CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 31
on the case-law of the Court
June 2001

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

Statistical information[1]

		June	2001
I. Judgments delivered			
Grand Chamber		1	14(16)
Chamber I		29	148(151)
Chamber II		8	115
Chamber III		8	79(83)
Chamber IV		7	56(63)
Total		**53**	**412(428)**
II. Applications declared admissible			
Section I		11	83(91)
Section II		7	139(140)
Section III		16	157(162)
Section IV		10	116(118)
Total		**44**	**495(511)**
III. Applications declared inadmissible			
Section I	- Chamber	25	45(46)
	- Committee	83	680
Section II	- Chamber	9	57(58)
	- Committee	210	700
Section III	- Chamber	10	60
	- Committee	202	998(999)
Section IV	- Chamber	13(14)	53(64)
	- Committee	208	948
Total		**760(761)**	**3541(3555)**
IV. Applications struck off			
Section I	- Chamber	0	8
	- Committee	1	18
Section II	- Chamber	0	32(214)
	- Committee	4	15
Section III	- Chamber	3	9
	- Committee	7	23
Section IV	- Chamber	0	4(6)
	- Committee	2	6
Total		**17**	**115(299)**
Total number of decisions[2]		**821(822)**	**4151(4365)**
V. Applications communicated			
Section I		27(30)	225(236)
Section II		12	136(137)
Section III		15	96(98)
Section IV		37	165(169)
Total number of applications communicated		**91(94)**	**622(640)**

[1] **The statistical information is provisional.**
[2] **Not including partial decisions.**

Judgments delivered in June 2001					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	24	4	1	0	29
Section II	4	4	0	0	8
Section III	7	1	0	0	8
Section IV	5	2	0	0	7
Total	**41**	**11**	**1**	**0**	**53**

Judgments delivered in January - June 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	12(14)	0	1	1[1]	14(16)
Section I	121(123)	24	2	1(2)[1]	148(151)
Section II	76	38	0	1[2]	115
Section III	71(75)	7	1	0	79(83)
Section IV	46(52)	10(11)	0	0	56(63)
Total	**326(340)**	**79(80)**	**4**	**3(4)**	**412(428)**

[1] Just satisfaction.
[2] Revision.
[3] Of the 314 judgments on merits delivered by Sections, 19 were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Fatal shooting by security forces and effectiveness of investigation: *struck out*.

AKMAN - Turkey (Nº 37453/97)
*Judgment 26.6.2001 [Section I]

The applicant's son was shot dead by security forces who came to search his house. The applicant maintains that his son was unarmed, whereas the Government claim that the security forces responded to firing and that there was a loaded Kalashnikov beside the applicant's son.
Following unsuccessful friendly settlement negotiations, the Government submitted a unilateral declaration in the following terms:

- "1. The Government regrets the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of Murat Akman's death notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.
- 2. It is accepted that the use of excessive or disproportionate force resulting in death constitutes a violation of Article 2 of the Convention and the Government undertakes to issue appropriate instructions and adopt all necessary measures to ensure that the right to life - including the obligation to carry out effective investigations - is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application as well as more effective investigations.
- 3. I declare that the Government of the Republic of Turkey offers to pay *ex gratia* to the applicant the amount of 85.000 GBP. This sum, which also covers legal expenses connected with the case, shall be paid in pounds sterling to a bank account named by the applicant. The sum shall be payable, free of any taxes that may be applicable, within three months from the date of striking out decision of the Court pursuant to Article 37 of the European Convention on Human Rights. This payment will constitute the final settlement of the case.
- 4. The Government considers that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place."

The applicant requested the Court to reject the Government's initiative and to proceed with its decision to take evidence with a view to establishing the facts. He stressed that the declaration omitted any reference to the unlawful nature of the killing of his son and failed to highlight that his son was unarmed. The Court, having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed, considered that it was no longer justified to continue the examination of the application. It was satisfied that respect for human rights did not require it to continue the examination of the application, which it consequently struck out of the list.

ARTICLE 3

INHUMAN TREATMENT
Continued detention of a convict despite very advanced age and health problems: *inadmissible*.

PAPON - France (N° 64666/01)
Decision 7.6.2001 [Section III]

In April 1998 the applicant was sentenced to ten years' imprisonment for aiding and abetting crimes against humanity. In 1996 he had to have a triple heart bypass operation. He is now 90 years old and has been serving his sentence since October 1999, when the Court of Cassation dismissed an appeal he had lodged on points of law. He was initially held in Fresnes Prison but, on an application by his lawyer, was transferred by the prison authorities to the Santé Prison, where the conditions of detention would be more suitable. He has been held there since November 1999. In January 2000 he had to be fitted with a pacemaker. According to information supplied by the Government, the applicant's health is monitored by doctors and nurses from the prison's Outpatient Consultation and Treatment Unit (*Unité de consultations et soins ambulatoires* – UCSA), set up under the Act of 18 January 1994, and by outside specialists in a hospital environment. He is in an individual cell in the prison's "VIP" wing. Two applications he made for a pardon on medical grounds were refused by the French President in the light of expert reports. In July 2000 he made a number of complaints to the governor of the Santé Prison about some of the conditions in which he was being held. The applicant submitted that his imprisonment was contrary to Article 3 on account of the combination of his extreme old age and his poor state of health.
Inadmissible under Article 3: advanced age as such is not a bar to pre-trial detention or to imprisonment in any of the Council of Europe's member States. However, age in conjunction with other factors, such as state of health, may be taken into consideration either at the sentencing stage or while the sentence is being served. None of the provisions of the Convention expressly prohibits detention beyond a certain age, but in two recent decisions (*Priebke v. Italy*, no. 48799/99, 5 April 2001 and *Sawoniuk v. the United Kingdom*, no. 63716/00, 29 May 2001) the Court stated that the detention of an elderly person for a lengthy period might raise an issue under Article 3. In the instant case, although the applicant's movement was restricted owing to his state of health, his general state of health was described as good by a doctor whom he had recently seen and he did not exhibit any signs of dependency; moreover, he was being given regular medical attention and treatment. In determining his conditions of detention, the national authorities had as far as possible taken his state of health and age into account; in particular, they had found solutions to some of the problems he had raised. Lastly, the applicant still kept up a social life and received regular visits from his family and his lawyers. Consequently, as things stood, his situation had not attained the minimum level of severity required to fall within the scope of Article 3. If the situation worsened, various measures were available to the national authorities under French law: convicted prisoners could be released on parole if it was established that they required treatment, while in particularly serious circumstances calling for humanitarian measures, the President could exercise his prerogative of mercy at any time: manifestly ill-founded.

INHUMAN TREATMENT
Detainees chained to their beds in casualty department in which they were placed following a hunger strike: *communicated*.

AVCI and others - Turkey (N° 70417/01)
[Section III]

The applicants were serving prison sentences when they decided to go on hunger strike in late 2000 to protest against a proposal to alter their conditions of detention. Owing to their state of health, they were taken to hospital and placed in the section set aside for prisoners. They then had to be transferred to the hospital's casualty department, where they were chained to their beds. The applicants lodged a complaint with the public prosecutor against the prison authorities and the doctors concerned, arguing that chaining up prisoners while they were unconscious constituted a breach of Article 3 of the Convention. They subsequently requested the public prosecutor to deal with their complaint as a matter of priority. No action had been taken on the complaint.
Communicated under Articles 35(1), 3 and 13.

ARTICLE 5

Article 5(3)

JUDGE OR OTHER OFFICER
Automatic refusal of bail: *violation*.

S.B.C. - United Kingdom (N° 39360/98)
*Judgment 19.6.2001 [Section III]

Facts: In 1978, the applicant was convicted of manslaughter. After serving his sentence, he was arrested in 1996 and charged with, *inter alia*, raping two of his daughters. The Magistrates' Court rejected his application for bail on the ground that there was a risk that he might commit further offences or interfere with witnesses. The court was unaware that it did not in any event have power to grant bail, since section 25 of the Criminal Justice and Public Order Act 1994 provided that bail could not be granted to a person charged with or convicted of murder, attempted murder, manslaughter, rape or attempted rape if he or she had previously been convicted of any of these offences. However, the court was made aware of the applicability of the provision when a further bail application was made and the scheduled hearing for examining the bail application did not take place. The applicant was later acquitted.
Law: Article 5(3) and (5), taken alone and in conjunction with Article 13 – Although, as in the Caballero case, the Government conceded that there had been a violation of Article 5(3) and (5), the Court considered that it should examine the issues raised. It saw no reason to disagree with the conclusions reached by the European Commission of Human Rights in its report in the Cabellero case, to the effect that the exclusion in advance by the legislature of any possibility of consideration by a judge of release on bail violated Article 5(3) and the absence of a remedy violated Article 5(5). It found no material difference between the relevant facts of that case and the present one and considered that section 25 of the 1994 Act, which applied in the applicant's case, by its terms removed the judicial control of his pre-trial detention which was required by Article 5(3). Accordingly, there had been a violation of Article 5(3) and (5) of the Convention. On the other hand, there had been no violation of Article 13 in conjunction with Article 5(3) and (5) of the Convention.

Article 41 – The Court considered that it could not speculate on whether or not the applicant would have been released on bail in the absence of section 25 of the 1994 Act. Consequently, no causal link between the violation of Article 5 and the alleged pecuniary and non-pecuniary damage had been established. As to any non-pecuniary damage sustained by him by reason of his knowledge of his pre-trial detention in violation of Article 5(3), the Court considered that the finding of a violation constituted sufficient just satisfaction. In reaching this conclusion, the Court distinguished the situation in the Caballero case (£1,000 in compensation for non-pecuniary damages), in which the Government had not disputed affidavit evidence that the applicant would have had a good chance of being released on bail prior to his trial were it not for section 25 of the 1994 Act, whereas in the present case the Magistrates' Court had considered and rejected a substantive bail application. The Court made an award in respect of costs and expenses.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Review of lawfulness of continuation of psychiatric detention of a person considered not to be criminally liable because of his mental illness: *admissible*.

MAGALHÃES PEREIRA - Portugal (N° 44872/98)
Decision 14.6.2001 [Section IV]

The applicant was placed in a secure psychiatric unit in December 1996 after it was found that he could not be held criminally responsible for his actions because he was mentally ill. He lodged several *habeas corpus* applications with the Supreme Court, which dismissed them, finding that his situation was not unlawful, as his detention had been ordered as a preventive measure. In January 2000 the Supreme Court decided that *habeas corpus* applications made by the applicant would no longer be considered, since an expert had concluded that the applicant's mental illness made him incapable of understanding what his applications meant. Meanwhile, a judge at the Oporto Criminal Court had ordered that the mandatory periodic review of the applicant's detention should take place on 1 March 1998. Although a favourable assessment of the applicant's conduct was submitted in March 1997, the judge decided to await the expiry of the prescribed time. In 1997 the applicant himself applied for release on the basis of a favourable medical report. In accordance with the relevant legislation, the judge requested the opinion of two medical institutions on the applicant's social circumstances. After a second personal application for release in 1998, the applicant was interviewed by the judge. He subsequently lodged a third application for release, again of his own motion. In January 2000 the Execution of Sentences Court ruled that the applicant's detention should continue and that there was no need to consider the applications for release lodged by the applicant himself. An appeal by the applicant was dismissed by the judge, who noted that the applicant was detained in a secure unit and that a lawyer had been officially assigned to represent him. In January 2001 the judge dismissed an application by State Counsel's Office for the applicant's release and decided to reassess the situation when the next periodic review – scheduled for the end of January 2002 – was carried out. State Counsel's Office appealed against that decision and the appeal proceedings are still pending.
Admissible under Article 5(1) and (4): the Court dismissed the Government's objection that domestic remedies had not been exhausted. The Government had not cited any earlier cases from which it could be inferred that the Supreme Court could examine possible grounds for ending a period of detention in a secure unit and order the release of a detainee on a *habeas corpus* application, although the relevant provision of the Criminal Code had been in force since 1988. A remedy had to be effective both in theory and in practice. In the present case,

the remedy in issue had not been effective. The objection was therefore dismissed and the applicant's complaints concerning the review of the lawfulness of continuing his detention were declared admissible.

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Disputes over payment of allowances by military units to former officers : *communicated*.

SVINTITSKIY and others - Ukraine (N° 59312/00)
[Section IV]

Until 1998 the applicants served as regular officers in the same unit of the army. On resigning from the army, the first applicant asked to receive his pay and his food and clothing allowances. The second applicant also resigned and asked to receive his food, travel and housing allowances. Since no payments were made, both applicants applied to the appropriate military court, which found in their favour. In the face of the authorities' failure to act, the two applicants lodged a number of complaints with the Ministries of Justice and Defence and the public prosecutor's office between March 1999 and March 2000 with a view to securing enforcement of the military court's decision in their favour. In a decision of January 2000 the Ministry of Justice announced that proceedings to enforce the judgment in respect of the first applicant were being terminated as it had been found that the military unit was insolvent and that it would be impossible to seize the unit's assets in order to enforce the judgment. To date, the applicants have not received any of the allowances they are owed.
Communicated under Articles 6(1) and 13 and Article 1 of Protocol No. 1.

MARCHENKO - Ukraine (N° 65520/01)
[Section IV]

The applicant served as an officer in an army unit until he resigned in September 1999. He requested payment of his clothing and food allowances, part of his wages and also damages. At first instance and on appeal the courts found in his favour, except as regards his claim for damages, rendering a final decision in June 2000. He lodged complaints with various authorities, including the Ministry of Defence, requesting enforcement of that decision. He was given confirmation that the army unit owed him the amounts in question. In September 2000, however, he was informed that payment of the allowances would be impossible because of irregularities in the Treasury's reimbursement of the Ministry's current expenditure. To date, he has not received any of the allowances in issue.
Communicated under Articles 6(1) and 13 and Article 1 of Protocol No. 1.

NOVIKOV - Ukraine (N° 65514/01)
[Section IV]

The applicant served as an officer in an army unit until he resigned in September 1998. He requested payment of his clothing allowance and his average wage, calculated at the date of final settlement. He obtained a court judgment in his favour in September 1999, except as regards his claim for payment of his average wage,. The court served a writ of execution in respect of that judgment on the Ministry of Justice. The applicant lodged several complaints

with the Ministry of Justice with a view to securing enforcement of the judgment. The Ministry confirmed that the army unit owed him the amount in question. In July 2000, however, he was informed that payment of the allowance would be impossible because of irregularities in the Treasury's reimbursement of the Ministry's current expenditure. To date, he has not received the allowance.
Communicated under Articles 6(1) and 13 and Article 1 of Protocol No. 1.

CIVIL RIGHTS AND OBLIGATIONS
Criminal complaint accompanied by a claim for damages of one franc : *Article 6 applicable*.

MATTHIES-LENZEN - Luxembourg (N° 45165/99)
Decision 14.6.2001 [Section II]

In October 1993 the applicants lodged a complaint against a company, alleging misappropriation; they also applied to join the proceedings as a civil party. A preliminary investigation was begun on 1 March 1994 and, after interviewing the applicants in March 1995, the investigating officers submitted a report in November 1995. In February 1998 a report by the police criminal investigation department was submitted and the investigating judge issued two search warrants. A hearing was held in October 1998. In early 2001 the investigating judge charged two people. He closed the investigation, but the prosecuting authorities applied for additional measures to be taken.
Admissible under Article 6(1) (reasonable time): objection of incompatibility *ratione materiae* – in applying to join the proceedings as a civil party, the applicants had, admittedly, only claimed damages amounting to one Luxembourg franc, but they had reserved the right to increase that amount later and had pointed out that the company, from which they benefited financially, had suffered enormous financial loss; the impugned proceedings consequently involved the determination of a civil right affecting their assets. The objection was dismissed.
Objection of failure to exhaust domestic remedies – the Government maintained that the applicants should have brought a civil action against the State under section 1 of the State or Public Authorities Liability Act of 1 September 1988. Their arguments were closely connected to the complaint under Article 13 and the objection was therefore joined to the merits. *Admissible* under Article 13.

CIVIL RIGHTS AND OBLIGATIONS
Refusal to reinstate former civil servant recruited under Communist regime: *Article 6 not applicable*.

STAŃCZUK - Poland (N° 45004/98)
Decision 14.6.2001 [Section IV]

From 1989 to 1989, the applicant served as a secret agent of the security services of the Ministry of the Interior. In 1990, all agents of these services were dismissed in accordance with the Security Bureau Act 1990. A special procedure of selection and recruitment was set for former agents of the services. The decision on reinstatement of former agents was to be taken by a special board, with a possible appeal to another board which would give a final decision on reinstatement. The examination board decided that the applicant did not meet the required standards to be reinstated. Consequently, he appealed to the second board, which upheld the decision refusing him reinstatement. The applicant lodged three appeals with the Supreme Administrative Court, which rejected them on the ground that no appeal laid against the decisions of the boards. He lodged a further complaint to the Regional Court, which informed him that it could not be examined as, *inter alia*, the relevant law did not provide for the jurisdiction of civil courts in respect of decisions of the examination boards and he had failed to indicate who should be the other party to the proceedings he was seeking to institute.

Inadmissible under Article 6(1): According to domestic law, former agents of the secret services of the police recruited under the Communist regime were to be dismissed and had to go through a screening procedure before being reinstated in the service. No appeal lay against decisions on reinstatement, which thus were final. The applicant has not demonstrated that, in domestic law, he could have, even on arguable grounds, a claim to have the unfavourable decision on reinstatement reversed or amended. Regard must be had to the fact that the proceedings concerned the dismissal of a public officer working for secret services of the police. The applicant's post, by its very nature, involved the exercise of State powers conferred on the police by public law. Thus, it could not be found established that the proceedings which the applicant sought to institute before the Regional Court fell within the ambit of the present article: incompatible *ratione materiae*.

ACCESS TO COURT
Requirement to pay court fees: *violation*.

KREUZ - Poland (Nº 28249/95)
Judgment 19.6.2001 [Section I]

Facts: The applicant was refused final zoning approval for a car-wash. The Supreme Administrative Court quashed this decision, finding that the municipality had breached the rule of law, and remitted the case. The applicant sued the municipality for damages but the Regional Court rejected the claim on the ground that the zoning proceedings were still pending. The applicant lodged an interlocutory appeal and was ordered to pay court fees of PLZ 200,000,000. His request to be exempted, based on a declaration of means, was granted for the interlocutory proceedings. The Court of Appeal then quashed the Regional Court's decision rejecting the applicant's damages claim and remitted the case to the Regional Court. The Regional Court considered the applicant's request to be exempted from the court fees in respect of the damages claim. It considered that the appropriate fee (based on a percentage of the claim) was too high but ordered him to pay a reduced fee of PLZ 100,000,000. It took the view that when engaging in a business venture he should have foreseen the possibility of litigation. The applicant's appeal against this decision was rejected and, since he did not pay the court fees, his statement of claim was returned to him.
Law: Article 6(1) – The Court has never ruled out the possibility that the interests of the proper administration of justice may justify imposing a financial restriction on access to a court. Furthermore, neither an unqualified right to obtain free legal aid from the State in civil matters nor a right to free proceedings in civil matters can be inferred from Article 6. Thus, the requirement to pay fees to civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is in itself incompatible with Article 6. As to whether the imposition of a fee in the present case was compatible with the right of access to court, although the fee was reduced, it was nevertheless equal to the average annual salary in Poland at that time and, from the perspective of the ordinary litigant, was undoubtedly substantial. When setting the fee, the courts relied to a considerable degree on the assumption that engaging in a business activity could in itself imply the necessity of litigation; they also assumed that the applicant lived on his savings and that the scale of his investments proved his ability to pay the court fee. However, these grounds are not persuasive. Firstly, the applicant's claim related only loosely, if at all, to a business activity as such, and secondly, the courts' findings with regard to the applicant's financial situation appear to have been based on his hypothetical earning capacity rather than on the facts he had supplied. They thus refused to accept his argument that he was unable to pay the fees without obtaining or considering any evidence contradicting his declaration of means, and indeed made assumptions that were not fully supported by the material before them. They therefore failed to secure a proper balance between the interest of the State in collecting court fees and the interest of the applicant in vindicating his claim through the

courts. The fee was excessive and resulted in the applicant desisting from his claim, thus impairing the very essence of his right of access to a court.
Conclusion: violation (unanimously).
Article 41 – The Court did not consider that it had been shown that any pecuniary loss had been caused by the breach of the right of access to court. It awarded the applicant PLN 30,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

ACCESS TO COURT
Termination of proceedings concerning constitutional complaints following entry into force of new legislation: *no violation*.

TRUHLI - Croatia (Nº 45424/99)
*Judgment 28.6.2001 [Section IV]

Facts: The applicant brought unsuccessful proceedings in the administrative court in respect of the reduction of the pension which he had received as a former officer in the Yugoslav army. In 1993 the applicant lodged a constitutional complaint in respect of a decree on the pensions of former Yugoslav Army officers but the Constitutional Court terminated the proceedings in 1998 on the basis that legislation which had come into force in the meantime had confirmed the position with regard to the pensions. The applicant had also lodged a constitutional complaint in respect of that legislation, but those proceedings were terminated by the Constitutional Court after new legislation on pensions entered into force in 1999. Finally, a constitutional complaint which the applicant had lodged in 1994 in respect of the decisions taken by the lower bodies was dismissed by the Constitutional Court in 1999 on the ground that the decisions at issue were based on the relevant laws.
Law: Article 6(1) –The applicant disagrees in substance with the authorities' decisions to decrease his pension and Croatian law undoubtedly afforded him the possibility of bringing court proceedings in order to settle that dispute: he initially lodged an application with the administrative court, thus contesting the lower bodies' decisions, and then availed himself of both possibilities of pursuing his case, namely by bringing a constitutional complaint alleging that his constitutional rights had been violated by the lower bodies' decisions and by bringing a constitutional claim challenging the constitutionality of the relevant laws. Although the Constitutional Court terminated the proceedings concerning the applicant's constitutional claims, in the light of new legislation, it decided on the applicant's individual constitutional complaint, dismissing his complaint on the basis that his constitutional rights had not been violated. In these circumstances, the applicant had access to a court for the determination of his civil rights and the fact that the Constitutional Court had decided to terminate other proceedings did not restrict the exercise of this right in such a way or to such an extent that the very essence of the right was impaired.
Conclusion: no violation (unanimously).

ACCESS TO COURT
Legislative interference in pending court proceedings: *violation*.

AGOUDIMOS and CEFALLONIAN SKY SHIPPING CO. - Greece (Nº 38703/97)
*Judgment 28.6.2001 [Section II]

Facts: The first applicant is one of the liquidators of the second applicant, a shipping company in liquidation. In 1984 the sailors' social security fund ordered the applicants, in their capacity as previous owners of a particular ship, to pay social security contributions in respect of the period prior to the compulsory sale of the ship by auction. The applicants unsuccessfully contested the order in the first instance court but their appeal was upheld by the Court of Appeal, relying on a different interpretation of the relevant decree, there being

conflicting case-law of the Court of Cassation in the matter. In June 1987, Parliament enacted a law which gave an authoritative interpretation of the decree, to the effect that it extended to compulsory sale by auction. The Court of Cassation consequently found in favour of the sailors' social security fund and remitted the case to the Court of Appeal, where the proceedings are pending.
Law: Article 6(1) – While the new law expressly excluded final court decisions from its scope, it settled once and for all the terms of the dispute before the ordinary courts and did so retrospectively, in reality determining the substance of the dispute. Since social security bodies perform a public service mission and are subject to ministerial supervision, the intervention of the legislature took place when legal proceedings to which the State was a party were pending. The State infringed the applicants' rights by intervening in a decisive manner to ensure the outcome of the proceedings was favourable to it.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicants 2,000,000 drachmas (GRD) in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

ACCESS TO COURT
Annulment of conviction for defamatory statements made at electoral meeting by a Member of Parliament, on the basis of his parliamentary immunity: *communicated*.

CORDOVA - Italy (N° 45649/99)
[Section II]

In 1993 the applicant was a public prosecutor in Palmi. At two election campaign meetings in Palmi, S., a member of parliament, made harsh and offensive comments about the applicant. The applicant lodged a criminal complaint alleging aggravated defamation. The Palmi public prosecutor's office committed S. for trial and the applicant joined the criminal proceedings as a civil party seeking damages. S. was convicted, given a suspended prison sentence and ordered to pay the applicant damages, whose amount would be assessed in separate civil proceedings. The judge did not consider it necessary to stay the proceedings in order to obtain the opinion of the Chamber of Deputies, since in his view the impugned statements had not been made in the course of S.'s parliamentary duties and were therefore not covered by the constitutional guarantee of parliamentary immunity (Article 68(1) of the Constitution). S. appealed unsuccessfully against that decision, seeking to have the proceedings stayed and the case referred to the Chamber of Deputies. He relied on a legislative decree which provided that where a judge did not allow an objection raised by one of the parties that Article 68(1) was not applicable, he had to forwarded a copy of the case file as speedily as possible to the parliamentary chamber of which the person concerned was a member, and the proceedings were stayed until the chamber concerned reached a decision. On an appeal on points of law by S., the Court of Cassation ordered the proceedings to be stayed and the file to be forwarded to the Chamber of Deputies. The chamber found that S. had expressed his opinion in the course of his parliamentary duties. The Court of Cassation set aside the trial and appeal courts' decisions on the ground that S. had acted while discharging his duties as a member of parliament. It held that a broad interpretation of the concept of "parliamentary duties" encompassing all acts of a political nature – even outside Parliament – had already been adopted on several occasions and was not contrary to the spirit of the Constitution.
Communicated under Article 6(1).

FAIR HEARING
Failure to summon an unrepresented appellant to a hearing before the *Conseil d'Etat*: *admissible*.

FRETTE - France (N° 36515/97)
[Section III]
(see Article 8, below).

ADVERSARIAL PROCEEDINGS
Absence of opportunity to respond to opinion submitted to the Federal Insurance Court by the Administrative Court: *violation*.

F.R. - Switzerland (Nº 37292/97)
*Judgment 28.6.2001 [Section II]

Facts: The cantonal Compensation Office brought proceedings against the applicant in the Administrative Court for compensation in respect of losses sustained following the bankruptcy of a company. The applicant lodged an administrative law appeal to the Federal Insurance Court, which obtained the opinion of the Administrative Court. The applicant claimed that this opinion raised new points and submitted observations on these. However, the Federal Insurance Court refused to take these observations into account, although it observed that the opinion did not raise new points and was not relevant.
Law: Article 6(1) – Although the applicant was not permitted to reply to the Administrative Court's opinion, the court is an independent tribunal which cannot be regarded as the applicant's opponent in the proceedings, and there has thus been no infringement of equality of arms. Nevertheless, the opinion expressly called for the administrative law appeal to be dismissed and the actual effect on the judgment of the Federal Insurance Court is of little consequence. The opinion came from an independent tribunal which had a thorough knowledge of the file and it is unlikely that the Federal Court would have paid them no heed. In fact, in certain respects it relied on the opinion. It was therefore all the more necessary to give the applicant an opportunity to comment on it. While the applicant did in fact submit a reply which the Federal Court commented on in its judgment, the judgment explicitly and unequivocally stated that the applicant's unsolicited observations could not be legally considered. Indeed, the Federal Court found it unnecessary to consider the reply, as the opinion submitted by the lower court contained no new factual or legal points. However, parties should be given the possibility to state their views as to whether this is the case and whether or not a document calls for their comments. Respect for the right to a fair trial required that the applicant be given the opportunity to comment on the opinion.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

ADVERSARIAL PROCEEDINGS
Non-communication to party of observations submitted to the *Conseil d'Etat* by the *commissaire du Gouvernement*: *no violation*.

KRESS - France (N°39594/98)
Judgment 7.6.2001 [Grand Chamber]
(see below).

EQUALITY OF ARMS
Presence of the *commissaire du Gouvernement* at the deliberations of the *Conseil d'Etat*: *violation*.

KRESS - France (N°39594/98)
Judgment 7.6.2001 [Grand Chamber]

Facts: After undergoing an operation under general anaesthetic at Strasbourg Hospital the applicant suffered vascular accidents, which resulted in 90% invalidity, and also her shoulder was scalded. On an urgent application for the appointment of an expert, the President of the Strasbourg Administrative Court designated a doctor, who concluded that there had not been any medical error. In August 1987 the applicant brought a claim for damages against the hospital in the Administrative Court. In May 1990 the Administrative Court ordered a fresh expert report and in September 1991 delivered its judgment, in which damages were awarded solely in respect of the applicant's scalded shoulder. In April 1993 the Nancy Administrative Court of Appeal dismissed an appeal by the applicant. The latter appealed on points of law to the *Conseil d'Etat* and filed full pleadings. She was represented by a member of the Court of Cassation and *Conseil d'Etat* Bar. She had not been able to study the Government Commissioner's submissions before he made them orally at the hearing and had been unable to reply to them. She nevertheless made final submissions in a memorandum for the deliberations which her lawyer gave to the court before it took its decision. The *Conseil d'Etat* dismissed the appeal in a judgment of 30 July 1997.
Law: Article 6(1) (fair trial) – The complaints raised, *mutatis mutandis*, issues similar to those examined by the Court in several cases concerning the role of the Advocate-General or similar officers at the Court of Cassation or Supreme Court in various European countries. They were, however, being raised for the first time in connection with a case in the administrative courts, and it therefore had to be considered whether the principles the Court had identified in the cases mentioned earlier also applied in the instant case. The administrative courts in France displayed a number of special features and the role of the Government Commissioner in those courts was that not of a State counsel's office but of a *sui generis* institution peculiar to administrative-court proceedings in France. Nevertheless, the Commissioner's status as an independent judge who was not responsible to any hierarchical superior was not in itself sufficient to justify the assertion that the non-disclosure of his submissions to the parties and the fact that it was impossible for the parties to reply to them were not capable of offending against the principle of a fair trial. In that connection, importance had to be attached to the part he actually played in the proceedings and, in particular, to the content and effects of his submissions.
(a) Complaint based on the non-disclosure of the Government Commissioner's submissions and the impossibility of replying to them at the hearing – the Government Commissioner made his submissions for the first time orally at the public hearing of a case and accordingly the parties to the proceedings, the judges and the public all learned of their content on that occasion. The right to equality of arms did not guarantee the right to disclosure, before the hearing, of submissions which had not been disclosed to the other party to the proceedings or to the reporting judge or to the judges of the trial bench. There had accordingly been no breach of equality of arms. The right to a fair trial, however, also meant the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the Court's decision. In the *Conseil d'Etat* lawyers could ask the Government Commissioner, before the hearing, to indicate the general tenor of his submissions and might reply to them by means of a memorandum for the deliberations; in the event of the Government Commissioner's raising orally at the hearing a ground not raised by the parties, the presiding judge would adjourn the case to enable the parties to present argument on the point. That being so, current procedure in the *Conseil d'Etat* afforded litigants sufficient safeguards and no problem arose from the point of view of the right to a fair trial as regards compliance with the principle that proceedings should be adversarial.

Conclusion: no violation (unanimously).
(b) Complaint based on the Government Commissioner's presence at the *Conseil d'Etat*'s deliberations – the Government's argument that the Government Commissioner was truly a judge was considerably weakened by the fact that he had no right to vote; moreover, it was hard to accept the idea that some judges might express their views in public while the others might do so only during secret deliberations. The Court also took into account the earlier finding (see point (a)) that the applicant enjoyed sufficient safeguards to counterbalance the Government Commissioner's power. Although the Commissioner's opinion did not derive its authority from that of a State counsel's office, contrary to the position in the cases in which the Court had developed its case-law on the doctrine of appearances, importance had to be attached to the role of appearances in the case of the Government Commissioner also. In publicly expressing his opinion on the rejection or acceptance of the grounds submitted by one of the parties, the Government Commissioner could legitimately be regarded by the parties as taking sides with one or other of them; an uninitiated litigant might see him, according as he recommended rejection or acceptance of the litigant's submissions, either as an adversary or as an ally; lastly, a party might have a feeling of inequality if he saw him withdraw with the judges of the trial bench to attend the secret deliberations after making submissions unfavorable to his case at the hearing. Admittedly, as the last person to have seen and studied the file, the Government Commissioner would be able to answer any questions put by the judges during the deliberations. However, that purely technical assistance given to the trial bench was to be weighed against the higher interest of the litigant, who had to have a guarantee that the Government Commissioner would not be able, through his presence at the deliberations, to influence their outcome. That guarantee was not afforded by the current French system. Furthermore, at the Court of Justice of the European Communities the Advocate General, whose role was very similar to that of the Government Commissioner, did not attend the deliberations.
Conclusion: violation (ten votes to seven).
Article 6(1) (reasonable time) – The administrative proceedings had lasted ten years and more than one month. Seeing, in particular, that the proceedings in the *Conseil d'Etat* had taken four years and a little over one month, that length of time was excessive.
Conclusion: violation (unanimously).
Article 41 – The finding of a violation in respect of the fairness of the proceedings sufficiently compensated for the applicant's non-pecuniary damage. On the other hand, the Court awarded the sum of FRF 80,000 for non-pecuniary damage on account of the length of the proceedings. For costs and expenses incurred in the proceedings before it, the Court awarded FRF 20,000.

IMPARTIAL TRIBUNAL
Impartiality of a judge whose spouse's debts were allegedly reduced by a bank party to the proceedings with which he was dealing: *admissible*.

SIGURÐSSON - Iceland (Nº 39731/98)
Decision 14.6.2001 [Section I]

The applicant instituted compensation proceedings against the National Bank of Iceland. The Supreme Court rejected his claim. He claims that he then became aware that one of the Supreme Court judges and her husband had strong financial ties with the bank. The judge's husband allegedly had enormous debts with the bank and real property belonging to them was mortgaged as a security. The applicant further claims that the bank substantially reduced the debts while the case was under examination. His two requests to the Supreme Court to have the case reopened on the ground of the judge's lack of impartiality were rejected.
Admissible under Article 6(1): Under the relevant domestic provisions, the disqualification of a judge did not depend on a request made by one of the parties. On the contrary, it was in the first place for each judge to appraise himself or herself *ex officio* of the existence of any

reasons that could justify that he or she withdrew from consideration of the case. Although it was possible for the parties to request that a judge withdraw, the question of disqualification was not a matter primarily of their responsibility. Furthermore, it was not established that the applicant was aware of the composition of the Supreme Court before the opening of the oral hearing. Nor was there anything to suggest that, pending the outcome of the Supreme Court proceedings, the applicant had any particular reason to investigate so as to find out whether there was any relationship between the bank and the Supreme Court judge capable of compromising the latter's independence and impartiality. Therefore, it was not established that by omitting to raise the matter pending the main proceedings before the Supreme Court, the applicant had failed to exhaust domestic remedies.

IMPARTIAL TRIBUNAL
Impartiality of judge having previously acted as representation of the opposing party in proceedings involving the applicants: *communicated*.

PUOLITAIVAL and PIRTTIAHO - Finland (N° 54857/00)
[Section IV]

The applicants owned a company which was dissolved following an alleged breach of a contract between the company and a certain bank. The applicants instituted proceedings against the bank. The District Court having rejected their claims, they lodged an appeal. However, in 1998, the Court of Appeal upheld the first instance decision. The applicants then applied to the Supreme Court for leave to appeal, contending that one of the judges of the Court of Appeal, P.L., was biased. They noted that in previous proceedings which had taken place in 1982 and to which their company had been a party, P.L.'s law firm had represented the opposing party. The Supreme Court rejected their application for leave to appeal.
Communicated under Article 6(1).

Article 6(1) [criminal]

CRIMINAL CHARGE
Criminal proceedings against a third person in respect of an offence committed with the vehicle of the applicant, against whom no proceedings were brought: *inadmissible*.

C.M. - France (N° 28078/95)
Décision 26.6.2001 [Section III]
(see Article 1 of Protocol No. 1, below).

IMPARTIAL TRIBUNAL
Impartiality of judges having dealt with similar cases: *inadmissible*.

CRAXI - Italy (N° 63226/00)
Decision 14.6.2001 [Section II]

The applicant was secretary of the Italian Socialist Party between 1976 and 1993 and Prime Minister between 1983 and 1987. He died in January 2000, after his application had been lodged, but his heirs stated that they wished to pursue the application. The applicant was prosecuted for corruption and illegal funding of his party in connection with work on the Milan underground (the so-called *Metropolitana milanese* case). The proceedings were brought as part of the "clean hands" (*mani pulite*) investigation. In the course of the

preliminary inquiries, a certain L. admitted that he had collected payments made to the applicant's political party by particular firms, with the applicant's approval. At the trial L., who had likewise been charged, exercised his right to remain silent. However, the statements he had made during the investigation were added to the case file. The applicant was convicted, sentenced to eight years' imprisonment and ordered to pay a heavy fine. He appealed against the decision but without success. Following an appeal on points of law, the appellate court's decision was set aside by the Court of Cassation and the case was remitted to the Fourth Division of the Court of Appeal. Relying on Law no. 267 of 1997, the applicant applied to have L. summoned, but his application was refused as being out of time. The applicant challenged the division's judges for bias, in particular its president, and sought their withdrawal, but his challenge was dismissed. The Fourth Division upheld the applicant's conviction in part, although it reduced his prison sentence. He then appealed to the Court of Cassation, which dismissed his appeal. Throughout the trial there was intense media interest on account of the high profile enjoyed by the applicant and the other defendants. Mr Di Pietro, who had been one of the best-known prosecutors in the "clean hands" investigation but was no longer a member of the legal service, was alleged to have stated unequivocally in a lecture that the applicant was listed in the register of persons accused of corruption and abuse of office.

Inadmissible under Article 6(1) and (2): (a) As regards the impartiality of the Fourth Division of the Court of Appeal, there was nothing to suggest that any doubt should be cast on the personal impartiality of the division's president, and the applicant's allegations were not based on any concrete evidence. His fears that the division was not impartial stemmed from the fact that it had already expressed a view, in another case, on the illegal funding of political parties and on the applicant's character. While a situation of that kind might give rise to misgivings on the applicant's part, such misgivings should not necessarily be regarded as objectively justified. The mere fact that a judge had already ruled on similar yet separate offences and had tried a particular defendant in other criminal proceedings could not in itself put in doubt his impartiality. However, a judge's impartiality would be undermined if judgments which he had previously delivered referred to or anticipated the defendant's guilt in cases yet to be decided. In the instant case, the facts of the earlier case had been quite different from those of the *Metropolitana milanese* case. Furthermore, the Fourth Division's judgment in the first case had made no reference to the role that the applicant might have played in the second one. The situation complained of by the applicant could not in itself justify doubts as to the impartiality of the Fourth Division of the Court of Appeal: manifestly ill-founded.

(2) With regard to the applicant's complaint that he had been denied his right to examine or have examined the main witness against him, the Court noted that, following the entry into force of Law no. 267 of 1997, statements made before a trial by a prosecution witness who was also a co-defendant could only be used if the adversarial principle had been observed or the defendant in respect of whom the statements were made had given his consent. Statutory provision had been made for an interim measure whereby, if statements made by co-defendants before a trial were added to the case file without the consent of the defendant in question, any interested party could – during the appeal proceedings or in the appellate court to which the case had been remitted by the Court of Cassation – apply to have the investigation reopened and to have witnesses summoned who had not been examined. Following that law's entry into force and the Court of Cassation's judgment, the applicant had had the opportunity in the court to which the case had been remitted to apply for the main prosecution witness to be summoned to appear and give evidence. However, his application had been made out of time and had consequently been refused. He had therefore not exhausted that domestic remedy.

(3) It was inevitable in a democratic society that the press should sometimes make harsh comments on a sensitive case which, like the one before the Court, called into question politicians' morality and relations between the political and business worlds. In the instant case, however, there was no evidence to suggest that in assessing the defence's submissions and the prosecution evidence, the judges who had ruled on the merits had been influenced by

the statements made in the press. With regard to the applicant's allegations that the prosecuting authorities had been pursuing political ends, the guarantees of independence and impartiality in Article 6 did not apply to the prosecuting authorities, who were one of the parties in adversarial court proceedings. It could not be inferred from the evidence adduced by the applicant that the prosecution had exceeded their powers in an effort to harm his or his party's reputation. As to the lecture given by Mr Di Pietro, nothing in his statements – inasmuch as they might have related to the applicant – had given the impression that he was pursuing political ends or breaching the principle of a fair trial or of presumption of innocence, particularly as the lecture had taken place after the applicant's initial conviction: manifestly ill-founded.

IMPARTIAL TRIBUNAL
Alleged lack of independence and impartiality of prosecution service: *inadmissible*.

CRAXI - Italy (N° 63226/00)
Decision 14.6.2001 [Section II]

EQUALITY OF ARMS
Non-disclosure of material by the prosecution: *violation*.

ATLAN - United Kingdom (Nº 36533/97)
*Judgment 19.6.2001 [Section III]

Facts: Following a surveillance operation by the customs authorities, the applicants were convicted of importing cocaine. They maintained that they had been falsely implicated by a Mr Steiner, who they claimed was an informer. Under cross-examination, customs officers refused to confirm or deny whether an informer had been involved. The prosecution affirmed that there was no undisclosed material. However, while an appeal was pending, the applicants' lawyer learned of a Swiss police report in which Mr Steiner was named as an informer of several European police forces. The prosecution declined to confirm or deny the authenticity of the report's contents and repeated that it held no undisclosed material relevant to the issues at trial. However, the prosecution subsequently admitted that undisclosed material did exist and applied *ex parte* to the Court of Appeal for a ruling on whether it was entitled not to disclose the material on the ground of public interest immunity. After hearing the applicants' application to admit new evidence and holding an *ex parte* hearing in the absence of the defence lawyers, the Court of Appeal ruled that justice did not require disclosure of the material by the prosecution.
Law: Article 6(1) – It is clear that the repeated denials by the prosecution of the existence of undisclosed relevant material and the failure to inform the trial judge of the true position were not consistent with the requirements of this provision, and the issue is whether the *ex parte* procedure was sufficient to remedy this unfairness at first instance. Although the nature of the undisclosed material has never been revealed, the sequence of events raises a strong suspicion that it concerned Mr Steiner, his relationship with the British customs authorities and his role in the applicants' arrest. The allegations concerning Mr Steiner were central to the applicants' defence and they expressly asked the prosecution if there was undisclosed material relevant to this issue. The trial judge is best placed to decide whether or not the non-disclosure of public interest immunity evidence would be unfairly prejudicial to the defence and, moreover, in this case the trial judge might have chosen a very different form of words for his summing up to the jury had he seen the evidence. The prosecution's failure to lay the material before the trial judge and let him rule on the question of disclosure deprived the applicants of a fair trial.
Conclusion: violation (unanimously).
Article 41 – The Court could not speculate as to whether the applicants would have been convicted had the violation not occurred and considered that the finding of a violation

constituted in itself sufficient just satisfaction for any pecuniary or non-pecuniary damage they may have suffered. It made an award in respect of costs and expenses.

INDEPENDENT TRIBUNAL
Withdrawal of judges from case following statements in the press by the Prime Minister and the Minister for Justice contesting their decision: *admissible*.

LAVENTS - Latvia (N° 58442/00)
Decision 7.6.2001 [Section II]

The applicant was chairman of the supervisory board of Latvia's largest bank. When the bank went into liquidation, the consequences for the national economy were disastrous and hundreds of thousands of people were ruined. In June 1995 the applicant was charged with sabotage and other offences under banking and business legislation, and also with unlawful possession of firearms. In July 1995 he was detained pending trial. Various steps were taken in connection with his detention and the investigation until October 1996, when the public prosecutor's office preferred the final indictment against him. From December 1996 to March 1997 he was in hospital under supervision. In June 1997 he was committed for trial, and in October 1997 the examination of the merits of his case began. From October 1997, owing to his serious health problems, he was released from detention and placed under house arrest under constant police supervision until September 1998, when it was decided that he should return to prison. In October 1997 Latvia's main daily newspaper published information on a joint official statement in which the Prime Minister and the Minister of Justice expressed their disagreement with the order placing the applicant under house arrest. That same month the judges upheld the preventive measure and withdrew from considering the case on account of the pressure exerted by the Government and public opinion in the light of the statements which the Prime Minister and the Minister of Justice had made to the press. In October 1997 an order was made for the seizure and examination of his correspondence, including that with his lawyers. The judge who issued the order returned to the applicant's lawyers the appeal they had lodged against the order, informing them that the order was not subject to appeal. Between April and June 2000 the applicant was transferred to a hospital outside the prison. In September 2000 he was taken to the hospital in Riga Central Prison, but because he could not be given adequate medical treatment in prison, he had to be transferred to an ordinary hospital, where he currently remains, under supervision. In 1999 the national press published statements by the judge presiding over the panel of the court dealing with the applicant's case. She referred, *inter alia*, to the applicant's numerous challenges against her and to the grounds of his defence, which she said she could not understand. In 1999 and 2000 the applicant had on several occasions challenged her and the whole panel of the court dealing with his case, alleging in particular that they had committed serious breaches of the Code of Criminal Procedure which indicated bias on their part; he had also challenged one of the other members of the panel individually. His challenges were dismissed.
Admissible under Articles 5(3), 5(4), 6(1) (independent tribunal established by law), 6(2) and 8: Preliminary objection (failure to exhaust domestic remedies) – in October 1997 the judge who had ordered the seizure and examination of the applicant's correspondence had refused to transmit his appeal on the ground that no appeal lay, and the Government had not indicated what other remedy might have been available to the applicant. The objection was dismissed.

IMPARTIAL TRIBUNAL
Statements made in the press about the applicant by the judge presiding the court dealing with the merits of criminal proceedings against him: *admissible*.

LAVENTS - Latvia (N° 58442/00)
Decision 7.6.2001 [Section II]
(see above).

INDEPENDENT TRIBUNAL
Independence of the "inferior number" of the Royal Court of Jersey: *communicated*.

SNOOKS - United Kingdom (N° 44305/98)
DOWSE - United Kingdom (N° 49150/99)
[Section II]

Both applicants were tried for drug-related offences in the Royal Court of Jersey before the "inferior number", which consisted of a judge of law (the deputy bailiff) and two judges of fact (the jurats). Jurats are appointed by an electoral college of the legal profession, the judiciary and the executive. In the first case, the deputy bailiff gave his summing-up to the jurats in public, while it was done in private in the second case. In both cases, the deputy bailiff retired with the jurats when the latter were to reach their verdicts. Both applicants were convicted and sentenced to prison. No reasons were given for the verdicts.
Communicated under Article 6(1) (fair hearing, independent tribunal).

Article 6(3)(c)

DEFENCE IN PERSON
Conviction *in abstentia* of an accused prevented from attending his trial by decision of a foreign court*: no violation*.

MEDENICA - Switzerland (N° 20491/92)
*Judgment 14.6.2001 [Section II]

Facts: The applicant, a doctor, practised in Switzerland until 1984. He then emigrated to the United States where he acquired American nationality and continued to practise as a doctor. In 1982 criminal proceedings were instituted against him by the Swiss authorities, mainly for fraud. In 1988 the applicant was summoned to appear in the Assize Court on 17 April 1989. However, he was unable to appear at the hearing, as one of his American patients, who was suffering from cancer, had requested and obtained an order from an American judge preventing the applicant from leaving the United States unless he could be replaced by another doctor, on account of the consequences his departure might have for the patient's treatment. The applicant had to surrender his passport to the American authorities. The Swiss judicial authorities were informed of the American judge's order by the applicant's lawyers, who applied for an adjournment of the trial. The President of the Assize Court refused to adjourn the trial, on the ground that the applicant had failed to justify his absence, and expressed reservations about the American judge's order preventing the applicant from leaving the country, noting in addition that the applicant had neither lodged an appeal against the decision nor made serious endeavours to find a replacement doctor, although he had had advance notice of the hearing date. The applicant applied to set aside the order preventing him from leaving the United States. However, while that application was being examined, the hearings in the Swiss Assize Court took place on the dates originally scheduled. He was

therefore unable to attend, but was represented by his lawyers. The court sentenced him *in absentia* to a term of imprisonment. The applicant lodged appeals against the Assize Court judgment, submitting, in particular, that his absence had been justified and that his conviction *in absentia* had been unlawful. His appeals were dismissed by various courts, including the Federal Court, which held that he had misled the American judge by making inaccurate statements, especially about the course of the proceedings in Switzerland, in an attempt to obtain a judgment that would make it impossible for him to attend the trial. He had alleged that he had been unlawfully detained for sixteen months in Geneva and that he feared he would be sentenced to death in Switzerland. He had also maintained that his lawyers had not had access to the case file and had been unable to take part in the earlier proceedings. The court added that the applicant had omitted to appeal effectively against the American judge's order by challenging it in a court that might have found in his favour.
Law: Article 6(1) and (3)(c): The applicant had not been punished for his absence in a manner that infringed his right to legal assistance; at the hearing he had been defended by two lawyers of his own choosing. Under the Geneva Code of Criminal Procedure, persons convicted *in absentia* could in principle have the proceedings set aside and apply for a retrial both of the merits and of the legal issues. However, the Swiss authorities had rejected the applicant's application on the grounds that he had not provided any valid excuse for his failure to appear, as required by the relevant provision of the aforementioned Code, and that there was nothing in the file to warrant the conclusion that his absence had been due to circumstances beyond his control. There was no reason to believe that the Swiss courts had acted arbitrarily or had based their decision on inaccurate information. Furthermore, regard being had to the circumstances of the case as a whole, the applicant had to a considerable extent helped to create a situation in which it was impossible for him to appear in the Swiss courts. That was clear from the decision of the Federal Court in particular, which had found that the applicant had misled the American judge by making equivocal or deliberately untrue statements, especially about the proceedings in Switzerland, in an attempt to obtain a judgment that would make it impossible for him to attend the trial. Ultimately, since it was not a case in which the accused had not received a summons or had been denied legal assistance, and in view of the Swiss authorities' margin of appreciation, the applicant's conviction *in absentia* and the refusal to grant him a retrial which he would be able to attend did not amount to a disproportionate penalty.
Conclusion: no violation (five votes to two).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction of East German public prosecutor in respect of his submissions during the trial of a dissident: *inadmissible*.

GLÄSSNER - Germany (N° 46362/99)
Decision 28.6.2001 [Section IV]

The treaty of reunification between East and West Germany provided that offences committed in the former German Democratic Republic (GDR) would be dealt with under GDR criminal law as it had stood at the material time, save where the equivalent provisions of FRG law were less severe. In 1996 the applicant, a former public prosecutor in the GDR, was sentenced to twelve months' imprisonment, three of them suspended, for (among other things) deliberately asking for an excessively harsh sentence to be passed on a dissident in 1978. The applicant was convicted pursuant to both FRG and GDR criminal-law provisions under which it was an offence deliberately to aid and abet a violation of the law and to aid and abet depriving a person of his liberty. Before the Court he relied on the principle that the

criminal law should not have retrospective effect, arguing, firstly, that the submissions on sentence he had made in 1978 had been based on the law as it stood in the GDR at the time and, secondly, that the provisions of the GDR Criminal Code on which his own conviction had been based had been given an interpretation contrary to the one prevailing at the material time.

Inadmissible under Article 7: It was legitimate for a State to bring criminal proceedings against persons who had committed crimes under a former regime; the courts of such a State, having taken the place of those which existed previously, could not be criticised for applying and interpreting the legal provisions in force at the material time in the light of the principles governing a State based on the rule of law. In the instant case the Regional Court's application and interpretation of the provisions of the GDR Criminal Code on which the applicant's conviction was founded had not been arbitrary in any way. In addition, the GDR parliament which had been democratically elected in 1990 had expressly requested the German legislature to ensure that criminal proceedings were brought in respect of the injustices committed by the Socialist Unity Party. It was therefore reasonable to suppose that, even if the reunification of Germany had not taken place, a democratic regime taking over from the Socialist Unity Party regime in the GDR would have applied the GDR's legislation and prosecuted the applicant, as the German courts had done after reunification. Consequently, at the time when they were committed the applicant's acts had constituted an offence which was defined with sufficient accessibility and foreseeability in GDR law.

With regard to the limitation period, the court dealing with the case had noted that, in the light of the Federal Court of Justice's established case-law, the offences of which the applicant stood accused were not time-barred. The Federal Court of Justice had held that the GDR authorities' refusal to prosecute where there had been deliberate breaches of the law meant that limitation was suspended in respect of the offences in question. Such findings had been supplemented by the Limitation Act of 26 March 1993, section 1 of which provided for the suspension of limitation in respect of "acts committed under the unjust regime of the Socialist Unity Party". In the instant case there was no need to determine whether that case-law, combined with the Limitation Act, satisfied the requirements of Article 7, because the offence for which the applicant was prosecuted had not been subject to limitation under GDR law. The prison sentence recommended by the applicant in his capacity as a public prosecutor and imposed by the GDR courts had been disproportionate and arbitrary, and had consequently amounted to a blatant violation of the right to a fair trial. In 1974 the GDR had ratified the International Covenant on Civil and Political Rights, which safeguarded the right to a fair hearing by an independent and impartial tribunal. Furthermore, Article 95 of the GDR Criminal Code provided that any person whose conduct violated human rights was to be held criminally liable. The offence for which the applicant had been prosecuted had therefore not been subject to limitation, by virtue of Article 84 of the GDR Criminal Code, in that it had constituted a breach of the right to a fair hearing in a criminal matter.

In conclusion, the principle that only the law can define a crime and prescribe a penalty had been observed in this case: manifestly ill-founded.

ARTICLE 8

PRIVATE LIFE
Deportation after lengthy residence: *relinquishment*.

SLIVENKO - Latvia (N° 48321/99)
[Section II]

The first applicant's family, Soviet citizens of Russian origin, moved to Latvia when she was one month old. The second applicant, a Soviet military officer, was transferred to Latvia in 1977. In 1980, they married and a year later the first applicant gave birth to their daughter, the third applicant. After Latvia's independence in 1991, the first applicant's parents, herself and her daughter were entered in the Register of Latvian residents on the basis of a status of "ex-USSR citizens". In 1994, the second applicant, who still held Russian citizenship, retired from the Russian army and applied for a temporary residence permit. The authorities refused, relying on the fact that families of Soviet military officers were required to leave the Latvian territory following the withdrawal of the Russian troops in 1994. The immigration authorities annulled the first and third applicants' entry in the Register of Latvian residents. A deportation order was issued against the applicants and they were evicted from their flat. The first applicant brought a legal action in her own name and on behalf of the third applicant claiming that they were *de facto* permanent residents. The domestic courts found after lengthy proceedings that they belonged to the second applicant's family and for that reason were required to leave the country. The first applicant then requested permission for herself and her daughter to remain in Latvia, emphasising the fact that it was their homeland as they had spent all their lives there and had no other nationality and in addition that she had to take care of her handicapped parents who were permanent residents of Latvia. In 1999, the authorities informed her that they had to leave the country immediately. They eventually moved to Russia to join the second applicant who had moved there in 1996. They have not been able to visit the first applicant's parents in Latvia since.

PRIVATE LIFE
Surveillance of the applicant by private detectives engaged by her insurers following doubts about the genuineness of alleged after-effects of injuries: *inadmissible*.

VERLIERE - Switzerland (N° 41953/98)
Decision 28.6.2001 [Section II]

In 1979 the applicant sustained serious injuries in a road accident while travelling as a passenger in a vehicle covered by third-party insurance taken out with the S. insurance company. The insurance company met her medical costs until 1985, when it refused to provide any further cover. In 1989, having failed to negotiate an agreement, she brought an action for damages. In the course of the proceedings she discovered that the insurance company, which from 1982 onwards had had doubts as to whether the injuries were genuine, had instructed private detectives to ascertain her physical condition. She had therefore been under surveillance on various occasions, for example on a journey to the insurance company's offices for an appointment and while on a picnic and her activities had been recorded in reports and photographs and on video. In 1990 the applicant requested the courts to protect her personality rights by prohibiting the surveillance operations, ordering the destruction of the photographs and film and declaring that the reports, pictures and film had constituted an unlawful invasion of her privacy. The trial and appeal courts both found against her. In December 1997 the Federal Court dismissed her application to have those courts' decisions

reversed. In 1993 she had lodged a criminal complaint against the private detectives and the representatives of her insurance company, alleging, *inter alia*, that they had invaded her privacy. Consideration of the complaint was suspended pending the outcome of the action for damages; that action ended in March 2001 with an order for the insurance company to pay damages to the applicant.
Inadmissible under Article 8: Swiss legislation afforded effective protection of individuals' right to respect for their private lives in their relations with one another. Both criminal and civil remedies were available to anyone who considered that his personality rights had been infringed, and appropriate penalties could be imposed. In this case, the civil courts had carried out a thorough examination of the competing interests of the insurance company and the applicant. They had held that the insurance company had an overriding interest, since it had been under an obligation to check that the compensation claimed was justified as it was acting in the interests of all its insured, and since its investigations had been carried out in the public domain, had focused exclusively on the applicant's mobility and had pursued the sole aim of preserving its own pecuniary rights. Accordingly, the Swiss courts had fulfilled the positive obligation inherent in ensuring effective respect for privacy: manifestly ill-founded.

PRIVATE LIFE
Alleged inaction of authorities regarding operation of mine involving use of toxic substance, despite court decisions: *communicated*.

TAŞKIN and others - Turkey (N° 46117/99)
[Section I]

In 1992 a public limited company, E.M., was granted licences to operate the gold mines in the Bergama region. In 1994 the Ministry of the Environment confirmed the grant of the licences. In November 1998 the inhabitants of Bergama, including the applicants, applied to the Administrative Court for an order setting aside the Ministry of the Environment's decision. In support of their application, they argued that the company intended to extract the gold using sodium cyanide, a highly toxic substance. The court rejected their application. In May 1997, following an appeal on points of law by the applicants, the Supreme Administrative Court overturned the Administrative Court's decision, holding that, in view of the negative impact of the company's mining methods on the environment and public health, the Ministry of the Environment's decision could not be regarded as serving the public interest. In June 1997 the provincial governor's office, pointing out that court proceedings were still pending, informed the applicants that the Ministry of Energy and Natural Resources had requested the continuation of the mining operations. In October 1997 the Administrative Court complied with the Supreme Administrative Court's judgment and declared the Ministry of the Environment's decision void. Its ruling was served on the ministry. The next day, the ministry requested that the mining licences be reviewed in the light of the ruling. In November 1997 the ministry requested the suspension of the activities of the supervisory committee attached to the provincial governor's office. That same month the applicants lodged a complaint against the provincial governor, alleging that he had not enforced the court ruling. The governor replied in March 1998 that an investigation by the Ministry of the Interior had found that he had ordered the suspension of the supervisory committee's activities and forwarded the ruling to the relevant authorities with a view to ensuring interministerial coordination in enforcing the ruling. In April 1998 the Supreme Administrative Court upheld the Administrative Court's later decision. Criminal proceedings instituted against E.M. by the public prosecutor are still pending. The applicants were informed that the mining licences had been extended until April 2000 on the basis of a report by the Turkish Institute for Scientific Research, which had concluded that E.M. had taken the necessary precautions to ensure that its mining operations were harmless.
Communicated under Articles 2, 6(1), 8 and 10.

PRIVATE LIFE
Rejection of request for authorisation to adopt lodged by an unmarried homosexual man, on the ground of his "life-style": *admissible*.

FRETTE - France (N° 36515/97)
[Section III]

As a result of his request for preliminary leave to adopt, the applicant was investigated by social services. His request was refused. He lodged an appeal with social services which was dismissed on the grounds that his "lifestyle" (he is an unmarried homosexual) did not appear to provide the necessary safeguards for him to be entrusted with a child. The applicant applied for the decisions to be set aside. The Administrative Court set aside the decisions, holding that the decision-making authorities had misinterpreted the relevant legislative provisions. The Paris *département* appealed to the *Conseil d'Etat*. The Government Commissioner was asked for his opinion and stated that the *département* had good grounds for challenging the judgment of the court below but that the applicant had been denied preliminary leave to adopt solely because he was homosexual and, as such, could not provide the safeguards required of someone seeking to be entrusted with a child. The Government Commissioner took the view that that kind of decision amounted to introducing a form of discrimination between prospective adopters which the legislature had not intended – discrimination on the grounds of choice of private lifestyle. The *Conseil d'Etat* quashed the judgment of the court below and substituted its own decision, rejecting the applicant's request for preliminary leave to adopt. It held that, on the evidence before it, the applicant – despite his personal qualities and aptitude for bringing up children – could not provide the safeguards required of someone adopting a child and that the court below had erred in law in setting aside social services' decisions on the ground that the refusal of preliminary leave to adopt had been based on an incorrect application of the relevant legislation.
Inadmissible under Articles 12 and 14: neither provision guaranteed the right to adoption: incompatible *ratione materiae*.
Inadmissible under Articles 6(1) and 13: as regards the allegation that the *Conseil d'Etat* had not given reasons for its judgment, it had considered and assessed all the material in the file – even if it had not expressly mentioned and formally dealt with each aspect – and several courts had already dealt with the case and given reasons for their decisions: manifestly ill-founded.
Inadmissible under Article 6(1): (a) the fact that Government Commissioner had adopted more of an ethical than a legal standpoint before the *Conseil d'Etat* did not constitute sufficient evidence to rebut the presumption of the Commissioner's personal impartiality; (b) the applicant complained that the Government Commissioner's submissions had not been communicated to him before the hearing in the *Conseil d'Etat* and that he had been unable to reply to them at the hearing. However, he had not been in a position to attend the hearing, as he had not been summoned. There was therefore no need to examine his procedural position *vis-à-vis* the Government Commissioner, since he had not actually been in the situation of which he complained; the issue of fairness could only be assessed in relation to specific circumstances: manifestly ill-founded.
Admissible under Articles 8 and 14 (rejection of request for preliminary leave to adopt) and Article 6(1) (failure to summon the applicant to attend the hearing in the *Conseil d'Etat*).

FAMILY LIFE
Alleged absence of diligence of the courts in ensuring the enforcement of decisions awarding the applicant custody of her son, in particular after her ex-husband went abroad with the child: *communicated*.

IGLESIAS GIL and URCERO IGLESIAS - Spain (N° 56673/00)
[Section IV]

Following the first applicant's divorce, she was awarded custody of her son (the second applicant), while the child's father was granted access rights. During a visit in February 1997 the father took the child with him to the United States by air. The first applicant lodged a complaint against her former husband, alleging that he had abducted the child, and subsequently against other members of his family, alleging that they had been parties to the abduction. She also applied to join the proceedings as a civil party. In February 1997 the investigating judge ordered that the father's whereabouts be ascertained and that the child be returned to its mother immediately. He rejected requests by the first applicant for her former husband's mobile phone to be tapped, for the members of his family who had allegedly played a role in the abduction to be interviewed and for his firm's offices and his car to be searched. The investigating judge also rejected a request by the first applicant for an international warrant to be issued for her former husband's arrest. In June 1997 the investigating judge rejected further requests by the first applicant for investigative measures to be taken in connection with the offences of contempt of court and failing to comply with the family-affairs judge's decision. In May 1998 the investigating judge held that under the established case-law of the domestic courts a person sharing parental authority over a minor could not be prosecuted for abducting the child. In July 1998 he reiterated his view that an international arrest warrant could not be issued for the presumed offence of contempt of court. Appeals by the first applicant against those two orders were dismissed. A challenge against the investigating judge had been dismissed in November 1997 and an application to set aside the proceedings was rejected in February 1999. At the end of the investigation, in July 1998, the investigating judge issued a provisional decision to take no further action on the first applicant's complaint against her former husband – although the warrant for his arrest and for the seizure of his property would remain valid – and a final decision to take no further action on her complaint against the members of his family. After her appeal was dismissed the first applicant lodged an *amparo* appeal, alleging that the investigating judge's systematic refusal to comply with her request for an international search for her child amounted to a breach of the judge's positive obligation to protect the child and his family; she argued in particular that the investigating judge's reluctance to take any investigative measures had amounted to a direct breach of her right, and that of her child, to respect for their private and family life. In June 1999 the Constitutional Court dismissed her appeal as being manifestly ill-founded. In February 1999 the family-affairs judge withdrew the father's parental authority and conferred sole authority on the first applicant. In June 2000 the first applicant lodged a complaint against her former husband, alleging that he had subjected her to threats and coercion. In September 2000 the investigating judge issued a provisional decision to take no further action on the complaint. That decision was set aside in May 2001 on an appeal by the first applicant. Meanwhile, in April 2000, the applicant had seen her son for the first time since his abduction in February 1997. She was finally able to take him back in June 2000 with the police's assistance and since then has lived in hiding with the child at a women's refuge.
Communicated under Article 8.

FAMILY LIFE
Prohibition by the courts on a prisoner receiving visits by the wife and minor daughter: *admissible*.

LAVENTS - Latvia (N° 58442/00)
Decision 7.6.2001 [Section II]
(see Article 6(1) [criminal], above).

FAMILY LIFE
Deportation of wife and child of detainee, preventing them from visiting him in prison: *inadmissible*.

SELMANI - Switzerland (N° 70258/01)
Decision 28.6.2001 [Section II]

In 1997, the first applicant, a Yugoslav citizen, married A.S., also a Yugoslav citizen, who had settled in Switzerland some years before and had obtained a residence permit. As a consequence, the applicant also obtained a residence permit. The same year, the second applicant, their daughter, was born in Switzerland. In 1999, A.S. was convicted of a drug-related offence and sentenced to eight years' imprisonment and a prohibition on entering the country for fifteen years. On appeal, the prison sentence was reduced to six years. In January 2000, the Aliens' Police consequently refused to prolong the residence permits of A.S. and the applicants. The latter were asked to leave to country by May 2000, while the former would have to leave after having served his prison sentence, i.e. in November 2002. The applicants' subsequent appeals were unsuccessful.
Inadmissible under Article 8: The Convention does not grant detainees the right of choosing the place of their detention. Separation and distance from their families are inevitable consequences of detention. However, the detention of a person in a prison at a distance from his family which renders any visit very difficult, if not impossible, may, in exceptional circumstances, constitute an interference with his family life, the possibility for members of his family to visit a prisoner being an essential factor to preserve family life. In the instant case, the applicants complained that if forced to leave Switzerland, they would not have the means to travel back there regularly to visit A.S. in prison. However, such a right to visit a family member in prison would prove considerably difficult for States to organise. Moreover, the Swiss authorities enabled the applicants to visit regularly A.S. and to communicate with him through writing and telephone, and he is due to be released at the end of 2002. The difficulties which the applicants encountered were thus not excessive and did not render family life impossible. The present article did not imply, in the present case, an obligation for the authorities to ensure that the applicants could visit A.S: manifestly ill-founded.

FAMILY LIFE
Expulsion from country where close family lives: *admissible*.

AMROLLAHI - Denmark (N° 56811/00)
Decision 28.6.2001 [Section II]

The applicant, an Iranian citizen, deserted from the army and fled from Iran in 1987. In 1989, he arrived in Denmark, where he obtained a permanent residence permit. In 1992, he started living with a Danish citizen, whom he later married. They had a daughter in 1996 and a son in 2001. In 1996, however, the applicant was convicted of drug trafficking by the City Court, which ordered his permanent expulsion. The applicant unsuccessfully lodged an appeal against this decision arguing that, in Iran, he risked severe punishment for desertion and life imprisonment for the drug offence which had led to his conviction in Denmark. His

subsequent appeal was to no avail. The Aliens Authorities found that he did not risk any persecution in the event of deportation to Iran. The applicant made a request for reconsideration before the City Court, which revoked the deportation order. However, the decision was quashed by the High Court on the ground that only one request for reconsideration could be made, and that in the applicant's case there had already been one. The applicant's application for leave to appeal to the Supreme Court was turned down.
Admissible under Article 8.

HOME
Search carried out in lawyer's premises: *communicated*.

TAMOSIUS - United Kingdom (N° 62002/00)
[Section II]

The premises of the applicant, a lawyer, were searched twice, under warrants, by the Inland Revenue. He and several of his clients were suspected of having committed serious tax fraud. The Divisional Court found that both warrants were lawful and rejected the applicant's argument that they had failed to give adequate particulars of the materials which could be seized. It held that the statute did not require such specification and that the validity of the warrant did not depend on that but on the reasonable suspicion that an offence of serious fraud had been committed and that evidence would be found on the premises. The applicant was refused leave to appeal. No independent observer appears to have been present during the searches.
Communicated under Article 8.

HOME
Seizure of documents at company offices by competition inspectors without prior authorisation by a court or control of the operation: *admissible*.

Sociétés COLAS EST, COLAS OUEST and SACER - France (N° 37971/97)
Decision 19.6.2001 [Section III]

In the course of an investigation into local tendering procedures for public-roadworks contractors, inspectors from the Directorate General for Competition and Consumer Affairs twice visited the head offices of various companies in November 1985 and September 1986 and seized thousands of documents. They were acting in accordance with the provisions of the order of 30 June 1945, which did not require them to obtain a court order. In the light of their findings, proceedings were brought against a number of companies, including the applicant companies. In a decision of 25 October 1989 the Competition Commission ordered the applicant companies to pay fines of twelve million, four million and six million French francs respectively. Those penalties were upheld by the Paris Court of Appeal. However, its judgment was quashed and the case was remitted to the Court of Appeal with a differently constituted bench. In that court the applicant companies, relying on Article 8 of the Convention, disputed the lawfulness of the seizures, which had been carried out by the inspectors without a court order (and thus without judicial supervision of the visit or the seizures). The Court of Appeal found against them, holding that while the inspectors had a general right to inspect documents and were authorised to seize them, no searches had been carried out during the administrative investigation; accordingly, the companies' allegations of an infringement of their right to respect for their private lives and home were unfounded. However, the fines imposed on the first two applicant companies were reduced. The Court of Cassation dismissed an appeal on points of law by the applicant companies, noting in particular that the administrative investigation had not entailed any searches or coercive measures.

Admissible under Article 8.
(N.B. This application raises an issue on which no ruling has yet been given, namely whether the concept of "home" for the purposes of Article 8 extends to the premises (head offices) of companies or other juristic persons.)

CORRESPONDENCE
Control of prisoner's correspondence: *admissible*.

LAVENTS - Latvia (N° 58442/00)
Decision 7.6.2001 [Section II]
(see Article 6(1) [criminal], above).

ARTICLE 9

FREEDOM OF RELIGION
Refusal to grant official recognition to a church: *admissible*.

MITROPOLIA BASARABIEI SI EXARHATUL PLAIURILOR and others - Moldova
(N° 45701/99)
[Section I]

The Metropolis of Bessarabia is an Orthodox church forming part of the patriarchate of Bucharest, which was in a state of turmoil as a result of events in the region. The successive annexations by the Soviet Union and Russia had led to the disappearance of the Metropolis, its place being taken by other rival churches from the Moscow patriarchate. Following the Moldovan declaration of independence in 1991, the applicant sought official recognition from the new State in October 1992. It received no reply to its request, but in December 1992 the Government recognised a separate church – the Metropolis of Moldova from the Moscow patriarchate – and another church of the same denomination a few months later. In March 1997 the Moldovan Court of Appeal ordered the Government to afford the applicant recognition, but in December 1997 that order was quashed by the Supreme Court on the grounds that the application had been lodged out of time and that recognition would constitute an interference in the affairs of the Metropolis of Moldova. Notwithstanding differences of rite between the two churches, the Supreme Court held that members of the Metropolis of Bessarabia had access to places of worship through the churches of the Metropolis of Moldova. The applicant alleged, *inter alia*, that the refusal of official recognition meant that its members were exposed to acts of violence and intimidation without any protection from the authorities. It also complained that the refusal meant that it had no legal personality and therefore no *locus standi* before the courts.
Admissible under Articles 6, 11 and 13 and Article 9 taken alone and in conjunction with Article 14: With regard to the Government's preliminary objection (failure to exhaust domestic remedies), the Court noted that the applicants had applied to the Moldovan Court of Appeal to obtain recognition for the Metropolis of Bessarabia, relying on their rights to freedom of religion and freedom of association, and that their appeal had been allowed in March 1997. Admittedly, the Supreme Court had quashed that decision, holding that the applicants' appeal had been lodged out of time (after the expiry of the statutory time-limit of one month from the date on which their application for recognition had been filed with the Government). However, although it had found that the action had been brought out of time, the Supreme Court had examined the merits of the applicants' complaints and had dismissed them as ill-founded. Consequently, the applicants had satisfied the requirement of exhaustion of domestic remedies: admissible.

FREEDOM OF EXPRESSION
Refusal of television authority to broadcast advertisement: *violation*.

VgT VEREIN GEGEN TIERFABRIKEN - Switzerland (N° 24699/94)
*Judgment 28.6.2001 [Section II]

The applicant is an association for the protection of animals. It prepared a television advertisement denouncing the industrial rearing of pigs and encouraging people to eat less meat by showing successively wild pigs in a forest and pigs hemmed in behind bars in an industrial rearing farm. The applicant sent the videotape of the advertisement to the authority responsible for the broadcasting of commercials on Swiss national television, the Television Commercial Company (a company established under private law), which replied that it would not broadcast it on account of its "clear political character". In order to be able to file an appeal, the applicant association asked the authority to issue a formal decision of refusal. The Television Commercial Company answered that it was not empowered to do so. The applicant association turned to the Independent Radio and Television Appeal Board, which declared that it could only deal with complaints about programmes that had already been broadcast. The complaint was transferred, however, to the Federal Office of Communication, which informed the applicant association that the Television Commercial Company was free in its choice of advertisements. The applicant association unsuccessfully filed a complaint with the Federal Department for Transport and Energy. Finally, the Federal Court rejected its administrative law appeal.
Law: Government's preliminary objection (abuse of the right of petition) – With regard to the assertion that the applicant had, when lodging the application, stated that an administrative appeal was not open but had at the same time introduced such an appeal, the Court recalled that it was not excluded that supplements to an initial application might relate in particular to the proof that the applicant had complied with the conditions of Article 35(1), even after the lodging of the application, provided it was before the decision on admissibility. It saw no reason to reconsider these issues and dismissed the preliminary objection.
Article 10 – The Commercial Television Company and later the Federal Court relied on the prohibition on "political advertising" in Swiss law, which made lawful the treatment of which the applicant association complains. In effect, political speech by the applicant association was prohibited and the responsibility of the respondent State may be engaged on that basis. The refusal to broadcast therefore constituted an interference by a public authority. The advertisement fell outside the regular commercial context in the sense of inciting the public to purchase a particular product; rather, by exhorting reduced meat consumption, it reflected controversial opinions pertaining to modern society in general and lying at the heart of various political debates. As such, the advertisement could be regarded as "political" and it was foreseeable that it would not be broadcast. Moreover, it pursued the legtimate aim of protecting the rights of others, in particular by preventing financially strong groups from obtaining an advantage in politics. As to the necessity of the interference, the State's margin of appreciation is particularly essential in commercial matters, but since in this case what was at stake was participation in a debate affecting the general interest rather than purely commercial interests, the margin of appreciation is reduced. The limitation of the prohibition on political avertising to radio and television broadcasts, and not to other media, on the basis of television's stronger effect on the public, does not appear to be of a particularly pressing nature. Moreover, it has not been argued that the applicant association itself constituted a powerful financial group which aimed at endangering the independence of the broadcaster, unduly influencing public opinion, or endangering the equality of opportunity between the different forces of society. Indeed, all it intended to do was participate in an ongoing general

debate on animal protection. A prohibition of "political advertising" may be compatible with Article 10 in certain situations, but the reasons must be relevant and sufficient in respect of the particular interference and it has not been shown in a relevant and sufficient manner why the grounds generally advanced in support of the prohibition of political advertising also justified the interference in the particular case. The domestic authorities did not invoke the disturbing nature of any particular sequence or of any particular words in the advertisement as a ground for refusing to broadcast, so it mattered little that the pictures and words may have appeared provocative or even disagreeable. The applicant association, aiming at reaching the entire Swiss public, had no other means than national television at its disposal, since regional private television channels and foreign television stations cannot be received throughout Switzerland, and the Commercial Television Company was the sole instance responsible for the broadcasting of commercials within national programmes. Various possibilities are conceivable as regards the organisation of broadcasting television commercials, but it is not the Court's task to indicate which means a State should utilise in order to comply with its Convention obligations.
Conclusion: violation (unanimously)
Article 13 – The administrative law appeal was an effective remedy.
Conclusion: no violation (unanimously).
Article 14 – The different aims of advertisements by the meat industry and that of the applicant means that they are not in comparable situations.
Conclusion: no violation (unanimously).
Article 41 – The Court made an award in respect of costs and expenses.

FREEDOM OF EXPRESSION
Award of damages of IEP 300,000 by jury in libel case against newspaper: *communicated*.

INDEPENDENT NEWS AND MEDIA PLC and INDEPENDENT NEWSPAPERS (IRELAND) LIMITED - Ireland (N° 55120/00)
[Section IV]

The second applicant company publishes the *Sunday Independent* and is a wholly owned subsidiary of the first applicant company. In 1992, the *Sunday Independent* published an article in which reference was made to a well-known politician. He was leader of a political party and engaged, at the time, in negotiations about his party's participation in the Government. Considering the content of the article defamatory, he initiated libel proceedings in the High Court against the first applicant. The jury found that that the article could be interpreted as implying that the politician in question was involved in or had tolerated serious crimes and that he personally supported anti-Semitism and violent communist oppression. In his directions to the jury, the trial judge, without giving any figures, stated that should the jury decide to award damages, the award should be of a substantial amount. The jury assessed damages at IEP 300,000, the highest libel award ever granted in Ireland. The first applicant company's appeal to the Supreme Court was unsuccessful. The applicants did not engage in separate constitutional proceedings to challenge the common law principles concerning the directions by trial judges to juries on the amount of awards in libel cases and of appellate court control of jury awards.
Communicated under Article 35(1) (exhaustion of domestic remedies) and 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Refusal to pay a trade union representative for time spent studying new legislation on trade union elections: *inadmissible*.

SANCHEZ NAVAJAS - Spain (N° 57442/00)
Decision 21.6.2001 [Section IV]

The applicant, a trade-union representative elected by local-government employees, was granted fifteen hours' paid leave of absence for trade-union activities carried out in September 1993. He accounted for the time by saying that it had been spent studying new legislation on trade-union elections and its implications for collective bargaining. In November 1994 the mayor decided to deduct fifteen hours' wages from the applicant's pay on the ground that the study had been carried out in his own interests rather than in the interests of the staff members he represented. The applicant appealed against that decision, relying on the right to form and join trade unions embodied in the Constitution. In 1996 the Andalusia High Court of Justice dismissed his appeal, holding that a study of new trade-union legislation was a private activity that could not be carried out at the taxpayer's expense. The Constitutional Court dismissed as ill-founded an *amparo* appeal by the applicant, who had relied on the right to form and join trade unions.
Inadmissible under Article 11: It could be inferred from Article 11, in the light of Article 28 of the European Social Charter (Revised), that workers' representatives should as a rule – within certain limits – be afforded such facilities as might be appropriate in order to enable them to discharge their trade-union functions promptly and efficiently. In this case, however, the applicant had not demonstrated in what way his study of the new legislation was strictly necessary for the effective exercise of his functions as the local-government workers' trade-union representative. There had therefore been no interference with the exercise of his right to form and join trade unions, since the decision to deduct the wages corresponding to his paid leave for trade-union activities had not attained a sufficient degree of severity to constitute a substantial impairment of the right enshrined in Article 11: manifestly ill-founded.
[N.B. This case marks a development in the Court's case-law set out in the Schmidt and Dahlström v. Sweden judgment, Series A no. 21.]

ARTICLE 12

FOUND A FAMILY
Request for approval as a prospective adoptive parent: *inadmissible*.

FRETTE - France (N° 36515/97)
[Section III]
(see Article 8, above).

[Note: Court approval of and commentary on Commission's decision in the case of Dalila di Lazzaro v. Italy (no. 31924/96 of 10.7.1997]

ARTICLE 14

DISCRIMINATION (Article 8)
Request for approval as a prospective adoptive parent: *inadmissible*.

FRETTE - France (N° 36515/97)
[Section III]
(see Article 8, above).

DISCRIMINATION (Article 9)
Impossibility for members of the Baptist Church to earmark part of their income tax for the support of their church, as members of the Roman Catholic Church may do: *inadmissible*.

ALUJER FERNANDEZ and CABALLERO GARCIA - Spain (N° 53072/99)
Decision 14.6.2001 [Section IV]

The applicants are members of the Baptist Evangelical Church in Valencia. In their income-tax return for 1988 the applicants were entitled to put part of their income tax towards financial support for the Catholic Church or other charitable purposes, but not towards financial support for their own church. The applicants applied to the Valencia High Court of Justice for judicial review of the Income Tax Act 1988. They relied on the principle of equality before the law and the right to freedom of conscience and religion embodied in the Constitution and sought an order invalidating the system of income-tax returns on the ground that it denied them a right enjoyed by Spaniards of the Catholic faith. In April 1990 the Valencia High Court of Justice rejected their application; likewise, in October 1997 the Supreme Court dismissed an appeal by them. Lastly, in May 1999 the Constitutional Court dismissed an *amparo* appeal by the applicants, holding, *inter alia*, that there had been no discrimination on religious grounds as the difference in the law's treatment of the churches was justified by the difference between the situation of the Catholic Church – the only church to have entered into a concordat with, *inter alia*, the State – and that of other faiths.
Inadmissible under Article 14 taken in conjunction with Article 9: Freedom of religion did not mean that churches or their members were entitled to a different tax status from those of other taxpayers. Agreements between a State and a church, by which the church was granted a special tax status, did not in principle contravene the requirements inherent in Articles 9 and 14, as long as there was objective and reasonable justification for the difference in treatment and other churches could enter into similar agreements with the State if they so desired. Yet neither the church of which the applicants were members nor the Spanish Federation of Evangelical Churches had sought to enter into an agreement with the State whereby they would be allocated a proportion of income tax. With regard to the special tax arrangements enjoyed by the Catholic Church, the requirement for a church to enter into an agreement with the State in order to receive a proportion of income-tax revenue did not appear unfounded or disproportionate. Moreover, in the light of the margin of appreciation afforded to States, particularly in their relations with religious denominations, such a requirement could not be regarded as a discriminatory interference with the applicants' freedom of religion. Indeed, the margin of appreciation enjoyed by States in such matters was all the more justified as there were no common European standards on funding churches or religious denominations. Furthermore, Spanish tax legislation did not force taxpayers to pay part of their taxes to the Catholic Church: manifestly ill-founded.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER

Expulsion from Latvia of applicants having always lived there and having no other nationality: *relinquishment*.

SLIVENKO - Latvia (N° 48321/99)
[Section II]
(see Article 8, above).

ARTICLE 34

VICTIM
Length of proceedings taken into account in sentencing: *no violation*.

BECK - Norway (Nº 26390/95)
*Judgment 26.6.2001 [Section III]

Facts: Criminal proceedings for serious fraud were brought against the applicant in 1987 and in November 1992 the City Court convicted him and sentenced him to two years' imprisonment. In sentencing, it attached weight "to a not insignificant degree" to the fact that a long time had elapsed since commission of the offences (the maximum sentence being nine years). The Supreme Court rejected the applicant's appeal in September 1994, recalling that the City Court had taken the length of the proceedings into consideration as a mitigating factor. Although more time had passed since that judgment, the Supreme Court saw no reason for reducing the sentence.
Law: Article 6(1) – The City Court expressly upheld the substance of the applicant's complaint that the proceedings had exceeded a reasonable time. Moreover, the applicant was afforded adequate redress for the alleged violation: despite the seriousness of the offences, he was sentenced to two years' imprisonment, at the lower end of the possible sentences and appreciably less than in comparable cases. The City Court expressly attached "not insignificant" weight to this consideration, which stood out as being the primary mitigating factor. Although the reasoning could have been more precise, the reduction in sentence on account of the length was measurable and had a decisive impact on the applicant's sentence.
Conclusion: no violation (unanimously).

VICTIM
Decision in applicant's favour following rejection at first instance of request for legal aid in proceedings concerning pension rights: *inadmissible*.

IHASNIOUAN - Spain (N° 50755/99)
Decision 28.6.2001 [Section III]

The applicant applied for a pension or allowance as the widow of a retired member of the Spanish army. Her application was rejected on the ground that she was not entitled to such a pension under the applicable domestic legislation. She lodged an administrative appeal with the High Court of Justice. She applied for legal aid, stating that she was not in a position either to conduct her own defence or to instruct counsel to represent her. In August 1997 her

application was rejected because it did not satisfy the requirements laid down in the Legal Aid Act. In October 1997 the court requested her to appoint a lawyer within thirty days. The applicant appealed against that order to the same court. In March 1998 the High Court of Justice ordered her appeal to be struck out on account of her failure to appoint counsel. In July 2000 the court, having regard to the judicial-cooperation agreement of 30 May 1997 between Spain and Morocco, set aside its order striking out the appeal and forwarded the applicant's application for legal aid to the Legal Aid Board. In December 2000 the board granted the applicant legal aid pursuant to the cooperation agreement and assigned her counsel. In her application to the Court, registered in September 1999, she complained that her application for a pension had been rejected and that the court had not considered her appeal against that decision.
Inadmissible under Articles 6(1) and 14: The decision of December 2000 could reasonably be regarded as just reparation for the consequences of the applicant's complaint concerning her access to the Spanish courts. Although she had sought to pursue the application, she had not alleged that she had continued to sustain any damage after being granted legal aid. Admittedly, she had also complained of the rejection of her application for a pension. However, that part of her application was premature as the domestic courts had yet to rule on her complaint. In this case, the award of free legal aid constituted sufficient reparation relating in substance to the complaints she had lodged under the Convention. Consequently, the applicant could no longer be regarded as having *locus standi* and was no longer entitled to claim to be a "victim" of a violation of the Convention.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Croatia)
Effectiveness of complaint under Section 59 § 4 of the Constitutional Court Act as a remedy in respect of the length of proceedings.

RAJAK - Croatia (Nº 49706/99)
*Judgment 28.6.2001 [Section IV]

The case concerns the length of civil proceedings instituted by the applicant in June 1975 and still pending at first instance. (The Convention entered into force in respect of Croatia in 1997.)
Law: Government's preliminary objection (non-exhaustion) – Even assuming a request under Section 59 § 4 of the Constitutional Court Act is an effective remedy in respect of complaints about the length of court proceedings, the effectiveness of such a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole. The provision entered into force in September 1999, by which time the proceedings had already lasted some 24 years, out of which one year, ten months and 19 days fall within the Court's jurisdiction. Even if the applicant had filed a request under Section 59 § 4, any decision which might have speeded up the proceedings could not have made up for any delays which had already occurred. Accordingly, in the circumstances of the case, such a request cannot be considered an effective remedy and the preliminary objection must be dismissed.
Article 6(1) – The reasonable time requirement has not been met.
Conclusion: violation (unanimously).
Article 41 – The Court made awards in respect of non-pecuniary damage and costs and expenses.

EFFECTIVE DOMESTIC REMEDY (France)
Effectiveness of domestic remedy based on Article L 781-1 of the Code of Judicial Organisation to complain about excessive length of proceedings already terminated: *inadmissible*.

GIUMMARRA and others - France (N° 61166/00)
Decision 12.6.2001 [Section III]

The applicants are respectively the wife and daughters of a gendarme who was killed in a shooting incident at a campsite in the Landes *département* in 1983, and a gendarme who was injured in the same incident. In August 1983 a judicial investigation was begun into offences including intentional homicide, aiding and abetting, and unlawfully possessing, carrying and conveying weapons. The deceased gendarme's widow and the gendarme who had been injured applied on an unspecified date to join the investigation proceedings as civil parties. In August 1987 four people were indicted and committed to stand trial at the Landes Assize Court. Following numerous appeals, the case was remitted to the Paris Indictment Division in October 1989. In December 1993 the deceased gendarme's widow and the gendarme who had been injured gave evidence to the investigating judge. In July 1994 and January 1996 the parties were informed that the investigation had been completed. In April 1998 the case file was lodged with the registry of the Landes Assize Court. In January 1999 the Court of Cassation referred the case to the Paris Assize Court in the interests of the proper administration of justice. In a judgment of 31 March 2000 the Paris Special Assize Court found three defendants guilty and sentenced them to four, fifteen and twenty years' imprisonment respectively. Since no appeal was lodged against that judgment, the proceedings had ended.
Inadmissible under Article 6(1): As French legislation and case-law currently stood, anyone prejudiced by the excessive length of proceedings was entitled to bring an action for compensation under Article L 781-1 of the Code of Judicial Organisation. That remedy had been available since the Court of Appeal's Gauthier v. the Treasury Solicitor judgment of 20 January 1999, and its existence confirmed on a number of subsequent occasions by appeal-court judgments which had not given rise to an appeal on points of law by the State; it had also been taken into account in the judgments of first-instance courts. The judgment of 20 January 1999 had become final on 20 March 1999 as no appeal on points of law had been lodged; furthermore, Mr Gauthier had not applied to the Court within a period of six months, as required by Article 35(1) of the Convention. Consequently, the Gauthier judgment could be regarded as having established a precedent as of 20 September 1999; the remedy available under Article L 781-1 had thus acquired a sufficient degree of legal certainty to represent a remedy that needed to be exhausted for the purposes of Article 35(1) if a complaint concerning the excessive length of proceedings was to be admissible. In this case, the applicants had not availed themselves of that remedy, even though on the date when they had lodged their application (24 August 2000) they could not have been unaware of the possibility of obtaining compensation for excessively lengthy proceedings by bringing an action under Article L 781-1 of the Code of Judicial Organisation: non-exhaustion.

Article 35(3)

RATIONE MATERIAE
Request for approval as prospective adoptive parent: *inadmissible*.

FRETTE - France (N° 36515/97)
[Section III]
(see Article 8, above).

ARTICLE 37

Article 37(1)(c)

ANY OTHER REASON
Unilateral declaration by Government following failure of friendly settlement negotiations: *struck out*.
AKMAN - Turkey (Nº 37453/97)
*Judgment 26.6.2001 [Section I]
(see Article 2, above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 28):

Pasquale DE SIMONE - Italy (Nº 42520/98)
MARCOLONGO - Italy (Nº 46957/99)
ARDEMAGNI and others - Italy (Nº 46958/99)
CIRCO and others - Italy (Nº 46959/99)
TRIMBOLI - Italy (Nº 46960/99)
MALETTI - Italy (Nº 46961/99)
LUCAS INTERNATIONAL S.r.l. - Italy (Nº 46962/99)
GALIÈ - Italy (Nº 46963/99)
ALPITES S.p.a. - Italy (Nº 46964/99)
FRANCESCHETTI and ODORICO - Italy (Nº 46965/99)
MASSARO - Italy (Nº 46966/99)
PROCACCIANTI - Italy (Nº 46967/99)
FALCONI - Italy (Nº 46968/99)
PROCOPIO - Italy (Nº 46969/99)
F.T. - Italy (Nº 46971/99)
MORELLI and NERATTINI - Italy (Nº 46973/99)
RISOLA - Italy (Nº 46974/99)
DI GABRIELE - Italy (Nº 46975/99)
DI MOTOLI and others - Italy (Nº 46976/99)
VACCARISI - Italy (Nº 46977/99)
F.P. - Italy (Nº 46978/99)
MASTRANTONIO - Italy (Nº 46979/99)
C.L. - Italy (Nº 46980/99)
PATANE - Italy (Nº 29898/96)
CIACCI - Italy (Nº 38878/97)
VISINTIN - Italy (Nº 43199/98)
ORLANDI - Italy (Nº 44943/98)
Judgments 1.3.2001 [Section II]

BERKTAY - Turkey (N° 22493/93)
BONELLI - Italy (Nº 44457/98)
Roberto SACCHI - Italy (Nº 44461/98)
ZANASI - Italy (Nº 44462/98)
RIGUTTO - Italy (Nº 44465/98)
Valerio SANTORO - Italy (Nº 44466/98)
P.B. - Italy (Nº 44468/98)
SPADA - Italy (Nº 44470/98)
Valeria ROSSI - Italy (Nº 44472/98)
A.C. - Italy (Nº 44481/98)
TEBALDI - Italy (Nº 44486/98)
VECCHI and others - Italy (Nº 44488/98)
MURGIA - Italy (Nº 44490/98)
SONEGO - Italy (Nº 44491/98)
O.P. - Italy (Nº 44494/98)
COVA - Italy (Nº 44500/98)
CITTERIO and ANGIOLILLO - Italy (Nº 44504/98)
SHIPCARE S.r.l. - Italy (Nº 44505/98)
BELLAGAMBA - Italy (Nº 44511/98)
MARI and MANGINI - Italy (Nº 44517/98)
Rossana FERRARI - Italy (Nº 44527/98)
VECCHINI - Italy (Nº 44528/98)
VENTURINI - Italy (Nº 44534/98)
CIUFFETTI - Italy (Nº 47779/99)
SANTORUM - Italy (Nº 47780/99)
FARINOSI and BARATTELLI - Italy (Nº 47781/99)
MARTINETTI - Italy (Nº 47784/99)
ANGEMI - Italy (Nº 47785/99)
G.V. - Italy (Nº 47786/99)
Ada MACCARI - Italy (Nº 44464/99)
MARCOTRIGIANO- Italy (no. 2) (Nº 47783/99)
Judgments 1.3.2001 [Section IV]

DOUGOZ - Greece (Nº 40907/98)
HILAL - United Kingdom (Nº 45276/99)
Judgments 6.3.2001 [Section III]

ZANA - Turkey (Nº 29851/96)
Judgment 8.3.2001 [Section III]

PINTO DE OLIVEIRA - Portugal (Nº 39297/98)
MINNEMA - Portugal (Nº 39300/98)
Judgments 8.3.2001 [Section IV]

GOEDHART - Belgium (Nº 34989/97)
STROEK - Belgium (Nº 36449/97 and 36467/97)
TELFNER - Austria (Nº 33501/96)
Judgments 20.3.2001 [Section III]

JOLY - France (Nº 43713/98)
Judgment 27.3.2001 [Section I]

KADRI - France (Nº 41715/98)
Judgment 27.3.2001 [Section III]

HARALAMBIDIS and others - Greece (Nº 36706/97)
THOMA - Luxembourg (N° 38432/97)
KOSMOPOLIS S.A. - Greece (Nº 40434/98)
Judgments 29.3.2001 [Section II]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Dismissal from civil service and consequent loss of retirement benefits: *admissible*.

AZINAS - Cyprus (N° 56679/00)
Decision 19.6.2001 [Section III]

Until 1982, the applicant was Governor of the Department of Co-operative Development of the Public Service. In April 1981, he was convicted of stealing, breach of trust and abuse of authority, and sentenced to 18 months' imprisonment. In October 1981, his appeals against conviction and sentence were rejected by the Supreme Court. In July 1982, the Public Service Commission instituted disciplinary proceedings against him and decided to dismiss him on the ground of his conviction. His dismissal resulted in the loss of his retirement benefits, including his pension, as from the date of his conviction. His appeal against the decision of dismissal was rejected by the Supreme Court, which held that it could not review the severity of the sentence imposed by a disciplinary body, unless it exceeded the limits of its margin of appreciation. In 1991, the applicant lodged an appeal on points of law; the proceedings are still pending.
Inadmissible under Article 6(1): Although the applicant was no longer a civil servant after 1982, the proceedings before the Supreme Court concerned exclusively his dismissal and not the consecutive forfeiture of his pension rights. Therefore, Article 6(1) was not applicable: incompatible *ratione materiae*.
Admissible under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-enforcement of judgment ordering military unit to pay allowance to former officer: *communicated*.

MARCHENKO - Ukraine (N° 65520/01)
[Section IV]

NOVIKOV - Ukraine (N° 65514/01)
[Section IV]

SVINTITSKIY and others- Ukraine (N° 59312/00)
[Section IV]
(see Article 6(1), above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Court decision annulling, on the basis of a *numerus clausus* rule, an authorisation to open a pharmacy: *communicated*.

GALLEGO ZAFRA - Spain (N° 58229/00)
[Section IV]

In 1989 the applicant, a pharmacist, was granted permission by the Murcia Autonomous Community to open a pharmacy pursuant to the relevant Royal Decree. She subsequently opened the pharmacy. However, two pharmacists who owned nearby pharmacies appealed to the appropriate High Court of Justice against the decision authorising her to open the pharmacy. In a judgment delivered in 1993 the court declared the authorisation void, adding that the issue had been whether the applicant's pharmacy was closer and more accessible than the two existing pharmacies for all the inhabitants of the area which the pharmacy was intended to serve. In that connection, it pointed out that permission to open a new pharmacy could only be granted if the area served by the pharmacy had at least 2,000 inhabitants, and held that the population of the area in question failed to satisfy that condition. The applicant lodged an appeal on points of law and an *amparo* appeal, both of which were dismissed. Meanwhile, in January 2000, she closed down the pharmacy.
Communicated under Article 1 of Protocol No. 1.

DEPRIVATION OF PROPERTY
Failure to return property and proceedings aiming to contest ownership by the State of property inherited by the applicant: *violation*.

ZWIERZYNSKI - Poland (N° 34049/96)
*Judgment 19.6.2001 [Section I]

Facts: In 1952 a property which the applicant's father had acquired in 1937 was expropriated. He was awarded compensation, but neither he nor his heirs claimed it. Following an appeal by the applicant's parents, the Minister for Economic Affairs declared the entirety of the proceedings since the 1952 expropriation decision null and void. The current occupier of the premises appealed against that decision, but a decision issued in 1992 confirmed that the proceedings from 1952 onwards were null and void. In 1994 it was decided that the applicant and his sister should each inherit half of their deceased parents' estate, and they were listed in the land register as joint owners of the property in issue. However, it was still not returned to them. In September 1992 proceedings were brought by the Treasury on behalf of the new occupier of the premises, the regional police authority, asserting acquisition of title to the property through adverse possession. The District Court upheld the 1994 decision on appeal and in 1999 rejected an application by the applicant for rectification of the entry in the land register. In 1998 the heirs of the person who had sold the property in issue to the applicant's father brought an action to have the proceedings concerning the division of the estate reopened, arguing that they had rights over the property. The court then stayed the proceedings brought by the Treasury until the action to reopen the proceedings concerning the division of the estate was settled. The case is still pending.
Law: Article 6(1) (reasonable time) – The proceedings had lasted eight years and eight months; however, having regard to its jurisdiction *ratione temporis*, the Court was only able to take a period of eight years and one month into consideration. The main causes of the delay had been the successive suspensions of the proceedings and the dilatory conduct of the current occupiers of the property in issue.
Conclusion: violation (unanimously).
Article 1 of Protocol No. 1 – It was clear from decisions at domestic level that the authorities had considered the applicant's father to be the owner of the property; moreover, he had been the only person from whom it could have been expropriated. Furthermore, the courts had

recognised the applicant, who had succeeded to his father's estate, as the owner of the property and the authorities had subsequently treated him as such; lastly, he paid the taxes and outgoings in respect of the building. The applicant therefore had title to a "possession". The regional police authority's continued occupation of the premises – even though the applicant's father had been recognised as the rightful owner of the property and the applicant had succeeded to his estate – and the actions it had instituted amounted to a manifest interference with the applicant's right to peaceful enjoyment of his possessions. The State authorities had done everything possible to delay returning the property to the applicant. Their *de facto* expropriation of the property had not been carried out in the public interest and had placed an individual and excessive burden on the applicant. The interference had therefore been unjustified.
Conclusion: violation (unanimously).
Article 41 – The Court awarded PLN 15,000 for non-pecuniary damage sustained on account of the excessive length of proceedings and PLN 25,000 for costs and expenses; it reserved the question in respect of Article 1 of Protocol No. 1.

CONTROL THE USE OF PROPERTY
Confiscation of applicant's vehicle used by third party to commit criminal offence, and restitution subject to payment: *inadmissible*.

C.M. - France (N° 28078/95)
Decision 26.6.2001 [Section III]

The applicant's son was arrested following a customs inspection while he was driving the applicant's car. The customs officers found nineteen grams of heroin. The applicant's son was found guilty of illegally importing and using drugs, and the Criminal Court ordered the customs authorities to confiscate the applicant's car, which his son had used to import the drugs. That order was upheld on appeal. Neither of the courts' decisions, issued in September 1994 and January 1995 respectively, was served on the applicant. In September 1994 the applicant requested the customs authorities to return his car and various personal effects. He repeated his request in October 1994. In November 1994 the Interregional Director of Customs informed him that he could recover his personal effects and that the car could be returned to him by means of a friendly settlement for the sum of FRF 3,000. The applicant complained that his car had been confiscated as a result of acts which had nothing to do with him in proceedings to which he had not been a party, and that the ensuing decisions had not been served on him. He also complained that no remedy had been available to enable him to assert his right of ownership.
Inadmissible under Article 1 of Protocol No. 1: The undisputed interference with the applicant's right to peaceful enjoyment of his possessions amounted to a "control on the use of property". Examination of domestic law revealed that the applicant, as the *bona fide* owner of the vehicle, had had the option – notwithstanding the impugned criminal proceedings – of applying to the District Court to recover his vehicle under Article 326 of the Customs Code. That possibility of judicial review satisfied the requirements of the second paragraph of Article 1 of Protocol No. 1. In this case, regard being had to the margin of appreciation permitted to States, a fair balance had been struck between the interests of the community and the fundamental rights of the individual: manifestly ill-founded.
Inadmissible under Article 13: Since the Court had found that Article 326 of the Customs Code satisfied the requirements of the second paragraph of Article 1 of Protocol No. 1, an effective remedy had been available under domestic law enabling the applicant to assert his right of ownership.
Inadmissible under Article 6: In accordance with its case-law in the Agosi and Air Canada cases, the Court held that, although the impugned measures had adversely affected the applicant's property rights, they had not involved the determination of any "criminal charge"

within the meaning of Article 6. The Court did not consider it necessary to examine of its own motion whether Article 6 was applicable under its "civil" head.

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Annulment by authority of exam results which would have enabled applicant to enter university: *communicated*.

EREN - Turkey (N° 60856/00)
[Section I]

The applicant made several attempts to pass the national examination required to attend university. He failed three times before finally obtaining a result which enabled him to be accepted in one of the universities he had selected. However, his name was not included in the list of students having passed. The applicant wrote to the competent authority which responded that his results had been annulled on the ground that they seemed too high in comparison with those which he had obtained the previous years. Nothing was said about the applicant being suspected of having cheated. The applicant applied to the Supreme Administrative Court and asked that the authority's decision be suspended and annulled. The judge rapporteur of the case at the Supreme Administrative Court considered that the impugned decision should be annulled as devoid of any legal basis. Despite the opinion of the judge rapporteur, the Supreme Administrative Court decided not to annul the decision in issue. The applicant's subsequent appeals were to no avail.
Communicated under Articles 2 of Protocol N° 1 and 6(1).

ARTICLE 3 OF PROTOCOL No. 1

CHOICE OF THE LEGISLATURE
Minimum percentage of votes required to obtain seat in Parliament: *inadmissible*.

FEDERACION NACIONALISTA CANARIA - Spain (N° 56618/00)
Decision 7.6.2001 [Section IV]

The applicant is a federation of political parties which in June 1999 put forward candidates for election by proportional representation to the parliament of the Autonomous Community of the Canary Islands. It challenged the election results, but with no success: although it had obtained more than 28.10 % of the vote in the Lanzarote constituency, it was not awarded any seats in the regional parliament; nor was it awarded any seats in respect of the Autonomous Community's other constituencies, even though it had obtained more than 4.80 % of the vote. It appealed to the Canary Islands High Court of Justice, alleging that there had been irregularities in the election and claiming some 100 additional votes which it maintained had not been counted. In September 1999 the court dismissed its appeal, declining jurisdiction to rule on its allegations concerning the thresholds prescribed by domestic law for representation in regional parliaments, rejecting some of the allegations of irregularities and holding that the other allegations were not sufficiently serious for the election to be declared void. In October 1999 the Constitutional Court dismissed an *amparo* appeal by the applicant. It declared constitutional the statutory requirement that a party had to obtain a certain percentage of all votes cast if its candidates were to be entitled to a share of the seats, which were allocated according to established models. Before the Court the applicant complained that the

thresholds prescribed by law for representation in the regional parliament were disproportionate and only benefited the mainstream political parties.
Inadmissible under Article 3 of Protocol No. 1 taken in conjunction with Article 14: The Spanish Constitution vested legislative power in the national parliament and the parliaments of the Spanish Autonomous Communities played a role in the exercise of that power; such regional assemblies were therefore part of the "legislature" within the meaning of Article 3 of Protocol No. 1. The Court had already described the State as the ultimate guarantor of pluralism; in political terms, that responsibility entailed, *inter alia*, holding free elections at reasonable intervals by secret ballot, under conditions ensuring "the free expression of the opinion of the people in the choice of the legislature". Such expression was inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population. Political parties relayed that range of opinion, not only within political institutions but also – with the help of the media – at all levels of social life, thereby making an irreplaceable contribution to political debate, which was at the very core of the Court's established conception of a democratic society. In the case before the Court, the Constitutional Court had examined the reasons for the existence of thresholds for representation in parliament and had found that they were designed to avoid the excessive fragmentation of parliaments; it had based its findings on constitutional concerns such as the need to ensure that the electorate was adequately represented from a geographical and demographic standpoint. For its part, the Court found that a system requiring a minimum of 6 % of all valid votes cast throughout the Autonomous Community provided a certain degree of protection for smaller political groups. The law governing elections did not appear arbitrary, disproportionate or capable of undermining "the free expression of the opinion of the people in the choice of the legislature." Moreover, a system whereby a relatively high proportion of votes was required for representation in parliament did not exceed the wide margin of appreciation afforded to States in the matter: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 4

Article 3(1) of Protocol No. 4

PROHIBITION OF EXPULSION OF A NATIONAL
Expulsion from Latvia of applicants having always lived there and having no other nationality: *relinquishment*.

SLIVENKO - Latvia (N° 48321/99)
[Section II]
(see Article 8, above).

Other judgments delivered in June 2001

Article 5(3)

FIRAT KOÇ - Turkey (Nº 24937/94)
LALIHAN EKINCI - Turkey (Nº 24947/94)
Z.E. and others - Turkey (Nº 35980/97)
Judgments 7.6.2001 [Section II]

These cases concern the alleged failure to bring the applicants promptly before a judge after they were taken into detention – friendly settlement.

Article 6(1)

KOLOKITHA - Greece (Nº 47020/99)
Judgment 7.6.2001 [Section II]

The case concerns the failure of a public body to comply with court decisions – friendly settlement.

SANTOS and another - Portugal (Nº 41598/98)
*Judgment 14.6.2001 [Section IV]

BROCHU - France (Nº 41333/98)
*Judgment 12.6.2001 [Section III]

MAHIEU - France (Nº 43288/98)
A.A.U. - France (Nº 44451/98)
*Judgments 19.6.2001 [Section III]

MAILLARD BOUS - Portugal (Nº 41288/98)
BENTO DA MOUTA - Portugal (Nº 42636/98)
*Judgments 28.6.2001 [Section IV]

These cases concern the length of civil or administrative proceedings – violation.

TRIČKOVIĆ - Slovenia (Nº 39914/98)
*Judgment 12.6.2001 [Section I]

The case concerns the length of proceedings before the Consitutional Court – no violation.

Mas.A. and others - Italy (Nº 53708/00)
Judgment 7.6.2001 [Section II]

FONSECA CARREIRA - Portugal (Nº 42176/98)
Judgment 14.6.2001 [Section IV]

THEMUDO BARATA - Portugal (Nº 43575/98)
Judgment 21.6.2001 [Section IV]

DINDAROĞLU and others - Turkey (Nº 26519/95)
Judgment 26.6.2001 [Section IV]

These cases concern the length of civil proceedings – friendly settlement.

MILLS - United Kingdom (Nº 35685/97)
*Judgment 5.6.2001 [Section III]

The case concerns the independence and impartiality of a court martial – violation.

Article 6(1) and (3)(c)

HOLDER - Netherlands (Nº 33258/96)
Judgment 5.6.2001 [Section I]

The case concerns the alleged failure to notify an accused of the trial and appeal hearings – friendly settlement.

Article 6(1) and Article 10

KAMIL T. SÜREK - Turkey (Nº 34686/94)
Judgment 14.6.2001 [Section II]

The case concerns the conviction of a magazine owner for making propaganda in favour of an illegal organisation and the alleged unfairness of the proceedings – friendly settlement.

Article 1 of Protocol No. 1

GÜLNAHAR ÇALKAN - Turkey (Nº 19661/92)
RABIA ÇALKAN - Turkey (Nº 19662/92)
EKREM ÇAPAR - Turkey (Nº 19663/92)
HAMDI ÇELEBI - Turkey (Nº 19664/92)
SEYFETTIN ÇALKAN - Turkey (Nº 19665/92)
NURI ÇAPAR - Turkey (Nº 19666/92)
HAYRETTIN DALGIÇ - Turkey (Nº 19668/92)
NECATI DALGIÇ - Turkey (Nº 19669/92)
DURSUN DIŞÇI - Turkey (Nº 19670/92)
HASAN DIŞÇI - Turkey (Nº 19671/92)
OSMAN DIŞÇI - Turkey (Nº 19672/92)
DAVUT GÜNEYSU - Turkey (Nº 19673/92)

ALI KARTAL - Turkey (Nº 19674/92)
HASAN KOÇ - Turkey (Nº 19675/92)
AYŞE KOÇER - Turkey (Nº 19676/92)
ALI ÖZTÜRK - Turkey (Nº 19678/92)
GÜLFIYE ÖZTÜRK - Turkey (Nº 19679/92)
KAMIL ÖZTÜRK - Turkey (Nº 19681/92)
MUHSIN ÖZTÜRK - Turkey (Nº 19682/92)
MUSTAFA ÖZTÜRK - Turkey (Nº 19683/92)
GAGANUŞ and others - Turkey (Nº 39335/98)
*Judgments 5.6.2001 [Section I]

These cases concern delays in payment of supplementary compensation for expropriation – violation.

Article 1 of Protocol No. 1 and Article 14

SIEBENHANDL - Austria (Nº 31778/96)
Judgment 12.6.2001 [Section III]

The case concerns the imposition of allegedly discriminatory building restrictions on the applicant's property – friendly settlement.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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