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COUR EUROPÉENNE DES DROITS DE L'HOMME

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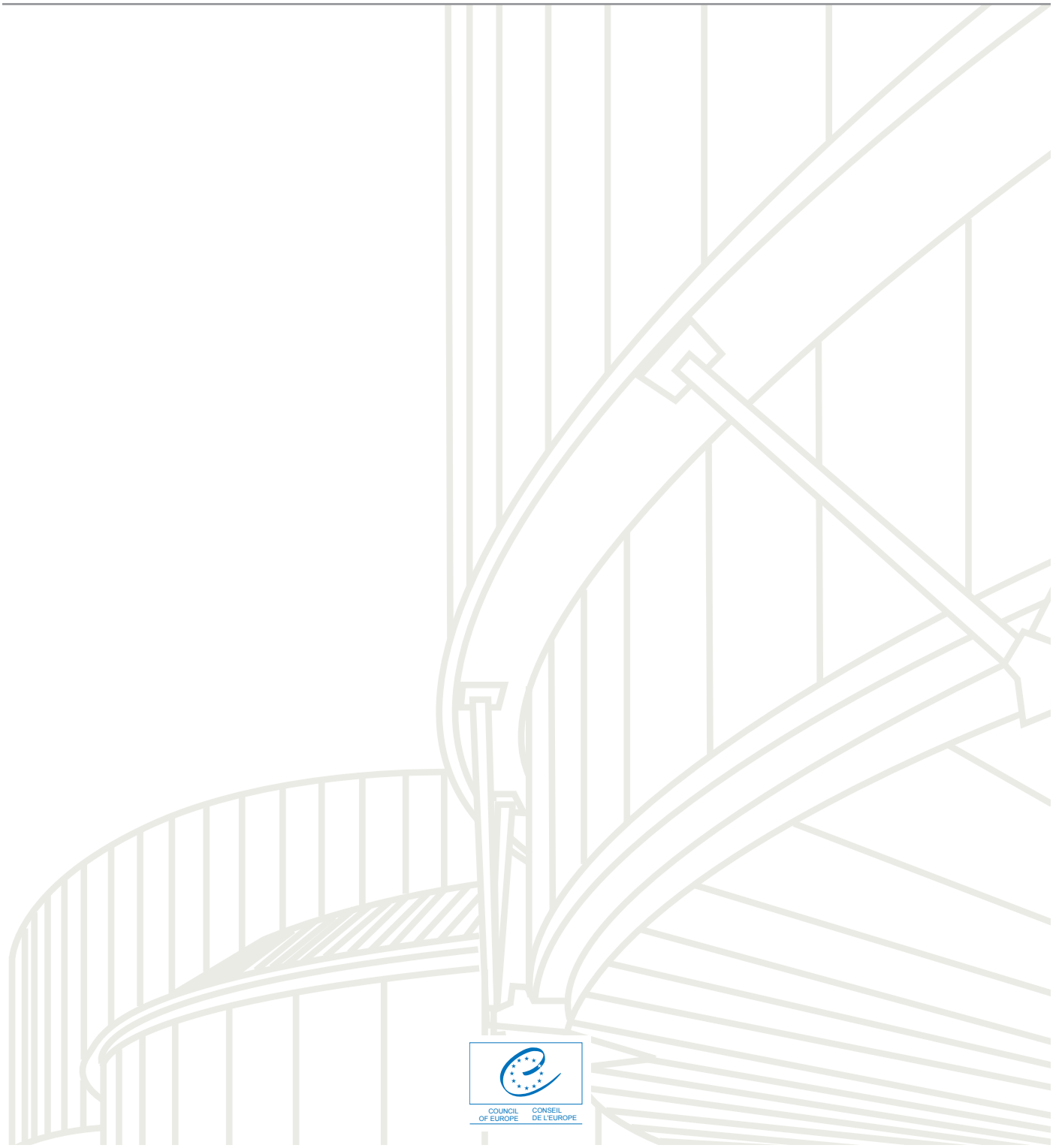

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ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Repeated transfers and placement in solitary confinement, and systematic body searches of high-security prisoner: *violation*.

KHIDER - France (No. 39364/05)
Judgment 9.7.2009 [Section V]

Facts: The applicant had been in detention since 2001 on charges of armed robbery as a member of a gang, kidnapping with voluntary liberation within a week, attempted manslaughter of a prison officer, conspiracy and aiding and abetting attempted escape. As soon as he was incarcerated he was registered as a high-security prisoner and subjected to a regime that included numerous changes of establishment, prolonged solitary confinement and systematic body searches. In 2007 he was sentenced to ten years' imprisonment.

Law: Article 3 – *Transfers*: In the space of seven years the applicant had been transferred fourteen times to different prisons. While some of the transfers were justified, according to the authorities, by the applicant's behaviour, they nevertheless seemed to have been part of a special preventive security regime to which he was submitted. According to a memorandum issued by the Minister of Justice in 2003, the purpose of this regime for dangerous detainees was to hinder would-be escapees and their accomplices in the preparation and execution of their plans. However, the memorandum had been annulled by the *Conseil d'Etat* in 2008. The Court considered that the failed escape attempt in which the applicant had taken part in 2001 was not sufficient to justify subjecting him indefinitely to a strict preventive rotation scheme. Moreover, since 2004 no disciplinary measures had been taken against the applicant by the prison authorities for any aggressive behaviour towards prison staff. The Committee for the Prevention of Torture (CPT), in its 2007 report on France, had highlighted the harmful effects of continually transferring a prisoner from one prison to another. Thus, while transfer might be necessary for the sake of security in a prison, and to discourage escape attempts, in this particular case the applicant's repeated transfers seemed to have been less justified by such imperatives as time went by. In addition, they were likely to have triggered feelings of acute anxiety in the applicant with regard to adapting to the different prison establishments and the possibility of continuing to receive visits from his family, as well as making it virtually impossible to set up any coherent medical supervision of his psychological condition. That being so, the prison authorities had failed to strike a fair balance between the imperatives of security and the need to provide the applicant with humane conditions of detention.

Solitary confinement: Solitary confinement was not a disciplinary measure and mere reference to organised crime or some unsubstantiated risk of escape was insufficient. Likewise, the classification of a detainee as a dangerous prisoner, or his committing even a serious disciplinary offence did not justify placing him in solitary confinement. In the event of transfer followed by a new decision to place the detainee in solitary confinement, the reasons given should state why the transfer alone did not suffice to guarantee the security of the establishment and the people in it. In this case the prison governor had relied on the acts that had led to the applicant's incarceration. However, the prison administration had lifted the solitary confinement measure two years earlier. In addition, the administrative court had found that the truth of the information the prison authorities had concerning an escape plan had not been established. In any event, the reasons concerned had ceased to be pertinent from 2004 onwards, as the applicant's behaviour had no longer been incompatible with ordinary conditions of detention and there was no evidence that any threats had actually been made. Furthermore, the prison authorities had failed to draw the necessary conclusions from the medical certificates advising, for health reasons, against the applicant's further solitary confinement. In 2007 the CPT criticised the prison authorities' tendency to treat solitary confinement quarters as a dumping ground for detainees who were difficult to handle, psychologically disturbed, even though access to health care, particularly psychiatric treatment, was worse there. Lastly, the applicant's solitary confinement had been interrupted without incident, but the

experiment had not lasted long as he had been placed in solitary confinement again on arrival in his new prison. At a time when the applicant was being repeatedly transferred from one prison to another, his placement in solitary confinement for such a long period, combined with the deterioration of his psychological and physical health, had to be taken into account in assessing whether the minimum level of severity required for the purposes of Article 3 had been reached.

Body searches: The Code of Criminal Procedure did not specify in what circumstances simple patting down was sufficient or when a full body search was required. However, a circular did explain in what circumstances full body searches should be carried out. Having regard to the applicant's file, and the fact that he had been singled out for special supervision, full body searches seemed to have been carried out systematically, in proportion with the number of transfers he underwent, the frequency of his placement in solitary confinement or in disciplinary cells, and the number of times he was taken to the visiting rooms. The repetitive nature of the searches, combined with the strict nature of the detention conditions complained of, did not appear to have been justified by any convincing motives of security, law and order or crime prevention, and were likely to create the impression that he was the victim of arbitrary measures. These repeated searches of a detainee who showed signs of psychiatric instability and psychological suffering were likely to have accentuated the feeling of humiliation and degradation to such an extent that they could be qualified as degrading treatment. (See *Frérot v. France*, no. 70204/01, 12 June 2007, Information Note no. 98.)
The applicant's conditions of detention, his classification as a high-security prisoner, his repeated transfer from prison to prison, his lengthy solitary confinement and the frequent full body searches he was subjected to all added up to inhuman and degrading treatment within the meaning of Article 3.
Conclusion: violation (unanimously).

Article 13 in conjunction with Article 3 – The applicant was found to have been the victim of a violation of Article 3. His complaints were therefore "arguable" for the purposes of Article 13.

Solitary confinement: The *Conseil d'Etat* had found that the applicant's prolonged solitary confinement could be considered grounds for seeking judicial review. The applicant had done so and the administrative court had annulled the measures. The applicant had therefore had an effective remedy.

Repeated transfers: The applicant had produced several administrative court decisions dismissing the actions of detainees who had challenged their repeated transfers, or finding that the transfers were purely internal organisational measures. The effectiveness of the remedy relied on by the Government in respect of the repeated transfers of the applicant from one prison to another was not established. Not until 2007 had the *Conseil d'Etat* acknowledged that a decision to submit a detainee to a high-security regime was not an internal organisational measure but an administrative decision open to appeal as being *ultra vires*. In 2008 it had annulled the circular introducing the high-security regime.

Body searches: the applicant's complaint concerned the frequency of the searches. The only case cited by the Government as a remedy had qualified body searches as unlawful and humiliating in 2006. However, the applicant produced an order given by the president of an administrative court in 2008 stating that a decision to search a detainee, based on the Code of Criminal Procedure, was not open to appeal. It was therefore not established that any domestic remedy existed against a decision to carry out a body search. The applicant had therefore not had any effective remedies in respect of his complaints under Article 3 concerning his repeated transfers and the frequent body searches.
Conclusion: violation (unanimously).

Article 41 – EUR 12,000 in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Clear lack of personal space in detention: *violation*.

SULEJMANOVIC - Italy (No. 22635/03)
Judgment 16.7.2009 [Section II]

Facts: The applicant had been convicted a number of times on charges of robbery, attempted theft, handling stolen goods and forgery. In 2003 he was sentenced to one year, nine months and five days' imprisonment and incarcerated in Rebibbia prison in Rome. During his detention he was placed in different cells each measuring 16.2 sq.m, with an adjoining 5.04 sq.m space containing sanitary facilities. He shared these cells with other prisoners. In October 2003 the applicant was granted a remission of sentence and released.

Law: While the European Committee for the Prevention of Torture has set 7 sq.m per prisoner as a desirable guideline for a detention cell (see the second general report – CPT/Inf (92) 3, § 43), it was not for the Court to say once and for all exactly how much space each detainee should be given for the purposes of the Convention, as a number of factors could come into play, such as the length of the detention, access to an outdoor exercise area, or the prisoner's mental and physical condition .

Period up to April 2003: The applicant claimed that from 30 November 2002 until April 2003 he had been held in a 16.2 sq.m cell that he shared with five other detainees. Even assuming that, as the Government had submitted, the cell concerned was occupied by six prisoners only from 17 January 2003, that nevertheless meant that for over two and a half months each prisoner had had no more than 2.7 sq.m of living space. Such a situation must have been a daily source of discomfort and inconvenience for the applicant, obliged as he was to live in a space much smaller than that deemed desirable by the CPT. This blatant lack of personal space the applicant had had to endure amounted in itself to inhuman or degrading treatment.
Conclusion: violation (five votes to two).

Period after April 2003: After that initial period and until his release, the applicant had had 3.24 sq.m, 4.05 sq.m and 5.4 sq.m respectively in his subsequent cells, which represented a marked improvement in his situation. Although there had no doubt been a problem of overcrowding in the prison at the time of the applicant's detention, the maximum capacity had been exceeded by only 14.5 to 30%, which seemed to indicate that overcrowding at the time had not reached dramatic proportions. Furthermore, the applicant had not complained of any problem of heating or access to or quality of sanitary facilities. Indeed his cell had had an adjoining space of about 5 sq.m containing sanitary facilities. Nor had he explained exactly what repercussions his conditions of detention had had on his physical health. The Court further noted that the detainees had had access to the exercise yard for four hours and thirty minutes every day. They were also allowed to leave their cells to go to the showers, play table tennis and buy food. They could also eat their dinner in cells other than their own. So, in all, detainees could spend up to eight hours and fifty minutes outside their cells. The applicant had thus had sufficient access to natural light and fresh air and to leisure activities and social contact with detainees other than those with whom he shared his cell. Therefore, during the period when the applicant had had more than 3 sq.m of personal space – and prison overcrowding had not, in itself, been such as to raise a problem under Article 3 – the treatment to which the applicant had been subjected had not attained the minimum level of severity required to fall within the scope of Article 3 of the Convention.
Conclusion: no violation (unanimously).

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

INHUMAN OR DEGRADING TREATMENT
Lack of personal space considered in light of other conditions of detention: *no violation*.

SULEJMANOVIC - Italy (No. 22635/03)
Judgment 16.7.2009 [Section II]

(See above).

INHUMAN OR DEGRADING TREATMENT
Compatibility of continued detention with applicant's state of health: *no violation*.

PRENCIPE - Monaco (No. 43376/06)
Judgment 16.7.2009 [Section V]

(See Article 5 § 3 below).

DEGRADING TREATMENT
Inadequacy of medical treatment provided to high-security prisoner suffering from serious medical condition: *violation*.

GRORI - Albania (No. 25336/04)
Judgment 7.7.2009 [Section IV]

Facts: In February 2001 the applicant, an Albanian national, was convicted *in absentia* of murder by an Italian court and sentenced to life imprisonment. The Italian authorities issued a warrant for his arrest. In March 2002 they transmitted the judgment sentencing the applicant to life imprisonment to their Albanian counterparts for information purposes only, but did not request its enforcement in Albania as there was no relevant international agreement between the two countries at the time. However, in May 2002 the Albanian prosecuting authorities instituted proceedings against the applicant (who, by then, was already in custody awaiting trial on a separate drug-trafficking charge) for the validation and enforcement of the sentence. On 15 May an Albanian court made an order for the applicant's detention pending the outcome of the validation proceedings. The applicant contested the proceedings on the grounds that the Italian authorities had not made a request for validation to the Albanian authorities, that there was no relevant international agreement between the countries and that, under domestic law, his consent to validation was required. The Albanian Supreme Court found against him, concluding that where a literal interpretation of the domestic norm (in this instance, the requirement for consent) led to an absurd result, it was legitimate to seek guidance from generally recognised norms of international law and from international treaties, even where they had yet to be ratified by Albania. Following that approach, it found that the requirement for consent related solely to the issue of where the sentence was to be served and did not constitute an obstacle to the validation of the foreign judgment. The Constitutional Court upheld that decision. The applicant was given a fifteen-year sentence by the Albanian courts on the separate drug-trafficking charge on 29 December 2003.
From September 2003 onwards the applicant made repeated requests for a medical examination because of a deterioration in his health. In August 2004 he was diagnosed with multiple sclerosis and advised that, even with treatment, his disease was capable of causing shock, organ damage, permanent disability or death. His health continued to decline and his representatives asked for him to be examined by a specialist neurologist. However, as he was in a high-security prison, the approval of the prosecuting authority had to be obtained and he was not admitted to the prison hospital until April 2005. The doctors confirmed the diagnosis and prescribed treatment with interferon-beta. The prison authorities, however, gave him vitamins and anti-depressants instead. In 2006 the doctors noted that the applicant was continuing to deteriorate, mainly as a result of the lack of treatment, which they described as life-threatening. On 10 January 2008, the Court issued an interim measure under Rule 39 requiring his immediate transfer to a civilian hospital for examination and appropriate treatment. He was transferred on 28 January 2008.

Law: Article 3 – The applicant complained of inadequate medical care. The Court noted that evidence from various medical sources confirmed that he had several serious medical problems requiring regular medical care, which he had not received. Indeed, the 2006 medical report had confirmed that his disease had progressed as a result of the lack of proper care. Even while in the prison hospital, the applicant had clearly suffered from the physical effects of his condition. As to the mental effects, he must have known that he risked a serious medical emergency at any time without qualified medical assistance being available. The fact that he was held under a high-security regime with no contact with his representatives must have added to his anxiety and it was alarming that it had been left to the discretion of the prosecutor, not the doctors, to decide whether he needed additional medical examinations. Nor could the Court accept the Government's argument that his treatment with the interferon-beta his doctors had prescribed would place a huge burden on the State budget, as the drug was available free of charge in hospitals and there was no legitimate reason why the applicant should have been treated differently from other members of the public. He suffered from a very serious disease, multiple sclerosis, that was capable of causing disability and death. The risk of the disease, associated with the lack of adequate medical treatment and the length of his prison term, had served to intensify his fears. In these circumstances the absence of timely medical assistance, added to the authorities' refusal to offer him the prescribed medical treatment, had created a strong feeling of insecurity which, combined with his physical suffering, had amounted to degrading treatment.
Conclusion: violation (unanimously).

Article 5 § 1 – In his application to the Court, the applicant complained that his detention pending the outcome of the validation proceedings was unlawful. The Court noted that the Supreme Court, in reasoning that was upheld by the Constitutional Court, had decided to disregard the provisions of domestic law requiring the convicted person's consent to the imposition of a foreign sentence. Instead, it had found that the law was inadequate and that a legal basis for the detention could be provided by generally recognised norms of international law. In so doing, it had imported into domestic law provisions of international-law instruments which had yet to enter into force in Albania. Such a legal basis for the detention and the conversion of the sentence imposed by the Italian courts could scarcely be said to have met the qualitative components of the "lawfulness" requirement. Accordingly, the applicant's detention from 15 May 2002 (when the order was made) to 29 December 2003 (when the applicant was convicted of the drug-trafficking charge) had not been in accordance with a procedure prescribed by law.
Conclusion: violation (unanimously).

Article 34 – Despite having become aware at the latest on 11 January 2008 of the interim measure issued by the Court, the domestic authorities had not transferred the applicant to hospital until 28 January, some seventeen days later. No acceptable explanation had been provided for their failure to take immediate action to comply with a measure that was intended to prevent irreparable damage. Although the Government had claimed that time had been needed to adopt security measures and to arrange for coordination among the various institutions concerned, no concrete action had been taken until 24 January. The fact that the applicant had been responsible for a delay of at most three days and that his condition following the transfer suggested that the risk had not been as serious as previously thought did not alter the position. There had, therefore, been no objective justification for the failure to comply with the interim measure.
Conclusion: violation (unanimously).

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

ARTICLE 5

Article 5 § 1

LAWFUL ARREST OR DETENTION
Decision by court of appeal not to set defective detention order aside, but to remit case to trial court: *no violation*.

MOOREN - Germany (No. 11364/03)
Judgment 9.7.2009 [GC on referral]

Facts: On 25 July 2002 the applicant was arrested on suspicion of tax evasion. A district court made an order for his detention after finding strong suspicion that he had evaded taxes on some twenty occasions over a six-year period and a risk of collusion or of his destroying evidence. The applicant subsequently obtained legal representation and on 7 August 2002 applied to the district court for a review of the detention order. A request by his lawyer for access to the case file to establish the facts and evidence on which the suspicion and order were based was turned down by the prosecution on the grounds that it would jeopardise the purpose of the investigation. The prosecution did, however, offer to inform the lawyer orally of the facts and evidence but he declined. At the review hearing, the district court upheld the detention order. The applicant's appeal to the regional court was dismissed. On 14 October 2002, following a further appeal by the applicant, a court of appeal quashed the lower courts' decisions and remitted the case to the district court after finding that the order of 25 July 2002 did not comply with statutory and constitutional requirements for a detailed description of the facts and evidence on which the defendant was suspected of the offence and of the reasons for his detention. It did not quash the order, however, as it found that while it was defective in law (*rechtsfehlerhaft*), it was not void (*unwirksam*). It also declined to give its own decision on the applicant's detention, preferring to remit the case to the district court, which it directed to inform the applicant of the grounds for suspicion and to hear his representations. Following the remittal of the case the prosecution provided the applicant's lawyer with a four-page overview by the tax-fraud office of the amount of the applicant's income and of the taxes he was alleged to have evaded. The district court issued a fresh detention order, but suspended it on conditions. That decision was upheld by the regional court and the applicant was released on 7 November 2002. Shortly afterwards his lawyer was authorised to consult the case file. At the trial the applicant was found guilty of tax evasion and sentenced to twenty months' imprisonment suspended on probation.
Under German law detention orders that are defective in law are remediable on appeal and remain a valid basis for detention until the defect is remedied. Only in cases where the flaw is obvious and of such extent and gravity as to blatantly contradict the principles underlying the German legal system will a detention order be declared null and void. Article 309 § 2 of the Code of Criminal Procedure requires appeal courts to take their own decision in cases in which they find an appeal well-founded. However, the courts of appeal have developed exceptions to that rule and tend to remit the issue to a lower court where, as in the applicant's case, insufficient details have been given in the detention order and defence counsel has been refused access to the case file. The rationale for this exception is that the defective reasoning effectively amounts to a breach of the duty to hear representations from the defendant.
In its judgment of 13 December 2007, a Chamber of the Court found no violation of Article 5 § 1 and violations of Article 5 § 4.

Law: Article 5 § 1 – The applicant complained that the court of appeal had failed to set aside the detention order of 25 July 2002 or to order his release even though it had found the order to be illegal. The Court noted that defects in a detention order did not necessarily render the underlying detention "unlawful" for the purposes of Article 5 § 1, unless they amounted to "a gross and obvious irregularity". Although the detention order of 25 July 2002 failed to comply with the formal requirements of domestic law as it did not describe in sufficient detail the facts and evidence forming the basis for the suspicion against the applicant, it did not suffer from a gross and obvious irregularity such as to render it null and void. In

particular, the district court had jurisdiction, had heard representations from the applicant at a hearing and had notified him of the order. In the review proceedings, all the domestic courts agreed that the substantive conditions for the applicant's detention – strong suspicion that he had committed an offence, coupled with the danger of collusion or of his absconding – were met. The fact that the applicant's lawyer had not been given full access to the case file did not alter the position as a violation of Article 5 § 4 on that account (see below) did not automatically entail a breach of Article 5 § 1, so that although the district court should have given more detailed information, it had nevertheless specified the charges in such a way as to make it clear that the suspicions against the applicant were based on business records seized at his home. The applicant could not therefore complain that he had been unaware of the basis for the suspicion. Further, contrary to the applicant's submissions, the court of appeal's decision of 14 October 2002 had been sufficiently foreseeable not to violate the principle of legal certainty. The distinction between orders that were merely "defective" and those that were "void" was well-established in the domestic case-law, even if, as the applicant had alleged, there was no basis for it in the Code of Criminal Procedure. Further, even though the court of appeal's decision to remit ran counter to the wording of the Code requiring the appeal court to take the decision on the merits, it too was based on a well-established jurisprudential exception that applied in certain limited circumstances. While the Court considered that judicial exceptions to an express statutory rule should be kept to a minimum to avoid compromising legal certainty, the court of appeal had expressly cited earlier case-law in situations comparable to the applicant's, so that its decision on this point also had been sufficiently foreseeable.
Lastly, while the speed with which a defective detention order was replaced was relevant to the question whether detention was arbitrary, the district court had issued a fresh, reasoned, detention order within 15 days of the court of appeal's decision to remit. Moreover, remitting a case to a lower court was a recognised technique for establishing the facts in detail and for assessing the evidence and in cases like the applicant's, its benefits could outweigh the inconvenience caused by any delay and even serve to avoid unnecessary delays by taking advantage of the lower court's better knowledge of the suspect and the investigation. It could also serve to improve the administration of justice when, as in the applicant's case, it was accompanied with instructions to the lower court on how to avoid defective decisions in the future. Accordingly, the time that had elapsed between the court of appeal's finding that the detention order was defective and the issuing of the fresh detention order had not rendered the detention arbitrary. In sum, the applicant's detention had been lawful and in accordance with a procedure prescribed by law.
Conclusion: no violation (nine votes to eight).

Article 5 § 4 – (a) *Speed of review*: The Grand Chamber endorsed the Chamber's findings that the decision to remit the case had unjustifiably delayed the process of judicial review of the legality of the detention order. A total of two months and twenty-two days had elapsed between the date the applicant sought judicial review on 7 August 2002 and the date the district court ordered his release.
Conclusion: violation (unanimously).

(b) *Access to the case file*: Equality of arms was not ensured if the defence was denied access to documents in the case file which were essential in order effectively to challenge the lawfulness of the detention. The Grand Chamber endorsed the Chamber's findings that the offer of an oral account of the facts and evidence and the provision of a four-page overview were insufficient when defence counsel had not been given access to the parts of the case file on which the suspicion against the applicant was essentially based.
Conclusion: violation (unanimously).

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

LAWFUL ARREST OR DETENTION
Detention based on principles of international law derived from treaties not yet in force in respondent State: *violation*.

GRORI - Albania (No. 25336/04)
Judgment 7.7.2009 [Section IV]

(See Article 3 above).

Article 5 § 3

LENGTH OF PRE-TRIAL DETENTION
Lack of relevant reasons for continued pre-trial detention: *violation*.

PRENCIPE - Monaco (No. 43376/06)
Judgment 16.7.2009 [Section V]

Facts: The applicant, a French national, was charged with having misappropriated several million euros when she worked as a bank employee in Monaco. When first questioned in 2004, she confessed to misappropriating the money, but explained that she had not made any personal profit from her actions. The next day she was charged and remanded in custody. Between 2004 and 2006 the applicant lodged several requests for her release, which were all rejected. In September 2006 the Judicial Revision Court rejected an appeal lodged by the applicant, fined her and ordered her to pay the costs. When a prison doctor found that the applicant's state of health was incompatible with her continued detention, she submitted a new request to the investigating judge to be released on health grounds, but it was rejected. The Court of Appeal upheld that decision in December 2006. The applicant did not appeal against that decision. In 2007, while the criminal proceedings were in progress, the applicant was released "in order to comply with the requirements of the European Convention on Human Rights concerning the reasonable length of detention pending trial".

Law: Article 5 § 3 – *Concerning the Government's request to strike the case out of the list*: In certain circumstances a case could be struck out of the list under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wished the examination of the case to be continued. Many factors needed to be taken into account to determine whether the unilateral declaration was a sufficient basis for the Court to conclude that there was no need for it to examine the case any further in order to protect the human rights enshrined in the Convention: depending on the type of complaints raised, the Government's unilateral declaration must include an admission of liability for the alleged violations of the Convention or, at least, a concession along those lines. In this particular case the Government's declaration contained no form of acknowledgment that, under the circumstances, the length of the applicant's detention pending trial had been in violation of Article 5 § 3 of the Convention. That being so, it did not suffice to render further examination of this complaint unnecessary in order to guarantee respect for human rights as defined in the Convention. The Court accordingly decided to reject the Government's request to strike the application out of the list.

Merits: The applicant's detention pending trial had lasted almost four years. The Court confined its examination of the detention to the period from the entry into force of the Convention in respect of Monaco (on 30 November 2005) to the applicant's release in 2007, while bearing in mind that she had in fact been in detention from 2004 onwards. The domestic courts had given various reasons to justify the applicant's continued detention and the length of the investigation.
As to the seriousness of the offences and the threat to law and order, the Court found that the authorities had failed to substantiate the threat sufficiently to justify the applicant's continued detention. In any event the seriousness of the offences and the threat to law and order alone were no justification for such lengthy pre-trial detention.

Furthermore, most of the decisions pronounced had been unsubstantiated as far as the need to guarantee the applicant's appearance in court was concerned; the courts had simply mentioned "the need to make sure the applicant appeared in court", without further explanation and without specifying what risk there might be, in the circumstances of the case, that the applicant would abscond after almost four years in detention. In addition, due regard should have been had to the applicant's personal connections with the respondent State. Various factors which pointed to the unlikelihood of the applicant's absconding – she had no criminal record, had been born in Monaco and had strong personal, social and family ties with the Principality – had never been taken into account by the domestic courts. Nor had the matter of whether the applicant was able to offer sufficient guarantees that she would appear in court if released been properly examined.
Lastly, the risk of collusion or pressure between the co-accused had been raised only once, without any substantiation, and therefore without any evidence of a serious risk of collusion or pressure that was likely to hinder the investigation. That being so, the need to avoid such a risk did not justify the applicant's pre-trial detention.
Conclusion: violation (unanimously).

Article 3 – *Non-exhaustion of domestic remedies*: The applicant had not lodged an appeal before the Judicial Revision Court against a judgment of the Court of Appeal of December 2006 rejecting her request for release, although an appeal to that court was, in principle, a remedy that should have been used. However, Monaco's Criminal Code provided for a fine to be imposed automatically on the appellant if an appeal was rejected, the size of the fine depending on the nature of the criminal case. Only certain persons could be exempted, and the applicant did not qualify for exemption. By systematically imposing a fine, apart from costs, on an unsuccessful appellant, the impugned domestic laws effectively penalised recourse to the Judicial Revision Court, albeit indirectly. Imposing a fine based on the outcome of an appeal when no abuse of process was alleged rendered the appeal ineffective. The Government's preliminary objection that the applicant had failed to exhaust domestic remedies could not be allowed.

Merits: The different medical reports prepared by the authorities and produced before the Court made no mention of any incompatibility between the applicant's state of health and her continued detention, of any deterioration of her health as a result of her detention, or of the prison's inability to cope. Furthermore, the applicant had had more than 220 consultations in the prison and been transferred for external consultations about 30 times, mostly with specialists, and had had X-rays, scans and MRI scans. That being so, the prison authorities, who had closely monitored the applicant's health at regular intervals, had not failed in their duty to take the necessary measures. The applicant had not been subjected to treatment which attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.
Conclusion: no violation (unanimously).

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

Article 5 § 4

TAKE PROCEEDINGS
Refusal of access to documents in case file material to issue of lawfulness of detention: *violation*.

MOOREN - Germany (No. 11364/03)
Judgment 9.7.2009 [GC on referral]

(See Article 5 § 1 above).

SPEEDINESS OF REVIEW
Delays caused by court of appeal's decision to remit case to trial court rather than to set aside defective detention order itself: *violation*.

MOOREN - Germany (No. 11364/03)
Judgment 9.7.2009 [GC on referral]

(See Article 5 § 1 above).

ARTICLE 6

Article 6 § 1 [civil]

ACCESS TO COURT
Operation of time-bar as a result of the running of the limitation period during the claimant's minority: *violation*.

STAGNO - Belgium (No. 1062/07)
Judgment 7.7.2009 [Section II]

Facts: When their father died, the two applicants, who were minors at the time, and several other descendants were paid a sum of money by an insurance company as the beneficiaries of their father's life insurance. Their mother, being the statutory administrator of her children's property, deposited the money in savings accounts that were emptied within less than a year. On coming of age, the applicants each brought an action against their mother and against the insurance company. They later dropped the claim against their mother after entering into an agreement. The court declared their action against the company inadmissible on the ground that the three-year limitation period was applicable, regardless of the capacity of the parties, to any claim arising from an insurance policy. The court of appeal also rejected their argument that, since they had been minors at the time, it had been legally impossible for them to act. An appeal on points of law was also dismissed on the grounds that the aim pursued by the limitation period, namely to avoid the disappearance of evidence and means of verification, could not be fulfilled if it were open to insured persons or their beneficiaries to bring a claim many years after the event on which it was based. The applicants argued that they should not be penalised for failing to apply, at the ages of 9 and 10, for the appointment of a special guardian, and that they had found themselves *de facto* in a situation where they had no legal representative through whom they could have asserted their rights. The Court of Cassation found that it was not appropriate to allow different treatment for persons without legal representation.

Law: Statutory limitation periods pursued the legitimate aim of ensuring legal certainty, as a time-bar on claims protected potential defendants from belated complaints and meant that the courts would not have to give judgments based on evidence that had become uncertain or incomplete with the passing of time. The courts had thus held that the limitation period also ran against minors, and put the interests of the insurance companies first. However, it had been practically impossible for the applicants to defend their property rights against the company before reaching their majority, and by the time they did come of age, their claim against the company had become time-barred. Furthermore, the fact that the applicants had taken legal action against their mother then dropped the claim should not, in principle, have had any incidence on their right to file a claim against the insurance company and to have their claim decided on the merits. Especially considering that the primary liability lay with the insurance company, while the mother's liability was secondary. The strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had thus prevented the applicants from using a remedy that in principle was available to them. That limitation on their right of access to a court was disproportionate in relation to the aim of guaranteeing legal certainty and the proper administration of justice.

Conclusion: violation (six votes to one).

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

FAIR HEARING
Profound and persistent differences in interpretation of statutory provision by a supreme court: *violation*.

IORDAN IORDANOV and Others - Bulgaria (No. 23530/02)
Judgment 2.7.2009 [Section V]

Facts: The three applicants and one other person, B.B., were dismissed from the Operational and Technical Intelligence Department of the Ministry of the Interior after having been identified by an internal investigation body as those responsible for the presence of listening devices in the official residence of the Principal State Prosecutor which they had failed to detect. They disputed the lawfulness of their dismissal before the Supreme Administrative Court. A panel of three judges annulled the dismissals because the persons concerned had not had the benefit of the guarantees provided for under Bulgarian law in connection with official investigations, which also applied to internal investigations. The Minister of the Interior appealed on points of law. An initial bench of five judges of the Supreme Administrative Court upheld the decision annulling B.B.'s dismissal. A few months later, however, a slightly different bench disagreed with the reasoning that same court had adopted in the B.B. case and overturned the first-instance judgments concerning the three applicants because the procedural guarantees attending official investigations were not applicable to internal investigations.
In its case-law the Supreme Administrative Court had adopted two different stances on the question whether the procedural guarantees offered in the event of an official investigation to a staff member threatened with dismissal for disciplinary reasons also applied in the event of an internal investigation. In some judgments it had found that the guarantees applied to internal investigations by analogy with the procedural guarantees offered in the event of official investigations, while in others it had taken the opposite view.

Law: The principle of legal certainty was implicit in all the Articles of the Convention and was one of the fundamental aspects of the rule of law. While divergences in the case-law were inherent in any judicial system composed of a series of trial courts each having authority in its own geographical jurisdiction, the role of the Supreme Court was precisely to resolve those contradictions.
There were "profound and long-standing differences" in the Supreme Administrative Court's interpretation of the relevant domestic legal provision. The court that had heard the applicants' appeal had ruled that certain procedural guarantees were not applicable to internal investigations, whereas only a few months earlier the same court, with an almost identical bench had adopted the opposite position in the case of B.B. Furthermore, the relevant case-law of the Supreme Administrative Court revealed two different interpretations of the relevant provisions of the law governing official investigation and internal investigation procedures, which had continued after the adoption of the judgments in the present case. Also, although there was a remedy for this situation in domestic law under Articles 44 and 45 of the Supreme Administrative Court Act (namely the possibility of requesting an interpretation of the relevant legal provisions in order to harmonise the case-law) it was never implemented and the legal uncertainty had continued, effectively depriving the applicants of one of the essential guarantees of a fair hearing within the meaning of Article 6 § 1.
Conclusion: violation (unanimously).

Article 41 – EUR 4,500 to the first applicant and EUR 4,000 each to the second and third applicants in respect of non-pecuniary damage.

(See also *Beian v. Romania (no. 1)*, no. 30658/05, Information Note no. 103)

REASONABLE TIME
Length of proceedings subject to repeated supervisory review: *violation*.

SVETLANA ORLOVA - Russia (No. 4487/04)
Judgment 30.7.2009 [Section I]

Facts: The applicant worked as a consultant at the Supreme Court of one of the federal subjects of the Russian Federation. While she was on maternity leave her position was converted to that of an assistant of the president of the Supreme Court. Upon her return she was offered various posts but not the newly created position. She refused the offers and was dismissed. In 2001 she brought court proceedings against her former employer seeking reinstatement in her previous position and the payment of salary arrears and compensation. The case was initially dismissed in 2001. Between 2002 and 2008 it was re-examined five times as a result of remittals for fresh consideration and supervisory-review proceedings. Ultimately, the domestic courts found for the applicant.

Law: The domestic courts had examined the case in six rounds of proceedings in total. Although the case had been pending before the courts for only one year and eleven months in all, the proceedings had been delayed by the repeated remittals of the case for fresh examination to the first-instance court either by the appeal or the supervisory-review courts. Thus, the proceedings had been spread over almost seven years. The right to have one's claim examined within a reasonable time would be devoid of all sense if domestic courts examined a case numerous times, by shifting it from one court to another, even if at the end the accumulated length of proceedings did not appear particularly excessive. Therefore, the fact that in the present case the aggregated length of the proceedings did not appear very long at first glance did not absolve the domestic authorities of their responsibility to account for the reasonableness of the length of proceedings. There had been two major deficiencies in the proceedings at hand. Firstly, in the first three rounds of proceedings the case had been examined by courts which could not be considered impartial and independent. That fact had eventually been acknowledged by the Supreme Court of the Russian Federation, which in 2005 had quashed the decisions adopted in the applicant's case and had referred the case to a court situated in a different region. It was to be noted that from the beginning of the proceedings the applicant had lodged several requests to that effect with the Supreme Court, but to no avail. After the case had been transferred, it was examined in three further rounds, in particular, because the first-instance court had not implemented the instructions of the higher court. In sum, the failure of the domestic courts to promptly refer the applicant's case to an independent and impartial court and the repeated referrals of the case from one court to another had resulted in significant delays. The applicant had been in a particularly vulnerable position since she had been dismissed while on maternity leave. Therefore, special diligence had been required from the domestic courts in the examination of her claims against her employer. Accordingly, the length of the proceedings had been excessive.
Conclusion: violation (unanimously).

Article 41 – EUR 2,100 in respect of non-pecuniary damage.

(See also *Markin v. Russia*, no. 59502/00, Information Note no. 67).

Article 6 § 1 [criminal]

ACCESS TO COURT
Condition requiring payment before fixed fine could be appealed against: *inadmissible*.

SCHNEIDER - France (No. 49852/06)
Decision 30.6.2009 [Section V]

In 2005 the applicant was twice ordered to pay fines for exceeding the speed limit, following automatic speed checks. The notices requesting her to pay the fines stated that unless payment was made within a

specified period, proceedings would be instituted to seize her property, and that the sums due had to be deposited before any appeal could be lodged. The applicant initially addressed appeals to the public prosecutor's office, refusing to deposit the sums due in advance. She claimed to have received no reply, an assertion contested by the Government. She eventually paid the fines – plus a late-payment surcharge – in mid-2006 and subsequently lodged further appeals, to which she received no reply.

Inadmissible: The applicant complained of a violation of her right of access to a court because of the decisions of the public prosecutor's office rejecting her appeals. This case is to be likened to that of *Thomas v. France* ((dec.), no. 14279/05, 29 April 2008), in which the Court found that, in the sphere of road traffic offences, which concerned the entire population and were the subject of frequent appeals, the aim pursued by the requirement to deposit the sums in question – namely to prevent dilatory or vexatious appeals and overloading of the Police Court's list – was legitimate. In this case, however, the applicant alleged that her household income had been insufficient for her to deposit the requisite sums, but she failed to show that her income in 2005 had been inadequate for her to deposit EUR 550. In fact, she had paid the fines, plus a late-payment penalty and bailiff's fees, which together amounted to an even larger sum: *manifestly ill-founded*.

FAIR HEARING
Conviction based on evidence obtained during unlawful police operation: *no violation*.

LEE DAVIES - Belgium (No. 18704/05)
Judgment 28.7.2009 [Section II]

Facts: In 1998 the police were checking an industrial estate when they spotted two individuals loading boxes into a lorry. They then entered one of the hangars adjoining the main building, where they found numerous boxes and a car. They opened one of the boxes and found that it contained packets of tobacco. The door from the hangar into the main building was locked, but the police officers found a key in a jacket and let themselves in. There they found the applicant and another person in the lavatories. The police officers asked the applicant to open one of the boxes in the back of the car. There they found 25 packets of cannabis and 25 packets of hashish. A police dog subsequently reacted when sniffing the car. The investigation revealed that the car had been purchased at the applicant's request and with his money, and that he had a key to it. The applicant and the other person were charged with drug-trafficking and conspiracy. The Criminal Court acquitted them because the evidence had been obtained illegally. The public prosecutor appealed and the court of appeal sentenced the applicant to imprisonment and a fine. The Court of Cassation rejected the applicant's subsequent appeal.

Law: This case differed from those where evidence collected unlawfully according to domestic law had also been collected in breach of Article 8 of the Convention (see, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, 10 March 2009, Information Note no. 117).
The relevant Belgian case-law left the judge largely free to mitigate or, where applicable, eliminate the consequences of irregularities in the collecting of evidence. In the present case the court of appeal had meticulously examined the layout of the premises in order to determine whether or not there had been unlawful entry. It had made a distinction between the different places visited by the police: on the one hand there was the fenced-off land surrounding the industrial buildings and on the other the hangar and the main building. The court of appeal held that the land in question was accessible to the public. The police officers had therefore been within their rights when they had inspected the land around the buildings. As to the search of the hangar and the main building, the court of appeal had found it unlawful, but had decided that this had not affected the value of the evidence found as there was no provision in the law for any specific punishment for such an unlawful search. It had also emphasised that the offences concerned were serious enough to far outweigh any irregularities in the collection of evidence, and that the rights enshrined in Article 8 of the Convention had been respected in one way or another. However, on entering the hangar, which was neither the applicant's residence nor his place of work, the police had found an offence being committed. It was on the strength of that police operation – the lawfulness of which was certainly open to criticism – and of the evidence gathered on that occasion that the applicant

had been convicted. In considering whether the proceedings taken as a whole were fair, it was important to ascertain whether the rights of the defence had been respected. In this particular case the circumstances in which the impugned evidence had been collected left no doubt as to its reliability or accuracy. Furthermore, the applicant had had an opportunity to challenge the evidence and to object to its use and to the resulting findings at three levels of jurisdiction.
Conclusion: no violation (unanimously).

ARTICLE 8

PRIVATE LIFE
Restrictions on obtaining an abortion in Ireland: *relinquishment in favour of the Grand Chamber*.

A., B. and C. - Ireland (No. 25579/05)
[Section III]

Under Irish law as interpreted by the Supreme Court, an abortion is lawful only if there is a real and substantive risk to the life of the mother that can be averted only by a termination of pregnancy. Since the introduction of the Thirteenth and Fourteenth Amendments to the Constitution, it is now lawful for Irish residents to have an abortion abroad or to obtain or make available information relating to services available in another State.
All three applicants were resident in Ireland at the material time, had become pregnant unintentionally and had decided to have an abortion as they considered that their personal circumstances did not permit them to take their pregnancies to term. The first applicant was an unemployed single mother. Her four young children were in foster care and she feared that having another child would jeopardise her chances of regaining custody after sustained efforts on her part to overcome an alcohol-related problem. The second applicant had been advised that she had a substantial risk of an ectopic pregnancy and in any event did not wish to become a single parent. The third applicant, a cancer patient, was unable to find a doctor willing to advise whether her life would be at risk if she continued to term or how the foetus might have been affected by contraindicated medical tests she had undergone before discovering she was pregnant. As a result of the restrictions in Ireland all three applicants were forced to seek an abortion in a private clinic in England in what they described as an unnecessarily expensive, complicated and traumatic procedure. The first applicant was forced to borrow money from a money lender, while the third applicant, despite being in the early stages of pregnancy, had to wait for eight weeks for a surgical abortion as she could not find a clinic willing to provide a medical abortion (drug-induced miscarriage) to a non-resident because of the need for follow-up. All three applicants experienced complications on their return to Ireland, but were afraid to seek medical advice there because of the restrictions on abortion.
The application was communicated under Article 2 (third applicant) and Articles 3, 8, 13 and 14.

HOME
Lack of procedural safeguards in enforcement proceedings for debtor lacking legal capacity: *violation*.

ZEHENTNER - Austria (No. 20082/02)
Judgment 16.7.2009 [Section I]

Facts: In November 1999 the applicant's flat was the subject of a sale at the request of creditors who had obtained payment orders against her in summary proceedings in the sum of approximately EUR 9,600. The court decisions concerning the sale were not served on her personally as she could not be found at her home address, but were deposited at the post office and the sale took place in her absence. In February 2000 the applicant was evicted from the flat. The following month she suffered a nervous breakdown and was admitted to a psychiatric hospital. A temporary guardian was appointed to look after her needs. In the ensuing guardianship proceedings it was established that since 1994 she had suffered from paranoid psychosis and had been unable to make rational decisions. The guardian appealed against the order for the

sale of the flat on the grounds of the applicant's incapacity. However, although the court found that two of the payment orders that had served as a basis for the enforcement order had not been enforceable because the applicant had been unable to participate in the proceedings at the time, it ruled that it was no longer possible to discontinue the enforcement proceedings as the decision allocating the proceeds of sale to the creditors had become final and had been executed. Moreover, the 14-day time-limit for appealing the decision was absolute and served to protect the purchaser.

Law: Article 34 – The applicant had filed her application with the Court in 2002, setting out in a sufficiently substantiated manner the subject-matter of her complaint. In 2006 her guardian informed the Court that she had not approved the institution of the proceedings before the Court and did not wish to pursue the application. The applicant, however, requested that the Court proceed with the examination of her case and stated that she did not wish to be represented before the Court by her guardian. Bearing in mind that the conditions governing individual applications were not necessarily the same as national criteria governing *locus standi*, the Court concluded that the applicant had standing to pursue her complaint.
Conclusion: admissible (unanimously)

Article 8 – The Court found that the applicant had lacked legal capacity for a number of years by the time the judicial sale of the flat and her eviction took place. She had therefore not been able either to contest the payment order or to resort to the remedies available under domestic legislation. By the time the authorities became aware of her lack of legal capacity, she was left without any means of obtaining a review of her case owing to the absolute nature of the time-limit for appealing. Even though the existence of such time-limits served to protect legal certainty as well as bona fide purchasers, the Court considered that when persons lacking legal capacity were concerned, specific justification was required owing to their vulnerable position. However, the domestic courts had not advanced any such justification, or weighed the interests of the purchaser against those of the applicant. As regards whether the absolute time-limit served the general interest of legal certainty, the Court reiterated that that principle would not be violated in circumstances of a substantial and compelling character. Accordingly, neither of the legitimate aims relied on by the Government could outweigh the fact that the applicant had been dispossessed of her home without being able to effectively participate in the proceedings and without any possibility to have the proportionality of the measure determined by the courts.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – Even though the applicant's case involved a dispute between private parties, the State was under an obligation to afford those parties judicial procedures offering the necessary procedural safeguards. In this connection, the Court had doubts whether the applicant's interests were taken into account where a payment order for a comparatively minor sum issued in summary proceedings should serve as a basis for judicial sale of real estate of considerable value. As to the procedural mechanism relied on by the Government as an alternative means of protecting the applicant's pecuniary interests, the Court was not convinced that such procedure, requiring the institution of a number of consecutive sets of proceedings against each of the applicant's creditors, offered adequate protection to a person lacking legal capacity.
Conclusion: violation (unanimously).

Article 41 – EUR 30,000 in respect of non-pecuniary damage.

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Expulsion of pupils from school for refusing to remove conspicuous symbols of religious affiliation during lessons: *inadmissible*.

AKTAS - France (No. 43563/08)
BAYRAK - France (No. 14308/08)
GAMALEDDYN - France (No. 18527/08)
GHAZAL - France (No. 29134/08)
J. SINGH - France (No. 25463/08)
R. SINGH - France (No. 27561/08)
Decisions 30.6.2009 [Section V]

At the start of the school year 2004-2005 some Muslim girls went to school wearing headscarves to cover their hair, while some young men wore the Sikh keski or under-turban. The headmasters considered these accessories to be in breach of a French law passed in 2004 prohibiting the wearing of all conspicuous signs of religious faith during lessons. When the pupils refused to remove them they were denied access to the classroom and some were placed in a separate study room. Then three girls changed their headscarves for bonnets. After discussions with their families, however, the schools' disciplinary bodies finally expelled the pupils. The area schools directors concerned upheld that decision while seeking solutions to enable the pupils to continue their studies. The pupils challenged the expulsions before the administrative courts. Their applications were dismissed at first instance and on appeal. In the cases of Aktas, Bayrak and Gamaleddyn, requests for legal aid to appeal to the *Conseil d'Etat* on points of law were rejected for lack of serious grounds of appeal. Miss Aktas and the fathers of the Singh boys nevertheless lodged appeals with the *Conseil d'Etat*, but to no avail.

Inadmissible under Article 9: In all of these cases, prohibiting the pupils from wearing conspicuous signs of their religious beliefs in class was a restriction on their freedom to manifest their religion. The restriction was in accordance with the law and pursued the legitimate aim of protecting the rights and freedoms of others and public order. This was why the pupils had been expelled, not because of any objection to their religious convictions. The ban was also meant to protect the constitutional principle of secularity, an aim in keeping with the values underlying the Convention and the Court's case-law. In addition, the permanent wearing of a bonnet instead of a headscarf was also a conspicuous manifestation of religious beliefs. The 2004 Act had anticipated the appearance of new symbols of religious beliefs, as well as possible attempts to circumvent the law. In these circumstances, and having regard to the margin of appreciation left to the national authorities in this area, the expulsions had been justified and proportionate to the aim pursued. Moreover, the pupils had been able to continue their studies in other schools: *manifestly ill-founded*.

(See *Dogru* and *Kervanci v. France*, no. 31645/04 and no. 27058/05, Information Note no. 114).

Concerning the procedure followed by the school until Miss Gamaleddyn was expelled, while ensuring that the regulations were correctly applied, the school authorities had continued to teach the girl during the period of dialogue provided for in the law. The situation during the transition period had therefore been neither illegal nor arbitrary: *manifestly ill-founded*.

Inadmissible under Article 14 in conjunction with Article 9: In the cases of Aktas, Ghazal and J. and R. Singh the impugned legal provisions did not affect the children's religious beliefs but pursued the legitimate aim of protecting public order and the rights and freedoms of others. Their purpose was to preserve the neutrality and secularity of teaching establishments and they applied to all conspicuous religious symbols: *manifestly ill-founded*.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of president of extreme right-wing party for inciting the public to discrimination or racial hatred in leaflets distributed in electoral campaign: *no violation*.

FÉRET - Belgium (No. 15615/07)
Judgment 16.7.2009 [Section II]

Facts: The applicant, the chairman of the "Front National-Nationaal Front" political party, was a member of the Belgian House of Representatives at the relevant time. Leaflets and posters distributed by his party in an election campaign led to complaints of incitation to hatred, discrimination and violence. The leaflets presented non-European immigrant communities as criminally-minded and keen to exploit the benefits they derived from living in Belgium, and also sought to make fun of them, with the inevitable risk of arousing feelings of distrust, rejection or even hatred towards foreigners. The applicant's parliamentary immunity was lifted at the prosecutor's request. Then criminal proceedings were brought against him as the author and editor-in-chief of the offending leaflets and owner of the website. The applicant was sentenced to 250 hours' community service related to the integration of immigrants, together with a 10-month suspended prison sentence. He was also declared ineligible for ten years. The court found that the applicant's offending conduct had not fallen within his parliamentary activity and that the leaflets contained passages that represented a clear and deliberate incitation to discrimination, segregation or hatred, and even violence, for reasons of race, colour or national or ethnic origin. An appeal by the applicant on points of law was dismissed.

Law: The applicant's conviction was an "interference" with his right to freedom of expression which was provided for by the law on racism and xenophobia. It had the legitimate aims of preventing disorder and protecting the rights of others. It was of the utmost importance to combat racial discrimination in all its forms and guises, as emphasised in the Council of Europe's legal instruments. Incitation to hatred did not necessarily call for specific acts of violence or other offences. Insults, ridicule or defamation aimed at specific population groups or incitation to discrimination, as in this case, sufficed for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people's dignity, or even their safety. Political speech that stirred hatred based on religious, ethnic or cultural prejudices was a threat to social peace and political stability in democratic States. The applicant's position as a Member of Parliament could not be considered as a mitigating circumstance. It was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance. It was their duty to defend democracy and its principles because their ultimate aim was to govern. In this case, at the prosecutor's request, the House of Representatives considered that the impugned comments justified lifting the applicant's parliamentary immunity. Fostering the exclusion of foreigners was a fundamental attack on their rights, and everyone – including politicians – should exercise particular caution. The political party's leaflets had been handed out in an electoral campaign, with a view to reaching the electorate at large, that is to say, the whole population. Political parties must enjoy broad freedom of expression to be able to canvass for votes; where racist or xenophobic comments were concerned, the electoral context helped to kindle hatred and intolerance and the impact of this type of speech grew worse and more harmful. Political speech required a high level of protection through parliamentary immunity and protection from prosecution for opinions expressed in Parliament. Political parties had the right to defend their opinions in public, even if they offended, shocked or disturbed part of the population. They could propose solutions to the problems linked to immigration, but without triggering reactions incompatible with a peaceful social climate and without undermining people's confidence in the democratic institutions. Examination of the offending texts revealed that the wording the applicant had used was clearly an incitation to discrimination and racial hatred, which could not be disguised by the election campaign. The reasons given by the domestic courts to justify the interference with the applicant's freedom of expression had been pertinent and sufficient, considering the pressing social need to protect public order and the rights of others, namely, the immigrant community. Lastly the appeal court had sentenced the applicant to 10 years' ineligibility, amongst other things, thereby applying

the principle that restraint must be displayed in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of one's opponents. The interference with the right to freedom of expression had thus been necessary in a democratic society.
Conclusion: no violation (four votes to three).

FREEDOM OF EXPRESSION
Criminal conviction of mayor for announcing intention to boycott Israeli products in the municipality: *no violation*.

WILLEM - France (No. 10883/05)
Judgment 16.7.2009 [Section V]

Facts: In 2002, during a meeting of the town council at which journalists were present, the applicant, who was the mayor, announced his intention to boycott Israeli products in the municipality, to protest against the anti-Palestinian policies of the Israeli Government. His words were reported in a newspaper. In response to the reactions the article triggered, a few days later the applicant published an open letter on the municipal Internet site. Representatives of the Israeli community lodged a complaint with the public prosecutor, who decided to prosecute the applicant for incitement to discrimination on national, racial and religious grounds. The applicant was acquitted by the criminal court, but sentenced on appeal and fined 1,000 euros. He lodged a cassation appeal but was unsuccessful.

Law: The applicant's conviction, which amounted to an "interference" with his freedom of expression, had been based on the Press Act 1881, which referred to the provisions of the Criminal Code. The aim of the interference had been to protect the rights of others, namely, Israeli producers. However, interference with the freedom of expression of a mayor required the Court to show particular vigilance. In this case the applicant had not been convicted for his political opinions but for inciting the commission of a discriminatory act. He had not stopped at denouncing the policy of Ariel Sharon's government at the time, but had gone further and called for a boycott of food products from Israel. Furthermore, the Court of Cassation had taken into account not only the call for a boycott made orally at the council meeting but also the message posted on the municipal Internet site, which had aggravated the discriminatory nature of the applicant's position. In his capacity as mayor the applicant had certain duties and responsibilities. In particular he should have shown a certain neutrality, and he had a duty of discretion when acting on behalf of the community he represented. The applicant's intention may have been to protest against the policy of Israel's Prime Minister, but the reasons given for the boycott, both at the meeting and on the Internet site, were discriminatory and therefore reprehensible. The applicant had not been prosecuted or convicted because of his political opinions, which fell within the scope of freedom of expression, but rather for calling on the municipal authorities to engage in an act of positive discrimination, namely the explicit and determined refusal of all commercial relations with Israeli producers. In so doing, by means of a statement at a municipal council meeting, with no debate or vote on the matter, and on the municipal Internet site, the applicant could not claim to have been encouraging the free discussion of a subject of general interest. Furthermore, as the public prosecutor had noted in his submissions to the domestic courts, the mayor was not entitled to take the place of the governmental authorities by declaring an embargo on products from a foreign country. In such circumstances the reasons given by the French courts to justify the interference with the applicant's freedom of expression had been "relevant and sufficient" for the purposes of Article 10 § 2 of the Convention. In addition, the fine imposed had been relatively moderate and proportionate to the aim pursued. That being so, and regard being had to the margin of appreciation allowed to the national authorities in such matters, the impugned interference had been proportionate to the legitimate aims pursued.
Conclusion: no violation (six votes to one).

FREEDOM OF EXPRESSION
Disciplinary penalty imposed on public-television journalist for criticising the company's programming policy: *violation*.

WOJTAS-KALETA - Poland (No. 20436/02)
Judgment 16.7.2009 [Section IV]

Facts: The applicant was a journalist with a public television company and also the President of the Polish Public Television Journalists' Union. She was reprimanded by the company after criticising – in comments to the press in her trade-union capacity and in an open letter – its decision to take two classical music programmes off the air. She applied to a district court for an order for the reprimand to be withdrawn, but her application was dismissed. On appeal, a higher regional court upheld that decision on the grounds that the applicant had been in breach of her duty of loyalty towards her employer.

Law: The applicant's case raised the issue of how the limits of loyalty of journalists working for public broadcasters should be delineated and what restrictions could be imposed on them in public debate. It was not necessary to draw a distinction between the applicant's roles as an employee of a public television company, a trade-union activist and a journalist and to make a separate analysis of the scope of her freedom of expression in each. However, her combined professional and trade-union roles were relevant to the question whether the reprimand had been "necessary in a democratic society". The obligation of discretion and constraint did not apply with equal force to journalists as it was in the nature of their functions to impart information and ideas. A public broadcaster's programming policy was an issue of public interest and concern allowing of little scope for restrictions on debate. The applicant's employer had been entrusted with a special statutory mission which included assisting cultural development with special emphasis on national intellectual and artistic achievements. The applicant had argued that the changes in its programming policy were not consistent with that mission and had echoed widely shared concerns about the declining quality of music programmes. Although she claimed to have done so in her role as a journalist commenting on a matter of public interest, the company had taken the view that merely participating in the debate was sufficient to establish a breach of her obligations as an employee, without weighing those obligations against the company's role as a public service. Similarly, the domestic courts had endorsed that conclusion without examining whether and how the subject matter and context of her comments could have affected the permissible scope of her freedom of expression. In the Court's view, it was also relevant that the applicant's comments had had a sufficient factual basis, while at the same time amounting to value judgments not susceptible of proof; that the tone had been measured; that no personal accusations had been made; and that her good faith was not in dispute. In sum, having weighed up the various competing interests, including the right to freedom of expression on matters of general interest, the applicant's professional obligations and responsibilities as a journalist and the duties and responsibilities of employees towards their employers, the Court concluded that the interference had not been "necessary in a democratic society".
Conclusion: violation (unanimously).

Article 41 – No claim made.

FREEDOM OF EXPRESSION
Award of damages against magazine for publishing information that had been freely divulged and made public by a singer: *violation*.

HACHETTE FILIPACCHI ASSOCIÉS ("ICI PARIS") - France (No. 12268/03)
Judgment 23.7.2009 [Section V]

Facts: The applicant company, Hachette Filipacchi Associés, publishes the weekly magazine *Ici Paris*, which published an article about singer Johnny Hallyday, illustrated by four photographs, one showing him on stage and the others being advertising material for products with which he had allowed his name and image to be associated. The article focused on financial difficulties which had allegedly obliged the

singer to cash in on his image, with little hope of repaying his debts. The singer took action against the applicant company, which was ordered, on appeal, to pay 20,000 euros in damages.

Law: The fact that the applicant company was ordered to pay damages amounted to an interference with its freedom of expression. The interference had been prescribed by law and there were legal precedents concerning the right to one's image of which the applicant company, an informed professional publisher in the press sector, must have been aware. Furthermore, the interference had pursued a legitimate aim, namely the protection of the rights of others, in this case the plaintiff's right to respect for his private life. As to whether it had been proportionate to the legitimate aim pursued, the offending article and the accompanying photos, which focused on the singer's alleged financial difficulties and the way he exploited his name and image, could not be regarded as having taken part in or contributed to a debate on a matter of general interest to the community in keeping with the Court's case-law. That being so, the respondent State enjoyed a broader margin of appreciation. The national courts had found that the applicant company had violated the plaintiff's right to his image on the grounds that the publication of the photographs without his consent had not been consistent with the purpose of advertising for which he had allowed his image to be used. The misuse of a photograph for a purpose other than that for which a person had specifically authorised its reproduction could be considered sufficient grounds for restricting freedom of expression. However, that finding alone did not suffice to justify the award against the applicant company. Particular importance had to be attached to the nature of the pictures published, which had been purely promotional. This case differed from those previously examined by the Court in which the offending photographs had been obtained fraudulently or taken in secret, or had revealed details of people's private lives by invading their privacy. In this case the pictures had not been altered or their commercial character changed, as they had been used to illustrate, albeit in a critical manner, the news that the singer was selling his image for use by a variety of consumer products in order to satisfy his financial needs. The information about the lavish way in which he managed and spent his money did not fall within the "inner circle" of private life protected by Article 8 of the Convention. The prior disclosure by Mr Hallyday himself of the relevant information was an essential element of the Court's analysis of the applicant company's interference with the singer's private life. Its disclosure had weakened the degree of protection to which he was entitled as regards his private life, as it was by then widely known news. This had not been taken into account in the determination of the applicant company's liability. Yet it was a decisive factor in assessing the balance to be struck between the applicant company's freedom of expression and the singer's right to respect for his private life. Lastly, although the general tone of the article might appear to have been negative towards Mr Hallyday, it had not contained any offensive expressions or harmful intent towards him. The applicant company had thus used the degree of exaggeration and provocation permitted in a democratic society without overstepping the limits attached to freedom of the press. In conclusion, although the reasons given by the domestic courts appeared relevant, they did not suffice to show that the impugned interference with the applicant company's right had been necessary in a democratic society. It was therefore not necessary for the Court to examine the nature and quantum of the award in order to measure the proportionality of the interference.
Conclusion: violation (unanimously).

Article 41 – EUR 26,000 in respect of pecuniary damage.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Imposition of a fine for presiding over a peaceful meeting without giving prior notice to the authorities: *inadmissible*.

SKIBA - Poland (No. 10659/03)
Decision 7.7.2009 [Section IV]

The applicant was vice-president of an association whose purpose was to defend Christian values in Poland. In 2002 the association was told that an exhibition was to be inaugurated two days later in a modern art gallery which certain Catholic circles considered contrary to their religion. When the exhibition opened, thirty-odd members of the association, including the applicant, gathered outside the gallery in the centre of Cracow. For about forty-five minutes they displayed banners and distributed leaflets to passers-by explaining that they were protesting against the exhibition concerned. The applicant, who was leading the demonstration, spoke to the crowd with a loud-hailer and led them in prayer before bringing the meeting to a close. A police officer who was standing nearby then approached the applicant to check his identity. The applicant was subsequently fined approximately EUR 100 for organising a public meeting without first notifying the authorities. The applicant's lawyer appealed. He pointed out that as his client had found out about the exhibition only two days before the opening, it had not been possible for him to notify the authorities three days in advance as required by law. He stressed that the demonstration had been part of the peaceful debate on the exhibition, which had caused a public outrage and which the members of the applicant's association considered blasphemous. He argued, *inter alia*, that the demonstration would have been meaningless had it been held at another time or place. The regional court rejected the appeal, holding that the things the applicant had said during the demonstration were irrelevant to the case because he had been fined solely for failing to give the authorities the requisite prior notification.

Inadmissible: The applicant's conviction amounted to an interference with his right to freedom of assembly. In this case he had been punished not for having taken part in a public meeting as such, nor for having made any particular statement in public, but for having knowingly disregarded the domestic law under which, as the organiser of the planned public meeting, he was required to give the authorities prior notice. The aim of this law was not to arbitrarily restrict the exercise of the right in question but rather to give the authorities a reasonable amount of time to take adequate steps to reconcile the exercise by certain people of their right to freedom of peaceful assembly, on the one hand, with the legitimate rights and interests of other people, including freedom of movement, but also to uphold law and order and prevent crime. That being so, the obligation on the applicant under domestic law could not be considered an excessive or unreasonable requirement capable of surreptitiously restricting his right to freedom of peaceful assembly. Even though, as the applicant argued, the information about the exhibition had reached him too late for him to give the authorities the requisite three days' notice, nothing in the case file indicated that the authorities could be held in any way responsible for this. In spite of the fact that there had still been time for him to notify the authorities before going ahead with the demonstration, the applicant had made no attempt to do so, probably for fear that the authorities would prohibit the gathering. However, the applicant had submitted no evidence to the domestic courts or to the Strasbourg Court to prove that such fears might have been well-founded. It could not be said, therefore, that the applicant's right to hold the meeting overrode his duty to inform the authorities, particularly considering that he had never claimed that the demonstration had been a spontaneous event. It was important that associations and other organisers of demonstrations should play by the democratic rules they helped to defend, by respecting the regulations in force. In this particular case, although the authorities had not been informed of the demonstration in advance, and although it had taken place in a central location and could have obstructed people's freedom of movement, the authorities had shown tolerance and the applicant had been able to exercise his right to freedom of assembly as intended. Lastly, the authorities had shown the necessary restraint when sentencing the applicant: they had taken into account the fact he had no criminal record and that the demonstration had been a peaceful one, and they had opted for the most lenient sentence. This attitude on the part of the authorities could not have any chilling effect on the applicant. His conviction did not appear to have been based on the authorities' desire to punish him for what he had said at the meeting or for the ideas or values he was defending. On the contrary, the courts had made it quite clear that the purpose of the fine was merely to prevent similar situations from arising in the future. Accordingly, the applicant's criminal conviction did not appear disproportionate to the legitimate aims pursued: *manifestly ill-founded*.

(See also *Bukta and Others v. Hungary*, no. 25691/04, Information Note no. 99, and *Éva Molnár v. Hungary*, no. 10346/05, Information Note no. 112).

ARTICLE 13

EFFECTIVE REMEDY
Absence of statutory remedy for non-pecuniary damage resulting from death in accident caused by private individual: *no violation*.

ZAVOLOKA - Latvia (No. 58447/00)
Judgment 7.7.2009 [Section III]

Facts: The applicant's twelve-year-old daughter was run over in the street and killed by a car driven by a private individual. When charged, the driver spontaneously paid the applicant about 2,600 euros to cover the cost of her daughter's funeral. The court of first instance found the driver guilty as charged and sentenced him to three years' imprisonment. The applicant then brought a civil action against the driver in the court of first instance for financial compensation for the non-pecuniary damage sustained as a result of her daughter's death. Her application was dismissed as there was no provision in the Civil Code for compensation for non-pecuniary damage in the event of the death of a close relative. The applicant lodged an appeal with the regional court, which found that she was entitled to full compensation from the driver. The driver appealed on points of law. The Senate of the Supreme Court, considering that the case raised a serious problem of interpretation of the Civil Code, suspended the examination of the appeal and convened a plenary sitting of the Supreme Court, which, in a preliminary ruling, held that the general provisions of the Civil Code provided only for compensation for pecuniary damage suffered by the victim, while compensation for non-pecuniary damage was provided for only in a provision of the Civil Code which was not applicable to the applicant's case. The Senate quashed and annulled the judgment of the regional court and remitted the case to the appeal court, which accepted the Senate's findings in substance and dismissed the appeal. The Senate rejected the applicant's subsequent appeal and upheld the judgment.

Law: The applicant's only quarrel with the national courts was that they had refused to award her compensation for the non-pecuniary damage she had allegedly suffered; her complaint thus concerned only the ineffectiveness of the compensation procedure. It was therefore to be examined under Article 13 in conjunction with Article 2 of the Convention. At the material time the compensation of family members of accident victims was regulated by the Civil Code. One provision covered only pecuniary damage, while another provided for compensation for non-pecuniary damage only in certain cases, which did not include that of the applicant. Concerning the substantive limb of Article 2, the applicant's daughter had been killed in a road accident caused by the negligence of a private individual at the wheel of a motor vehicle. The authorities had therefore not been in a position to foresee the risk of such a random event occurring, so they could not be held liable in any way. Furthermore, there was no appearance of any violation of the procedural limb of Article 2, as the authorities had effectively set in motion the criminal-justice machinery provided for in the domestic law. The applicant thus had no arguable claim under Article 13 in so far as neither aspect of Article 2 applied. Concerning the compensation for non-pecuniary damage claimed by the applicant, in view of the great diversity that reigned in the legal orders of the different contracting States in the field of compensation in the event of death, the Court could not infer that there was a general and absolute obligation to award pecuniary compensation for non-pecuniary damage in situations similar to that of the applicant. Furthermore, the applicant could have joined the criminal proceedings as a civil party to claim the reimbursement of her medical and funeral expenses, but instead had preferred to accept the sum offered by the driver responsible for the accident. Lastly, a new law had amended the general provisions of the Civil Code, which henceforth provided expressly for the possibility of compensation for non-pecuniary damage as part of the general right to compensation. In addition, it created the presumption that non-pecuniary damage existed in the event of criminal offences against life. Although it noted with approval this change in the law, the Court did not consider the previous situation to have been incompatible with Article 13. So, in the light of all the relevant circumstances of the case, there was no arguable claim of a violation of Article 2 in this case in respect of compensation for the damage suffered by the applicant.
Conclusion: no violation (six votes to one).

EFFECTIVE REMEDY
Lack of effective remedy in respect of repeated transfers and frequent body searches of high-security prisoner: *violation*.

KHIDER - France (No. 39364/05)
Judgment 9.7.2009 [Section V]

(See Article 3 above).

ARTICLE 14

DISCRIMINATION (Article 9)
Expulsion of pupils from school for refusing to remove conspicuous symbols of religious affiliation during lessons: *inadmissible*.

AKTAS - France (No. 43563/08)
BAYRAK - France (No. 14308/08)
GAMALEDDYN - France (No. 18527/08)
GHAZAL - France (No. 29134/08)
J. SINGH - France (No. 25463/08)
R. SINGH - France (No. 27561/08)
Decisions 30.6.2009 [Section V]

(See Article 9 above).

DISCRIMINATION (Article 11)
State's failure to afford effective judicial protection against discrimination on the ground of trade-union membership: *violation*.

DANILENKOV and Others - Russia (No. 67336/01)
Judgment 30.07.2009 [Section V]

Facts: The applicants, who were members of a local branch of the Dockers' Union of Russia (DUR), were employed by a private company called Kaliningrad Commercial Seaport. In 1997 the DUR began a two-week strike over pay, better working conditions, and health and life insurance. The strike failed to achieve its goals and was discontinued. In the period following, DUR members found themselves reassigned to special work teams, transferred to part-time positions, and ultimately declared redundant and dismissed as a result of a structural reorganisation of the company. The applicants responded to these and other actions by bringing a number of cases to the local courts in which they complained of unlawful and discriminatory treatment based on their union membership. In each instance, the civil courts ruled in favour of the applicants, reversing the company's decisions and ordering payment of compensation for lost wages. Their discrimination complaints were repeatedly dismissed, however, on the grounds that the existence of discrimination could only be established in the framework of criminal proceedings. The applicants were unable to launch a criminal case, because legal entities such as the seaport company could not be held liable and the prosecutor's office declined to open a criminal investigation against the managing director of the company, as a preliminary inquiry had failed to establish direct intent by the director to discriminate against the applicants. In addition to going to the courts, the DUR complained to the International Transport Workers' Federation (ITF) and the regional Duma. Both the ITF and the Duma recognised the existence of discrimination based on trade-union membership and called for the DUR members' rights to be respected. Despite these warnings and the courts' repeated rulings overturning the company's anti-DUR policies, DUR membership decreased from 290 in 1999 to only 24 in 2001.

Law: Any employee or worker should be free to join or not to join a trade union without being sanctioned. It was crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge such treatment and to have the right to take legal action capable of ensuring real and effective relief. The seaport company had used various techniques to encourage employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals that were subsequently found unlawful by the courts, wage reductions, disciplinary sanctions, and refusing to reinstate DUR members following court judgments. The clear negative effects that DUR membership had on the applicants were sufficient to constitute a prima facie case of discrimination in their enjoyment of the rights guaranteed by Article 11 of the Convention. Russian law contained a blanket prohibition on all discrimination on the ground of trade-union membership or non-membership and the applicants were entitled to have their discrimination complaints examined by a court by virtue of the general rules of the Russian Civil Code and the *lex specialis* contained in the Trade Union Act. These provisions had remained ineffective in the instant case, as the domestic judicial authorities had refused to entertain the applicants' discrimination complaints, on the grounds that the existence of discrimination could be established in criminal proceedings only. However, as regards the criminal remedy, its main deficiency was that, being based on the principle of personal liability, it required proof "beyond reasonable doubt" of direct intent by the company's key managers to discriminate against the trade-union members; failure to establish such intent led to decisions not to institute criminal proceedings. Furthermore, victims of discrimination had only a minor role in the institution and conduct of criminal proceedings. The Court was thus not persuaded that a criminal prosecution, which depended on the ability of the prosecuting authorities to unmask offenders and prove direct intent to discriminate, could have provided adequate and practicable redress in respect of the alleged anti-union discrimination. Alternatively, civil proceedings would allow the far more delicate task of examining all the elements of the relationship between the applicants and their employer, including the use of a combination of techniques to induce dockers to relinquish their DUR membership, to be fulfilled and appropriate redress to be granted. The lack of protection of the applicants' right not to be discriminated against could entail fear of potential discrimination and discourage potential members from joining the trade-union, which might in turn lead to its disappearance. In sum, the State had failed to fulfil its positive obligations to afford effective and clear judicial protection against discrimination on the ground of trade-union membership.
Conclusion: violation (unanimously).

Article 41 – EUR 2,500 each in respect of non-pecuniary damage.

DISCRIMINATION (Article 1 of Protocol No. 1)
Consequences of family's loss of nationality on applicant's status as the mother of a large family and her related pension entitlement: *violation*.

ZEÏBEK - Greece (No. 46368/06)
Judgment 9.7.2009 [Section I]

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

ARTICLE 34

LOCUS STANDI
Applicant lacking legal capacity under domestic law permitted to present own case before the Court despite guardian's disapproval: *admissible*.

ZEHENTNER - Austria (No. 20082/02)
Judgment 16.7.2009 [Section I]

(See Article 8 above).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Failure by State to comply promptly with interim measure intended to prevent irreparable damage: *violation*.

GRORI - Albania (No. 25336/04)
Judgment 7.7.2009 [Section IV]

(See Article 3 above).

ARTICLE 35

Article 35 § 1

EXHAUSTION OF DOMESTIC REMEDY
EFFECTIVE DOMESTIC REMEDY (Monaco)
Automatic fine in the event of appeal on point of law being dismissed: *admissible*.

PRENCIPE - Monaco (No. 43376/06)
Judgment 16.7.2009 [Section V]

(See Article 5 § 3 above).

EXHAUSTION OF DOMESTIC REMEDY
Ineffectiveness of remedies in respect of length of proceedings: *violation*.

ROBERT LESJAK - Slovenia (No. 33946/03)
Judgment 21.7.2009 [Section III]

Facts: In October 1999 the applicant brought a civil action in damages. The first interim judgment was delivered in September 2006, followed by a judgment delivered on appeal in May 2007. In June 2007 the respondent appealed to the Supreme Court on points of law and the proceedings are still pending. In early March 2007 the applicant lodged a supervisory appeal with a district court complaining that the proceedings had been pending for over seven years and requesting that they be expedited and a decision delivered immediately. Later that month, the president of the district court, referring to the Protection of the Right to a Trial without Undue Delay Act 2006, replied that the case had been transferred to a higher court.

Law: Article 35 § 1 – In its earlier case-law in respect of Slovenia, the Court had found that applicants had to exhaust the aggregate of remedies available to them under the 2006 Act as regards proceedings pending before first- and second-instance courts. That requirement applied irrespective of whether the applications with the Court were lodged before or after the entry into force of the Act. While in proceedings before the ordinary courts the remedies under the 2006 Act meant in effect an appeal to a higher instance court, this was not the case for excessively lengthy proceedings before the Supreme Court, given that length complaints concerning those proceedings were decided by the same court. In addition, no compensation could be claimed in respect of the length of proceedings before the Supreme Court. Having regard to the nature of the acceleratory remedies provided in the 2006 Act, the Court found that they did not provide effective redress in respect of the length of Supreme Court proceedings and therefore applicants could not be required to have used them.
Furthermore, before the 2006 Act came into force the applicant's case had been pending for more than seven years, mainly before the first-instance court. The only way to remedy such a situation was to provide a compensatory remedy for the damage suffered as a result of the delays. However, having noted the conflicting position of the Government on the question of when a compensatory remedy had become available to the applicant and the lack of an explicit provision addressing that issue, the Court found that the 2006 Act did not afford the applicant an effective remedy in respect of the delays that had occurred in the proceedings thus far.

Articles 6 § 1 and 13 – violations (unanimously).

Article 41 – EUR 4,800 in respect of non-pecuniary damage.

(See also *Lukenda v. Slovenia*, no. 23032/02, Information Note no. 79; *Grzinčič v. Slovenia*, no. 26867/02, Information Note no. 97; and *Žunič v. Slovenia*, no. 24342/04, Information Note no. 101).

Article 35 § 3

COMPETENCE *RATIONE PERSONAE*
Wife wishing to pursue application filed on behalf of her late husband months after his death: *inadmissible*.

DUPIN - Croatia (No. 36868/03)
Decision 7.7.2009 [Section I]

The application was lodged on 31 October 2003 in the name of Mr Vladimir Dupin. During the procedure before the Court, it was established that he had died on 13 March 2003. His wife expressed her intention to take over the proceedings instituted by her late husband.

Inadmissible: An application could not be brought in the name of a deceased person, not even through a representative. Since Mr Dupin had died more than seven months before his representatives introduced the application in his name, the case had not been brought by a person who could be regarded as an applicant for the purposes of Article 34 of the Convention: incompatible ratione personae.

As regards the late Mr Dupin's wife, the Court considered that she could not pursue the application in his place because he had never taken part in proceedings before the Court: inadmissible.

COMPÉTENCE *RATIONE PERSONAE*
Application directed against State by virtue of fact that the international organisation concerned had its seat there: *inadmissible*.

LOPEZ CIFUENTES - Spain (No. 18754/06)
Decision 7.7.2009 [Section III]

The applicant was an employee of the International Olive Council ("the IOC"), an international intergovernmental organisation based in Spain. The Executive Director of the IOC brought disciplinary proceedings against him and he was suspended. He was informed of the disciplinary charges and of the investigator's recommendation that he be dismissed without notice. The applicant appealed to the Joint Committee of the IOC, which found that the disciplinary procedure had been properly followed, but suggested that the case be examined by the competent judicial authorities. Having heard the applicant, the Executive Director of the IOC adopted a decision stating that gross negligence had been established and that the applicant was to be dismissed without notice, with immediate effect. That decision was nevertheless open to appeal before the Administrative Tribunal of the International Labour Organisation ("ATILO"). The applicant applied to the Court, considering that as Spain had ratified a "host country" agreement with the IOC, it could be held responsible for violations of the Convention resulting from that organisation's acts in so far as Spain could not allow the IOC to exercise its judicial powers over its territory and its inhabitants in breach of the guarantees provided for in Article 6 of the Convention. He then challenged the decision before the ATILO, which found his application ill-founded and rejected it.

Inadmissible: The alleged violations of the Convention had originated in an act of the IOC, namely, the disciplinary procedure that had led to the applicant' dismissal. The application was unusual in that it had been lodged against the respondent State in its capacity as host country of the international organisation's permanent headquarters. Spain had granted the IOC immunity from criminal, civil and administrative jurisdiction. That, however, did not justify the application of principles different from those established in the *Boivin* and *Connolly* cases, which concerned the individual and collective liability of the Contracting States under the Convention as a result of them being members of a particular international organisation. The findings were transposable to a State Party to the Convention which had agreed to the presence of an international organisation on its soil. It was in keeping with international law for States to confer immunities and privileges on international bodies on their territory. The applicant's complaints essentially concerned the disciplinary proceedings against him in the IOC. He had challenged the disciplinary penalty through the internal system set in place by the organisation. The impugned decisions had been taken by an international organisation that was not under the jurisdiction of the respondent State, in the context of a labour dispute that fell fully within the legal authority of that organisation, which had a legal personality distinct from that of its member States, including the host country. Accordingly, the alleged violations of the Convention concerning the disciplinary proceedings within the IOC could not be attributed to the host country concerned. As to the possible liability of the IOC, as the organisation was not a Contracting Party to the Convention, it could not be held responsible under the provisions thereof: *incompatible* ratione personae.

(See *Boivin v. 34 member States of the Council of Europe* (dec.), no. 73250/01, Information Note no. 111; *Connolly v. 15 member States of the European Union* (dec.), no. 73274/01; *Galić v. the Netherlands*, no. 22617/07; and *Blagojević v. the Netherlands*, no. 49032/07, Information Note no. 120).

ARTICLE 37

Article 37 § 1 (c)

CONTINUED EXAMINATION
Unilateral declaration by respondent Government without any acknowledgment of allegation of a violation of the Convention: *not struck out*.

PRENCIPE - Monaco (No. 43376/06)
Judgment 16.7.2009 [Section V]

(See Article 5 § 3 above).

Article 37 § 2

RESTORATION TO THE LIST OF CASES
Failure to comply with terms of friendly settlement: *case restored to the list*.

KATIĆ - Serbia (No. 13920/04)
Decision 20.7.2009 [Section II]

The applicants, who were mentally disabled, were deprived of their legal capacity and a guardian was appointed to look after their interests. Before the Court, they complained about the length of civil proceedings against an insurance company that had been pending since 1987. The applicants subsequently accepted a friendly settlement offer made by the Government and on 4 March 2008 the Court struck the case out of its list. On 30 April 2008 the Government, as specified in the friendly settlement, paid EUR 6,000 to a bank account opened on behalf of the applicants, and the competent social-care centre appointed an interim guardian to manage the sum. By November 2008 only some EUR 400 of the awarded amount had been spent for the applicants' subsistence. Consequently, they continued to live in very difficult conditions, with a leaking roof, inadequate electrical installations and no functioning home appliances. In view of their legal status, the applicants could not independently access their money and the interim guardian appointed to them was an employee, and under the direct supervision, of the social care centre.

The respondent Government had timely transferred the settlement sum to the applicants' account and, in different circumstances, that would have generally satisfied the terms of a friendly settlement. However, given the applicants' disability and legal status, the fact that by November 2008 only EUR 400 had been spent for their subsistence, and that their housing situation remained difficult, indicated that the interim guardian and/or the centre had failed to make sure that the settlement sum was being used in the applicants' best interests: *case restored to the list*.

ARTICLE 46

EXECUTION OF A JUDGMENT
GENERAL MEASURES
Respondent State required to adopt general measures to eliminate structural problems of length of pre-trial detention.

CAHIT DEMIREL - Turkey (No. 18623/03)
Judgment 7.7.2009 [Section II]

Facts: In 1996 the applicant was remanded in custody on suspicion of involvement in the activities of the PKK. He was held in pre-trial detention for a total of six years and four months before the proceedings were ultimately discontinued under the statute of limitations.

Law: Articles 5 §§ 3 and 5 and Article 6 § 1 – violations (unanimously).

Article 46 – In almost all of its 68 judgments against Turkey where the Court had found a violation of Article 5 § 3 of the Convention, it had concluded that the domestic courts had ordered the applicants' continued detention pending trial using identical stereotyped terms, such as "having regard to the nature of the offence, the state of the evidence and the content of the file", and that they had failed to consider other preventive measures provided for under domestic law, such as a prohibition on leaving the country or release on bail. Similarly, the Court had repeatedly held that there was no remedy in Turkish law within the meaning of Article 5 § 4 of the Convention by which the applicants could challenge the lawfulness of their pre-trial detention. Consequently, the Court considered that the violations found in the applicant's case had originated in a systemic problem arising out of the malfunctioning of the Turkish criminal-justice system and the state of the Turkish legislation. The respondent State was therefore invited to adopt general measures at the national level with a view to ensuring the effective protection of the right to liberty and security under Articles 5 §§ 3 and 4 of the Convention.

Article 41 – EUR 7,000 in respect of non-pecuniary damage.

EXECUTION OF A JUDGMENT
GENERAL MEASURES
Obligation to introduce effective remedy for non-enforcement or delayed enforcement of judgments in social housing cases and to grant redress to victims in pending cases.

OLARU and Others - Moldova (Nos. 476/07, et al.)
Judgment 28.7.2009 [Section IV]

Facts: Moldova has approximately 300 applications pending against it before the Court in cases concerning the non-enforcement of final judgments. Of these, roughly half concern the failure of municipal authorities to comply with final judgments awarding housing rights or money in lieu under legislation that bestows such rights on a very wide category of beneficiaries at the expense of municipal authorities who claim that they do not have the necessary funds.
In their applications to the Court, the applicants complained that their respective municipal authorities had failed to comply with final court orders requiring the provision of social housing.

Law: Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 – violations (unanimously).

Article 46 – The Court noted that non-enforcement, particularly in social housing cases, was Moldova's prime problem in terms of the number of applications pending before the Court and reflected a persistent

structural dysfunction and a practice that was incompatible with the Convention. It therefore decided to adopt a pilot judgment procedure. Following its approach in *Burdov v. Russia (no. 2)* (see Information Note no. 115), it ruled that the State must, within six months of the Court's judgment in the applicants' case becoming final, set up an effective domestic remedy securing adequate and sufficient redress for the non-enforcement or delayed enforcement of final domestic judgments concerning social housing and, within one year, grant such redress to all victims in applications lodged before the delivery of its judgment. Proceedings in applications lodged after delivery would be adjourned for one year and applicants in such cases could be required to resubmit their grievances to the domestic authorities.

Article 41 – Reserved.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
POSITIVE OBLIGATIONS
Failure to pay compensation for loss caused by unlawful administrative act on grounds that applicants had sued the wrong authority: *violation*.

PLECHANOW - Poland (No. 22279/04)
Judgment 7.7.2009 [Section IV]

Facts: The applicants were the heirs of the owner of residential premises in Warsaw that were transferred to the city under a 1945 decree. They lodged compensation claims against the Warsaw Municipality under Article 160 of the Code of Administrative Procedure (which afforded a right to compensation for actual damage suffered as a result of certain unlawful administrative decisions) following a ruling by the Local Government Board of Appeal in 1999 that the authorities' refusal in 1964 to grant the former owner temporary ownership had been unlawful. Their claims were dismissed, however, on the grounds that the proper defendant was the State Treasury, not the Municipality. That decision was upheld on appeal. The question of the proper defendant in such cases was the subject of divergent interpretation by the domestic courts, including the Supreme Administrative Court, both before and after the applicants lodged their claim for compensation.

Law: (a) *Compatibility* ratione materiae: The Government had argued, *inter alia*, that the applicants had not proved that they had any "possessions", as the fact that they were entitled to pursue a claim for compensation under Article 160 of the Code of Administrative Procedure did not mean that they had a "legitimate expectation of obtaining effective enjoyment of a property right". The Court observed that in its 1999 ruling the Local Government Board of Appeal had established that the 1964 decision had been issued in breach of law and this fact entitled the applicants to seek compensation for damage. The entitlement was expressly provided for in domestic law and the established case-law confirmed the existence of a causal link between a flawed administrative decision and loss sustained. The applicants thus had a "legitimate expectation" that their claim would be dealt with in accordance with the applicable laws and, consequently, upheld.
Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits*: The applicants' claim had failed because, in reliance on the prevailing case-law, which the courts had later considered to be obsolete, they had sued the wrong defendant. Major administrative reforms in Poland over the previous fifty years had left the courts with the task of determining the authorities responsible for taking over the competencies of now defunct bodies. However, the constantly changing interpretation of the provisions introducing the reforms had led to case-law that was often contradictory, even at the level of the Supreme Court. The question of liability for damages resulting from flawed administrative decisions was by no means clear at the time the applicants' claim was examined or in the years that followed. While divergences in the case-law were an inherent consequence of any judicial system based on a network of courts, it was the role of a supreme court to resolve such conflicts.

In the instant case, however, even the Supreme Court's case-law on the legal questions in issue was not uniform. Although the problems with which the courts were faced as a result of the reforms was undoubtedly complex, it was nevertheless disproportionate to shift the duty of identifying the competent authority to be sued to the applicants and to deprive them of compensation as a result. In the Court's view, when a public entity was liable for damages, the State's positive obligation to facilitate identification of the correct defendant was all the more important. The applicants seemed to have fallen victims of the administrative reforms, the inconsistency of the case-law and a lack of legal certainty and coherence. Accordingly, the State had failed to comply with its positive obligation to provide measures safeguarding the applicants' right to the effective enjoyment of their possessions and had upset the "fair balance" between the demands of the public interest and the need to protect the applicants' right.
Conclusion: violation (unanimously).

Article 41 – Reserved.

PEACEFUL ENJOYMENT OF POSSESSIONS
Form of execution of judgment in the applicant's favour which resulted in reduction in compensation actually awarded: *violation*.

ZAHARIEVI - Bulgaria (No. 22627/03)
Judgment 2.7.2009 [Section V]

Facts: In 1947 a mill belonging to the applicants' father was nationalised and subsequently taken over by a State company. At a later date the State initiated a procedure to privatise the company. In 1998, following the entry into force of the Law of 1997 on compensation of owners of nationalised immovable property, the applicants applied to the competent authority for compensation. The procedure was concluded in 2003 by a judgment of the Supreme Administrative Court awarding the applicants a number of shares in the above-mentioned company, calculated on the basis of their book value (corresponding to the difference between the company's assets and liabilities expressed in value per share). In the meantime the company concerned had been taken over by another company. The applicants were thus given the same number of shares in the resulting company in execution of the judgment in their favour. They then asked the authorities to increase the number of shares, arguing that the book value of the shares of the new company was much lower than that of the shares in the initial company which they had been awarded. Their request was refused on the grounds that it was no longer possible to change the compensation as the court judgment had been final. The applicants appealed to the Supreme Administrative Court against that decision, but to no avail.

Law: As the operative provisions of the judgment in the applicants' favour had not been properly executed, there had been an interference with their right to the peaceful enjoyment of their possessions. As the company referred to in the judgment had ceased to exist, it did not appear unreasonable as such to have the judgment executed against the new company. The authorities should nevertheless have verified the adequacy and effectiveness of this solution with regard to Article 1 of Protocol No. 1. It was true that the parties had not provided any factual means of assessing the difference in the book values of the two companies' shares in order to establish whether the applicants had suffered a loss and, if so, how much. However, the Court considered that it was not its role to assess the values in question, but rather to ascertain whether the national authorities had taken the necessary steps to ensure the adequacy of the compensation thus afforded, that is, whether the exchange for shares in the new company had been consistent with the judgment of the Supreme Administrative Court, and whether the authorities had justified the possible decrease in compensation. In this regard the Court noted the "mechanical" nature of the solution adopted, the authorities having at no time examined whether the value of the same number of shares differed from one company to the other. In actual fact the respective value of the companies differed considerably. As a result, the shares in the new company had not been worth as much as those in the first company which the applicants had been awarded. The refusal of the authorities to review the situation on the grounds that the judgment had become final could not justify the interference, the applicants having submitted credible, convincing proof in support of their allegations, showing a

significant difference in the values of the two companies' shares. In conclusion, the Court found that the automatic awarding of shares in the new company, combined with the lack of an effective remedy to have the merits of the applicant's request for more shares examined, had upset the fair balance which had to be struck between the general interest and the interests of the individual, and the applicants had borne an individual and excessive burden.
Conclusion: violation (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Consequences of family's loss of nationality on applicant's status as the mother of a large family and her related pension entitlement: *violation*.

ZEÏBEK - Greece (No. 46368/06)
Judgment 9.7.2009 [Section I]

Facts: Between 1974 and 1982 the applicant had four children with her husband, who like her was a Greek citizen and a Muslim. When the fourth child was born she became the mother of a "large family" under Greek law. In 1984, while the applicant and her family were visiting her father in Turkey, they all had their Greek nationality withdrawn by a decision of the Minister of the Interior. That decision was based on Article 19 of the Nationality Code as then in force, authorising such a measure against "any person of foreign origin who leaves Greece without intending to resettle there". The family's appeals against that decision were dismissed. In 1998 Article 19 of the Nationality Code was repealed. The authorities then invited members of the Muslim community who had been deprived of their Greek nationality to apply for naturalisation, which the applicant and her family did in 1999. In 2000 Greek nationality was restored to the applicant and to three of her children but not to her husband or one daughter (Ilkaï). Being both a minor and married, Ilkaï was considered to be dependent on her husband and was not therefore entitled to acquire Greek nationality through her mother. In 2001 the applicant applied for a pension, payable for life, as the mother of a large family, in accordance with Law no. 1982/1990. However, her application was rejected on the ground that, as her four children did not all have Greek nationality, the statutory requirements were not met. The applicant's appeals against this refusal were dismissed by the head of the Family Allowance Department, the Department's litigation board and finally the Supreme Administrative Court, which found that Article 21 of the Constitution – which protected the family and motherhood – was relevant only to the need to preserve and promote the Greek nation and did not concern foreign families living in Greece. By a decision of 2007 the Minister of the Interior revoked the decision by which Ilkaï had been deprived of her Greek nationality.

Law: When Ilkaï was born the applicant's family all had Greek nationality and the applicant had acquired the status of mother of a large family under Greek law. Under Law no. 860/1979 that status was in principle to be retained for life, even when one or more of the children ceased to be attached to the family. In addition, the Supreme Administrative Court had held that the entitlement to a pension for life of mothers of Greek nationality living permanently and legally in Greece did not depend on the nationality of their children. The applicant's family had lost their Greek nationality when they travelled to Turkey. That decision of the Ministry of the Interior, of which the applicant and her family had never been informed, had apparently been prompted by a police report according to which the applicant's family had left the country for good, to settle in Turkey. It had been taken under an Article of the Nationality Code which concerned "any person of foreign origin" and had been applied systematically over a long period to Greek nationals of the Muslim faith, like the applicant and her family. After that Article was repealed in 1998, the applicant and three of her children had been given Greek nationally again in May 2000, but not Ilkaï, who was both a minor and married and was considered to be dependent on her husband. Although the applicant and certain members of her family had been reinstated as Greek nationals, this had not entitled them to all the corresponding rights that were enjoyed by all large families of Greek origin. The reinstatement should have involved recognising the applicant as the mother of a large family with all the benefits arising from that status, as if the withdrawal of nationality had never taken place. The applicant had been subjected to a difference in treatment that was not based on any "objective or reasonable justification", and had had to bear an excessive and disproportionate burden that upset the fair balance

between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.
Conclusion: violation (unanimously).

Article 41 – EUR 8,455 in respect of pecuniary damage and EUR 5,000 EUR in respect of non-pecuniary damage.

DEPRIVATION OF PROPERTY
Legislation disposing retrospectively and finally, without justification on general-interest grounds, of tax litigation: *violation*.

JOUBERT - France (No. 30345/05)
Judgment 23.7.2009 [Section V]

Facts: After the applicants sold all their shares in a company, the National and International Tax Audit Department (DVNI) of the Department of Revenue served the applicants with a supplementary tax demand in respect of the capital gains resulting from the transaction. The applicants applied to the tax authorities and then, in 1995 to an administrative court, arguing that the DVNI had not been authorised to make the assessment. However, while the proceedings were still pending, the Finance Act 1997 was published. Under that Act, inspections by the tax authorities that were challenged on the ground that the body carrying them out had not been authorised to do so were deemed to be lawful if they had been carried out in conformity with the new rules governing such authorisation. In 1999 the administrative court made an order cancelling the tax surcharges and related penalties, on the ground that the DVNI had not been empowered to investigate the applicants' tax affairs. But in 2004 the administrative court of appeal reversed that judgment. It applied the Finance Act and held that the DVNI had been empowered to inspect the applicants' tax affairs, but granted them full relief from the penalties. The *Conseil d'État* dismissed an appeal on points of law.

Law: According to the courts' decisions and the case-law of the administrative courts, the applicants had had a pecuniary interest amounting to a "possession". In determining the substance of the dispute once and for all, the Finance Act had interfered with the applicants' exercise of their right to the peaceful enjoyment of their possessions, resulting in a deprivation of property. The interference had been "provided for by law". However, the aim had not been that relied on by the Government, namely to reduce the number of potential actions brought by taxpayers, but rather to protect the financial interests of the State by reducing the number of tax proceedings annulled by the administrative courts. Furthermore, the revenue of which the State would have been deprived through court findings that the tax authorities had acted outside their powers would not have had so great an impact on its budget as to affect the general interest. The introduction of the legal provision which had settled the dispute between the applicants and the tax authorities irrevocably and retroactively had therefore not been justified by any general interest. So whether it had been in the public interest was open to doubt. The legal provision complained of had irrevocably prevented the applicants from raising before the administrative courts their complaint that the DVNI had acted outside its powers, and had thus deprived them of a possession which they might have expected to have reimbursed. An individual and excessive burden had been placed on the applicants and the interference with their possessions had been disproportionate, upsetting the fair balance that must be struck between the demands of the general interest and the protection of the individual's fundamental rights. As a result the margin of appreciation available to the authorities, although broader in a dispute concerning taxes, had been overstepped.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation afforded sufficient just satisfaction for the non-pecuniary damage suffered by the applicants.

The applicants had admitted to having made a serious mistake in their tax declaration. Their appeal had concerned a formal defect in the proceedings because the authorities at the origin of the supplementary tax

demand had acted outside their powers and the applicants had been unable to lodge a complaint because a retroactive law had been passed. The Court pointed out that it was not its task to speculate about the outcome of the applicants' supplementary tax assessment, or whether the tax authorities should be able to order a new assessment if the first one were to be annulled.

CONTROL OF THE USE OF PROPERTY
Lack of procedural safeguards in enforcement proceedings for debtor lacking legal capacity: *violation*.

ZEHENTNER - Austria (No. 20082/02)
Judgment 16.7.2009 [Section I]

(See Article 8 above).

CONTROL OF THE USE OF PROPERTY
Confiscation by customs with no recourse for bona fide owner whose goods were used to conceal fraud by third parties: *violation*.

BOWLER INTERNATIONAL UNIT - France (No. 1946/06)
Judgment 23.7.2009 [Section V]

Facts: The applicant company, a forwarding agent, commissioned the company M. to transport a shipment of 276 boxes of dolls from Spain to the United Kingdom. In 1998 the French customs authorities searched the lorry carrying the consignment, the driver of which was a British national. Amongst the boxes of toys, they found 17 boxes of cannabis resin which, together, weighed over 500 kilos. The 276 boxes of dolls were seized under the Customs Code on the grounds that they had served to conceal the fraud. The applicant company applied to the customs authorities to have its merchandise released, only to be told that the release of seized goods was subject to the provision of a bank guarantee or the payment of a deposit.
The criminal court found the lorry driver guilty of transporting, importing and trafficking in drugs and sentenced him to, *inter alia*, three years' imprisonment and a customs fine equal to the value of the drugs seized. It also ordered the confiscation of the drugs, as well as the 276 boxes of dolls, which had "evidently served to conceal the fraud because the boxes of drugs had been hidden amongst them". The court also allowed the applicant company's application to join the proceedings as a civil party and ordered the lorry driver to pay it damages. The company's request to have its merchandise returned to it was rejected. The court of appeal modified the sentence imposed by the lower court concerning the seizure of the 276 boxes of dolls and ordered the customs authorities to return them and to pay the applicant company compensation in the amount of 1% per month of the value of the goods wrongfully seized, calculated from 1998 until the effective return of the goods to their owner. In 2000 the dolls were returned to the applicant company and the customs authorities paid the stipulated compensation. The Court of Cassation quashed the appeal court's judgment and referred the case to another court of appeal, which upheld the judgment of the criminal court in so far as it had validated the seizure of the 276 boxes of dolls and ordered them to be confiscated and handed over to the customs authorities. The applicant company appealed on points of law. The Court of Cassation dismissed the appeal, finding that in sentencing the applicant company, after the goods had been returned to it, to pay a sum in lieu of confiscation of the merchandise, the appeal court had stated that the confiscation was a charge against property, intended to indemnify the Treasury for the loss suffered as a result of the offence, and that under the Customs Code confiscated items could not be reclaimed by their owner.

Law: The goods had been confiscated under the Customs Code, which stipulated that "confiscated items could not be claimed by their owners". Furthermore, the release of the merchandise had been conditional on a bank guarantee or the payment of a deposit. Following an initial, favourable decision, the applicant company had been sentenced by the second court of appeal to pay a sum "corresponding to the value of the goods at the time they were seized, in lieu of confiscation" of the goods. This amounted to an effective

deprivation of property and not just a temporary measure of seizure and restitution against payment. In addition, the Government's report concerning the lack of a remedy enabling the owner to apply to recover its property by demonstrating its good faith suggested that confiscation meant the outright transfer of ownership of the property and not a temporary restriction on its use. However, although there had been a transfer of ownership, the confiscation of property did not necessarily fall within the scope of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The applicable legislation showed that the confiscation of the merchandise that had served to commit the fraud had pursued the legitimate aims of combating international drug-trafficking and making owners more responsible in their choice of transporters, which the parties did not dispute. As such, the interference concerned the control of the use of property.

While confiscation could be considered to have been provided for by law and to have pursued the legitimate aim of combating international drug-trafficking, the argument that it was a purely preventive measure intended to indemnify the Treasury did not appear relevant. That purpose had already been served by the sentencing of the offender to a large fine. Furthermore, the confiscation of the merchandise that had served to conceal the fraud appeared to be a harsh penalty when, as in this case, the merchandise concerned did not consist of dangerous or prohibited substances. As to the possibility for a bona fide owner to seek redress in such a situation, it is limited by law to an action against the principal offender. The problem was therefore a general legislative issue. However, in view of the size of the fines offenders were made to pay to the customs authorities, the preferred creditor under French law, and the risk of insolvency of the offenders, that remedy could not be considered to afford this category of owners a reasonable opportunity of putting their case to the responsible authorities. The applicant company had thus been deprived of its property then, after its property had been returned, sentenced to pay a sum equal to the value of the property, without having any effective remedy against the interference, even though the courts had acknowledged its good faith. French law did provide for such a remedy, however, for bona fide owners of means of transport. Consequently, the interference with the applicant company's peaceful enjoyment of its possessions had not struck the requisite fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights, as there had been no direct means of remedying it. The introduction of the type of exceptions provided for in other cases under French law where the owner's good faith was not in dispute would not harm the interests of the State.

Conclusion: violation (unanimously).

Article 41 – EUR 15,000 for pecuniary damage.

Relinquishment in favour of the Grand Chamber

Article 30

A., B. and C. - Ireland (No. 25579/05)
[Section III]

(See Article 8 above).

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

On 6 July 2009 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

HAMZARAJ – Albania (no. 1) (No. 45264/04)
NURI – Albania (No. 12306/04)
VRIONI – Albania (No. 2141/03)
MYLONAS – Cyprus (No. 14790/06)
KANGOVA – Former Yugoslav Republic of Macedonia (No. 17010/04)
EXAMILIOTIS – Greece (No. 44132/06)
VONTAS and Others – Greece (No. 43588/06)
CZIFRA – Hungary (No. 13290/05)
BEN KHEMAIS – Italy (No. 246/07)
C.G.I.L. and COFFERATI – Italy (No. 46967/07)
ZARA – Italy (No. 24424/03)
KUFEL – Poland (No. 9959/06)
KUPIEC – Poland (No. 16828/02)
PELIZG – Poland (No. 34342/06)
DELCA – Romania (No. 25765/04)
GROSU – Romania (No. 2611/02)
MARTIN – Romania (No. 14466/02)
TĂTAR – Romania (No. 67021/01)
AKHMADOV and Others – Russia (No. 21586/02)
ALEKSEYENKO – Russia (No. 74266/01)
ALEKSEYEVA – Russia (No. 36153/03)
ANDREYEVSKIY – Russia (No. 1750/03)
CHERVONENKO – Russia (No. 54882/00)
GANDALOYEVA – Russia (No. 14800/04)
JOUK (ZHUK) – Russia (No. 42389/02)
KISELEV – Russia (No. 75469/01)
LEVISHCHEV – Russia (No. 34672/03)
NOLAN and K. – Russia (No. 2512/04)
TKATCHEVY – Russia (No. 42452/02)
ZAKRIYEVA and Others – Russia (No. 20583/04)
AHMET DOĞAN – Turkey (No. 37033/03)
AMER – Turkey (No. 25720/02)
DOKDEMIR and Others – Turkey (Nos. 44031/04, 44045/04, 44050/04, 44053/04, 44105/04, 44108/04, 44111/04, 44112/04, 44123/04, 44131/04, 44133/04, 44194/04, 44197/04, 44199/04, 45260/04 and 45283/04)
ECONOMOU – Turkey (No. 18405/91)
EVAGOROU CHRISTOU – Turkey (No. 18403/91)
GAVRIEL – Turkey (No. 41355/98)
HASIRCI – Turkey (No. 38012/03)
IOANNOU – Turkey (No. 18364/91)
KALYONCU – Turkey (No. 41220/07)
KYRIAKOU – Turkey (No. 18407/91)

[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.

MEHMET KOÇ – Turkey (No. 36686/07)
MICHAEL – Turkey (No. 18361/91)
NICOLA – Turkey (No. 18404/91)
NICOLAIDES – Turkey (No. 18406/91)
ORPHANIDES – Turkey (No. 36705/97)
PROTOPAPA – Turkey (No. 16084/90)
SOLOMONIDES and Others – Turkey (No. 16161/90)
SOPHIA ANDREOU – Turkey (No. 18360/91)
TEREN AKSAKAl – Turkey (No. 51967/99)
SPINOV – Ukraine (No. 34331/03)
ONUR – United Kingdom (No. 27319/07)