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POSITIVE OBLIGATIONS
Extrajudicial execution of tens of citizens by security forces and subsequent failure to conduct an effective investigation: *violations*.

MUSAYEV and Others - Russia (Nos. 57941/00, 58699/00 and 60403/00)
Judgment 26.7.2007 [Section I]

Facts: In February 2000 Russian forces conducted an operation in Novye Alde in the suburbs of Grozny (Chechnya). Numerous houses were burnt down and, according to the applicants, at least 60 civilians were killed. The first applicant witnessed the killing of nine people, including seven members of his family. He was himself threatened and forced at gunpoint to lie on the ground in the snow. Soon after the events the first applicant and other relatives of the victims set up a coordination group. It was a month before the prosecutor's office opened an investigation. Thereafter, despite the efforts of the coordination group and a substantial body of evidence pointing to the implication of members of the special police forces, no progress was made in the investigation. The detachments involved in the security operation were never identified and no one was charged with any crime. The investigation was adjourned and subsequently resumed several times.
Following the communication to the Government of the applications the Court requested a copy of the investigation file. The Government replied that no access could be granted to information of a military nature or to witnesses' personal data and that the file would have to be inspected *in situ*. The Court reiterated its request for the file once it had declared the applications admissible. In April 2006 the Government submitted a copy of the file but, with one exception, without full copies of the witness statements. The domestic investigation was still pending at the date of the Court's decision.

Law: Article 2 – (a) The Court was entitled to draw inferences from the Government's failure to produce the full investigation file without any explanation. The question of whether or not documents were relevant could not be unilaterally decided by the Government. The material before the Court established that the applicants' relatives had been killed by servicemen and that their deaths could thus be attributed to the State. No explanation had been forthcoming from the Government as to the circumstances of the deaths, nor had any ground of justification for the use of lethal force by their agents been advanced. It was thus irrelevant whether the killings had occurred "with the knowledge or on the orders" of the federal authorities.
Conclusion: substantive violation (unanimously).

(b) It had taken a month for the investigation to be opened. That in itself was an unacceptable delay in a case involving dozens of civilian deaths. Thereafter, there had been a series of serious unexplained delays and failures. Yet the investigation body's task had by no means been impossible. The killings had taken place in broad daylight and a large number of witnesses had seen the killers face to face. The injuries and the circumstances of the deaths had been established with sufficient certainty and the bullets and cartridges that had been found should have enabled individual weapons to be identified. Information about the alleged involvement of particular military units had been available within a month of the incident. Despite all that, and notwithstanding the domestic and international public outcry caused by the cold-blooded execution of more than 50 civilians, no meaningful result whatsoever had been achieved almost six years later. The astonishing ineffectiveness of the prosecuting authorities could only be qualified as acquiescence in the events.
Conclusion: procedural violation (unanimously).

Article 3 – Only the first applicant made a complaint under this provision. The Court noted that relatives of persons killed by the authorities in violation of Article 2 did not normally have a valid

claim under Article 3. However, the situation of the first applicant went beyond that. He had witnessed the extrajudicial execution of several of his relatives and neighbours, his own life had been threatened and he had been forced at gunpoint to lie on the ground. The shock he had thus experienced, coupled with the authorities' wholly inadequate and inefficient response to the events had caused him suffering beyond the threshold of inhuman and degrading treatment proscribed by Article 3.
Conclusion: violation in respect of the first applicant (unanimously).

Article 13 (in conjunction with Article 2) – The State had failed in its obligation to afford an effective remedy as the deficiencies in the criminal investigation had undermined the effectiveness of any other remedy, including civil remedies, that might have existed.
Conclusion: violation (unanimously).

Articles 34 and 38 § 1 (a) – The applicants had alleged that the Government had failed to discharge their obligations under these provisions on account both of their refusal to submit the documents from the investigation file at the communication stage and of their general handling of the Court's request. The Court noted that Article 38 § 1 (a) was applicable to cases that had been declared admissible. It could not find that the failure to submit the information requested prior to the admissibility decision had prejudiced the establishment of the facts or otherwise prevented the proper examination of the case. Although the Government had not submitted the entire file even after the case had been declared admissible, the inferences drawn by the Court from the missing documents made it unnecessary to draw any separate conclusions under Article 38 § 1 (a). As to Article 34, there was no indication that there had been any hindrance of the applicants' right of individual petition,
Conclusion: no separate examination necessary (unanimously).

Article 41 – EUR 8,000 to the third applicant for pecuniary damage (loss of financial support). Awards to each of the applicants for non-pecuniary damage ranging from EUR 5,000 (in respect of the Article 3 violation) to EUR 40,000.

POSITIVE OBLIGATIONS
Investigative failings resulting in persons responsible for a fatal shooting following the intervention of an off-duty police officer not being called upon to furnish an explanation: *violation*.

CELNIKU - Greece (N° 21449/04)
Judgment 5.7.2007 [Section I]

Facts: A man ("the victim") was fatally wounded during an attempted arrest by police. An off-duty police officer was informed of the victim's whereabouts. He alerted a senior officer in charge of a group of three officers who, after obtaining leave to apprehend the victim and the other four Albanian nationals with him and asking the officer not to take part in the operation, entered the café where the suspects were located and ordered them to raise their arms in the air and get down on the ground. The victim refused to comply and attempted to slide his hand inside his raincoat. The off-duty policeman moved towards him with his firearm in his hand. The victim kicked him in the right hand, and a shot went off which struck the victim in the head, killing him. The policeman searched the victim's body. An administrative inquiry was started immediately in order to ascertain whether the use of force had been justified.

Law: Article 2 – *As to the victim's death*: The fatal shot had been fired as a result of the sudden reaction by the victim, consisting in kicking the police officer's hand in which the weapon was held. Accordingly, the use of lethal force was not attributable to the respondent State.
Conclusion: no violation (unanimously).

The police operation: The policeman, who had not been on duty, had of his own initiative laid himself open to the actions of the victim resulting in the fatal shot being fired. The lack of clear rules could

explain why the officer had acted hastily. Hence, while the victim's death could not in itself be attributed to the domestic authorities, the way in which the operation had been conducted showed that the authorities had not taken appropriate care to ensure that any risk to the persons present at the scene of the incident was kept to a minimum. They had therefore demonstrated negligence in their course of action.
Conclusion: violation (unanimously).

As to the inquiry into the victim's death: The authorities had shown their willingness to conduct an administrative inquiry in order to determine whether the use of force had been justified. However, there were problems as to the independence, objectivity and effectiveness of the inquiry. The police officers in charge of conducting it were attached to the same police headquarters as the officers involved. In addition, the person who had fired the fatal shot was the person least qualified to search the victim's body. Furthermore, the police officers involved had not preserved the scene. They had acted in the absence of clear rules and instructions as to the procedures to be followed in such a situation.
Conclusion: violation (unanimously).

Inadmissible under Article 14 – It was not established beyond any reasonable doubt that the actions of the State agents had been motivated by racial prejudice against persons of Albanian origin: *manifestly ill-founded*.

Article 41 – EUR 4,010 for pecuniary damage and EUR 20,000 for non-pecuniary damage.

POSITIVE OBLIGATIONS
Death allegedly caused by an assault a month earlier by a State agent although no causal link was established at the trial: *violation (procedural)*.

FEYZİ YILDIRIM – Turkey (N° 40074/98)
Judgment 19.7.2007 [Section III]

Facts: Law enforcement officers patrolling under the command of Captain A. after shots had been fired at a gendarmerie post in the middle of the night entered the applicant's father's shop. The parties disagree about the allegation that the captain violently beat him, but it is not disputed that he hurled abuse at him for being open so late. Less than a month later the applicant's 67-year-old father was admitted to hospital in a comatose state brought on by an aggravated intracranial haemorrhage. He died four days later. According to the forensic expert who performed the autopsy, a trauma suffered "about a month earlier" could well have been the cause of death. Following a complaint lodged by the applicant and his mother, a charge of manslaughter was brought against Captain A., now a major, in the Assize Court. Referring to the medical opinions, the Assize Court rejected the charge, there being no irrefutable proof that the alleged beating was the cause of death. The major was found guilty of using offensive and defamatory language towards the victim. He was sentenced to the minimum sentence of three months' imprisonment, and suspended from duty for two and a half months. The prison sentence was reduced for good behaviour, then commuted to a fine of about EUR 0.68, and suspended.

Law: The applicant believed that his father had died as a result of blows inflicted by Captain A.; the respondent Government argued that it was impossible to establish a causal link between the death and the alleged blows. Having been charged with manslaughter, the accused had been convicted of offensive language.
For the Court the main legal question here concerned Article 2, which, read as a whole, also covered situations where the use of force might result, as an unintended outcome, in the deprivation of life. The ground on which the accused had been acquitted of manslaughter was the lack of concordant, compelling proof, particularly medical proof, that the allegations of assault were true. On the basis of the available evidence it was not possible for the Court to establish, beyond reasonable doubt, that the

applicant's father had died as a result of blows inflicted by A. However, the difficulties experienced by the Court and the domestic courts in establishing the exact circumstances of the death were largely due to the following instances of negligence during the judicial proceedings:
The complaint the victim had lodged the day after the incident was not passed on by the competent authority (the superior officer of the alleged aggressor) to the judicial authorities, preventing the timely conduct of investigations to verify the allegations and detect any early signs of dangerous cranial injury; instead, in disregard of his legal obligations, the alleged aggressor's superior officer organised a meeting between the officer concerned and the victim with a view to conciliation.
The autopsy report had been incomplete, dooming to failure any effort to establish a link between the alleged violence and the victim's death. The accused had been promoted during the investigation and maintained in post and in his military duties during the investigation and for six months after he was charged.
Three witnesses had withdrawn their testimonies in court, having previously given incriminating evidence to the prosecutor, only subsequently to confirm their initial testimonies, explaining that the accused had threatened them. Their vulnerability entitled them to protection. Article 2 could be considered, under its procedural aspect, to require criminal proceedings to be organised in such a way that the interests of witnesses testifying against agents of the State were not unduly placed in danger, particularly when the interests in question concerned their lives, liberty or security. No steps had been taken to strike a balance between the interests of the accused and those of the witnesses for the prosecution, whose testimonies had carried no weight, and the Assize Court had shown clemency towards the accused for "good behaviour" without verifying the allegations of threats. That being so, although there had been a trial and Captain A. had been convicted of "ill-treatment", the Court considered that the Turkish criminal justice system as it operated in this case had proved to be far from rigorous and incapable of effectively preventing unlawful acts on the part of agents of the State or of offering appropriate redress for infringements of the principles enshrined in Article 2 of the Convention.
Conclusion: procedural violation of Article 2 (six votes to one). Concurring opinion on the obligation, where necessary, to provide people testifying against agents of the State with special protection.

Article 41 – EUR 15,000 in respect of non-pecuniary damage, i.e. EUR 2,500 for the applicant and EUR 12,500 for the deceased's other heirs.

POSITIVE OBLIGATIONS
Failure to hold effective investigation into racially motivated killing: *violation*.

ANGELOVA and ILIEV - Bulgaria (N° 55523/00)
Judgment 26.7.2007 [Section V]

Facts: The applicants are the mother and brother of a man of Roma origin who was killed in an unprovoked attack by a group of seven teenagers in April 1996. The police made immediate arrests. On questioning the youths, they learnt that the attack had been racially motivated although the intention had been to give the victim a beating, not to kill him. However, one of the group had produced a knife and stabbed the victim, who, according to the autopsy, had died of massive internal bleeding. There was conflicting evidence as to who had wielded the knife. Initially, G.M.G. was singled out by two of the group as the person who had inflicted the knife wounds. He was charged with an aggravated form of murder known as "murder stemming from an act of hooliganism". Four other members of the group were charged with a form of aggravated hooliganism. A month later the two youths who had accused G.M.G. retracted their statements and alleged that another member of the group, N.B., had in fact carried out the stabbings. In June 1996 he was charged with negligent homicide and the charge against G.M.G. was reduced to one of aggravated hooliganism. The pace of the investigation then slowed with occasional investigative steps continuing until June 2001. Thereafter there were no further developments until March 2005 when the prosecutor's office dismissed under the statute of limitations the aggravated hooliganism charges against five members of the group who had been juveniles at the time of the attack. It also dismissed the negligent homicide

charge against N.B. and remitted the case for further investigation with instructions for G.M.G. to be charged with the murder. A hooliganism charge remained in relation to another of the accused, who was an adult at the time of the attack. In April 2005 the applicants and the victim's three sisters filed a request to be joined as civil claimants in the criminal proceedings.
The applicants alleged that the authorities had failed to carry out a prompt, effective and impartial investigation and that the domestic legislation contained no separate criminal offence or penalty for racially motivated murder or serious bodily injury. They further alleged that the authorities had failed to investigate and prosecute a racially motivated violent offence and that the excessive length of the criminal proceedings had resulted in their being denied access to a court to claim damages.

Law: Article 2 – With regard to the length of the proceedings, the Court noted that despite the assailants being identified almost immediately after the attack and the identity of the person who had stabbed the victim being determined with some degree of certainty, no one had been brought to trial over a period of more than 11 years. As a result of the accumulated delays, the proceedings against the majority of the attackers had had to be dismissed under the statute of limitations. The Government had failed to provide convincing explanations for the length of the proceedings. While the investigation was still pending against two of the assailants, it was questionable whether they would ever be brought to trial or convicted. The authorities had thus failed in their obligation to effectively investigate the death promptly, expeditiously and with the required vigour, considering the racial motives of the attack. As to the allegation that the Bulgarian legal system did not afford protection against racially-motivated offences, the Court observed that the authorities had charged the assailants with aggravated offences, which despite not making any direct reference to racist motives nevertheless carried heavier sentences than those envisaged under the domestic racial-hatred legislation. The domestic legislation and lack of increased penalties for racist murder or serious bodily injury had not, therefore, hampered the authorities from conducting an effective investigation.
Conclusion: violation (unanimously).

Article 14 (in conjunction with Article 2) – The racist motives behind the attack had been known to the authorities since a very early stage of the investigation. Their failure to complete the preliminary investigation and bring the culprits to trial expeditiously was, therefore, completely unacceptable. They had also failed to charge the assailants with any racially-motivated offence, despite widespread prejudice and violence against Roma. They had thus failed to make the required distinction between offences that were racially motivated and those that were not. This constituted unjustified treatment that was irreconcilable with Article 14.
Conclusion: violation (unanimously).

Article 6 § 1 – While it was true that, had the applicants brought a civil claim against the youths, the competent civil court would in all likelihood have stayed the proceedings because of the criminal nature of the acts, it would not have been bound by any refusal to act or delay on the part of the prosecuting authorities. Accordingly, it was pure speculation to consider that any civil proceedings would have remained stayed for any length of time: *manifestly ill-founded*.
Conclusion: inadmissible (unanimously).

Article 41 – EUR 15,000 jointly in respect of non-pecuniary damage.

DEATH PENALTY
Impending extradition to the United States of a terrorist suspect, following governmental assurances excluding capital punishment: *communicated*.

AHMED and ASWAT - United Kingdom (N° 24027/07)
[Section IV]

(see Article 3 "Extradition" below).

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Lack of proper medical assistance and abrupt interruption of neurological treatment administered to a remand detainee: *violation*.

PALADI - Moldova (N° 39806/05)
Judgment 10.7.2007 [Section IV]

(see Article 34 "Hinder the exercise of the right of petition" below).

INHUMAN OR DEGRADING TREATMENT
Treatment of Roma suspect in police custody and failure to carry out a proper investigation into his allegations: *violation*.

COBZARU - Romania (N° 48254/99)
Judgment 26.7.2007 [Section III]

(see Article 14 below).

INHUMAN OR DEGRADING TREATMENT
Treatment allegedly endured as "war children" born out of the Nazi "*Lebensborn*" scheme and authorities' subsequent failure to take any remedial measures: *inadmissible*.

THIERMANN and Others - Norway (N° 18712/03)
Decision 8.3.2007 (text adopted in July) [Section I]

The applicants (over 150 altogether) all have a Norwegian mother and a German father and were born during the Second World War. A number of them were registered as children of "*Lebensborn*", a Nazi scheme, introduced by Heinrich Himmler in 1935, to create children who were deemed racially and genetically pure. In 1940-45 some 10-12,000 children were born in Norway with a Norwegian mother and a German father, being referred to as "war children". Various public officials publicly denounced the war children, claiming that they were mentally and genetically defective and potential Nazi sympathisers.
In 1999 seven applicants brought unsuccessful damage proceedings against the State, claiming to have been subjected to various forms of ill-treatment, harassment and discrimination. Many war children had been deprived of their original names and identity, subjected to discrimination, harassment and ill-treatment and left with psychological problems and registered disabled at an early age. Some had been placed in psychiatric institutions without adequate prior expert assessment and several had been refused baptism certificates.
In 2001 a city court ruled that the applicants' compensation claims had been submitted too late. The High Court unanimously upheld the judgment and the Appeals Selection Committee of the Supreme Court refused leave to appeal. A number of the other applicants also brought proceedings which were stayed pending a legally enforceable decision in the case brought by the first seven applicants.

Inadmissible: The Court found no reason to call into doubt the domestic courts' assessment that the claims against the State had fallen within the provisions of the Damage Compensation Act 1969 and section 9 of the Limitation Act 1979 and that the first seven applicants' claims had become time-barred at the latest in 1985, 20 years after the youngest of them had reached the age of 21.The Court nevertheless went on to consider whether there were any special circumstances which might have

absolved the applicants from their normal obligation to exhaust domestic remedies within the applicable statutory time-limits.
In this regard, the Court observed that the individual statements provided by the first group of seven applicants contained harrowing accounts of personal experiences of social ostracism and social exclusion. However, the impugned statements made by certain public officials and the contested political decisions and legislative measures taken by the authorities had essentially predated the entry into force of the Convention with respect to Norway in 1953. Moreover, the alleged experiences of harassment and abuse had consisted essentially of instantaneous acts which, despite their ensuing effects, had not given rise to any possible continuous situation of a violation of the Convention. Against this background the Court found nothing to indicate that since the Convention entered into force in respect of Norway there had been an administrative practice *vis-à-vis war children* consisting of a repetition of acts incompatible with the Convention and an official tolerance by the authorities of the respondent State, of such a nature as to make proceedings futile or ineffective and to render the exhaustion rule inapplicable.
Neither had it been suggested that by the time the disputed 20-year time bar expired in 1985 the applicants had been unaware of the instances of misplacement, ill-treatment, harassment and discrimination to which they had allegedly been subjected. In sum, there was nothing to indicate that the application of the 20-year time bar had entailed an arbitrary limitation on the applicants' right to pursue their compensation claims against the State or that any other special reasons existed which could have dispensed them from the requirement to exhaust domestic remedies. *Non-exhaustion*.

EXTRADITION
Impending extradition to the United States of terrorist suspects, following governmental assurances: *communicated*.

AHMED and ASWAT - United Kingdom (N° 24027/07)
[Section IV]

The applicants, British nationals, are indicted for terrorist offences in the United States. The United States has sought their extradition. In the proceedings before the United Kingdom courts, two diplomatic notes were produced by the US Embassy giving the following assurances: that the death penalty would not be sought; that the applicants would be prosecuted before a Federal Court and not in any other tribunal or court; that they would not be prosecuted before a military commission; and that they would not be designated as enemy combatants. The applicants argued that they would be at real risk of being designated as enemy combatants at the conclusion of the criminal proceedings pending against them. One of the applicants alleged that he would also be at real risk of being subjected to the death penalty, since he could be tried on a superseding indictment. Both applicants invoked a real risk of being subjected to extraordinary rendition to a third country and to 'special administrative measures' involving solitary confinement and restrictions on communication with their legal representatives whilst in detention on remand. Finally, one of the applicants alleged that if extradited there was a real risk of a flagrant denial of justice due to the possible use at his trial of evidence obtained through the coercion of a third party. On the basis of the diplomatic notes, the domestic courts allowed the extraditions to proceed. The applicants appealed unsuccessfully. In June 2007, the Acting President of the European Court granted their request for interim measures under Rule 39 of the Rules of Court, indicating that they should not be extradited until the Court has given due consideration to the matter.
Communicated under Articles 2, 3, 5 and 6 of the Convention.

ARTICLE 6

Article 6 § 1 [civil]

APPLICABILITY
Enforcement of a foreign court's forfeiture order: *Article 6 applicable (civil limb)*.

SACCOCCIA - Austria (Nº 69917/01)
Partial decision 5.7.2007 [Section I]

In 1993, the applicant, a citizen of the United States of America, was convicted of large-scale money laundering by a United States court. In 1997, the US court issued a forfeiture order concerning his assets and a letter Rogatory requesting its enforcement in Austria. In 1998, the Vienna Regional Criminal Court, as an interim measure, ordered the confiscation of the applicant's assets, to approximately EUR 5,8 million, for that purpose. The applicant appealed unsuccessfully. In 2000, without holding a hearing, the Vienna Regional Criminal Court ordered the forfeiture of his assets. The Vienna Court of Appeal, sitting *in camera*, dismissed his appeal.

Article 6 § 1 – *Applicability – Criminal limb*: The proceedings before the Austrian courts relating to the enforcement of the forfeiture order had not involved the determination of a new criminal charge against the applicant, but an examination of whether or not his acts would have been punishable under Austrian law. However, this assessment had been an abstract one and had not related to a determination of his guilt. Such an abstract assessment of criminal liability was also typical for extradition proceedings which according to the Court's established case-law did not involve a "determination of a criminal charge". The proceedings at issue had not been not akin to a sentencing procedure either, since the Austrian courts had had no discretion to determine the amount or the assets to be forfeited. The Court was not convinced by the applicant's argument that the proceedings had gone beyond a mere execution of the forfeiture order. Since the matters relating to the execution of a sentence did not fall under the criminal limb of Article 6, there was no reason for the Court to draw a different conclusion regarding the *exequatur* of a sentence imposed by a foreign court. Article 6 § 1 under its criminal limb was therefore *inapplicable*.

Applicability – Civil limb: the United States court's final forfeiture order had involved a determination of the applicant's civil rights and obligations. The applicant and the Austrian authorities had been in dispute as to whether or not the conditions for its enforcement in Austria had been met. The outcome of the dispute had been decisive for whether or not he could exercise his rights over the assets at issue. It was through the Austrian courts' decisions that the forfeiture order had become effective and that he had been permanently deprived of these assets. Article 6 § 1 had, therefore, applied under its civil limb to the proceedings before the Austrian courts.

Compliance: *Admissible* (lack of a hearing in the proceedings relating to the enforcement of the United States court's forfeiture order in Austria).

Remainder inadmissible (fairness of proceedings): *Inter alia*, the Court found that the Austrian courts had duly satisfied themselves, before authorising its enforcement, that the forfeiture order had not been the result of a flagrant denial of justice. The Court was not called upon to decide in the abstract which level of review had been required from a Convention point of view, since – in any case – domestic law required the Austrian courts to make sure that the decision to be executed had been given in proceedings complying with the principles of Article 6 of the Convention: *manifestly ill-founded*.

Article 7 – In contrast with *Welch v. the United Kingdom* (judgment of 9 February 1995), the forfeiture of the applicant's assets had been foreseen in the relevant laws of the United States at the time of the commission of his offences. The applicant complained in essence that the enforcement of the forfeiture order in Austria had not been foreseeable. This issue had not concerned the penalty itself but its execution. However, Article 7 did not apply to the execution of a penalty: incompatible *ratione materiae*.

Article 1 of Protocol No. 1: *admissible*.

ACCESS TO COURT
Order requiring claimant in a civil action to pay court fees calculated as a percentage of any part of his claim that was disallowed: *violation*.

STANKOV - Bulgaria (N° 68490/01)
Judgment 12.7.2007 [Section V]

Facts: As interpreted by the domestic courts, the State Responsibility for Damage Act 1988 (the Act) requires a plaintiff in proceedings against the State to pay court fees if all or part of his claim is dismissed, the amount payable being 4% of the value of the failed part of the claim. Thus, if a claim is found to be excessive, the plaintiff may end up having to pay more in court fees than he is awarded in damages. There is no provision for judicial discretion and considerations of equity play no role in determining the fees due. The applicant successfully sued the State for unlawful detention and was awarded damages. However, pursuant to the Act he was ordered to pay court fees equal to approximately 90% of the damages award. His appeals to the appellate court and the Court of Cassation were dismissed.

Law: The main issue was whether, as alleged by the applicant, excessive court fees had hampered his right of access to a court. In practical terms, the imposition of a considerable financial burden after the conclusion of the proceedings could act as a restriction on the right to a court. Such a restriction was not compatible with Article 6 § 1 unless it pursued a legitimate aim and was proportionate. It was accepted that the imposition of court fees was an aim compatible with the good administration of justice. As to whether the restriction was proportionate, the Government had not suggested that the applicant's claim for non-pecuniary damage was vexatious, grossly exaggerated or abusive. Moreover, non-pecuniary damage was inherently difficult to assess. The applicant could not, therefore, be criticised for having made the claim he did. The financial burden was particularly significant because the legislation imposed a flat 4% rate with no upper limit and no room for judicial discretion. Further, the fact that claimants were not required to pay the court fees in advance had removed any "cautioning effect". Various procedural solutions used in other member States, such as reducing or waiving court fees in actions in damages against the State or affording the courts a discretion in determining costs, were absent. In sum, the practical difficulties in assessing the likely award under the Act, taken together with the relatively high and wholly inflexible rate of court fees, amounted to a disproportionate restriction on the applicant's right to a court.
Conclusion: violation (unanimously).

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

ACCESS TO COURT
Discontinuance of civil action as a result of failure of impecunious claimants to pay court fees after they were refused legal aid on the grounds that they had obtained legal representation under a contingency-fee arrangement: *violation*.

MEHMET and SUNA YİĞİT - Turkey (N° 52658/99)
Judgment 17.7.2007 [Section II]

Facts: The applicants brought an action in medical negligence against a hospital authority in respect of injuries sustained by their baby daughter. Although they provided evidence that they did not have the means to pay the costs of the proceedings, the administrative court dismissed their application for legal aid on the ground that they already had legal representation under a contingency-fee arrangement. It subsequently discontinued the proceedings when they failed to pay the court fees of approximately EUR 500. That decision was upheld on appeal.

Law: The reason that had been given by the administrative court for refusing legal aid was wholly insufficient. While it was true that the applicants had hired a lawyer to pursue the compensation proceedings, he had explained to the domestic courts that he had not received any payment, but had agreed to accept a certain percentage of any compensation received at the end of the proceedings. Consequently, the requirement for the applicants, who had no source of income, to pay court fees amounting to more than four times the monthly minimum wage at the time could not be considered a proportionate restriction on their right of access to a court.
Conclusion: violation (unanimously).

Article 41 – The Court reiterated that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicants, as far as possible, were put in the position in which they would have been had that provision not been disregarded. In the instant case, this would entail annulling or otherwise setting aside the decision to discontinue the proceedings and restarting the proceedings in accordance with the requirements of Article 6 § 1, if the applicants so requested. The Court also awarded the applicants EUR 10,000 for non-pecuniary damage.

ACCESS TO COURT
Failure to comply with a final judgment requiring administrative authorities to deliver up possession of a building occupied by a governmental organisation that enjoyed diplomatic immunity: *violation*.

HIRSCHHORN - Romania (N° 29294/02)
Judgment 26.7.2007 [Section III]

Facts: The applicant lodged an action against the State to recover property. The Court of First Instance ordered the restitution of the building, of which the State had taken possession in the 1950s, without any valid title, as part of a nationalisation process. When subsequent appeals failed, the mayor ordered the building's restitution. Since 2000, however, it had been occupied by the United States Peace Corps organisation under a lease concluded with a State company. The applicant took action against the State company and the organisation. The Court of First Instance rejected the claim, considering that the company had proper authority to manage the building and that the disputed lease was valid. The County Court set aside the judgment and allowed the applicant's claim, holding that the State had had no valid right to expropriate the building in the first place. The court declared the lease void and ordered the eviction of the tenant organisation. The company informed the bailiff in charge of the eviction that the building was the property of the State and the tenant organisation had diplomatic immunity and could not be evicted. The bailiff informed the court in a letter of the difficulties encountered and the president of the Court of Appeal informed him that his concerns had been looked into by a judge who had confirmed that the property of diplomatic missions was inviolable. He concluded that the applicant could not repossess his building and asked the bailiff to advise him to apply for compensation corresponding to the value of the building, as it was impossible to enforce the judgment. In a final judgment the Court of Appeal confirmed the validity of the lease, holding that it had been entered into in good faith in so far as, although the company was not the legitimate owner at the time of signature of the lease, it had appeared to be. The applicant took various steps to have the building returned, but to no avail.

Law: Article 6 § 1 (right to a court) – The final judgment had remained unenforced because of the opposition of the company managing the building, which had relied on the diplomatic immunity of

the tenant organisation. The organisation had merely been the tenant, and its latest lease had expired. That being so, if the existence of the lease had justified the delay in the restitution of the building to the applicant, the Court failed to see what justification there could be for the authorities' refusal to give back the building once the lease had expired. The applicant had been, and continued to be, deprived of his property, the authorities continuing to consider the building as State property. The argument that the organisation enjoyed diplomatic immunity was not an obstacle to the transfer of ownership rights over the building to the applicant. This would not necessarily have meant the tenant organisation having to leave the building. In the event of any dispute over its occupancy, it could have defended its rights, even availing itself of its diplomatic immunity. The steps taken after the final judgment had merely been attempts by the applicant to make the authorities comply. That being so, they could not be considered to affect his ownership rights in any way.
Conclusion: violation (unanimously).

Article 6 § 1 (independent and impartial tribunal) – In concluding in his report that the applicant could not take possession of his building, the inspecting judge had supported the position of the defending parties, i.e. the company and the organisation. In forwarding to the bailiff the report of that judge, who was acting at the behest and under the responsibility of the president of the Court of Appeal, the latter had endorsed the report's findings. In view of the vast judicial and administrative ground inspecting judges were expected to cover, and the fact that they answered both to the Minister of Justice and to the presidents of the courts of appeal, the question arose whether the members of the trial bench were not subject to undue influence. To avert that risk the law prohibited judges from voicing opinions in public about trials in progress and formally prohibited any interference by inspecting judges in the proceedings. However, the inspecting judge had infringed that principle when, in examining the appeal filed by the company, he had declared that the organisation could not be evicted, whereas the disputed County Court judgment had ordered its eviction. The inspecting judge and, implicitly, the president of the Court of Appeal had pleaded in favour of rejecting the applicant's claim.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – The applicant had been deprived of every attribute of his ownership rights to the building when the building had been placed on the State-owned property list. This had amounted to a de facto expropriation. The principle of the immunity of State bodies was not sufficient in itself to legitimise the authorities' failure to transfer ownership rights over the building to the applicant.
Conclusion: violation (unanimously).

Article 41 – The respondent State must return the building to the applicant, in keeping with the judgment of the Court of First Instance; failing that, EUR 1,900,000 in respect of pecuniary damage. In any event, the Court awarded EUR 200,000 in respect of pecuniary damage (loss of income) and EUR 10,000 for non-pecuniary damage.

IMPARTIAL TRIBUNAL
EQUALITY OF ARMS
Court's findings based on expert opinion submitted by employees of the defendant party: *violation*.

SARA LIND EGGERTSDÓTTIR - Iceland (N° 31930/04)
Judgment 5.7.2007 [Section III]

Facts: The applicant was born at the National and University Hospital in 1998. Soon after her birth, it became clear that she was severely handicapped both physically and mentally. Alleging medical negligence, her parents brought judicial proceedings on her behalf against the State. The district court found that the State was liable and awarded the applicant compensation. The Supreme Court requested the State Medico-Legal Board (SMLB) to give an opinion on the matter. It refused to disqualify four of its members who were employees of the defendant hospital, as none of them was a member of the hospital's highest management, or was employed at the department of obstetrics and

gynaecology or involved with the treatment of the applicant and her mother. Basing its findings on the report by the SMLB, the Supreme Court overturned the district court's judgment and rejected the applicant's claims.

Law: The Supreme Court's decision to commission an expert opinion from the SMLB had clearly fallen within its discretion under Article 6 § 1 of the Convention and disclosed no lack of impartiality or unfairness for the purposes of that provision. As far as the composition of the SMLB was concerned, its four members employed at the defendant hospital had been called to analyse and assess the performance of their colleagues with the aim of assisting the Supreme Court in determining the question of their employer's liability. Three of the four members in question had prepared, with the assistance of two other experts, the Board's own examination before it submitted its final report to the Supreme Court. Even if the doctors in question had not had any prior involvement in the case, their hierarchical superior had taken a clear stance against the district court's judgment during the appeal proceedings. The applicant could legitimately fear that the SMLB had not acted with proper neutrality in the proceedings before the Supreme Court. In view of the SMLB's special statutory role as a provider of medical opinions to the courts, its opinions would carry greater weight than those of an expert witness called by any of the parties. The applicant's procedural position had therefore not been on a par with that of her opponent, the State, in the manner required by the principle of equality of arms. The Supreme Court's objective impartiality had been compromised by SMLB's composition, procedural position and role in the proceedings before it. Variable standards should not apply to the competent "tribunal" depending on practical considerations, such as those invoked by the Government, namely the particular demographic situation in Iceland, with its relatively small population, and the difficulty of finding suitable experts without ties to the defendant hospital.
Conclusion: violation (unanimously).

Article 41 – EUR 75,000 in respect of damages.

INDEPENDENT AND IMPARTIAL TRIBUNAL
President of a court of appeal's intervention in order to influence proceedings in line with the report of a judicial inspector who was answerable to both the Minister of Justice and the presidents of the courts of appeal: *violation*.

HIRSCHHORN - Romania (N° 29294/02)
Judgment 26.7.2007 [Section III]

(see Article 6 § 1 above).

Article 6 § 1 [criminal]

APPLICABILITY
Gravity of an order for three days' administrative detention: *Article 6 § 1 applicable*.

ZAICEVS - Latvia (N° 65022/01)
Judgment 31.7.2007 [Section III]

Facts: The applicant accompanied a woman he was representing to the courthouse to obtain a copy of the record of a hearing held in her civil case. However, Judge M.J., who had examined the case, refused to give them the document concerned and ordered them to leave her office. She reported the applicant for a regulatory offence and sent an explanatory note to Judge K.S., interim president of the court. Shortly thereafter a similar written account was presented by a member of the court's registry who had witnessed the incident. The following day Judge K.S. ordered the applicant to be summoned, to determine whether he had been guilty of contempt of court. However, the applicant did not find out

about this until a few days later, when he went to the same court to represent somebody else. He immediately went to see Judge K.S. and asked to see and make copies of the documents in the case file, to help him prepare his defence. The request was refused at first, then accepted the following day. Judge A.P. examined the merits of the accusation against the applicant, who requested – in vain – that the judge who had reported him be summoned to the hearing. The applicant was sentenced to three days' administrative detention for contempt of court, an offence under the Code of Regulatory Offences. Judge A.P. considered that the applicant's guilt was sufficiently established by the written explanations of judge M.J. and the registry staff member who had witnessed the incident.

Law: Article 6 § 1 – *Applicability* – As the maximum penalty applicable was fifteen days' imprisonment and the applicant had actually been sentenced to three days, the penalty was sufficiently serious to place the offence in the criminal sphere. Furthermore, the two highest courts in the respondent State had expressly acknowledged that administrative detention could be equated with a criminal penalty.
Conclusion: Article 6 was applicable in this case (unanimously).

Compliance – The applicant had elected to forgo his right to be assisted by a lawyer. No grounds for questioning the subjective or objective impartiality of judge A.P., who had convicted him, had been adduced. Judge K.S. had eventually allowed the applicant to consult his file and make photocopies free of charge two days before the hearing. This would have given him enough time to prepare his defence. Concerning the judge's refusal to summon her colleague and allow the applicant to question her, the colleague concerned had drafted a report describing the events which had led to the applicant's conviction. The report in question had not been the only item of evidence at the origin of the conviction. In order to exercise the right to question witnesses, the accused must clearly request it, which he had not done in this case. All things considered, the disputed proceedings could not be said to have been unfair.
Conclusion: no violation (unanimously).

Article 2 of Protocol No. 7 – An offence for which imprisonment is the principal penalty prescribed by law could not be qualified as minor within the meaning of Article 2 § 2 of Protocol No. 7.
Conclusion: violation (unanimously).

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

APPLICABILITY
Enforcement of a foreign court's forfeiture order: *Article 6 not applicable (criminal limb)*.

SACCOCCIA - Austria (N° 69917/01)
Partial decision 5.7.2007 [Section I]

(see Article 6 § 1 "civil" above).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Tenuous difference between the role of a professional judge in deciding on the extension of a defendant's detention and her role in assessing whether to endorse the jury's verdict: *violation*.

EKEBERG and Others - Norway (N°s 11106/04, 11108/04, 11116/04, 11311/04 and 13276/04)
Judgment 31.7.2007 [Section I]

Facts: The applicants, members of motor cycle clubs, detonated hidden explosives in order to blow up parts of a club house belonging to another club. The force of the explosion killed the driver of a passing car and caused extensive damage. The applicants were subsequently charged before the High Court, convicted and sentenced to prison terms ranging from 6 to 16 years.

The applicants complained *inter alia* that Judge G. had lacked the requisite impartiality in the trial because she had taken part in a decision to extend the fourth applicant's detention. This shortcoming had been aggravated by the fact that juror W. had been disqualified as, some years earlier, she had given a witness statement to the police concerning the case.

Law: *Judge G.'s role in deciding on the extension of the fourth applicant's detention and assessing whether to endorse the jury's verdict* – The decision to extend the fourth applicant's detention had been taken in accordance with the Code of Criminal Procedure, which required a definite suspicion that he had committed the offence in question. Without the professional judges' endorsement, the fourth applicant could not have been convicted by the High Court jury. That made tenuous the difference between Judge G.'s role in deciding about the extension of the fourth applicant's detention and then assessing whether to endorse the High Court jury's verdict. Furthermore, Judge G. also took part in the sentencing of the fourth applicant. Hence the fourth applicant had legitimate grounds for fearing that the High Court had lacked the requisite impartiality (cf. *Hauschildt v. Denmark* judgment). The fact that neither the fourth applicant nor his counsel at any time had objected to Judge G.'s participation in the trial could not, in the circumstances of the case, reduce the protection that follows from the requirement of objective impartiality of judges. On the other hand, any fears that the remaining applicants had entertained in this respect of Judge G.'s impartiality could not be considered objectively justified.
Conclusion: violation in respect of the fourth applicant / no violation in respect of the others (unanimously).

Juror W's participation – The nature, timing and short duration of juror W.'s involvement in the proceedings could not cause the applicants to have doubts as to the impartiality of the jury.
Conclusion: no violation (four votes to three).

TRIBUNAL ESTABLISHED BY LAW
Allegation by the applicant that the German courts had no jurisdiction to try him for serious offences, including genocide, committed in Bosnia: *no violation*.

JORGIC - Germany (N° 74613/01)
Judgment 12.7.2007 [Section V]

(see Article 7 below).

ARTICLE 7

Article 7 § 1

NULLUM CRIMEN SINE LEGE
Allegation by the applicant that the definition of the offence of genocide used by the domestic courts was unduly wide: *no violation*.

JORGIC - Germany (N° 74613/01)
Judgment 12.7.2007 [Section V]

Facts: In December 1995 the applicant was arrested on returning to Germany from Bosnia on suspicion of having engaged in genocide in the Doboj region between May and September 1992. The accusations against him included setting up a paramilitary group that had ill-treated and killed Muslim villagers and personally executing villagers. He was ultimately convicted of, *inter alia*, genocide and murder and sentenced to life imprisonment. In his application to the Court, he complained in particular that the German courts had wrongly assumed jurisdiction to try him and that their

interpretation of the crime of genocide had no basis in German or public international law. On the former point, the trial court ruled that it had jurisdiction to try the case despite the fact that the alleged offences had taken place in Bosnia as there was a legitimate link with Germany's military and humanitarian missions there and the applicant had resided in Germany for more than 20 years and been arrested there. The trial court did not consider itself debarred by public international law from hearing the charges, especially as the International Criminal Tribunal for the Former Yugoslavia (ICTY) had stated that it was not willing to take over the prosecution. The trial court's decision was upheld on appeal, notably under the principle of universal jurisdiction. As regards the definition of the offence of genocide, the trial court ruled that the expression "destruction of a group" used in the German Criminal Code meant the group's destruction as a distinct social unit and did not require its destruction in a biological-physical sense. It concluded that the applicant had acted with intent to destroy a group of Muslims in the north of Bosnia. The Constitutional Court declined to consider the applicant's constitutional complaint, holding that there had been no violation of the principle that criminal law was not to be applied retroactively as the interpretation of the relevant provision had been foreseeable and conformed to that used in public international law.

Law: Article 5 § 1 (a) and Article 6 § 1 – The German courts' interpretation of the Genocide Convention and their establishment of jurisdiction to try the applicant on charges of genocide were widely confirmed by the statutory provisions and case-law of numerous other Contracting States to the Convention and by the Statute and case-law of the ICTY. Furthermore, Article 9 § 1 of the ICTY Statute confirmed the German courts' view providing for the concurrent jurisdiction of the ICTY and national courts without any restriction to domestic courts of particular countries. The German courts' interpretation of the applicable provisions and rules of public international law was not arbitrary. They had therefore had reasonable grounds for establishing their jurisdiction to try the applicant on charges of genocide. It followed that the applicant had been tried by a "tribunal established by law" (Article 6 § 1) and been lawfully detained after conviction "by a competent court" (Article 5 § 1 (a)).
Conclusion: no violation (unanimously).

Article 7 – While many authorities had favoured a narrow interpretation of the crime of genocide, there had already been several authorities which had interpreted it in a wider way, in common with the German courts. The applicant could therefore reasonably have foreseen, if need be with the assistance of a lawyer, that he risked being charged with and convicted of genocide for his acts. In this context the Court also had regard to the gravity and duration of the acts the applicant had been found guilty of. The national courts' interpretation of the crime of genocide could therefore reasonably be regarded as consistent with the essence of that offence and reasonably foreseeable by the applicant at the material time. Once those requirements were met, it was for the German courts to decide which interpretation of the crime of genocide under domestic law they wished to adopt.
Conclusion: no violation (unanimously).

ARTICLE 8

PRIVATE LIFE
Civil servant's office sealed off and searched following a letter he had published in the press criticising the chief prosecutor: *violation*.

PEEV - Bulgaria/Bulgarie (N° 64209/01)
Judgment/Arrêt 26.7.2007 [Section V]

(see Article 10 below).

PRIVATE AND FAMILY LIFE
HOME
Dawn raid of the applicant's home by masked and armed police officers in order to notify charges – prison administration's refusal to permit visits from his wife: *violations*.

KUČERA - Slovakia (N° 48666/99)
Judgment 17.7.2007 [Section IV]

Facts: The applicant, a police department director, claimed that early one morning in December 1997 several armed police officers in masks had burst into his flat without his consent. He and his wife were shown a police investigator's decision, accusing them and others of extortion. Criminal proceedings were brought against him and he was remanded in custody. He was not permitted to meet his wife until January 1999. His detention was extended several times, essentially on the ground that his release would jeopardise the investigation. He was eventually released in December 1999. Ultimately, the Supreme Court acquitted the applicant and his wife in February 2001.

Law: (a) *Entry into the apartment* – In circumstances involving the daybreak intervention of masked police officers carrying submachine guns it was difficult to accept that any consent to their entry was free and informed. There had accordingly been interference with the applicant's right to respect for his home. That interference was disproportionate as there was no indication that the police had needed to enter the apartment in order to notify the charges and escort the applicant for questioning. Indeed, a risk of abuse of authority and violation of human dignity was inherent in a situation where the applicant was confronted by a number of specially trained masked police officers at his front door very early in the morning. Appropriate safeguards might have included regulatory measures to confine the use of special forces to situations where ordinary police intervention could not be regarded as safe and sufficient and procedural guarantees such as the presence of an impartial person during the operation or the obtaining of the owner's clear, written consent as a pre-condition for entry. Accordingly, the intervention was not compatible with the applicant's right to respect for his home.
Conclusion: violation (unanimously).

(b) *Inability to meet his wife* – While there had been a legitimate need for preventing the applicant from hampering the investigation, for example by exchanging information with his co-accused including his wife, the Court was not persuaded that it had been indispensable to refuse him visits from his wife for a period of 13 months. For instance, special visiting arrangements with supervision by an official could have been arranged. It was also questionable whether relevant and sufficient grounds existed for preventing the applicant from meeting with his wife for such a long period in view of the suffering caused by such a lengthy separation and the fact that the investigation had practically ended. The interference could not therefore be regarded as "necessary in a democratic society".
Conclusion: violation (unanimously).

The Court also found violations of Article 5 § 3 and Article 5 § 4 and no violation of Article 5 § 1.

Article 41 – EUR 6,000 in respect of non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Use of a chemical substance by a factory situated near a town: *admissible*.

TATAR - Romania (N° 67021/01)
Decision 5.7.2007 [Section III]

A company was granted a licence to operate a gold mine located near a city. Under the terms of the licence, it was required to take a number of environmental-protection measures. However, a cyanide spill for which the company could potentially be held liable occurred when sodium cyanide, used

during the extraction process, was discharged into the surrounding rivers. Various diseases linked to the use of this substance were found among the local population. The Government denied that there was any causal link, pointing out that the substance was used at a different location, that its use had not been prohibited by European Union legislation, that the company was licensed to use toxic substances and that environmental-impact assessments had ruled out any causal link, basing their conclusions on the numerous economic and social benefits and the fact that the activity in question could not affect the region's existing characteristics to any significant extent. However, another report stated that there were uncertainties as to the environmental impact of the use of this technology. The first applicant lodged a number of complaints with various authorities, seeking to have the company's operating licence withdrawn, its activities halted and action taken against its management, but to no avail.

Admissible under Article 8 following the dismissal of preliminary objections of failure to exhaust domestic remedies.

CORRESPONDENCE
Lack of sufficient safeguards in a law allowing the use of secret surveillance measures: *violation*.

THE ASSOCIATION FOR EUROPEAN INTEGRATION AND HUMAN RIGHTS AND EKIMDZHIEV - Bulgaria (N° 62540/00)
Judgment 28.6.2007 [Section V]

(see Article 34 "Victim" below).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of a journalist for defamation in respect of an article setting out allegations by a man on trial who sought to use the press to persuade the public of his innocence: *violation*.

ORMANNI - Italy (N° 30278/04)
Judgment 17.7.2007 [Section II]

Facts: The applicant, a journalist at the weekly magazine *Oggi*, had written an article about M.G., a dancer and choreographer who ran a dance academy and stood accused of rape and abuse of young pupils at the academy. The article reported M.G.'s fears that the accusations against him were the result of his professional activities and his opposition to what he called a "powerful local business committee". The article explained that M.G. had submitted an application for subsidies, but that his application had disappeared and the complaint for theft he had subsequently lodged had not been followed up. The article went on to explain that the brother-in-law of the manager of a rival dance academy, who had been awarded the subsidies M.G. had applied for, was the head of the town's prosecution service, and mentioned his name. The following issue of *Oggi* published a different version of the story: that of the principal public prosecutor, M.S., who had lodged a complaint for libel. He claimed that the article gave the reader the impression that he had taken advantage of his position to dismiss M.G.'s complaint for theft, helped the rival dance academy and trumped up charges to remove M.G. from the scene. The applicant was found guilty of defamation through the medium of the press, aggravated by the fact that he had insulted the State legal service. He was fined and ordered to pay interim compensation, but the conviction was not entered in a criminal record. M.G. was acquitted. Before the Court of Cassation the applicant pleaded, to no avail, that he had done nothing but report M.G.'s version of events, without endorsing it or supplying any false information.

Law: The accuracy of the main facts reported in the article was not at issue. The applicant had based the story on a video tape recorded by M.G. and on the documents in the criminal proceedings against M.G. The journalist had discharged his obligation to verify the accuracy of the facts reported in his article. True, he had omitted to mention that M.S. had had no power to have M.G.'s complaint of theft dropped, but a journalist writing for a widely read magazine could not be expected to explain all the technical details of the judicial proceedings he referred to.
The article was presented as an account of an interview with M.G., in which M.G. set out his arguments, which were by their very nature subjective, in an attempt to persuade the readers of his innocence. While the applicant had endorsed M.G.'s allegations, at least in part, and had not formally distanced himself from them, he had expressed no value judgment concerning the human or professional qualities of Principal Public Prosecutor M.S., whose name had been mentioned only once in the article, without any suggestion that he was responsible for the bringing of proceedings against M.G. or that he was a member of the "business committee" which had allegedly sought to harm him, and he had clearly stated that the public prosecutor in charge of the proceedings was not M.S. So while it did contain an element of provocation, the article could not be regarded as a gratuitous personal attack on M.S., and it stuck fairly closely to the facts. In addressing such topics as the administration of justice, judicial institutions, the world of politics and private interests, the article had addressed matters of general interest.
M.S. had promptly been given the opportunity to present his version of events, to dispel any suspicions and give the public the opportunity to compare the two accounts. The interim compensation the applicant had been ordered to pay (EUR 12,911 together with the director of the magazine) had been immediately enforceable. This sum was a down-payment pending the total compensation that might be awarded in separate proceedings the injured party might wish to bring, which could substantially increase the court costs and compensation the applicant might have to pay.
The sentence had not been "necessary" to protect the reputation or rights of the complainant.
Conclusion: violation (five to two).

Article 41 – Pecuniary damage: monetary award commensurate with the compensation, fine and court costs incurred by the applicant in the trial for defamation. Non-pecuniary damage: finding of a violation sufficient.

FREEDOM OF EXPRESSION
Unlawful dismissal of a civil servant following a search of his office in apparent retaliation for a letter he had published in the press criticising the chief prosecutor: *violation*.

PEEV - Bulgaria (N° 64209/01)
Judgment 26.7.2007 [Section V]

Facts: The applicant was employed as an expert by the Supreme Cassation Prosecutor's Office (SCPO). Following the death by suicide of a prosecutor colleague who had alleged that the chief prosecutor and his entourage were harassing and exerting improper pressure on him, the applicant considered resigning and to that end prepared two draft letters which he kept in a drawer of his office desk. However, he eventually decided not to resign and sent a letter to two daily newspapers and the Supreme Judicial Council making a number of grave accusations against the chief prosecutor and urging the authorities to investigate. One of the newspapers published the letter. On the evening preceding publication, a prosecutor from the SCPO sealed off the applicant's office and ordered the duty police officer not to allow the applicant to enter the building as he had been dismissed. The applicant was subsequently informed that his resignation letter had been brought to the attention of the chief prosecutor and that his resignation had been accepted. Some days later, the applicant was allowed into the office to collect his personal belongings. He discovered that it had been searched and that certain items, including the draft resignation letters, were missing. The prosecuting authorities refused to open criminal proceedings. However, the applicant brought a civil action for unlawful dismissal and obtained an order for his reinstatement and an award of compensation. Although he was

not in fact reinstated in his former position as the department for which he had worked had been abolished in the interim, he did succeed in obtaining a post with a similar body.

Law: Article 10 – *Admissibility* – On the question whether the quashing of the applicant's dismissal, accompanied by an award of compensation and his appointment to another post, had deprived him of victim status within the meaning of Article 34, the Court noted that the termination of his employment was only part of the alleged interference with his freedom of expression. Further, the purpose of the domestic proceedings had been to give effect to the applicant's labour rights, not to protect his freedom of expression as such. Therefore, even if the judgments in his favour had provided some redress, they had not acknowledged expressly or in substance the alleged violation of Article 10. Likewise, while the applicant's appointment to a similar position about three years after the termination of his employment had no doubt mitigated the damage, there was no indication that it had been intended as an acknowledgment of and redress for his Article 10 grievance: *victim status upheld*.

Compliance – The sequence of events appeared significant, with the applicant's office being sealed off shortly after the publication of his letter containing the accusations against the chief prosecutor and his dismissal being engineered on the basis of material obtained during the search. The string of measures taken against him thus appeared to have been a result of that publication and so an interference with his

freedom of expression. Since the Court had already found the search to be unlawful and the domestic courts had ruled his dismissal unlawful, that interference had not been "prescribed by law".
Conclusion: violation (unanimously).

Article 8 – The applicant had a "reasonable expectation of privacy", if not in respect of his entire office, at least in respect of his desk and filing cabinets. In view of the national courts' finding that the person who had carried out the search had had access to the Courts of Justice building and was apparently connected to the chief prosecutor before whom the material obtained during the search was later brought, there was no reason to assume that the search was carried out by persons in their private capacity. The search thus amounted to interference by a public authority with the applicant's private life. The Government had not sought to argue that there were any provisions in domestic law at the relevant time to regulate the circumstances in which the SCPO could search the offices of its employees outside the context of a criminal investigation. The interference was therefore not "in accordance with the law".
Conclusion: violation (unanimously).

Article 13 (in conjunction with Articles 8 and 10) – The Government had failed to show that any remedies existed in respect of the unlawful search. The domestic proceedings in which the applicant had challenged his dismissal had concentrated on the resignation issue and had not discussed the substance of his freedom-of-expression grievance. Those proceedings therefore did not amount to an avenue whereby he could vindicate his freedom of expression as such and no other remedy had been suggested by the Government.
Conclusion: violation (unanimously).

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

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Dispersal of a peaceful demonstration for failure to give prior notice to the police: *violation*.

BUKTA and Others - Hungary (N° 25691/04)

Judgment 17.7.2007 [Section II]

Facts: Under the Right of Assembly Act 1989 the police have to be informed of an assembly at least three days beforehand and have power to disband an assembly held without prior notification. In December 2002 the Romanian Prime Minister made an official visit to Budapest and gave a reception to celebrate Romania's national day. The previous day, the Hungarian Prime Minister had declared that he would attend the reception. The applicants believed that he should not attend an event that commemorated a negative part of Hungarian history (the annexation of Transylvania by Romania in 1918) and joined a group of approximately 150 people who had gathered in front of the hotel whilst the reception was taking place. They had not given the police any prior notice of their intention to hold the demonstration. On hearing a sound like a minor detonation, the police present at the reception forced the demonstrators to disperse. The applicants brought proceedings for a declaration that the police intervention was unlawful. These were ultimately dismissed on the grounds that the demonstration had been disbanded because of the demonstrators' failure to give the police prior notice.

Law: The domestic courts had based their decisions exclusively on the lack of prior notice without examining other aspects of the case such as whether the demonstration was peaceful. A prior-authorisation procedure would not normally encroach upon the essence of the right to freedom of assembly. However, the lack of advance warning of the Hungarian Prime Minister's intention to attend the reception had left the applicants with a choice between foregoing their right to peaceful assembly or disregarding the notice requirement. In special circumstances such as these where an immediate response – in the form of a demonstration – to a political event might be justified and where there was no evidence to suggest a danger to public order, a decision to disband the ensuing, peaceful assembly solely because of the failure to comply with the notice requirement, without any illegal conduct by the participants, was disproportionate.
Conclusion: violation (unanimously).

Article 41 – Finding of a violation sufficient just satisfaction for any non-pecuniary damage.

FREEDOM OF PEACEFUL ASSEMBLY
FREEDOM OF RELIGION
Minority church prevented from worshipping in public: *violation*.

BARANKEVICH - Russia (N° 10519/03)
Judgment 26.7.2000 [Section I]

Facts: The applicant is the pastor of the "Christ's Grace" Church of Evangelical Christians. In September 2002 he was refused permission to hold a service of worship in a park. He brought proceedings against the town council for having violated his right to freedom of religion and assembly. His claim was ultimately dismissed on the ground that his church was different from those of the majority of local residents and therefore a service of worship could have led to discontent among adherents of other religious denominations and could have provoked public disorder.

Law: Although the Law on Public Assemblies had been amended in 2004, replacing the requirement of prior authorisation by an obligation to provide notification of an intended assembly, those developments had occurred after the events at issue. At the material time the authorities could ban assemblies deemed to be a threat to public order or the security of citizens. In the instant case the town council had made use of that power and denied permission for the applicant's assembly.
It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Hence the fact that the Evangelical Christian religion was being practised by a minority of the local residents could not justify an interference with the rights of followers of that religion. The religious assembly planned by the applicant had been of a peaceful nature. Even assuming that there had been a threat of

violence from a counter-demonstration, the domestic authorities had had at their disposal a wide choice of means which they could have used to facilitate the holding of the assembly without disturbance. It moreover appeared from the wording of the refusal that the applicant's requests for permission to hold a service of worship in public had already been rejected on many occasions without detailed reasons. Such a comprehensive ban could not be considered justified as being "necessary in a democratic society".
Conclusion: violation of Article 11 interpreted in the light of Article 9 (unanimously).

Article 41 – EUR 6,000 for non-pecuniary damage.

FREEDOM OF PEACEFUL ASSEMBLY
FREEDOM OF ASSOCIATION
Arbitrary ban on demonstration due to "expected outbreak of terrorist activities": *violation*.

MAKHMUDOV - Russia (N° 35082/04)
Judgment 26.7.2007 [Section I]

Facts: At the relevant time the applicant was a district councillor. In 2003, on the eve of a demonstration against the Moscow government's town-planning policy, the local authorities withdrew their permission for that assembly as it was expecting "an outbreak of terrorist activities". The demonstration was being organised by a non-governmental organisation which aimed to protect citizens' rights in town planning and was to protest in particular against the planned construction of a luxury block of flats and to cast a vote of no confidence against the city authorities. Despite the ban on the demonstration, the applicant – one of the assembly's co-organisers – and a few dozen residents gathered on the square on the given day. The police dispersed the crowd by force. The applicant was later taken out of a car by force and escorted to the district police station, where he was detained for the night and not given any food or drink. Over the following days the "Day of the City" was celebrated in Moscow and several public festivities sponsored by the Mayor took place despite the potential "terrorist threat". The applicant was charged with disobeying lawful police orders and organising an unauthorised assembly. The proceedings were subsequently discontinued concerning the disobeying of a lawful order but he was found to have breached procedure for organising public assemblies. His appeals were rejected. He brought civil proceedings for damages against the district police but this claim was dismissed.

Law: The domestic judgments – in so far as they had relied on information about a "terrorist threat" as the ground for banning the applicant's meeting – had been based on assumptions rather than on reasoned findings of fact. The Court perceived strong and concordant indications militating against the Government's allegation that a potential terrorist attack had been the true reason for banning the applicant's meeting. Although the number of participants at the "Day of the City" festivities had significantly exceeded the number expected for the applicant's planned meeting, that meeting had been the only public event to have been cancelled on account of "an expected outbreak of terrorist activities". The Government's failure to produce any evidence capable of substantiating the affirmation of a "terrorist threat" as the ground for banning the applicant's meeting led the Court to the conclusion that, in banning the applicant's meeting, the domestic authorities had acted in an arbitrary manner. Hence there had been no justification for the interference with the applicant's right to freedom of association.
Conclusion: violation of Article 11 (unanimously).

The Court also found violations of Article 5 §§ 1 and 5 of the Convention.

Article 41 – EUR 12,000 for non-pecuniary damage.

ARTICLE 14

DISCRIMINATION (Article 2)
Failure by the authorities to hold an effective investigation into a racist killing or to charge the attackers with a racially motivated offence: *violation*.

ANGELOVA and ILIEV - Bulgaria (N° 55523/00)
Judgment 26.7.2007 [Section V]

(see Article 2 above).

DISCRIMINATION (Articles 3 and 13)
Law enforcement agents' failure to investigate possible racial motives behind ill-treatment of Roma at police station, combined with their attitude during the investigation: *violation*.

COBZARU - Romania (N° 48254/99)
Judgment 26.7.2007 [Section III]

Facts: According to the applicant, in the evening of 4 July 1997 he had gone to the flat where he had been living with his girlfriend Steluța M. and had found the door locked. Fearing that she might have attempted to take her life, as she had already done in the past, he had forced open the door of the flat in the presence of his neighbour, Rita G, finding nobody inside. As he had been leaving, he had met Steluța's brother-in-law, Crinel M., accompanied by three men armed with knives, who had tried to attack him. A little later Crinel M. had lodged a complaint against the applicant for trying to break into the flat. Rita G. had stated that the applicant had broken into the flat in her presence. Between 8 and 9 p.m., the applicant had gone to the city police department, accompanied by his cousin Venuşa L and complained to the duty police officer that some individuals had attempted to beat him up as he had been leaving the flat. At around 10 p.m. two police officers, who had come back from the on-site investigation they had carried out at Steluța's flat, had punched and kicked him and had hit him with a wooden stick. Four plainclothes officers had observed the assault without intervening. He had then been forced to sign a document stating that he had been beaten up by Crinel M. and other individuals. Later that evening he had been admitted to an emergency ward with injuries diagnosed as craniocerebral trauma.
On 8 July 1997 a forensic medical expert concluded that the applicant's injuries were the result of his having been hit "with painful and hard objects". On the same day the applicant lodged a complaint against three police officers. In written statements given a few days later they denied having beaten the applicant. None of them mentioned having seen any bruises on his face on his arrival at the police station. On 6 October 1997 the three accused officers presented a new version of events, stating that the applicant had arrived at the police station after they had come back from the on-site investigation of 4 July 1997, and that he had had bruises on his body on his arrival.
In November 1997 a military prosecutor refused to open a criminal investigation in respect of the applicant's complaints, on the ground that the facts had not been established. The prosecutor noted that both the applicant and his father were known as "antisocial elements prone to violence and theft", in constant conflict with "fellow members of their ethnic group". The prosecutor considered that the statement given by Venuşa L. could not be taken into consideration since she was also a "gypsy" – and, moreover, the applicant's cousin – and therefore her testimony was insincere and subjective. A chief military prosecutor dismissed the applicant's appeal as no evidence had been adduced that the police officers had beaten the applicant, "a 25-year-old gypsy", "well known for causing scandals and always getting into fights".

Law: Article 3 – The degree of bruising found by the doctors who had examined the applicant indicated that his injuries had been sufficiently serious to amount to ill-treatment within the scope of Article 3. It was undisputed that the applicant had been the victim of violence on 4 July 1997, either

shortly before going to the police station or while he had been there. Having regard to the seriousness of his injuries, the Court found it inconceivable that, had the applicant arrived at the police station with bruises on his body, the police officers would not have noticed them. Moreover, had the police noticed any bruises, they should normally have questioned him as to their origin and either taken him to the hospital or called a doctor.
It was not until 6 October 1997 that the three accused police officers had presented a new version of events, stating that the applicant had bruises on his body on his arrival at the police station. None of the eyewitnesses to the altercation between the applicant and Crinel M. had confirmed that version of events (that Crinel M. had beaten up the applicant) and Crinel M. had consistently denied it. The findings of fact made by the prosecutors had been based entirely on the accounts of October 1997 given by the police officers accused of ill-treatment or their colleagues. Not only had the prosecutors accepted without reserve the submissions of those police officers, apparently they also had disregarded crucial statements from eyewitnesses, Rita G. and Venuşa L. The investigation carried out by the domestic authorities appeared to have had other shortcomings such as a failure to question certain key witnesses or to pursue obvious lines of questioning. Finally, the Court noted a number of contradictions in the investigation file, including the time when the applicant had arrived at the police station.
The Court concluded that the Government had not satisfactorily established that the applicant's injuries had been caused otherwise than by treatment inflicted on him while he had been under police control on the evening of 4 July 1997 and that those injuries had been the result of inhuman and degrading treatment.
Conclusions: violations of Article 3 for ill-treatment and failure to conduct a proper investigation into the applicant's allegations of such treatment (unanimous votes).

Article 13 – The authorities had been under an obligation to carry out an effective investigation into the applicant's allegations against the police officers, but had failed to do so. Consequently, any other remedy available to the applicant, including a claim for damages, had stood limited chances of success. While the civil courts had the capacity to make an independent assessment of fact, in practice the weight attached to a preceding criminal inquiry was so important that even the most convincing evidence to the contrary would often be discarded and such a remedy would prove to be only theoretical and illusory. In the particular circumstances the applicant's possibility of suing the police for damages had remained merely theoretical.
Conclusion: violation (unanimously).

Article 14 – *Was the ill-treatment based on racial prejudice*? The applicant had argued, without referring to any specific facts, that his allegation of discriminatory treatment should be evaluated within the context of documented and repeated failure by the Romanian authorities to remedy instances of anti-Roma violence and to provide redress for such discrimination. However, the expression of concern by various organisations about the numerous allegations of violence against Roma by Romanian law enforcement officers and the repeated failure of the Romanian authorities to remedy the situation and provide redress for discrimination did not suffice to allow the Court to find that it had been established that racist attitudes played a role in the applicant's ill-treatment.

Were possible racist motives investigated? The numerous anti-Roma incidents which often had involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence had been known to the public at large, as they had been covered regularly by the media. It appeared that all those incidents had been officially brought to the attention of the authorities and that, as a result, various programmes had been set up to eradicate such discrimination. Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma had been known to the investigating authorities in the applicant's case, or should have been known to them. Therefore special care should have been taken in investigating possible racist motives behind the violence against him. However, there had been no attempt on the part of the prosecutors to verify the behaviour of the police officers involved in the violence and to ascertain, for instance, whether

they had been involved in the past in similar incidents or whether they had been accused of displaying anti-Roma sentiment.

Did the authorities racially discriminate against the applicant? Prosecutors had made tendentious remarks in relation to the applicant's Roma origin throughout the investigation and no justification had been provided by the Government for those remarks. The Court had already found that similar remarks made by the Romanian judicial authorities regarding an applicant's Roma origin had been purely discriminatory. In the applicant's case, the prosecutors' tendentious remarks as to his origin had disclosed a general discriminatory attitude on the part of the authorities, which had reinforced his belief that any remedy in his case had been purely illusory.
Conclusion: violation of Article 14 taken in conjunction with Articles 3 and 13 on account of the law enforcement agents' failure to investigate possible racial motives behind the applicant's ill-treatment, combined with their attitude during the investigation (unanimously).

Article 41 – EUR 8,000 for non-pecuniary damage.

For further details, see Press Release no. 534.

DISCRIMINATION (Article 1 of Protocol No. 1)
Deprivation of property despite the fact that the immovable property of non-Muslim minorities in Turkey is protected by agreements under international law: *admissible*.

OECUMENICAL PATRIARCHATE (FENER RUM PATRİKLİĞİ) - Turkey (N° 14340/05)
Decision 12.6.2007 [Section II]

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

ARTICLE 34

VICTIM
Association could claim to be directly affected by a law which allows the use of secret surveillance measures: *victim status accepted*.

THE ASSOCIATION FOR EUROPEAN INTEGRATION AND HUMAN RIGHTS AND EKIMDZHIEV - Bulgaria (N° 62540/00)
Judgment 28.6.2007 [Section V]

Facts: The applicants are a non-profit-making association and a lawyer who acts as counsel in civil and criminal cases and represents applicants in proceedings before the European Court of Human Rights. The applicants claimed that, under the Special Surveillance Means Act of 1997, they could be subjected to surveillance measures at any time without notification.

Law: Article 34 – To the extent that a law instituted a system of surveillance under which all persons in the country concerned were liable to have their mail and telecommunications monitored, without their knowledge (save indiscretions or subsequent notification), it directly affected all users or potential users of the postal and telecommunication services in that country. The applicant association was, contrary to what the Government had suggested, not wholly deprived of the protection of Article 8 by the mere fact that it was a legal person. Its mail and other communications, which had been in issue in the present case, were covered by the notion of "correspondence" which applied equally to communications originating from private and business premises. The Article 8 rights in issue in the present case were those of the applicant association, not of its members. There had

therefore been a sufficiently direct link between the association as such and the alleged breaches of the Convention. It could therefore claim to be a victim within the meaning of Article 34.

Article 8 – The law at issue did not provide for any review of the implementation of secret surveillance measures by a body or official that was either external to the services deploying the means of surveillance or at least required to have certain qualifications ensuring its or his independence and adherence to the rule of law. It made no provision for the judge to be informed of the results of the surveillance or require the judge to review whether the provisions of the law had been complied with. Moreover, some safeguards were applicable only in the context of pending criminal proceedings and did not cover all situations envisaged by the law, such as the use of special means of surveillance to protect national security. The Court also noted the apparent lack of regulations specifying with an appropriate degree of precision the manner intelligence obtained through surveillance was screened, the procedures for preserving its integrity and confidentiality and the procedures for its destruction. Overall control over the system of secret surveillance was entrusted solely to the Minister of Internal Affairs – who was directly involved in the commissioning of special means of surveillance – and not to independent bodies. The manner in which the Minister was to exercise this control was not set out in the law. The law did not provide for the notification of persons subjected to monitoring under any circumstances or at any time, even after it had ceased. The persons concerned were accordingly unable to seek redress for unlawful interferences with their Article 8 rights. The statistics showed that the system of secret surveillance in Bulgaria had been overused. In sum, Bulgarian law did not provide sufficient guarantees against the risk of abuse inherent in any system of secret surveillance. The interference with the Article 8 rights of the applicants had therefore not been "in accordance with the law".
Conclusion: violation (unanimously).

Article 13 – Bulgarian law did not provide effective remedies against the use of special means of surveillance.
Conclusion: violation (unanimously).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Lack of appropriate regulations and deficiencies in the organisation of the Government Agent's activity resulting in the State's failure to comply promptly with a Rule 39 measure: *violation*.

PALADI - Moldova (N° 39806/05)
Judgment 10.7.2007 [Section IV]

Facts: In September 2004 the applicant was taken into custody on suspicion of abuse of position and power. He suffered from a number of serious illnesses (diabetes, angina, heart failure, hypertension, chronic bronchitis, pancreatitis and hepatitis) and, while in detention, was examined by various doctors who all recommended medical supervision. However, he was only able to obtain sporadic medical visits and assistance in emergencies. In March 2005 he was transferred to a prison hospital. In May 2005 a neurologist from the Republican Neurology Centre recommended his transfer to an institution where he could receive hyperbaric oxygen (HBO) therapy. However, he did not start to receive therapy until September 2005. The therapy was given at the Republican Clinical Hospital and produced positive results. It was prescribed until the end of November 2005. On 10 November 2005 the district court ordered his transfer back to the prison hospital, as the Republican Neurology Centre had made no reference to HBO therapy among its latest recommendations and indicated that the applicant's condition had stabilised. That same evening, the Court indicated by facsimile an interim measure to the Government under Rule 39 of the Rules of Court, stating that the applicant should not be transferred back to the prison hospital until the Court had had an opportunity to examine the case. The next day a Deputy Registrar of the Court unsuccessfully tried several times to contact the Government Agent's Office in Moldova by telephone. On the basis of the Court's fax to the Government, the applicant requested the district court to stay the execution of its decision. However, it refused. He was transferred to the prison hospital the same day. Finally, following requests by the

applicant's lawyer and the Agent of the Government, the district court ordered the applicant's transfer back to the Republican Neurology Centre on 14 November 2005. He was made to wait six hours before being admitted apparently because his medical file arrived late. In December 2005 the applicant's detention pending trial was replaced with an obligation not to leave the country. In 2006 he was declared as having a second-degree disability.

Law: Article 3 – The applicant had been in need of constant medical supervision, without which his health had been at risk. However, he had not been given appropriate medical supervision and assistance while at the detention centre. His transfer to the neurological institution, recommended by a highly-qualified and independent doctor, had been unreasonably delayed (by four months) because the domestic courts had taken too long to obtain the opinion of a competent medical body and had not taken any measures to speed up the process. The resulting delay in beginning the recommended treatment had unnecessarily exposed the applicant to a risk to his health and must have resulted in stress and anxiety. This had been in clear contrast to the urgency with which the domestic court had decided on the applicant's transfer back to the prison hospital. Confronted with two divergent medical opinions, the district court had chosen simply to ignore the opinion of the Republican Clinical Hospital, notwithstanding that it had been responsible for administering the HBO treatment to the applicant and was therefore the competent medical authority to advise the court on the necessity of continuing the therapy. By interrupting the treatment, which had already yielded positive results, the district court had further undermined its effectiveness and caused the applicant stress and anxiety which had gone beyond the level inherent in any deprivation of liberty. Moreover, it had not balanced the potential risk to the applicant's health against any security risk or other reason requiring his urgent transfer to the prison. In sum, the lack of proper medical assistance at the remand centre, the incomplete treatment at the prison hospital after May 2005 and the abrupt termination of the applicant's HBO treatment had each amounted to a violation of Article 3 of the Convention.
Conclusion: violation (unanimously).

Article 34 – There had been serious deficiencies in the State's compliance with the Court's interim measures: firstly, the apparent lack of clear provisions in the domestic law and practice requiring a domestic court to deal urgently with an interim measure; and, secondly, the shortcomings in organising the activity of the Government Agent's Office, starting with the unavailability of officials to answer urgent calls from the Registry and resulting in its failure to react promptly to the interim measure and to ensure that the hospital authorities had had at their disposal all the medical documents necessary for the applicant's immediate admission. In the light of the very serious risk to which he had been exposed as a result of the delay in complying with the interim measure and notwithstanding the relatively short period of such delay and the absence of adverse consequences for his life or health, the attitude of the domestic authorities had in itself jeopardised his ability to pursue his application before the Court.
Conclusion: violation (six votes to one).

The Court also found a violation of Article 5 § 1.

Article 41 – EUR 2,080 in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

ARTICLE 35

Article 35 § 1

EXHAUSTION OF DOMESTIC REMEDY
EFFECTIVE DOMESTIC REMEDY (Italy)
Knowledge of change in the case-law of the Court of Cassation could not be assumed until six months after the relevant decision was lodged with the registry: *preliminary objection dismissed*.

PROVIDE S.R.L. - Italy (N° 62155/00)
Judgment 5.7.2007 [Section II]

Facts: The applicant company brought proceedings against two parties in the magistrate's court to obtain compensation for damage suffered in a road accident. Preparations for trial began in 1992 and the judgment was delivered in 1998. Relying on the "Pinto" Act, the applicant took the case before the Court of Appeal, alleging that the proceedings had taken too long and requesting compensation on an equitable basis for the non-pecuniary damage sustained. The Court of Appeal found that the proceedings had been unreasonably lengthy but rejected the claim for compensation as the applicant had failed to prove that any damage had been suffered. The applicant appealed on points of law, arguing that once proceedings had been judged excessively long, the legal entities concerned did not have to adduce proof of damage, which was obvious from the bare facts. In 2003 the Court of Cassation rejected the appeal. It held that the Pinto Act did not recognise damage *in re ipsa* but required proof to be provided. In a judgment deposited with the registry in January 2004 the Court of Cassation departed from its case-law by doing away with the only exception to the rule of exhaustion of the remedy afforded by the Pinto Act, which concerned appeals to the Court of Cassation against decisions of the Court of Appeal when the excessive length of the proceedings had been established and the appellants complained of the sum awarded in compensation on an equitable basis. In a judgment deposited with the registry in September 2004 the Court of Cassation held that there was no obstacle in domestic law to the award of compensation on an equitable basis to "legal persons" in keeping with the standards of the Strasbourg Court. From that moment on, appeals on points of law by legal persons had once again acquired a sufficient degree of legal certainty, in theory and in practice, to be used again, and for their use to be mandatory, for the purposes of Article 35 § 1 of the Convention.

Law: Article 35 § 1 – Applicant companies were required to exhaust the remedy of appeal on points of law under the Pinto procedure from the time when the public could no longer be considered to be unaware of the judgment of the Court of Cassation stating that there was no obstacle in domestic law to the award of fair compensation to "legal persons" in keeping with the standards of the Strasbourg Court, i.e. from March 2005 onwards. The applicant company had appealed to the Court of Appeal and then to the Court of Cassation, which had dismissed its appeal well before that date. That being so, the Pinto procedure had come to an end well before March 2005 and, in any event, the applicant company had appealed to the Court of Cassation: *preliminary objection of non-exhaustion of domestic remedies rejected*.

Article 34 – In finding that the proceedings had been excessively long and rejecting the request for compensation for non-pecuniary damage, the Court of Appeal had failed to compensate properly and adequately for the infringement it had just found. The redress was insufficient: *victim status upheld*.

Article 6 § 1 – The period of time concerned was a little over six years and two months for a single level of jurisdiction, which meant that the length of the impugned proceedings was excessive and did not meet the "reasonable time" requirement. *Conclusion*: violation (unanimously).

Article 13 – The Pinto Act laid down no limits in respect of compensation, and the amount awarded was left to the discretion of the national courts. The mere fact that the amount awarded in compensation was not large was not enough in itself to challenge the effectiveness of the "Pinto" remedy.
Conclusion: no violation (unanimously).

Article 41 – EUR 1,800 in respect of non-pecuniary damage.

EXHAUSTION OF DOMESTIC REMEDY
Failure of Iranian applicants to challenge a decision not to prosecute given in Turkey: *inadmissible*.

MANSUR PAD and Others - Turkey (N° 60167/00)
Decision 28.06.2007 [Section III]

In May 1999, seven Iranian men, the applicants' relatives, were killed by Turkish security forces near the Iran-Turkish border. The applicants' representative in the United Kingdom filed a petition with the chief public prosecutor's office asking for information about the state of the investigation into this incident. In a letter of November 2000, the public prosecutor informed him that a decision not to prosecute had been taken and that it could be challenged before the regional administrative court. This letter was served on the applicants by the Turkish Consulate General in Iran. In 2002 the Turkish Government transferred 175,000 US dollars to the Ambassador of the Islamic Republic of Iran to be paid to the relatives of the deceased. This amount was received by the Iranian authorities acting as the representatives of the applicants at the latter's request. The Iranian authorities decided to reduce the amount of compensation in order to prevent recurrences of trespassing and trafficking by the border inhabitants. The families of the deceased refused to take the money which had been offered (about 11,000 USD per family).

Inadmissible: It was not necessary to determine the exact location of the impugned events given that the Government had already admitted that the applicants' relatives were suspected of being terrorists and had been killed by gun fire from the helicopters. Accordingly, the victims had been within the jurisdiction of Turkey at the time of the alleged events. The respondent Government could be deemed to have fulfilled its duty to make reparation for the alleged wrong by the payment of compensation to the Iranian Government acting on behalf of the applicants. In any case, and as far as the exhaustion of domestic remedies was concerned, an appeal against decisions of public prosecutors not to prosecute constituted, in principle, an effective and accessible remedy within the meaning of Article 35 § 1 of the Convention. Even if the decision not to prosecute had not been formally served on the applicants, they and/or their representative could, had they acted more diligently, have apprised themselves of it much sooner. Under the domestic law, they could have contested the decision within fifteen days after learning of it, but they had not done so. Given their ability to instruct a lawyer in the United Kingdom, they could not claim that the judicial mechanism of Turkey, a foreign country, was physically and financially inaccessible. Accordingly, the Court did not find any circumstances which would dispense them from the obligation to object to the public prosecutor's decision not to prosecute. The Court further noted in this connection the applicants' failure to display due diligence by appointing a local legal representative to follow up their case as required by Turkish law: *non-exhaustion of domestic remedies*.

ARTICLE 41

EXECUTION OF JUDGMENT
Indication of most appropriate form of redress (finding of a breach of Article 6 § 1): *annulment of court decision to discontinue proceedings for non-payment of its fees and resumption of the proceedings*.

MEHMET and SUNA YİĞİT - Turkey (N° 52658/99)
Judgment 17.7.2007 [Section II]

(see Article 6 above).

EXECUTION OF JUDGMENT
Indication of most appropriate form of redress (interference not "in accordance with the law"): *bring domestic law into line with Convention*.

TAN - Turkey (N° 9460/03)
Judgment 3.7.2007 [Section II]

Facts: From his prison the applicant sent a letter to a newspaper criticising the conditions of detention in F-type prisons, which he said were incompatible with human dignity. The letter was intercepted by the prison's reading committee and subsequently its disciplinary board, which refused to forward it because of its content.

Law: Article 8 (correspondence) – Sections 144 and 147 of regulation no. 647 on prison management and the execution of sentences did not indicate with sufficient clarity the scope and arrangements for the exercise by the authorities of their discretion in the monitoring of inmates' correspondence. The interference had not been "in accordance with the law".
Conclusion: violation (unanimously).

Article 41 – Non-pecuniary damage: finding of violation sufficient.

The Court added that bringing the relevant domestic law into conformity with Article 8 of the Convention would be an appropriate way to put a stop to this type of violation. The violation of the applicant's rights under Article 8 stemmed from a problem in Turkey's legislation on the monitoring of correspondence, and the Court had already found a similar violation in its judgment of 15 May 2007 in the case of *Koç v. Turkey*, no. 39862/02.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Inability to comply with a final court order to deliver up possession of a building registered as private property of the State: *violation*.

HIRSCHHORN - Romania (N° 29294/02)
Judgment 26.7.2007 [Section III]

(see Article 6 § 1 above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Annulment of original title and registration of property in the name of a foundation which had the use of the property: *admissible*.

OECUMENICAL PATRIARCHATE (FENER RUM PATRİKLİĞİ) - Turkey (N° 14340/05)
Decision 12.6.2007 [Section II]

In 1902 the applicant acquired a piece of land with two buildings on it. Ownership of the property was officially transferred to it under Ottoman law governing real estate at the time. A foundation of the Orthodox minority (the Orphanage) was given the use of the property and that fact was recorded in the land register. When the Foundations Act entered into force the legal personality of the Orphanage was officially recognised and the property concerned was mentioned in its declaration. In 1964 the Turkish authorities ordered the Orphanage to vacate the premises and the applicant maintains that it took over possession and management of the property again at that time. The General Directorate of Foundations issued a decision excluding the Orphanage from the category of State-run foundations. In 1997 the Orphanage applied to the authorities to set that decision aside. In 1999 the General Directorate of Foundations, acting on behalf of the Orphanage, took proceedings to have the applicant's ownership title annulled and the property reregistered under the Orphanage's name. In 2002, after the Court of Cassation had set aside its first judgment, the District Court ordered the disputed property to be registered in the name of the Orphanage. The Court of Cassation rejected an application to have the judgment reviewed.

Admissible under Article 6 of the Convention and Article 1 of Protocol No. 1, combined with Article 14 of the Convention.

DEPRIVATION OF PROPERTY
Property sold at an undervalue to the holder of the right of pre-emption, in the context of enforcement proceedings: *violation*.

KANALA - Slovakia (N° 57239/00)
Judgment 10.7.2007 [Section IV]

Facts: In 1991 the applicant acquired a property at an auction. He took out two loans to buy and to reconstruct the buildings. Subsequently he was unable to pay the instalments to the bank. In 1998, pursuant to a court decision, the executions officer ordered the sale of the applicant's share in the property at a public auction. The auction was cancelled after the other co-owner used his pre-emption right and acquired the applicant's share in the property by depositing a sum corresponding to the value of the applicant's share as determined by an expert in accordance with the relevant regulation. The valuation did not reflect the market value of the property. The applicant's objections were dismissed.

Law: The applicant's share in the property had been transferred to the other co-owner in the context of execution proceedings. Using his pre-emption right, the latter had acquired it at the opening price which was lower than its actual market value. The interference was lawful and pursued the aim of ensuring legal certainty through the enforcement of judicial orders, which was undoubtedly in the public interest. However, there had been no apparent public-interest justification for such a financially advantageous transaction in disregard of the applicant's and the creditor bank's legitimate interests in having the property sold at a price which was as high as the circumstances permitted. The Court could not overlook the fact that the applicant had made further investments in the property and that the general value of real property in Slovakia had substantially increased following the country's transition to a market-oriented economy. Consequently, striking a fair balance between the competing interests required that the applicant should have been allowed an opportunity to have his property sold at a price corresponding to its market value and to have a greater proportion of his debts reimbursed.

This could have been achieved

if the co-owner had been allowed to make use of his pre-emption right only after the close of the public auction. In sum, a "fair balance" had not been struck between the demands of the public interest and the requirements of the protection of the applicant's rights.
Conclusion: violation (unanimously).

DEPRIVATION OF PROPERTY
Failure to take into account historic value of a building in calculation of compensation due for its expropriation: *violation*.

KOZACIOĞLU - Turkey (N° 2334/03)
Judgment 31.7.2007 [Section II]

Facts: The applicant's two-storey freestone building was expropriated by the Ministry of Culture, as a listed cultural asset. As the compensation paid to the applicant did not take the building's historical value into account, the applicant applied for additional compensation.
According to two panels of experts on architecture, construction and real estate, the architectural, historical and cultural characteristics of the building doubled its value. An increase in the amount of compensation paid was nevertheless ruled out, as the Cultural and Natural Heritage Protection Act of 1983 excluded the architectural and historical characteristics or the rareness of the property from the criteria used to calculate the expropriation value.

Law: The expropriation had pursued the legitimate aim of protecting the country's cultural heritage. The historical value of the expropriated building had not been taken into account in calculating the compensation payable, either when the compensation for expropriation had been determined or during the proceedings concerning increased compensation. Experts had attested that the applicant could have obtained a much higher price if the historical value of the building had been taken into account in the evaluation. The complete failure to allow for the historical value of the property in calculating the compensation had deprived the applicant of the value attributable to certain features of the expropriated property and had failed to strike the requisite "fair balance".
Practice in several Council of Europe member states showed that the possibility of taking the intrinsic value of certain aspects of an expropriated property into account could not be ruled out altogether when calculating rightful compensation. Various international instruments stressed the need to weigh the public interest in protecting the cultural heritage against the need to protect people's ownership rights. That being so, a sum reasonably reflecting the cultural characteristics of the expropriated property should be fixed in order to satisfy the requirement of proportionality between the interference with the right to property and the public-interest aim pursued.
Conclusion: violation (four votes to three). Joint dissenting opinion.

Article 41 – EUR 75,000 for pecuniary damage. Non-pecuniary damage: finding of a violation sufficient.

For further details, see press release no. 541.

Concerning expropriations pursuing the legitimate aim of protecting a country's cultural heritage, cf., *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I, Information Note no. 14, *SCEA Ferme de Fresnoy v. France* (dec.), no. 61093/00, ECHR 2005-…, Information Note no. 81 and *Debelianovi v. Bulgaria*, no. 61951/00, § 54, 29 March 2007 Information Note no. 95.
See also, below, *Longobardi and Perinelli v. Italy* regarding the need to protect the cultural and architectural heritage.

DEPRIVATION OF PROPERTY
Extinguishment of civil claims in respect of forced labour under the Nazi regime by virtue of a law providing for a general compensation scheme: *inadmissible*.

POZNANSKI and Others - Germany (Nº 25101/05)
Decision 3.7.2007 [Section V]

During the Second World War the applicants and their relatives, then Polish nationals, were subjected to forced labour in a concentration camp which was operated by an industrial corporation. In 1999 they sued the corporation's legal successor for compensation. In August 2000 a law entered into force which provided for the establishment of a public-law foundation "Remembrance, Responsibility and Future" to oversee a scheme to compensate former forced labourers. The law stipulated that compensation could only be requested pursuant to its provisions and that all further claims against the German State and German companies became extinct. In 2001 the regional court rejected the applicants' actions. They appealed unsuccessfully. They were subsequently granted payments under the new law.

Inadmissible: The applicants' claims before the domestic courts, under the ordinary rules of tort law, had constituted "possessions". As a result of the new law, they had lost their claims. The loss of claims had constituted a "deprivation of possessions". Instead of having a claim, they had become eligible for, and received, compensation from the fund which had been set up by the Federal Republic of Germany and German industry. Since the law had, *inter alia*, been aimed at creating legal certainty for German industry and the German State, the replacement of the applicants' claims could be considered to be "in the public interest". The claims which the applicants had lost were not assets in the sense of matters which had a physical existence and a quantifiable value; indeed, the substance of the claims had not been adjudicated on and the applicants had never had the benefit of a final judgment in their favour. Moreover, the applicants' actions had involved a challenge to the settled case-law, which indicated clearly that the actions would be time-barred. In this, the applicants' loss had been substantially less than that suffered by applicants in cases where pending claims had had substantial prospects of success. Instead, they had been awarded the maximum amount available under the compensation scheme set up by the law (about EUR 7,700 each). Although their civil claims against the successor company had been for amounts considerably in excess of that figure, namely for the sums of between EUR 20,000 and 36,000, they could have been protracted and would have been subject to the usual risks of civil litigation, whereas the compensation payments had been made out of the fund with a minimum of formality and relatively speedily. Finally, the Court noted the substantial public interest in setting up the foundation to deal comprehensively with all compensation claims for forced labour under the Nazi regime. The interference with the applicants' right of property had therefore not upset the "fair balance" which had to be struck between the protection of property and the requirements of the general interest: *manifestly ill-founded*.

CONTROL OF THE USE OF PROPERTY
Absolute prohibition, without compensation, on building on land that had been designated as building land in order to protect views of a nearby ancient monument: *inadmissible*.

LONGOBARDI and Others - Italy (Nº 7670/03)
PERINELLI and Others - Italy (Nº 7718/03)
Decisions 26.6.2007 [Section II]

The applicants' land, in Rome, was building land according to the city development plan. A 1994 decree of the Heritage and Environment Ministry prohibited all building on it because of the presence, a few hundred yards away, of a monument of archaeological interest. The applicants lodged an appeal, arguing that there were no archaeological remains on their land and that it was not very close to the mausoleum. The Council of State upheld the position of the authorities, who justified the ban

on building by the need to preserve the area around the heritage monument and make sure it could be seen from a distance.

Inadmissible: The classification of land located in an area of archaeological interest, and the prohibition of all building on it dated back to a law passed in 1939 and was a regulatory means of controlling the use of property. The purpose of the restrictions, which had been imposed without any compensation, was to protect a site of considerable archaeological value, and was in keeping with the general interest.
The need to protect the archaeological heritage was a basic requirement, particularly in a country which housed such a large share of the world's archaeological heritage.
When the decree was passed the applicants had not been obliged to change the use to which the land was put, and before then, when they could have done so, they had shown no inclination to build on their land and had not applied for planning permission for that purpose: *manifestly ill-founded*.

On the adoption of a new city development plan in Rome, prohibiting building on a piece of land in order to create a park, with no compensation, cf. *Casa Missionaria per le Missioni estere di Steyl v. Italy* (dec.), no. 75248/01, 13 May 2004. See also, above, the *Kozacioglu v. Turkey judgment*, on the expropriation of cultural heritage assets.

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Disqualification of election candidates because of alleged errors in information they had been required to submit on their employment status and party affiliation: *no violation/violation*.

KRASNOV and SKURATOV - Russia (N^{os} 17864/04 and 21396/04)
Judgment 19.7.2007 [Section I]

Facts: The applicants complained that they had been disqualified from standing in the general elections to the State Duma because they had submitted inaccurate information in their applications for registration as candidates. The first applicant was accused of claiming to be head of a district council of the Presnenskiy District of Moscow when he no longer held that post. The second applicant was alleged to have declared that he was acting Head of the Law Department at a State university whereas he had been transferred to a post of professor in the same department. He was also accused of not having adduced evidence of his membership of the Communist Party in the correct form. Ultimately, neither applicant took part in the elections.

Law: *Legitimate aim* – Requiring a candidate for election to the national parliament to submit truthful information on their employment and party affiliation enabled voters to make an informed choice with regard to the candidate's professional and political background and thus constituted a legitimate aim.

Proportionality – (a) *The first applicant* – The Court found that the first applicant had knowingly submitted untrue information on his employment. As a candidate for election in the same district, the information whether or not he remained the head of the district council was not a matter of indifference to the voters, all of whom were local residents. By withholding information on his discharge, the first applicant had cloaked himself in the authority associated in the voters' eyes with a position he no longer held and may therefore have adversely affected their ability to make an informed choice. As he had deliberately submitted substantially untrue information capable of misleading the voters, the decision as to his ineligibility was not disproportionate.
Conclusion: no violation (unanimously).

(b) *The second applicant* – As regards the allegedly incorrect information about his employment, the findings of the domestic authorities were inconsistent *inter se* and not founded on any relevant legal

provision or case-law interpreting the statutory requirements. The impugned measure did not therefore appear to have met the requisite standard of "lawfulness" and "foreseeability". Indeed, in the view of independent observers of the election, the ruling on his application had "suggested an inconsistent and selective application of the registration rules". In any event, it could not be seriously maintained that the difference between the positions of professor and acting head of the same department was capable of misleading the voters. The fact that the second applicant was a well-known public figure in another capacity also made his current academic position of lesser relevance.
As to the evidence of his membership of the Communist Party, here too the domestic authorities' interpretation of the legislation did not meet the Convention standard of "lawfulness" and "foreseeability". Further, it had never been claimed that the second applicant was not a member of the Communist Party, so that it could not be argued that the decision on his ineligibility, in so far as it was founded solely on the alleged formal defect in the membership certificate, was taken with the aim of preventing voters from forming misconceptions about his political leanings.
The domestic authorities' decision on the second applicant's ineligibility was thus disproportionate as it was not based on relevant and sufficient reasons and did not accord with the undisputed facts.
Conclusion: violation (unanimously).

Article 41 – Award of EUR 8,000 to the second applicant in respect of non-pecuniary damage.

FREE EXPRESSION OF OPINION OF PEOPLE
CHOICE OF THE LEGISLATURE
Requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament: *case referred to the Grand Chamber*.

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

The application concerns Turkish electoral law, according to which a party must obtain at least 10% of the national vote in parliamentary elections in order to win seats in the National Assembly. In the 2002 parliamentary elections the applicants stood as candidates for the political party DEHAP (Democratic People's Party) in a province. DEHAP obtained approximately 45.95% of the vote (over 47,000 votes) in Şırnak province, but did not secure 10% of the vote nationally. The applicants were not elected, in accordance with section 33 of the Election of Members of Parliament Act (Law no. 2939), which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast". Consequently, of the three parliamentary seats allotted to the province, two were filled by the AKP (Justice and Development Party), which had obtained 14.05% of the vote (with some 14,000 votes), and the third by an independent candidate, Mr Tatar, who had obtained 9.69% of the vote (with almost 10,000 votes).
The applicants submitted that setting a threshold of 10% of the vote in parliamentary elections interfered with the free expression of the opinion of the people in their choice of the legislature.
In a judgment of 30 January 2007 (see Information Note no. 93 and Press Release no. 70), a Chamber of the Court held, by 5 votes to 2, that there had been *no violation* of Article 3 of Protocol No. 1.
The case was referred to the Grand Chamber at the applicants' request.

ARTICLE 2 OF PROTOCOL No. 7

RIGHT OF APPEAL IN CRIMINAL MATTERS INDEMNISATION
No means of challenging an order for administrative detention for contempt of court: *violation*.

ZAICEVS - Latvia (N° 65022/01)
Judgment 31.7.2007 [Section III]

(see Article 6 § 1 above).

Other judgments delivered in July

The list of "other" judgments rendered during the month in question (i.e. judgments which have not been reported in the form of a summary) has been discontinued. Please refer to the Court's Internet page http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Lists+of+judgments/ for alphabetical and chronological lists of all judgments as well as for a list of all Grand Chamber judgments.

Referral to the Grand Chamber

Article 43 § 2

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

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

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

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

On 9 July 2007 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Aksakal v. Turkey (37850/97) – Section III, judgment of 15 February 2007
Arma v. France (23241/04) – Section III, judgment of 8 March 2007
Asfuroğlu and Others v. Turkey (36166/02, 36249/02, 36263/02, 36272/02, 36277/02, 36319/02 and 36339/02) – Section II, judgment of 27 March 2007
Boczoń v. Poland (66079/01) – Section IV, judgment of 30 January 2007
Duyum v. Turkey (57963/00) – Section IV, judgment of 27 March 2007
Gavrileanu v. Romania (18037/02) – Section III, judgment of 22 February 2007
Heglas v. the Czech Republic (5935/02) – Section V, judgment of 1er March 2007
Hesse v. Austria (26186/02) – Section I, judgment of 25 January 2007
Kadriye Sülun v. Turkey (33158/03) – Section II, judgment of 6 February 2007
Kirsten v. Germany (19124/02) – Section V, judgment of 15 February 2007
Krzych and Gurbiez v. Poland (35615/03) – Section IV, judgment of 13 February 2007
Kutbettin Baran v. Turkey (46777/99) – Section IV, judgment of 23 January 2007
Litvinyuk v. Ukraine (9724/03) –Section V, judgment of 1er February 2007
Musa and Others v. Bulgaria (61259/00) – Section V, judgment of 11 January 2007
Necip Kendirci and Others v. Turkey (10582/02, 1441/03 and 7420/03) – Section II, arrêt du 3 April 2007
Nerumberg v. Romania (2726/02) – Section III, judgment of 1er February 2007
Ouzounian Barret v. Cyprus (2418/05) – Section I, judgment of 18 January 2007
Oyman v. Turkey (39856/02) – Section II, judgment of 20 February 2007
Pepszolg Kft. (« v.a. ») v. Hungary (6690/02) – Section II, judgment of 27 February 2007
Pogrebna v. Ukraine (25476/02) – Section V, judgment of 15 February 2007
Raylyan v. Russia (22000/03) – Section I, judgment of 15 February 2007
Rompoti and Rompotis v. Greece (14263/04) – Section I, judgment of 25 January 2007
Ruciński v. Poland (33198/04) – Section IV, judgment of 20 February 2007
Scordino (nº 3) v. Italy (43662/98) – Section IV, judgment of 6 March 2007
Shlepkin v. Russia (3046/03) – Section I, judgment of 1er February 2007
Siałkowska v. Poland (8932/05) – Section I, judgment of 22 March 2007
Staroszczyk v. Poland (59519/00) – Section I, judgment of 22 March 2007
Tatishvili v. Russia (1509/02) – Section I, judgment of 22 February 2007
Tsekouridou v. Greece (28770/04) – Section I, judgment of 25 January 2007
Velikovi and Others v. Bulgaria (43278/98, 45437/99, 48014/99, 51362/99, 53367/99, 60036/00 and 194/02) – Section V, judgment of 15 March 2007
Verdu Verdu v. Spain (43432/02) – Section V, judgment of 15 February 2007

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

Statistical information[2]

Judgments delivered	July	2007
Grand Chamber	0	7(8)
Section I	50(57)	247(274)
Section II	64(75)	202(283)
Section III	28(29)	162(184)
Section IV	28	177(208)
Section V	34	143(154)
former Sections	1	25(27)
Total	**205(224)**	**963(1138)**

Judgments delivered in July 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	49(56)	1	0	0	50(57)
Section II	63(74)	1	0	0	64(75)
Section III	27(28)	1	0	0	28(29)
Section IV	27	0	0	1	28
Section V	34	0	0	0	34
former Section I	0	0	0	0	0
former Section II	1	0	0	0	1
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**201(220)**	**3**	**0**	**1**	**205(224)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	7(8)	0	0	0	7(8)
Section I	232(258)	1	10	4(5)	247(274)
Section II	201(282)	1	0	0	202(283)
Section III	152(174)	3	3	4	162(184)
Section IV	154(161)	17(41)	2	4	177(208)
Section V	140(151)	2	1	0	143(154)
former Section I	0	0	0	1	1
former Section II	18(20)	0	0	2	20(22)
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Total	**908(1058)**	**24(48)**	**16**	**15(16)**	**963(1138)**

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

Decisions adopted		July	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		5	27(5)
Section II		4	16
Section III		1	8
Section IV		1	12(2)
Section V		0	16
Total		**11**	**79(7)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	6	32
	- Committee	217	2993
Section II	- Chamber	4	61(22)
	- Committee	190	1715
Section III	- Chamber	5	35
	- Committee	107	2463
Section IV	- Chamber	1	34
	- Committee	428	1526
Section V	- Chamber	8	57(3)
	- Committee	506	3860
Total		**1472**	**12787(25)**
III. Applications struck off			
Grand Chamber		0	1
Section I	- Chamber	5	75
	- Committee	3	58
Section II	- Chamber	7	54(21)
	- Committee	5	44
Section III	- Chamber	7	53
	- Committee	1	37
Section IV	- Chamber	11	83
	- Committee	5	28
Section V	- Chamber	2	30
	- Committee	11	79
Total		**57**	**542(21)**
Total number of decisions[1]		**1540**	**13408(53)**

1. Not including partial decisions.

Applications communicated	July	2007
Section I	34	424
Section II	76	510
Section III	85	481
Section IV	12	240
Section V	18	198
Total number of applications communicated	**225**	**1853**

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