound by any collective labour agreement. A trade union, to which two of its employees were affiliated, requested negotiations to conclude a collective agreement. The company refused, arguing that the terms of employment applied at the company were more favourable than those in the proposed collective agreement. The union gave the applicant formal notice that it would take industrial action and order the cessation of all work at the company unless an agreement was reached, as a result of which the applicant started proceedings in the District Court seeking to have the industrial action stopped and requested an interim order. The case was forwarded to the Labour Court. The applicant challenged the objective impartiality of the Labour Court as the lay judges composing it were representing employers' and employees' interests: the claim was rejected on the grounds that the court was composed in accordance with the relevant legislation. The applicant also claimed that the industrial action violated its right to negative freedom of association under Article 11, but the Labour Court considered that the rationale behind the union's action was not to force the applicant to join the employers' association but to conclude a collective agreement. Despite the judgment, the applicant continued to refuse to conclude an agreement, and the union obtained a declaratory judgment establishing its right to take immediate industrial action. Following an unsuccessful appeal by the applicant to the Supreme Court, action against the company was taken and the latter ended up joining an association and being bound by a collective agreement. Following the friendly settlement between the applicant and the union, the industrial action was immediately withdrawn and the case struck out of the Labour Court's list. Some months later, due to declining profitability, the company filed for bankruptcy.
Inadmissible under Article 11: It could not be maintained that the industrial action taken by the trade union against the applicant limited the latter's negative freedom of association, since the applicant could have avoided joining an association by agreeing to sign the collective agreement. The industrial action pursued a legitimate aim and given the wide margin of appreciation in this area the lack of intervention by the Swedish authorities against the industrial action did not affect the applicant's negative freedom of association. The circumstances of the case did not give rise to a positive obligation for the State: manifestly ill-founded.
Admissible under Article 6(1).

Article 6(1) [criminal]

APPLICABILITY
Applicability of Article 6 to a 10% tax adjustment: *inadmissible*.

<u>MOREL - France</u> (N° 54559/00)
Decision 3.6.2003 [Section II]

The tax authorities served value added tax reminders tax on the applicant, together with interest for late payment, and, pursuant to Article 1728 § 1 of the General Tax Code, a surcharge of 10%. The applicant complains of the length of the ensuing tax proceedings.

Inadmissible under Article 6(1): The Court recalls that tax proceedings do not concern "civil rights and obligations" (cf. the *Ferrazzini* judgment, ECHR 2001-VII). In the present case, the Court considers that the tax proceedings did not resolve a "criminal charge". Article 1728 § 1 of the General Tax Code applies to all citizens in their capacity as taxpayers, requires certain conduct of them and imposes a surcharge to enforce that requirement. The purpose of the surcharge is to prevent the recurrence of similar acts. It is based on a general rule whose purpose is both preventive and punitive. Owing to its rate of 10%, the surcharge is relatively insignificant; and in the present case, as it amounted to a total of FRF4,450, it is a long way from assuming the "considerable extent" of the sums on which the Court based its finding in the *Bendenoun* judgment of 24 February 1994 that the case was "criminal" in nature: incompatible *ratione materiae*.

FAIR HEARING
Conviction on appeal by prosecution, on the basis of an assessment of the evidence by the Supreme Court, without hearing the accused in person: *violation*.

SIGURÞÓR ARNARSSON - Iceland (Nº 44671/98)
Judgment 15.7.2003 [Section II]

Facts: The applicant was charged in connection with the death of another man during a brawl in a night-club. The District Court, after hearing both the co-accused and a number of witnesses, whose accounts varied greatly, acquitted the applicant, considering that it had not been established that he had kicked the deceased on the head. The prosecution appealed. The Supreme Court, after hearing the prosecution and the applicant's lawyer, but without hearing the applicant himself or any witnesses, convicted the applicant and sentenced him to two years and three months' imprisonment. It relied on transcripts of the proceedings before the District Court and the documents submitted in those proceedings.
Law: Article 6(1) – The issue to be determined was whether the Supreme Court's omission to take oral statements from the applicant and witnesses before overturning his acquittal was incompatible with his right to a fair and public hearing. The fact that the Supreme Court was empowered to overturn an acquittal by the District Court without hearing the accused and witnesses in person did not itself infringe that right but it had to be considered whether, in the light of the Supreme Court's role and the nature of the issues to be decided, there had been a violation in the particular circumstances of the case. The Supreme Court had full jurisdiction to examine questions of law and fact and the issues to be determined by it in deciding on the applicant's criminal liability were predominantly factual in nature. Having regard to what was at stake for the applicant, those issues could not have been examined properly without a direct assessment of the evidence given by him in person and by certain witnesses. Moreover, in the light of domestic law, the applicant could reasonably have expected the Supreme Court to summon him and the witnesses to give oral evidence if it were minded to overturn his acquittal on the basis of a different assessment of the evidence. Having regard to the entirety of the proceedings, there were no special features to justify the failure of the Supreme Court to hear the applicant and witnesses directly. Moreover, the Supreme Court was under a duty to take positive measures to that effect.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 8,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

FAIR TRIAL

Non-disclosure by prosecution, on ground of public interest, of material potentially relevant to defence of entrapment: *violation*.

EDWARDS and LEWIS - United Kingdom (Nº 39647/98 and Nº 40461/98)
Judgment 22.7.2003 [Section IV]

Facts: The first applicant was convicted of drugs offences after being arrested in the company of an undercover police officer. As the applicant was the only person charged with an offence, he suspects that the other participants were also undercover officers or informers acting on police instructions. Prior to his trial, the prosecution gave notice to the defence that an *ex parte* application had been made to withhold evidence. The judge, who considered the material in the absence of the defence, concluded that it would not assist the defence and that there were genuine public interest grounds for withholding it. This ruling was confirmed by the trial judge after hearing submissions on behalf of the defence. The trial judge also refused a request to exclude the evidence of the undercover officer on the ground that the applicant had been entrapped into committing the offence. The applicant's appeal against his conviction was refused by the Court of Appeal, which examined the undisclosed material.
The second applicant, who was convicted of supplying counterfeit banknotes, also claimed that he had been entrapped by undercover police officers or informers. The judge, having heard an *ex parte* application by the prosecution to withhold evidence on grounds of public interest immunity, refused to order disclosure. He also refused to exclude the evidence of police undercover agents. As a result, the applicant pleaded guilty.
Law: Article 6(1) – The requirements of a fair trial preclude the use of evidence obtained as a result of police incitement. While in English law entrapment does not constitute a substantive defence, it places the judge under a duty either to stay the proceedings as an abuse of process or to exclude any evidence obtained by entrapment. It was not possible for the Court to determine whether there had been entrapment, contrary to Article 6, in the present cases, since the relevant information had not been disclosed. It was therefore essential for the Court to examine the procedure whereby the plea of entrapment was determined in each case, to ensure that the rights of the defence had been adequately protected. Article 6 requires, in addition to respect for adversarial proceedings and equality of arms, that the prosecution disclose to the defence all material evidence. That entitlement is not absolute, but only such measures restricting the rights of the defence as are strictly necessary are permissible. Moreover, any difficulties caused to the defence must be sufficiently counterbalanced by the procedures followed, which must, as far as possible, comply with the requirements of adversarial proceedings and equality of arms and incorporate adequate safeguards. In the case of *Jasper* (judgment of 16 February 2000), the Court had considered that it was sufficient to comply with Article 6 that the trial judge, with full knowledge of the issues in the trial, had carried out the balancing exercise between the public interest and the rights of the defence. However, it was material that the withheld evidence had not formed part of the prosecution case and had never been put to the jury. In the present case, in contrast, the undisclosed evidence related or may have related to an issue of fact decided by the trial judge. The applications to exclude evidence on the basis of entrapment were of determinative importance, since their success would have led to the prosecutions being discontinued, and the undisclosed evidence may have related to facts connected with these applications. The non-disclosure made it impossible for the defence to argue the case for entrapment in full. Moreover, the judges who rejected the submissions on entrapment had already seen prosecution evidence which may have been relevant to that issue. In these circumstances, the procedure followed did not comply with the requirements of adversarial proceedings and equality of arms and did not incorporate adequate safeguards to protect the interests of the accused.
Conclusion: violation (unanimously).

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made awards in respect of costs and expenses.

ARTICLE 7

NULLA POENA SINE LEGE

Serving of prison sentence longer than that applicable as a result of sentence imposed and the remission to which the applicant was entitled: *no violation*.

GRAVA - Italy (N° 43522/98)
Judgment 10.7.2003 [Section I]
(see Article 5(1)(a), above).

ARTICLE 8

PRIVATE LIFE

Compulsory gynaecological examination of applicant's wife while in custody: *violation*.

Y.F. - Turkey (Nº 24209/94)
Judgment 22.7.2003 [Section IV]

Facts: The applicant and his wife were taken into police custody on suspicion of aiding and abetting the PKK. The applicant's wife was held in custody for four days, during which she was allegedly subjected to ill-treatment. She was examined by a doctor, who found no signs of ill-treatment, and then taken to a gynaecologist for a further examination at the request of the police. Despite her refusal, she was forced to undergo an examination. The doctor reported that there was no evidence of recent sexual intercourse. The applicant's wife lodged a complaint about the forced gynaecological examination. Three police officers were prosecuted but were acquitted on the ground that they had had no intention of degrading or humiliating the applicant's wife but had wished to protect themselves against possible allegations of rape.
Law: Article 8 – The Government had not contested the right of the applicant to bring a complaint on behalf of his wife and in that connection it was open to him, as a close relative of the victim, to complain about the alleged violation of her rights, in particular having regard to her vulnerable position. A compulsory medical intervention, even of minor importance, constitutes an interference with the right to respect for private life and in the circumstances of the case the applicant's wife could not be expected to resist submitting to the examination in view of her vulnerability in the hands of the authorities, who exercised full control over her during her detention. There had therefore been an interference by a public authority with her right to respect for private life. The Government had not argued that the interference was "in accordance with the law" at the relevant time and indeed under domestic law any interference with a person's physical integrity is prohibited except in the case of medical necessity and in the circumstances defined by law. Moreover, in the course of the preliminary investigation, a detainee may only be examined at the request of a public prosecutor. However, the Government had not demonstrated the existence of medical necessity or the circumstances defined by law and had not suggested that a request had been made by the public prosecutor. While the medical examination of detainees can provide a significant safeguard against false accusations of sexual ill-treatment, any interference with

physical integrity must be prescribed by law and have the consent of the person concerned. In the present case, the interference was not in accordance with the law.
Conclusion: violation (unanimously).
Article 41 – The Court awarded 4,000 euros to be paid to the applicant to be held for his wife. It also made an award in respect of costs and expenses.

PRIVATE LIFE
Noise nuisance from night flights: *no violation*.

HATTON and others - United Kingdom (Nº 36022/97)
Judgment 8.7.2003 [Grand Chamber]

Facts: The applicants, who all live or lived in the vicinity of Heathrow airport, complain that from 1993 the level of noise from aircraft taking off and landing during the night increased substantially, as a result of which they and their families experienced considerable sleep disturbance. Prior to 1993, night flights at Heathrow had been regulated by a limitation on the number of take-offs and landings. However, a study published in 1992 in the context of a government review of restrictions on night flights had found that very few people were at risk of substantial sleep disturbance. The Government had then published a Consultation Paper, in response to which a considerable number of responses from airlines and trade associations with an interest in air travel had emphasised the economic importance of night flights. In 1993, a quota system was introduced with the stated aim of reducing noise at three London airports, including Heathrow. Under the scheme, each type of aircraft was assigned a "quota count" depending on its noise level and aircraft movements had to be kept within the permitted maximum number of points, the aim being to encourage the use of quieter aircraft. Additional restrictions applied during the "night quota period" between 11.30 p.m. and 6 a.m. In a supplement to a further Consultation Paper published in 1995, it was stated that the scheme allowed more noise than had been experienced in 1988, contrary to Government policy, but after a further review of reports on aircraft noise and sleep disturbance the scheme was kept in force. In judicial review proceedings brought by several local authorities, the Court of Appeal considered that adequate reasons and sufficient justification had been given for the conclusion that it was reasonable, on balance, to run the risk of diminishing to some degree the ability of local people to sleep at night, because of the other countervailing considerations. The House of Lords refused leave to appeal.
Law: Article 8 – In a case involving State decisions affecting environmental issues, there were two aspects to the inquiry to be carried out by the Court: firstly, an assessment of the merits of the decision to ensure its compatibility with Article 8 and secondly, scrutiny of the decision-making process to ensure that due weight had been accorded to the individual's interests. In relation to the substantive aspect, the State had to be allowed a wide margin of appreciation and in the present case the conflicting views of the parties as to the extent of that margin could be reconciled only by reference to the context of the particular case. In connection with the procedural element, the Court had to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account and the procedural safeguards available.
The Court had no doubt that the implementation of the 1993 scheme was susceptible of adversely affecting the quality of the applicants' private lives and the scope for their enjoyment of the amenities of their homes and thus their rights under Article 8. While the applicants had not submitted any evidence in support of the degree of discomfort suffered, the Government admitted, and it was evident from the 1992 sleep study, that sensitivity to noise included a subjective element, with a small minority of people being more susceptible to sleep disturbance. The Court could not, therefore, accept that the applicants had not been considerably affected.
It was clear that the disturbances were not caused by State organs but emanated from the activities of private operators. It might be argued that the 1993 scheme constituted a direct

interference by the State but the State's responsibility in environmental issues might also arise from a failure to regulate private industry in a manner securing proper respect for rights under Article 8. Since broadly similar principles apply, it was not necessary to decide into which category the present case fell, the question being whether a fair balance had been struck between the competing interests of the individuals and of the community as a whole.
The applicants did not claim that the policy was unlawful or that any flights had breached the applicable regulations. Moreover, it was legitimate for the Government to take the economic interests of the country into account in shaping its policy. Environmental protection should be taken into consideration by Governments and by the Court but it would not be appropriate for the Court to adopt a special approach in that respect by reference to a special status of environmental human rights. The 1993 scheme was a general measure not specifically addressed to the applicants and while it had obvious consequences for them it did not intrude into an aspect of private life in a manner comparable to, for example, criminal measures relating to sexual conduct. Rather, the normal rule applicable to general policy decisions seemed to be pertinent and the Court's supervisory function was limited to reviewing whether or not a fair balance had been struck. In that respect, the Court could not make any firm findings as to whether the scheme had actually led to a deterioration in the noise climate but it found no indication that the decision to introduce a quota system was as such incompatible with Article 8.
Whether the right balance had been struck in the implementation of the scheme depended on the relative weight to be given to the competing interests and in that context the authorities were entitled to rely on the available statistical data. The very purpose of the scheme was to keep noise disturbance at an acceptable level and it was also acknowledged that the measures had to be kept under constant review. Moreover, it was reasonable to assume that night flights contributed to a certain extent to the general economy. The scheme eventually put in place was stricter than that envisaged in the Consultation Paper and the Government had not only resisted calls for more liberal regulation but had introduced additional restrictions. A further relevant factor was the availability of measures to mitigate the effects of aircraft noise, a number of which had been taken. Moreover, it was also significant that the individuals had the possibility of moving elsewhere without financial loss, the applicants not having contested the Government's assertion that house prices had not been adversely affected by night noise.
Finally, with regard to the procedural aspect of the case, while a governmental decision-making process concerning complex issues of environmental and economic policy necessarily had to involve appropriate investigations and studies, this did not mean that decisions could only be taken if comprehensive and measurable data were available in relation to each and every aspect of the matter. It was relevant that the Government had consistently monitored the situation and the 1993 scheme in particular had been preceded by a series of investigations and studies. Moreover, the applicants had access to the Consultation Paper and it was open to them to make representations.
In the circumstances, the authorities had not overstepped their margin of appreciation by failing to strike a fair balance and there had not been any fundamental flaws in the preparation of the 1993 scheme.
Conclusion: no violation (12 votes to 5).
Article 13 – As the complaint under Article 8 had been declared admissible and indeed the Chamber had found a violation in its judgment, it had to be accepted that the claim under Article 8 was an arguable one. While judicial review proceedings were capable of establishing that the 1993 scheme was unlawful, it was clear that the scope of review by the domestic courts was limited to the classic English public law concepts, such as irrationality, unlawfulness and patent unreasonableness, and did not at the time allow consideration of whether the increase in night flights under the 1993 scheme represented a justifiable limitation on the right to respect for the private and family lives or the homes of those who lived in the vicinity of Heathrow airport. In these circumstances, the scope of review was not sufficient to comply with Article 13.
Conclusion: violation (16 votes to 1).

Article 41 – The Court considered that the finding of a violation was in itself sufficient just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs and expenses.

PRIVATE LIFE
Refusal to return identity card on release from detention on remand: *violation*.

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Judgment 24.7.2003 [Section III]

Facts: Criminal proceedings were instituted against the applicants, twin sisters, in 1993. The first applicant was arrested in August 1995 and detained on remand. Her identity card ("internal passport") was withdrawn and put in the case file. She was released in December 1997 but re-detained in March 1999, when the second applicant was also arrested following the resumption of the proceedings against her. Each of the applicants was subsequently released and re-detained on several occasions until their convictions were quashed in April 2002. The authorities had refused to return the first applicant's identity card until October 1999, as a result of which she encountered difficulties in everyday life. In particular, she claims that she was refused employment, free medical care, installation of a telephone and registration of her marriage. Moreover, an administrative fine was imposed on her when she was unable to produce her identity card.
Law: Article 5(1) and (3) – The applicants were both detained on four occasions, for periods totalling approximately 4 years 4 months (including just over 2 years after the entry into force of the Convention in respect of Russia) and 1 year 6½ months respectively. It was necessary to examine not only whether the total periods were reasonable but also whether the repetitive nature of the detention complied with Article 5(3). The reasons provided by the domestic courts appeared insufficient, the available decisions being remarkably terse and lacking any detailed examination of the applicants' respective situations. The repeated re-detention of the applicants was not, therefore, based on sufficiently reasoned decisions.
Conclusion: violation (unanimously).
Article 6(1) – The proceedings against the first applicant had lasted in total approximately 9 years 2 months (including almost 4 years within the Court's jurisdiction *ratione temporis*), from which a period of 6½ months during which she had absconded had to be excluded, giving a total period be taken into consideration of 3 years, 4 months and 19 days. The proceedings against the second applicant had lasted almost 7 years 7 months (including almost 4 years within the Court's jurisdiction), from which two periods during which she had absconded had to be excluded, giving a total period to be taken into consideration of almost 2 years 6 months. There were periods of inactivity on the part of the domestic courts for which no justification had been provided.
Conclusion: violation (unanimously).
Article 8 – While the first applicant had not substantiated any concrete event since entry into force of the Convention in respect of Russia which would constitute, at least arguably, disrespect for her private life, the interference in her private life allegedly flowed not from an instantaneous act but from a number of everyday inconveniences taken in their entirety, which lasted until October 1999. The Court had temporal jurisdiction at least in that respect. It was established that in everyday life Russian citizens often have to prove their identity, even when performing certain mundane tasks. Moreover, the internal passport is required for more crucial needs such as finding employment and obtaining medical care. The deprivation of the applicant's passport therefore constituted a continuing interference with the right to respect for her private life. Domestic law provides that the passport must be returned when an individual is released from detention on remand and the Government had not shown that the failure to return it when she was released from detention on remand had any basis in law.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants 3,500 euros and 2,000 euros respectively in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

PRIVATE LIFE
Covert filming of suspect at police station for identification purposes: *violation*.

PERRY - United Kingdom (Nº 63737/00)
Judgment 17.7.2003 [Section III]

Facts: The applicant, suspected of a series of robberies, failed to attend several identification parades. A senior police officer then gave permission for him to be filmed covertly. The police arranged for the applicant to be taken to a police station for the purposes of identification. The applicant again refused to participate in an identification parade but while he was waiting in a communal area he was filmed on closed circuit television, which had been adjusted to obtain a clear view of him. A video-tape was compiled, with footage of eleven volunteers and the applicant, and shown to a number of witnesses, two of whom identified the applicant as the perpetrator of certain robberies. At the applicant's trial, the judge refused an application to exclude the video evidence, although he recognised that the police had not fully complied with the Code of Practice. The applicant was convicted and his appeal was dismissed.
Law: Article 8 – The normal use of security cameras, whether in a public street or on premises such as shopping centres or police stations where they serve a legitimate and foreseeable purpose, does not in itself raise an issue under Article 8. In the present case, however, the police had regulated the security camera to obtain clear footage of the applicant and had included the footage in a montage shown to witnesses for the purposes of identifying him. The video was also shown during the public trial. Whether or not the applicant was aware of the camera, there was no indication that he had any expectation that he was being filmed for identification purposes. The ploy adopted by the police went beyond the normal or expected use of security cameras and the permanent recording of the footage and its inclusion in a montage for further use could therefore be regarded as the processing or collecting of personal data about the applicant. Moreover, the footage had not been obtained voluntarily or in circumstances where it could reasonably be anticipated that it would be recorded and used for identification purposes. There had therefore been an interference with the right to respect for private life. There was a sufficient basis in domestic law for the interference but the courts had found that the police had failed to comply with the procedures set out in the Code of Practice and in the light of those findings it could only be concluded that the measure as implemented in the present case did not comply with the requirements of domestic law.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 9,500 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

PRIVATE LIFE
Publication by the press, without consent, of photographs of a princess and her companion taken in "non-isolated" locations: *admissible*.

VON HANNOVER - Germany (N° 59320/00)
Decision 8.7.2003 [Section III]

The applicant is the eldest daughter of Prince Rainier III of Monaco. Certain German magazines published series of photographs taken by paparazzi showing the applicant in her everyday life, with her children and her companion. The applicant requested the German courts to ban any fresh publication of the photographs. She relied on her right to the protection of her personality, on the basis of the Basic Law, and on her right to protection of

her family life and her own image, guaranteed by the “Copyright Act”. The applicant was unsuccessful in part before the lower courts, on the ground, in particular, that as an undisputed “figure” of our era (*eine “absolute” Person der Zeigeschichte*), she had to put up with such photographs taken in public places being published without her consent. By judgment of 19 December 1995, the Federal Court of Justice granted the applicant’s application in part and banned any fresh publication of the photographs showing her with her companion in the courtyard of a restaurant, on the ground that the photographs infringed her right to respect for her private life. According to the Federal Court, even an indisputable “figure” of our era was entitled to respect for her family life, which was not restricted to her home but also encompassed the publication of photographs. However, outside the home, such a person could rely on protection of her private sphere only if she had retired to an isolated place (*in eine örtliche Abgeschiedenheit*) where it was objectively apparent to everyone that she wished to be alone and where, believing herself to be safe from prying eyes, she displayed in a given situation conduct which she would not have displayed had she been in a public place. There was therefore an unlawful breach of the protection of the private sphere when photographs were published which had been taken surreptitiously and/or which caught unawares a person who had retired to an isolated place. However, the Federal Court dismissed the remainder of the application, on the ground that as an indisputable “figure” of our era, the applicant had to put up with the publication of photographs where she appeared in a public place, even if they depicted scenes of her daily life rather than showing her carrying out official functions. The public had a lawful interest in knowing where the applicant was staying and how she acted in public. In December 1999, the Constitutional Court allowed the applicant’s appeal in part, holding that the photographs showing the applicant in public places in the company of her children failed to observe her right to protection of her personality and her right to the protection of her family. The Constitutional Court upheld the grounds on which the Federal Court had dismissed the remainder of the application. The applicant brought two further actions. She was unsuccessful, notably in application of the principles set out in the judgment of the Federal Court of December 1995 and in the leading judgment of the Constitutional Court of December 1999.
Admissible under Article 8: The dispute relating to the three photographs showing the applicant in the company of her children was closed when the parties reached a settlement during the domestic proceedings; those photographs therefore no longer form the subject-matter of the application. The Government consider that the applicant’s complaint relating to the protection of her family life is incompatible *ratione materiae*, since none of the other photographs to which the application relates depicts the applicant with members of her family. The Court decided to join that question to the merits of the application.

PRIVATE LIFE
Reading out at trial of transcripts of telephone conversations intercepted in the context of criminal proceedings and subsequent release into the public domain: *violation*.

CRAXI - Italy (Nº 25337/94)
Judgment 17.7.2003 [Section I]

Facts: The applicant, a former Prime Minister of Italy, was committed for trial in June 1994 on charges of corruption. He had absconded to Tunisia. In September 1995 the Milan District Court authorised the interception his telephone calls between Tunisia and Italy. The prosecutor filed the transcripts with the registry and asked for them to be admitted in evidence. The same day, he read out extracts of the conversations at a court hearing. The transcripts were made available to the parties immediately afterwards. Extracts from a number of intercepted conversations were subsequently reproduced in the press, although no one admitted to having divulged them. The court admitted some of the transcripts in evidence. The applicant was convicted.

Law: Article 8 – The reading out and subsequent disclosure to the press constituted interferences with the right to respect for private life and correspondence.
(a) disclosure: Reporting on court proceedings is perfectly consonant with the requirement under Article 6 that hearings be public. The media have the task of imparting information and ideas and the public has a right to receive them, especially when a public figure is involved. However, public interest in receiving information only covers facts connected with the criminal charges brought against the accused. In the present case, some of the conversations published in the press were of a strictly private nature and had little or no connection with the criminal charges. Their publication by the press did not, therefore, correspond to a pressing social need and the interference was not proportionate. However, the question arose whether the responsibility of the State was engaged, since the publication was made by private newspapers and it had not been suggested that these were in some way under the control of the public authorities. The Court found it established that the source of the information was the transcripts deposited with the District Court's registry. The public prosecutor had not chosen to release them into the public domain, since under domestic law the deposit of a document in the registry does not render it accessible to the public, but only to the parties. In these circumstances, the divulgence of the conversations was not a direct consequence of an act of the public prosecutor but was likely to have been caused by a malfunction of the registry or by the press obtaining the information from one of the parties to the proceedings or their lawyers. In that respect, it was necessary to ascertain whether the authorities had taken the necessary steps to ensure effective protection of the applicant's rights by making available appropriate safeguards and carrying out an effective enquiry. The authorities had, however, failed in these obligations.
Conclusion: violation (6 votes to 1).
(b) reading out at trial: The aim of the procedural requirements in the Code of Criminal Procedure was to provide the parties and the judge with an opportunity to select the interceptions which were of no relevance and whose disclosure could have adversely interfered with the accused's right to respect for private life and correspondence. They therefore constituted a substantial safeguard. Nothing in the District Court's order explained why these guarantees could not be respected. In these circumstances, the interference was not "in accordance with the law", as the authorities had failed to follow the procedures prescribed by law before allowing the transcripts to be read out.
Conclusion: violation (unanimously).
Article 41 – The Court made awards in respect of non-pecuniary damage to the applicant's heirs.

FAMILY LIFE
Refusal to grant father access to child born out of wedlock: *no violation*.

SAHIN - Germany (Nº 30943/96)
Judgment 8.7.2003 [Grand Chamber]

Facts: The applicant is the father of a child born out of wedlock in 1988. He acknowledged paternity and visited the child until October 1990. Thereafter, the mother prohibited any contact. The applicant's request for a right of access was dismissed by the District Court, with reference to section 1711 of the Civil Code, which at the material time provided that the person having custody of a child born out of wedlock could determine the father's right of access and that a court could only grant the father a right of access if it was in the child's interests. The court considered that while the applicant's request was motivated by a genuine affection for the child, access was not in the child's best interests, on account of the mother's strong opposition. The applicant appealed to the Regional Court, which ordered a psychologist's opinion on whether access was in the child's interests. The expert, after interviewing the applicant, the child and the mother on several occasions, concluded that access was not in the child's interests. She further considered that it would not be advisable

for the child, who was then about 5 years old, to be heard in court. The Regional Court, referring to the tensions between the parents and the risk that visits would interfere with the child's development, dismissed the applicant's appeal. The applicant's constitutional complaint was rejected.
Law: Article 8 – The refusal of access constituted an interference which had a basis in domestic law and pursued the legitimate aims of protecting the "health or morals" and "rights and freedoms" of the child. With regard to the necessity of the interference, the courts had adduced relevant reasons for their decisions to refuse access. As to whether the reasons were also sufficient, the Court could not satisfactorily assess this without determining whether the decision-making process as a whole had provided the applicant with the requisite protection of his interests, which depended on the particular circumstances of the case. The applicant had been able to present his arguments in favour of a right of access and had had access to all relevant information relied on by the courts. The District Court had based its decision on the parents' submissions and witness statements and the Regional Court had in addition obtained an expert report. It would be going too far to say that domestic courts were always required to hear a child in court on the issue of access. This depended on the specific circumstances, having due regard to the age and maturity of the child concerned. In the present case, the child was about 5 years old when the Regional Court gave its decision and, considering the methods applied by the expert and her cautious approach in analysing the child's attitude, the court had not overstepped its margin of appreciation when relying on her findings. There was no cause to doubt the expert's professional competence or the manner in which she had conducted her interviews. The Court was therefore satisfied that the procedural approach of the domestic courts was reasonable in the circumstances and had provided sufficient material to reach a reasoned decision in the particular case. The procedural requirements of Article 8 had therefore been complied with.
Conclusion: no violation (12 votes to 5).
Article 14 in conjunction with Article 8 – The facts fell within the scope of Article 8 and Article 14 was therefore applicable. At the material time, the relevant provisions of domestic law concerning, respectively, parents not having custody of children born in wedlock and fathers of children born out of wedlock contained different standards: the former had a legal right of access which could be restricted or suspended, while the latter's personal contact depended on the agreement of the child's mother or a court decision that access was in the child's interest. It was not necessary to consider whether the former legislation as such had made an unjustifiable distinction; the question was whether its application in the present case had led to an unjustified difference in treatment. In that respect, there were elements distinguishing the case from the *Elsholz* judgment (ECHR 2000-VIII), in which the Court had noted that it could not be said on the facts of the case that a divorced father would have been treated more favourably. In the present case, the courts had found that only special circumstances could justify the assumption that access would have beneficial effects on the child's well-being and, having regard to the fact that the courts were convinced of the genuineness of the applicant's motives, they placed a burden on him which was heavier than the one on divorced fathers. Very weighty reasons have to exist for a difference in treatment between the father of a child born out of wedlock and the father of a child born in wedlock and no such reasons could be discerned in the present case.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 20,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

SOMMERFELD - Germany (Nº 31871/96)
Judgment 8.7.2003 [Grand Chamber]

Facts: The applicant is the father of a child born out of wedlock in 1981. He acknowledged paternity of the child and lived with the child's mother until their separation in 1986, after which the mother prohibited any contact with the child. In 1990 the applicant requested the

District Court to grant him a right of access. The Youth Office advised against access, which it considered would adversely affect the close relationship which the child had established with her step-father. In June 1991, the court heard the child, who stated that she did not wish to have contact with the applicant. In April 1992 it obtained a psychologist's opinion, which was unfavourable to access, and after a hearing in June 1992 at which the child repeated her opposition to access, the applicant withdrew his request. However, he submitted a new request in September 1993. The District Court heard the child, then 13, who confirmed that she did not wish to have contact with the applicant. It dismissed the request, observing that under section 1711 of the Civil Code it could only grant a right of access if it was in the child's best interests. Referring to the statements of the parents and the child, as well as to the opinions of the Youth Office and the psychologist obtained in the earlier proceedings, the court concluded that access would not be in the child's interests. The applicant's appeal was dismissed by the Regional Court and his constitutional complaint was unsuccessful.
Law: Article 8 – The refusal of access constituted an interference which had a basis in domestic law and pursued the legitimate aims of protecting the "health or morals" and "rights and freedoms" of the child. With regard to the necessity of the interference, the courts had adduced relevant reasons for their decisions to refuse access. As to whether the reasons were also sufficient, the Court could not satisfactorily assess this without determining whether the decision-making process as a whole had provided the applicant with the requisite protection of his interests, which depended on the particular circumstances of the case. The applicant had been able to present his arguments in favour of a right of access and had had access to all relevant information relied on by the courts. The District Court had based its decision on the parents' and child's submissions, as well as on material obtained in the earlier proceedings and it would be going too far to say that domestic courts were always required to involve a psychological expert, this issue depending on the specific circumstances, having due regard to the age and maturity of the child concerned. In the present case, the child was 13 when heard by the District Court judge, who had already heard her in the earlier proceedings. Having had the benefit of direct contact with her, the court was well placed to evaluate her statements and establish whether she was able to make up her own mind. On that basis, the court could reasonably reach the conclusion that it was not justified to force the girl to see the applicant against her will. In these circumstances, the Court was not persuaded that the failure to obtain a new psychological opinion constituted a flaw in the proceedings. Having regard to the State's margin of appreciation, the Court was satisfied that the domestic courts' procedural approach was reasonable in the circumstances and had provided sufficient material to reach a reasoned decision in the particular case. The procedural requirements of Article 8 had therefore been complied with.
Conclusion: no violation (14 votes to 3).
Article 14 in conjunction with Article 8 – (a) The Court adopted the same general approach as in *Sahin*, above. In the present case, the domestic courts had held that a decision under section 1711 of the Civil Code depended on the circumstances and when reaching the conclusion that forcing the child to see the applicant against her will could not be justified, they appeared *prima facie* to have applied a test similar to that which would have been applied to a divorced father. Nevertheless, they had explicitly adhered to the standard of whether access was "in the best interest of the child" and in doing so had given decisive weight to the mother's initial prohibition on access and placed a burden on the applicant which was heavier than the one on divorced fathers.
Conclusion: violation (10 votes to 7).
(b) The exclusion by law (former section 63a of the Act on Non-Contentious Proceedings) of the possibility of a further appeal in access proceedings by the father of a child born out of wedlock constituted a difference in treatment which could not be regarded as compatible with the Convention.
Conclusion: violation (unanimously).
Article 14 in conjunction with Article 6(1) – In the light of the above findings, it was unnecessary to examine these complaints separately.

Article 41 – The Court awarded the applicant 20,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

HOME
Denial of access to, use and enjoyment of home in northern Cyprus: *violation*.

DEMADES - Turkey (N° 16219/90)
Judgment 31. 7.2003 [Section III]

Facts: The applicant is a Cypriot national who maintains he is the owner of a plot of land and a house in northern Cyprus. He claims that the house was furnished and regularly used by him and his family, but that since 1974 he has been prevented by the Turkish armed forces from gaining access to, using and enjoying his property.
Law: Article 1 of Protocol No. 1 – The Court's reasoning was similar to those in the case of *Eugenia Michaelidou Developments Ltd and Michael Tymvios*is (see Article 1 of Protocol No.1 below).
Conclusion: violation (6 votes to 1).
Article 8 – An extensive interpretation of the notion of "home" must be applied. Such a notion can include the second house of a person, as in the present case, since it is possible to develop strong emotional ties with the latter. The applicant's house thus qualified as a home within the meaning of Article 8. The restriction of his rights by the Government, purportedly in the interests of security, public safety, prevention of disorder and the protection of the rights of others was not justified, nor was the Government's claim that the notion of "home" could not be applied to a place where one no longer lives. The Court maintained its reasoning in the case of *Cyprus v. Turkey*, where it had already concluded that the complete denial of the right of Greek-Cypriot displaced persons to respect for their homes in northern Cyprus constituted a continuing violation of Article 8.
Conclusion: violation (6 votes to 1).
The Court unanimously found that it was unnecessary to examine whether there had been a violation of Article 13.
Article 41 – The Court reserved the question of just satisfaction.

CORRESPONDENCE
Control of correspondence during excessively lengthy bankrupcy proceedings: *violation.*

LUORDO - Italy (N° 32190/96)
Judgment 17.7.2003 [Section I]
(see Article 1 of Protocol No. 1, below).

ARTICLE 10

FREEDOM OF EXPRESSION
Prohibition on religious advertising on television and radio: *no violation*.

MURPHY - Ireland (Nº 44179/98)
Judgment 10.7.2003 [Section III]

Facts: The applicant is a pastor attached to the Irish Faith Centre, which in 1995 submitted to an independent local radio station for transmission an advertisement publicising the showing of a video with a religious theme. The broadcast was stopped by the Independent Radio and

Television Commission on the basis of section 10(3) of the Radio and Television Act 1988, which prohibits the broadcasting of advertisements for religious or political ends. In judicial review proceedings, the High Court found that the provision was a reasonable limitation on the right to communicate. The Supreme Court dismissed the applicant's appeal, considering that the prohibition was in the public interest and proportionate.

Law: Article 10 – The matter at issue concerned primarily the regulation of the means of expression and not the profession or manifestation of religion and therefore fell to be examined under Article 10 rather than under Article 9. There had clearly been an interference with the right to freedom of expression. The interference was prescribed by law and there was no reason to doubt that the aims of the legislation were public order and safety, together with the protection of the rights of others. As to the necessity of the interference, the exercise of freedom of expression carries duties and responsibilities which, in the context of religious beliefs, include a duty to avoid as far as possible expression that is gratuitously offensive to others. While there is little scope under Article 10 for restrictions on political speech or on debate of questions of public interest, State's enjoy a wider margin of appreciation in relation to matters liable to offend intimate personal convictions in the sphere of morals or, especially, religion. There is no uniform European conception in that respect and the State authorities are in principle in a better position than Court to give an opinion on the necessity of restrictions. It is nevertheless for the Court to give a final ruling on the compatibility of the restriction with the Convention and in that respect its task is to determine whether the reasons given were relevant and sufficient. In the present case, the Government mainly relied on the particular religious sensitivities in Irish society to justify the prohibition. In that connection, Article 10 did not as such envisage that an individual should be protected from exposure to religious views simply because they were not his own but it was not to be excluded that an expression which was not on the face of it offensive could have an offensive impact in certain circumstances. The domestic courts had considered that the Government were entitled to take the view that religious advertising might cause offence and indeed the impugned provision was designed to correspond to such concerns. The prohibition concerned only the audio-visual media and in the Court's view the State was entitled to be particularly wary of the potential for offence in the broadcasting context, such media having a more immediate, invasive and powerful impact. The applicant was free to advertise in the printed media or at public meetings and the prohibition related only to advertising, reflecting a reasonable distinction between purchasing broadcasting time for advertising and coverage of religious matters through programmes. Since advertising tends to have a distinctly partial objective, it cannot be subject to the principle of impartiality applicable to such programmes. There were thus highly relevant reasons justifying the prohibition. As to the sufficiency of the reasons, the Court considered persuasive the Government's argument that a complete or partial relaxation would sit uneasily with the nature and level of religious sensitivities and with the principle of neutrality in broadcasting. Firstly, a provision allowing one religion and not another to advertise would be difficult to justify, while a provision allowing filtering by an authority on a case by case basis of unacceptable religious advertising would be difficult to apply fairly, objectively and coherently. Secondly, it was reasonable for the State to consider it likely that even a limited freedom to advertise would benefit a dominant religion. Thirdly, allowing limited religious advertising would result in unequal consequences for the national and independent broadcasters. Fourthly, the dilution of the provision by a 2001 amendment did not undermine the State's view of religious sensitivities in 1988. Finally, there appeared to be no clear consensus between Contacting States in this field. Given the State's margin of appreciation, relevant and sufficient reasons had been given justifying the interference.

Conclusion: no violation (unanimously).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Prohibition on a series of visits organised by leaders of a political party in a region subject to a state of emergency: *admissible*.

GÜNERİ, KARAKOÇ and DEMOKRASİ BARIŞ PARTİSİ, and ESKİ - Turkey
(N°s 42853/98, 43698/98 and 44291/98)
Decision 8.7.2003 [Section III]

The applicants are certain leading members of the Democracy and Peace Party (DBP) and also that party. Mr Güneri was the President of the Van local branch of the DBP and Mr Eski was a member of the Management Committee of the DBP. Mr Karakoç is the President of the DBP. In early June 1998, the Management Committee of the DBP organised campaigns to visit various towns in the region of South East Turkey. The visits, which included, in particular, open-air meetings, were arranged for the purpose of meeting the population and civil organisations of that region of Turkey. Different versions of the circumstances in which the campaign of visits took place in mid-June were given by the respondent Government and by the applicants. In any event, the planned campaign of visits and demonstrations was unable to take place owing to banning measures imposed by the Prefect of the region subject to a state of emergency, on the basis of Law No. 2395 on the region subject to a state of emergency. The applicants claim that there was no effective remedy in Turkish law whereby they could challenge those measures. They refer to the Turkish origin of a large proportion of the leaders and members of the DBP and complain of discrimination against that party.
Admissible under Articles 10, 11, 13 et 14: Mr Güneri, the leader of the Van local branch, and Mr Eski, a member of the Management Committee of the DBP, complain under Articles 10, 11, 13 and 14 of the Convention about the decree of the Prefect of the region subject to the state of emergency banning the meetings organised by their party. The Court considers that the decree indisputably affected the applicants' rights and that the applicants have a legitimate interest in pleading that the ban infringed the rights on which they rely before the Court. The Government's objection alleging the absence of the capacity of victim must therefore be rejected. The Government contend that Mr Karakoç and the DBP could have brought actions before the administrative courts and that those actions are effective. The Court observes that Legislative Decrees No. 285 on the prefecture of the region subject to a state of emergency and No. 430 provide that no action lies for annulment of acts of the Prefect of the region subject to a state of emergency. The applicants therefore had no remedy capable of providing redress for the situation complained of (cf. the *Çetin and others v. Turkey* judgment of 13 February 2003). Furthermore, the Government have provided no specific example of the way in which the remedies to which it refers operate in cases similar to the applicants'. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

ARTICLE 13

EFFECTIVE REMEDY
Availability of effective remedy in respect of a complaint about the length of court proceedings: *violation*.

HARTMAN - Czech Republic (N° 53341/99)
Judgment 10.7.2003 [Section II]
(see Article 35(1), below).

EFFECTIVE REMEDY
Availability of effective remedy in respect of a complaint about the length of court proceedings: *violation*.

DORAN - Ireland (Nº 50389/99)
Judgment 31.7.2003 [Section III]

Facts: The applicants instituted civil proceedings in July 1991. The proceedings ended in December 1999.
Law: Article 6(1) – The proceedings lasted approximately 8 years and 5 months. The Court did not consider that the case was significantly complex and did not accept the Government's suggestion that the applicants' conduct accounted for the delay in the proceedings. However, it identified a number of delays which were attributable to the competent authorities and which were not justified by the Government's submissions. Consequently, the proceedings had not been determined within a reasonable time.
Conclusion: violation (unanimously).
Article 13 – In the context of excessive length of court proceedings, Article 13 offers an alternative: a remedy will be effective if it can either expedite the proceedings or provide adequate redress for delays that have already occurred. In the present case, the Government had not claimed that there was any specific remedy whereby an individual could complain about the length of proceedings, but had argued that the applicants could at any stage of the proceedings have brought an action based on two unenumerated constitutional rights, namely the principle of constitutional justice and the right to litigate. However, none of the domestic cases relied on stated that these rights include a right to complain about delays in court proceedings attributable to the judicial authorities. Moreover, even assuming that a right to a determination of proceedings within a reasonable time could be considered to be one of the guarantees flowing from the Constitution and that a complaint could be raised at any time, it had not been demonstrated that the remedy was "effective, adequate or accessible". The Government had not referred to any domestic case in which a complaint to a domestic court about delay of the nature at issue in the present case had resulted in the prevention of excessive delay or of its continuation or in damages being awarded for delay which had already occurred. In such circumstances, it had not been shown that a claim based on the constitutional rights to justice and to litigate constituted an effective domestic remedy for excessively long proceedings.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicants 25,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 14

DISCRIMINATION (Article 8)
Refusal to allow homosexual to succeed to deceased cohabitee's tenancy rights: *violation*.

KARNER - Austria (Nº 40016/98)
Judgment 24.7.2003 [Section I]

Facts: The applicant lived in a homosexual relationship with W. in a flat rented by the latter. After W. died, the landlord brought proceedings to terminate the lease. The action was dismissed by the District Court, which considered that the statutory right of family members to succeed to a tenancy extended to homosexual partners. The landlord's appeal was dismissed by the Regional Court. However, the Supreme Court quashed that judgment and terminated the lease, finding that the term "life companion" in section 14(3) of the Rent Act of 1974 did not include same-sex relationships. The applicant subsequently died.
Law: Article 37(1) *in fine* – As there were no heirs wishing to pursue the application, the Government had requested that it be struck off the list. However, while under Article 34 the existence of an individual applicant personally affected by an alleged violation is indispensable for putting the Convention's protection mechanism into motion, that criterion cannot be applied in a mechanical and inflexible way throughout the whole proceedings. As a rule, the existence of persons to whom a claim can be transferred is an important criterion, but it is not the only one. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public policy grounds in the common interest, thereby raising the general standards of human rights protection and extending human rights jurisprudence throughout the Contracting States. The issue in the present case involved an important question of general interest for Austria and other Contracting States and the continued examination of the application would contribute to elucidating, safeguarding and developing the standards of protection under the Convention. Respect for human rights therefore required that the examination of the case be continued.
Article 14 in conjunction with Article 8 – As the applicant's complaint related to the adverse effect of the alleged difference in treatment on the enjoyment of his right to respect for his home, Article 14 was applicable. Differences based on sexual orientation require particularly serious reasons by way of justification. However, the Supreme Court had not argued that there were important reasons for restricting the right to succeed to a tenancy to heterosexual couples but had found that it had not been the intention of the legislature to include protection for homosexual couples, while the Government had submitted that the aim of the provision at issue was the protection of the traditional family unit. The Court accepted that protection of the family in the traditional sense was in principle a weighty and legitimate reason which might justify a difference in treatment. However, it was a rather abstract aim, in pursuit of which a broad variety of concrete measures might be used. Where the margin of appreciation was narrow, as in the present case, the principle of proportionality required not only that the measure was in principle suited to realising the aim but also that it was shown to be necessary to exclude persons living in a homosexual relationship from the scope of the legislation in order to achieve that aim. However, the Government had not advanced any arguments that would allow such a conclusion and had thus failed to offer convincing and weighty reasons justifying the narrow interpretation of the provision.
Conclusion: violation (6 votes to 1).
Article 41 – In the absence of an injured party, no award could be made in respect of pecuniary or non-pecuniary damage. The Court made an award to the applicant's estate in respect of costs and expenses.

DISCRIMINATION (Article 8)
Different treatment of fathers of children born out of wedlock and divorced fathers: *violation*.

SAHIN - Germany (Nº 30943/96)
Judgment 8.7.2003 [Grand Chamber]
(see Article 8, above).

SOMMERFELD - Germany (Nº 31871/96)
Judgment 8.7.2003 [Grand Chamber]
(see Article 8, above).

DISCRIMINATION (Article 8)
Impossibility of keeping maiden name as sole legal surname: *admissible*.

TEKELI ÜNAL - Turkey (N° 29865/96)
Decision 1.7.2003 [Section IV]

The applicant, who was a trainee lawyer when she married in 1990, took her husband's family name, in application of the Civil Code. As she was known by her maiden name for professional purposes, she continued to use that name, in front of her legal family name. The judicial proceedings which she initiated in February 1995 with a view to being authorised to use her maiden name were unsuccessful. In May 1997, the relevant provision of the Civil Code was amended, so that a married woman is now authorised to indicate her maiden name in front of her husband's surnames. However, the applicant now wishes to use her maiden name alone as her legal patronymic. She contends that she is the victim of discrimination by comparison with a married man, since married men use their patronymic after marriage.
Admissible under Article 14 taken with Article 8. The Court rejects the Government's objection of non-exhaustion of domestic remedies, on the ground that the action for rectification of the judgment on which the Government rely was not an effective remedy in this case.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Denial of access to, use and enjoyment of property in northern Cyprus: *communicated*.

NICOLAOU - Turkey (N° 37996/02)
[Section III]

The applicant is a Cypriot national who inherited a house in northern Cyprus from his mother. He became the registered owner of the property in 1999. He contends that he has been prevented from using and enjoying his home since 1974, when he was evicted by the Turkish armed forces.
Communicated under Articles 8 and Article 1 of Protocol No. 1, with a question on exhaustion of the remedy now available as a result of the entry into force of the "Law on

Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus".
Inadmissible under Article 2 of Protocol No. 4.

EFFECTIVE REMEDY (Czech Republic)
Effectiveness of domestic remedies concerning the length of court proceedings: *preliminary objection dismissed.*

<u>HARTMAN - Czech Republic</u> (N° 53341/99)
Judgment 10.7.2003 [Section II]

Facts: In 1992 and 1995, the two applicants, who are of Czech origin, brought three court actions to recover their former assets, which had been confiscated in that country in 1955. The proceedings were completed in 2000 and 2002. Under Czech law, where there is a delay in the proceedings, Law No. 335/1991 provides for a hierarchical appeal before the organs of the judicial system, which may be followed by a constitutional appeal (Law No. 182/1993), based on the right to have a case heard within a reasonable time, as guaranteed by the Charter of Fundamental Rights and Freedoms; Law No. 82/1998 provides for an action for damages against the State in respect of the loss caused by a breach of the obligation to deliver a decision within the period laid down by law.
Law: Preliminary objections: the objection of incompatibility *ratione materiae* was first raised after the decision on the admissibility of the application and is therefore barred. The objection of non-exhaustion of domestic remedies is rejected. The Court observes that the remedies existing in the Czech domestic legal order on which the Government rely (see above) do not satisfy the requirements of Article 35(1) as interpreted in the case-law. The Court considers that there is no real remedy within the meaning of the Convention which effectively allows a litigant to complain of the excessive length of proceedings in the Czech Republic. The Court concludes that there is no adequate and effective remedy to be exhausted at national level for the purposes of Article 35(1) of the Convention as regards the length of proceedings.
Article 6(1) – The Court emphasises what was at stake for the applicants in the proceedings, have regard in particular to their age and their health, and considers that the length of the proceedings, ten years for two levels of jurisdiction, almost five years for one level of jurisdiction and six years and three months for two levels of jurisdiction, each considered as a whole, is excessive.
Conclusion: violation (unanimous).
Article 13 –The Court recalls that in respect of the excessive length of proceedings, a remedy is "effective" for the purposes of Article 13 when it either enables the decision of the courts dealing with the matter to be reached earlier or provides the person concerned with adequate compensation for the delays already established. The Court examines from that aspect the hierarchical appeal provided for by Law No. 335/1991 on the courts and judges, the constitutional appeal as existing in Czech law according to Law No. 182/1993 and the action for compensation available under Law No. 82/1998 on State liability for loss caused in the exercise of public authority, on which the respondent Government rely (see above). The Court concludes that there is no effective remedy in Czech law whereby the applicants could have challenged the duration of the proceedings in issue.
Conclusion: violation (unanimous).
Article 41 – The Court awards each of the two applicants a sum for non-pecuniary damage. It awards them costs and expenses.

ARTICLE 37

Article 37(1)

DEATH OF APPLICANT
Continued examination of application after death of applicant and in the absence of heirs wishing to pursue it.

KARNER - Austria (Nº 40016/98)
Judgment 24.7.2003 [Section I]
(see Article 14, above).

ARTICLE 43

Article 43(2)

The Panel has accepted a request for referral to the Grand Chamber of the following judgment:

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Information Note No. 51).

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. 52):

C. Spa - Italy (Nº 34999/97)
FEGATELLI - Italy (Nº 39735/98)
DEL BEATO - Italy (Nº 41427/98)
L.M. - Italy (Nº 41610/98)
MALESCIA - Italy (Nº 42343/98)
CAPURSO - Italy (Nº 45006/98)
KITOV - Bulgaria (Nº 37104/97)
ANAGNOSTOPOULOS - Greece (N° 54589/00)
Judgments 3.4.2003 [Section I]

DE SOUSA MARINHO and MARNIHO MEIRELES PINTO - Portugal (Nº 50775/99)
ESTEVES - Portugal (Nº 53534/99)
Judgments 3.4.2003 [Section III]

ZANGUROPOL - Romania (Nº 29959/96)
JUSSY - France (Nº 42277/98)
SIMKÓ - Hungary (Nº 42961/98)
PERHIRIN and others - France (revision) (Nº 44081/98)
MOCIE - France (Nº 46096/99)
RICHART-LUNA - France (Nº 48566/99)
JULIEN - France (Nº 50331/99)
JARREAU - France (Nº 50975/99)
Judgments 8.4.2003 [Section II]

SLOVÁK - Slovakia (Nº 57983/00)
Judgment 8.4.2003 [Section IV]

PAPASTAVROU and others - Greece (Nº 46372/99)
BAKKER - Austria (Nº 43454/98)
KONTI-ARVANITI - Greece (Nº 53401/99)
Judgments 10.4.2003 [Section I]

MEHEMI - France (N° 53470/99)
HUTT-CLAUSS - France (Nº 44482/98)
SIGURÐSSON - Iceland (Nº 39731/98)
Judgments 10.4.2003 [Section III]

JARLAN - France (Nº 62274/00)
Judgment 15.4.2003 [Section II]

P.M. - Italy (Nº 34998/97)
NIGIOTTI and MORI - Italy (Nº 35024/97)
LOSANNO and VANACORE - Italy (Nº 36149/97)
MASSIMO ROSA - Italy (Nº 36249/97)
ZANETTI - Italy (Nº 36377/97)
PANNOCCHIA - Italy (Nº 37008/97)
DE BENEDETTIS - Italy (Nº 37117/97)
APONTE - Italy (Nº 38011/97)
PEPE - Italy (Nº 46161/99)
FABI - Italy (Nº 48145/99)
PULCINI - Italy (Nº 59539/00)
KOLB and others - Austria (Nº 35021/97 and Nº 45774/99)
Judgments 17.4.2003 [Section I]

YILMAZ - Germany (Nº 52853/99)
Judgment 17.4.2003 [Section III]

WILLEKENS - Belgium (Nº 50859/99)
GILLET - Belgium (Nº 52229/99)
Judgments 24.4.2003 [Section I]

YVON - France (N° 44962/98)
Judgment 24.4.2003 [Section III]

McGLINCHEY and others - United Kingdom (Nº 50390/99)
Judgment 29.4.2003 [Section II]

BARILLOT - France (Nº 49533/99)
LOYEN and others - France (Nº 55926/00)
POPA and others - Romania (Nº 31172/96)
GHITESCU - Romania (Nº 32915/96)
ARMANDO GRASSO - Italy (revision) (Nº 48411/99)
Judgments 29.4.2003 [Section II]

SEVGİ ERDOĞAN - Turkey (Nº 28492/95)
NAZARENKO - Ukraine (Nº 39483/98)
DANKEVICH - Ukraine (Nº 40679/98)
ALIEV - Ukraine (Nº 41220/98)
KHOKHLICH - Ukraine (Nº 41707/98)
IGLESIAS GIL and A.U.I. - Spain (N° 56673/00)
Judgments 29.4.2003 [Section IV]

COSTA RIBEIRO - Portugal (Nº 54926/00)
Judgment 30.4.2003 [Section III]

Article 44(2)(c)

On 9 July 2003 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

WITTEK - Germany (Nº 37290/97)
Judgment 12.12.2002 [Section III]

SOBAŃSKI - Poland (Nº 40694/98)
Judgment 21.1.2003 [Section IV]

TSIRIKAKIS - Greece (just satisfaction) (Nº 46355/99)
Judgment 23.1.2003 [Section I]

ZEYNEP AVCI - Turkey (Nº 37021/97)
Judgment 6.2.2003 [Section III]

BUFFERNE - France (Nº 54367/00)
Judgment 11.2.2003 [Section II]

DJAVIT AN - Turkey (Nº 20652/92)
Judgment 20.2.2003 [Section III]

APPIETTO - France (Nº 56927/00)
TÍMÁR - Hungary (Nº 36186/97)
Judgments 25.2.2003 [Section II]

JANTNER - Slovakia (Nº 39050/97)
Judgment 4.3.2003 [Section IV]

GREGORIOU - Cyprus (Nº 62242/00)
Judgment 25.3.2003 [Section II]

DACTYLIDI - Greece (Nº 52903/99)
Judgment 27.3.2003 [Section I]

G.G. - Italy (Nº 43580/98)
Judgment 3.4.2003 [Section I]

SCHIETTECATTE - France (Nº 49198/99)
Judgment 8.4.2003 [Section II]

ARTICLE 46

EXECUTION OF JUDGMENT

Scope of re-examination of criminal case following a judgment of the Court: *inadmissible*.

LYONS - United Kingdom (N° 15227/03)
Decision 8 7.2003 [Section IV]

In September 2000, in the case of *IJL, GMR and AKP v. the United Kingdom*, the Court found that the respondent Government had breached the applicants' right not to incriminate themselves, as a significant part of the prosecution case against them had been based on transcripts of interviews they had given under statutory compulsion. Following the Court's judgment, the applicants succeeded in having their case referred to the Court of Appeal. They contended that the Human Rights Act should be applied retroactively, enabling them to challenge the fairness of their trial on Convention grounds. They also contended that to give effect to the Court's judgment and afford *restitutio in integrum* for the breach which had been identified, the safety of the initial conviction should be reconsidered. The Court of Appeal dismissed the appeal, holding that the interests of justice would not seem to require a retrial and that such an obligation was neither expressly nor implicitly required by Article 46. The applicants obtained leave to appeal. The House of Lords dismissed the appeal, holding that the conviction had been safe since it had been based on the law which was in force at the time. The amendments which had been made to the law following the Court's judgment (thereafter prohibiting the use at trial of statements obtained under compulsory powers) did not apply retroactively. The applicants claim a new breach of Article 6(1) as a result of the refusal to exclude from the review of safety the evidence given under compulsion.
Inadmissible under Articles 6 and 13: The safety review proceedings did not give rise to a new criminal charge, which essentially rests on the applicants' view that refusal to quash their convictions was a failure to give effect to the findings of the Court. The Court does not have jurisdiction to direct a State to open a new trial or quash a conviction. The judgment of the Court had been given effect to by amending the legislation and awarding the applicants costs and expenses. In addition, other possible measures to afford *restitutio in integrum* were a matter of on-going discussion between the Committee of Ministers and the respondent Government. Subject to monitoring by the Committee of Ministers, States remain free to choose the means by which they discharge their legal obligations under Article 46: incompatible *ratione materiae*.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Denial of access to, use and enjoyment of property in northern Cyprus: *violation*.

EUGENIA MICHAELIDOU DEVELOPMENTS LTD and MICHAEL TYMVIOS - Turkey (N° 16163/90)
Judgment 31. 7.2003 [Section III]

Facts: The first applicant is a company registered in Cyprus and the second is a Cypriot national, who is also the director and principal shareholder of the company. The company owned a substantial amount of property in the "Turkish Republic of Northern Cyprus" (TRNC), which it subsequently transferred by way of a gift to the second applicant. Both applicants claim that they are prevented by the Turkish armed forces from having access to their property, using it and enjoying its possession.
Law: Government's preliminary objections – The Court cannot take into account the additional preliminary objection of non-exhaustion of domestic remedies as a result of the entry into force of the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus" since it was raised after the application was declared admissible. The objection that the applicants' lack the status of victims was also dismissed as the Court considered it artificial to regard each as an applicant in its/his own right, there being no doubt that the second applicant, who is a physical person, can be regarded as a victim of the alleged violation.
Article 1 of Protocol No. 1 – Given the similarities, many considerations in this case were examined in the light of the *Loizidou* and *Cyprus v Turkey* judgments. As in the former, the Government claimed their responsibility could not be engaged, but the Court rejected their argument. The basic question was to consider whether the denial of access to the applicant's property was justified or not. The Turkish Government claimed that the political situation in Cyprus should be taken into consideration, as well as the fact that disputes over property rights could only be solved via inter-communal talks. However, the Court concluded that the continued refusal of access to the property, without any compensation, constituted an unjustified interference with the applicants' peaceful enjoyment of possessions.
Conclusion: violation (6 votes to 1).
The Court unanimously found that it was unnecessary to examine whether there had been a violation of Articles 1, 8 and 14 in conjunction with Article 1 of Protocol 1.
Article 41 – The Court reserved the question of just satisfaction.

PEACEFUL ENJOYMENT OF POSSESSIONS
Delay by the authorities in reimbursing overpaid tax: *violation*.

BUFFALO SRL IN LIQUIDATION - Italy (N° 38746/97)
Judgment 3.7.2007 [Section I]

Facts: The applicant company, which was on the register of companies in voluntary liquidation, was the holder of tax credits *vis-à-vis* the State. Italian companies are required to pay to the State advance income tax calculated on the actual taxable amounts for the previous year. Where the sums levied by the authorities by way of advance tax are higher than the amount of tax payable, the company becomes the holder of a tax credit *vis-à-vis* the State. The applicant company was the holder of a number of tax credits which had been unpaid by the State for several years. Reimbursement was made, but belatedly. Thus, the tax credits,

plus interest, dating from 1985, 1987, 1989 and 1991 were paid in 1998, and those for 1986 and 1988 were paid in 1997.
Law: (a) Applicability of Article 1 of Protocol No. 1: In Italian law, the authorities are required to make automatic reimbursement of an income tax credit after receiving the tax return, which is equivalent to a claim for reimbursement. Consequently, the applicant was the holder of an economic interest recognised in domestic law from the time when the tax authorities had received the tax return until the time when reimbursement was made – notwithstanding any possible discrepancy between the amount to which the taxpayer considers he is entitled according to his calculations and the amount recognised as payable to him. This interest constituted a "possession" within the meaning of Article 1 of Protocol No. 1.
(b) Compliance with Article 1 of Protocol No. 1: The delay in making reimbursement constituted an interference with the applicant's right to the peaceful enjoyment of its possessions. In principle, the imposition of taxes is an interference which is justified under the second paragraph of Article 1 of Protocol No. 1. However, reimbursement of credits on the part of the State must be subject to review by the Court. The Court must ascertain whether a fair balance was maintained between the requirements of the general interest of the community and the demands of the protection of the fundamental rights of the individual. From that aspect, the levying of taxes must not impose an excessive burden on the individual or fundamentally affect his financial situation. In this case, it is necessary to take into account the procedures for reimbursement provided for in national law and the way in which they were applied in the applicant's case. The time taken to make the reimbursements, between five and ten years, is attributable to the State and is unjustified. That delay was not compensated by the payment of interest, since owing to the large amount of the sums in question, the fact that they were not available for an extended period had a definite and considerable impact on the applicant's financial situation. The delay gave rise to a situation of uncertainty with regard to the time when the credits would be liquidated, which the applicant had to endure for an unreasonable period. Nor did the applicant have any possibility of rectifying that situation. In those circumstances, the interference with the applicant's possessions was disproportionate.
Conclusion: violation (unanimous).
Article 41 – The Court reserves the question of just satisfaction.

DEPRIVATION OF PROPERTY
Presumption of benefit accruing from expropriation: *violation*.

EFSTATHIOU AND MICHAÏLIDIS & CIE MOTEL AMERIKA - Greece
(N° 55794/00)
Judgment 10.7.2003 [Section I]

Facts: Part of the applicants' property was expropriated for the purpose of the development of sections of a national highway. Law No. 653/1977 establishes an irrebuttable presumption that owners of adjoining properties whose buildings face on to the road derive an advantage from the development and must therefore participate in the costs of the expropriation. Consequently, the authorities took the view that the applicants had derived an advantage of such a kind as to provide compensation for part of the expropriated assets, for which they would therefore receive no compensation. The applicants requested the Court of Appeal to fix the definitive compensation for the expropriation. In addition to the definitive compensation for the expropriated parts of the land concerned, the applicants were awarded special compensation for the parts not expropriated. The latter compensation is paid in the event of substantial depreciation in the value of the unexpropriated part of the land.
Law: Article 1 of Protocol No. 1 – The Greek courts now accept that the presumption that the added value derived from road development work constitutes adequate sufficient is no longer irrebuttable (the Court had held that the irrebuttable presumption was contrary to Article 1 of

Protocol No. 1 in the *Katikaridis and others* and *Tsomotsos and others* judgments of 1996). However, the presumption still exists and the courts which determine the amount of the compensation do not take account of the type of work carried out or of whether or not it benefits the owners. Under the current system, owners who consider that they have been harmed by the work are required to bring further proceedings before the civil courts in order to prove that their property was genuinely placed at a disadvantage. There is a risk that these proceedings will be prolonged and will take place in addition to the proceedings for determination of the amount of compensation, which already consists of three stages. The Court considers that where an individual's possessions are expropriated, there must be a procedure which guarantees a global assessment of the consequences of an expropriation, namely the award of compensation according to the value of the expropriated asset, a determination of the persons entitled to the compensation and any other question relating to the expropriation. Furthermore, it is inconsistent to award special compensation for the unexpropriated part of the land, as in the present case, and at the same time to state that the value of the property is enhanced by the work. In short, to maintain the presumption and to require the owners affected to bring additional proceedings in order to be able to receive compensation properly related to the value of the expropriated asset upsets the fair balance between individual rights and the requirements of general interest.
Conclusion: violation (unanimous).
Article 41 – The Court considers that the finding of a violation is sufficient compensation for the non-pecuniary harm and awards the two applicants jointly €20,000 for pecuniary harm.

KONSTANTOPOLOUS AE and others - Greece (Nº 58634/00)
INTEROLIVA ABEE - Greece (Nº 58642/00)
Judgments 10.7.2003 [Section I]

These cases raise the same issue as in the Efstathiou judgment above.

CONTROL THE USE OF PROPERTY
Bankrupt deprived of the administration of his property during excessively lengthy bankruptcy proceedings: *violation*.

LUORDO - Italy (N° 32190/96)
Judgment 17.7.2003 [Section I]

Facts: In 1982 a court declared that the company of which the applicant was a member was insolvent and in 1984 it declared the applicant bankrupt. Pursuant to the law on insolvency, the management and disposal of the assets then in existence were entrusted to a receiver, who was also empowered to bring or defend legal actions relating to the assets. Correspondence addressed to the applicant was to be delivered to the receiver, who could peruse it and retain any correspondence relating to financial interests. The applicant was unable to leave his place of residence without leave of the judge. In 1995, the receiver informed the judge that all the assets included in the insolvency had been sold, with the exception of the applicant's house; attempts to sell the house in 1985, 1991 and 1995 had proved unsuccessful. The house was sold in 1996. In July 1999, the judge closed the insolvency proceedings; following the sale of the applicant's house, the applicant had sufficient means to honour his debts.
Law: Article 1 of Protocol No. 1 – The prohibition on the bankrupt's managing his assets and disposing of them, which constitutes a control of the use of property, is intended to ensure that the creditors of the insolvency are paid. Having regard, in particular, to the legitimate aim thus pursued, and in accordance with the general interest and the margin of appreciation permitted by the second paragraph of Article 1 of Protocol No. 1, that restriction of the right to the peaceful enjoyment of the bankrupt's possessions cannot be criticised in itself. However, such a system entails the risk that the bankrupt will be required to bear an excessive

burden as regards the possibility of disposing of his assets, owing in particular to the length of the proceedings. In this case, the insolvency proceedings were spread out over fourteen years and eight months. There were periods of inaction attributable to the insolvency authorities and periods of inactivity on the part of the courts; for his part, the applicant did not by his conduct decisively slow down the insolvency proceedings. The Court therefore considers that the restriction of the applicant's right to the peaceful enjoyment of his assets was not justified throughout the proceedings, since although in principle the deprivation of the management and disposal of a bankrupt's assets is a measure necessary for the attainment of the aim pursued, the necessity for that measure becomes less pressing with time.
Conclusion: violation (unanimous).
Article 8 – The fact that all the applicant's correspondence was delivered to the receiver after the applicant had been declared bankrupt is not in itself a disproportionate interference. However, this system of monitoring correspondence entails the risk of imposing an excessive burden on the bankrupt as regards his right to respect for his correspondence, owing in particular to the length of proceedings, which, as in this case, were spread out over more than fourteen years. That period is not attributable, as the Government assert, to the failure of the attempts to sell the applicant's house at auction or to the applicant's conduct. The Court therefore considers that the restriction of the applicant's right to respect for his correspondence was not justified throughout the proceedings, since although in principle that control was a measure necessary for the attainment of the aim pursued – to ensure that the applicant's assets were not diverted to the detriment of his creditors – the necessity for that measure becomes less pressing with time.
Conclusion: violation (unanimous).
Article 6(1) – The restriction of the bankrupt's capacity to bring and defend court proceedings is intended to confer on the bankrupt's receiver the capacity to represent him in court proceedings relating to the bankrupt's assets. The Court considers that this restriction is designed to protect the bankrupt's creditors. However, the consequences for the bankrupt must be proportionate to the legitimate aim thus pursued. The declaration of bankruptcy prevented the bankrupt from bringing or defending court proceedings in disputes involving issues relating to his assets. This restriction of the applicant's right of access to a court cannot be criticised in itself. However, such a system entails the risk that the applicant will be required to bear an excessive burden as regards the right of access to a court, notably in the light of the length of proceedings which, as in this case, were stretched over fourteen years and eight months. The Court reiterates that this duration is not attributable to the failure of the attempts to sell the applicant's house at auction or to the applicant's conduct. The Court therefore considers that the restriction of the right of access to a court was not justified throughout the proceedings, since although in principle the restriction of the right to bring and defend legal proceedings is a measure necessary for the attainment of the aim pursued, the necessity for that measure becomes less pressing with time.
Conclusion: violation (unanimous).
Article 2 of Protocol No. 4 – The ban on the applicant's leaving his place of residence is intended to ensure that the bankrupt can be contacted in order to facilitate the proceedings, either in the interests of the bankrupt's creditors or with the legitimate aim of protecting the rights of others. This restriction on freedom of movement is in itself necessary in a democratic society, unless it imposes an excessive burden on the applicant as regards his freedom to move without restriction, in particular as a consequence of the length of the proceedings. The Court refers to its previous reasoning on the duration of fourteen years and eight months of the proceedings and considers that the restriction of the applicant's freedom of movement was not justified throughout those proceedings. Although in principle the ban on the bankrupt's leaving his place of residence is a measure necessary for the attainment of the aim pursued, the necessity for that measure becomes less pressing with time.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant the sum of €31,000 for non-pecuniary harm.
N.B. The complaint relating to the length of the proceedings had been declared inadmissible in accordance with the Pinto Act.

ARTICLE 3 OF PROTOCOL No. 3

VOTE
Convicted prisoner prohibited from voting in parliamentary and local elections: *admissible*.

<u>HIRST - United Kingdom</u> (N° 74025/01)
Decision 8.7.2003 [Section IV]

The applicant is serving a life sentence for manslaughter. Since he was barred by the Representation of the People Act from voting in parliamentary or local elections, he issued proceedings in the High Court claiming that the legislation was incompatible with the Convention. The application was heard by the Divisional Court, which acknowledged that whilst it was not easy to articulate the legitimate aim of disqualifying a convicted prisoner from voting while serving a sentence, the view had been taken that for the period in custody prisoners have forfeited their right and lost the moral authority to vote. The applicant's claim was rejected. Two consecutive applications for leave to appeal were refused. The applicant also complains that the same appeal judge considered the two applications and, furthermore, that he was less senior than the judge who delivered the initial judgement.
Inadmissible under Article 6(1) and Article 13: The complaints under Article 6 are incompatible *ratione materiae* as this provision does not apply to electoral rights.
Admissible under Article 3 of Protocol 1, taken alone and in conjunction with Article, 14 and Article 10.

ARTICLE 2 OF PROTOCOL No. 4

FREEDOM OF MOVEMENT
Prohibition on leaving place of residence during excessively lengthy bankruptcy proceedings: *violation*.

<u>LUORDO - Italy</u> (N° 32190/96)
Judgment 17.7.2003 [Section I]
(see Article 1 of Protocol No. 1, above).

Other judgments delivered in July 2003

Article 3

ESEN - Turkey (Nº 29484/95)
YAZ - Turkey (Nº 29485/95)
Judgments 22.7.2003 [Section II]

ill-treatment in police custody – violation.

SÜNNETÇI - Turkey (Nº 28632/95)
Judgment 22.7.2003 [Section II]

TOKTAŞ - Turkey (Nº 38382/97)
Judgment 29.7.2003 [Section IV]

alleged ill-treatment in custody – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment).

ÖZGÜR KILIÇ - Turkey (Nº 42591/98)
Judgment 22.7.2003 [Section II]

alleged ill-treatment in custody and in detention on remand – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment).

Articles 3, 5 and 13

RAMAZAN SARI - Turkey (Nº 41926/98)
Judgment 31.7.2003 [Section I]

alleged ill-treatment in police custody, unlawfulness of detention and lack of effective remedy – friendly settlement.

Article 3 and 5(3)

AYŞE TEPE - Turkey (Nº 29422/95)
Judgment 22.7.2003 [Section IV]

ill-treatment in police custody and failure to bring detainee promptly before a judge – violation.

Articles 3, 6(1), 8, 13 and 14

<u>ČERVEŇÁKOVÁ - Czech Republic</u> (Nº 40226/98)
Judgment 29.7.2003 [Section II]

eviction of Slovak nationals from their homes, length of civil proceedings and lack of effective remedy in that respect, and alleged discrimination – friendly settlement.

Articles 3, 8 and 13 and Article 1 of Protocol No. 1

<u>YÖYLER - Turkey</u> (Nº 26973/95)
Judgment 24.7.2003 [Section IV (former composition)]

destruction of possessions and home by security and lack of effective remedy – violation.

Articles 3 and 13

<u>Z.W. - United Kingdom</u> (Nº 34962/97)
Judgment 29.7.2003 [Section II]

alleged failure of social services to protect children from sexual abuse by foster parents and lack of effective remedy – friendly settlement.

Article 5(1)(e)

<u>KEPENEROV - Bulgaria</u> (Nº 39269/98)
Judgment 31.7.2003 [Section I]

absence of legal basis for ordering of detention by a prosecutor for the purposes of psychiatric assessment – violation (cf. *Varbanov* judgment of 5 October 2000).

Article 5(3) and (4) and Article 6(1)

HRISTOV - Bulgaria (Nº 35436/97)
MIHOV - Bulgaria (Nº 35519/97)
AL AKIDI - Bulgaria (Nº 35825/97)
Judgments 31.7.2003 [Section I]

length of detention on remand, scope of court review of lawfulness of detention and non-communication of prosecutor's submissions (*Hristov* and *Mihov*) and length of criminal proceedings (*Hristov* and *Al Akidi*) – violation (cf. *Ilijkov* judgment of 26 July 2001).

Article 6(1)

MULTIPLEX - Croatia (Nº 58112/00)
KASTELIC - Croatia (Nº 60533/00)
Judgments 10.7.2003 [Section I]

legislation staying all proceedings relating to claims for damages resulting from, respectively, acts of members of the army or police during the war in Croatia and terrorist acts – violation.

SUOMINEN - Finland (Nº 37801/97)
Judgment 1.7.2003 [Section IV]

failure of court to give reasons for refusal to admit evidence proposed by a party – violation.

THE FORTUM CORPORATION - Finland (Nº 32559/96)
Judgment 15.7.2003 [Section IV]

non-disclosure to party of documents submitted to the Supreme Administrative Court in proceedings relating to competition law – violation.

FONTAINE and BERTIN - France (Nº 38410/97 and Nº 40373/98)
Judgment 8.7.2003 [Section II]

shorter time-limit for unrepresented appellants in Court of Cassation proceedings to submit pleadings and absence of opportunity for them to make oral submissions – no violation; failure to communicate observations of *avocat général*, non-disclosure of the report of the *conseiller rapporteur*, and presence of *avocat général* during Court of Cassation's deliberations – violation.

DE BIAGI - San Marino (Nº 36451/97)
Judgment 15.7.2003 [Section II]

lack of oral hearing in criminal proceedings – violation (cf. *Stefanelli* judgment of 8 February 2000).

FORCELLINI - San Marino (Nº 34657/97)
Judgment 15.7.2003 [Section II]

lack of oral hearing in criminal appeal – violation (cf. *Tierce, Marra and Gabrielli* judgment of 25 July 2000).

CIĄGADLAK - Poland (Nº 45288/99)
Judgment 1.7.2003 [Section IV]

R.W. - Poland (Nº 41033/98)
SITAREK - Poland (Nº 42078/98)
Judgments 15.72003 [Section IV]

BISKUPSKA - Poland (Nº 39597/98)
Judgment 22.7.2003 [Section IV]

SCHMIDTOVA - Czech Republic (Nº 48568/99)
Judgment 22.7.2003 [Section II]

PRICE and LOWE - United Kingdom (Nº 43186/98 and Nº 43186/98)
Judgment 29.7.2003 [Section II]

HERBOLZHEIMER - Germany (Nº 57249/00)
Judgment 31.7.2003 [Section III]

length of civil proceedings – violation.

FARINHA MARTINS - Portugal (Nº 53795/00)
Judgment 10.7.2003 [Section III]

length of proceedings relating to employment – violation.

E.R. - France (Nº 50344/99)
Judgment 15.7.2003 [Section II]

length of paternity proceedings – violation.

BERLIN - Luxembourg (Nº 44978/98)
Judgment 15.7.2003 [Section IV]

length of divorce proceedings – violation.

WYSOCKA-CYSARZ - Poland (Nº 61888/00)
SKÓRA - Poland (Nº 67162/01)
Judgments 1.7.2003 [Section IV]

GODLESWKI - Poland (Nº 53551/99)
PAWLINKOWSKA - Poland (Nº 45957/99)
Judgments 8.7.2003 [Section IV]

DRAGAN - Poland (Nº 58780/00)
NIZIUK - Poland (Nº 64120/00)
Judgments 15.7.2003 [Section IV]

NOWAKOWSKI - Poland (Nº 71009/01)
M.M. and E.M.M. - Poland (Nº 76158/01)
MIKULSKA - Poland (Nº 8205/02)
Judgments 29.7.2003 [Section IV]

length of civil proceedings – friendly settlement.

J.T. - Hungary (Nº 44608/98)
Judgment 22.7.2003 [Section II]

length of civil proceedings – struck out (death of applicant)

BEUMER - Netherlands (Nº 48086/99)
Judgment 29.7.2003 [Section II]

length of proceedings relating to a claim to a disability benefit – violation.

SANTONI - France (Nº 49580/99)
Judgment 29.7.2003 [Section II]

length of civil proceedings, including preliminary procedure before administrative bodies – violation.

ZUILI - France (Nº 46820/99)
Judgment 22.7.2003 [Section II]

SOCIEDADE AGRICOLA DO PERAL and another - Portugal (Nº 55340/00)
Judgment 31.7.2003 [Section III]

length of administrative proceedings – violation.

LOYEN - France (Nº 43543/98)
Judgment 29.7.2003 [Section II]

length of administrative proceedings in respect of which the European Commission of Human Rights had previously found a violation – friendly settlement.

YURTDAŞ and INCI - Turkey (Nº 40999/98)
Judgment 10.7.2003 [Section III]

independence and impartiality of State Security Court – violation.

YUSUF KAYA - Turkey (Nº 28018/95)
Judgment 24.7.2003 [Section III]

independence and impartiality of State Security Court – friendly settlement.

MELLORS - United Kingdom (Nº 57836/00)
Judgment 17.7.2003 [Section III]

length of criminal proceedings, in particular the appeal proceedings, in Scotland – violation.

COSTE - France (Nº 50632/99)
Judgment 22.7.2003 [Section II]

length of criminal proceedings – violation.

POILLY - France (Nº 68155/01)
Judgment 29.7.2003 [Section II]

length of administrative proceedings concerning tax penalties – violation.

Article 6(1) and (3)

HYVÖNEN - Finland (Nº 52529/99)
Judgment 22.7.2003 [Section IV]

refusal to allow lawyer to represent accused who did not appear in person, purportedly on account of old age and dementia – friendly settlement.

Articles 6(1) and 13

GRANATA - France (no. 2) (Nº 51434/99)
Judgment 15.7.2003 [Section II]

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

Article 6(1) and Article 1 of Protocol No. 1

LORENZA CONTI - Italy (Nº 45356/99)
Judgment 10.7.2003 [Section I]

ONORATO RICCI - Italy (Nº 32385/96)
D'OTTAVI - Italy (Nº 33113/96)

TRAINO - Italy (Nº 33692/96)
DEL SOLE - Italy (Nº 36254/97)
ROSATI - Italy (Nº 55725/00)
Judgments 17.7.2003 [Section I]

MISCIOSCIA - Italy (Nº 58408/00)
GATTI and others - Italy (Nº 59454/00)
DE GENNARO - Italy (Nº 59634/00)
MARIGLIANO - Italy (Nº 60388/00)
FEZIA and others - Italy (Nº 60464/00)
TEMPESTI CHIESI and CHIESI - Italy (Nº 62000/00)
LA PAGLIA - Italy (Nº 62020/00)
FERRONI ROSSI - Italy (Nº 63408/00)
KRASZEWSKI - Italy (Nº 64151/00)
BATTISTONI - Italy (Nº 66920/01)
Judgments 31.7.2003 [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 – violation.

BLASETTI - Italy (Nº 48728/99)
NUTI - Italy (Nº 60662/00)
ROGAI - Italy (Nº 60661/00)
Judgments 3.7.2003 [Section I]

L.B. and others - Italy (Nº 46471/99)
Judgment 31.7.2003 [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.

ERDEI and WOLF - Romania (Nº 38445/97)
Judgment 15.7.2003 [Section II]

DICKMANN - Romania (Nº 36017/97)
Judgment 22.7.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation and deprivation of property – violation.

LIUBA - Romania (Nº 31166/96)
Judgment 29.7.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation and deprivation of property – striking out.

Article 8

BENHABBA - France (Nº 53441/99)
Judgment 10.7.2003 [Section III]

expulsion of foreign national after lengthy period of residence – no violation.

MOKRANI - France (Nº 52206/99)
Judgment 15.7.2003 [Section IV]

threatened expulsion of second-generation immigrant – violation.

Articles 8, 13 and 14

BROWN - United Kingdom (Nº 52770/99)
Judgment 29.7.2003 [Section IV]

dismissal of homosexual from the armed forces following investigation into private life, availability of effective remedy and alleged discrimination – friendly settlement.

Article 1 of Protocol No. 1

SA CABINET DIOT and SA GRAS SAVOYE - France (Nº 49217/99 and Nº 49218/99)
Judgment 22.7.2003 [Section II]

refusal to reimburse VAT payments made on the basis of legislation incompatible with a directive of the European Communities – violation (cf. *SA Dangeville* judgment of 16 April 2002).

GÜR - Turkey (Nº 35983/97)
Judgment 24.7.2003 [Section III]

delay in payment of compensation for expropriation – friendly settlement.

Revision

GUERRERA and FUSCO - Italy (Nº 40601/98)
Judgment 31.7.2003 [Section I]

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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