CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No 43
on the case-law of the Court
June 2002

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

Statistical information[1]

Judgments delivered	**June**	**2002**
Grand Chamber	0	4
Section I	17	213(214)
Section II	7	82(86)
Section III	26	123(128)
Section IV	7(15)	93(104)
Sections in former compositions	9(10)	27(28)
Total	**66(75)**	**542(564)**

Judgments delivered in June 2002					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	5	0	0	0	5
former Section II	0	0	0	1[2]	1
former Section III	0	0	0	0	0
former Section IV	2(3)	1	0	0	3(4)
Section I	9	7	1	0	17
Section II	4	3	0	0	7
Section III	13	13	0	0	26
Section IV	7(15)	0	0	0	7(15)
Total	**40(49)**	**24**	**1**	**1**	**66(75)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	1[2]	4
former Section I	7	1	0	0	8
former Section II	0	0	0	3[2]	3
former Section III	8	0	0	0	8
former Section IV	6(7)	1	1	0	8(9)
Section I	181(182)	31	1	0	213(214)
Section II	69(73)	10	3	0	82(86)
Section III	88(90)	34	1(4)	0	123(128)
Section IV	85(96)	7	1	0	93(104)
Total	**447(466)**	**84**	**7(10)**	**4**	**542(564)**

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

[* = Judgment not final]

Decisions adopted		June	2002
I. Applications declared admissible			
Grand Chamber		0	2
Section I		41	144(148)
Section II		10	54
Section III		7	48
Section IV		8	64(66)
Total		**66**	**312(318)**
II. Applications declared inadmissible			
Section I	- Chamber	31(35)	254(293)
	- Committee	395	1986
Section II	- Chamber	13(17)	59(64)
	- Committee	242	2013
Section III	- Chamber	9(14)	42(48)
	- Committee	191	1339
Section IV	- Chamber	11(15)	78(84)
	- Committee	269	1908
Total		**1161(1178)**	**7679(7735)**
III. Applications struck off			
Section I	- Chamber	9	66(89)
	- Committee	24	52
Section II	- Chamber	3	10(11)
	- Committee	2	29
Section III	- Chamber	8(13)	93(98)
	- Committee	1	11
Section IV	- Chamber	3(5)	14(16)
	- Committee	0	18
Total		**50(57)**	**293(324)**
Total number of decisions[1]		**1276(1300)**	**8283(8376)**

1. Not including partial decisions.

Applications communicated	June	2002
Section I	39(40)	227(232)
Section II	26	157(161)
Section III	25(26)	178(180)
Section IV	31(44)	166(199)
Total number of applications communicated	**121(136)**	**728(772)**

ARTICLE 2

LIFE
Death in police custody, failure to provide medical care and effectiveness of investigation: *violation*.

ANGUELOVA - Bulgaria (Nº 38361/97)
Judgment 13.6.2002 [Section I]

Facts: The applicant belongs to the Roma ethnic group. In 1996 her 17-year old son, A., died in police custody following his arrest on suspicion of attempted theft. He had been seen hanging around parked cars and had been chased and apprehended by an off-duty policeman. Witnesses later testified that A., who had been drinking, had slipped and fallen several times. Following the arrival of police officers, A. was handcuffed to a tree while they carried out a search of the area. He was then taken to the police station. However, no written detention order was issued. The register did not have any entry for him, although it mentioned an unidentified detainee; it subsequently appeared that the register had been altered. During the night, the police noticed that A.'s condition was deteriorating. Some time later, an officer drove to the hospital to fetch an ambulance and a doctor. A. was then taken to hospital, where he was pronounced dead shortly afterwards. According to a hospital doctor, the police officers stated that A. had been brought to the police station in the same condition as on his arrival at the hospital. An investigator was appointed to carry out an investigation. He questioned numerous witnesses, organised a reconstruction of events and ordered an autopsy, which established that the cause of death was internal bleeding as a result of a fractured skull around the left eyebrow, due to a blow either by or against a blunt object. Marks were also noted on the chest and wrists. The investigation was transferred to a military investigator because the death had occurred in police custody and five medical experts were appointed to re-examine these conclusions on the basis of the documentary material. The experts' report confirmed the cause of death but stated that the haematoma had been in place for at least ten hours prior to death, rather than between four and six hours, as stated in the first report. On that basis, the investigation was terminated.
Law: Article 2 (death of the applicant's son) – Since the death occurred in police custody, it was for the Government to provide a plausible explanation. The second forensic report, which relied solely on documentary material, departed in important aspects from the conclusions of the first report, without giving reasons, and this significantly reduced the reliability of its conclusions. It was unlikely that A. would have been out drinking, decided to steal car parts and been capable of running away if, as the second report suggested, he had already sustained a fractured skull ten hours before he died. The first report was consistent with the blow having been sustained while A. was in police custody and there were other injuries which could have been the result of the same events. The suggestion that the blow was sustained in a fall was not supported by the forensic evidence and none of the witnesses who had been seen A. before he was taken to the police station had reported any complaint of an ailment on his part. Moreover, significant weight had to be attached to the suspect behaviour of the police officers who, *inter alia*, appeared to have delayed access to a doctor and made an apparently false statement at the hospital, and to the fact that the detention records were manipulated, with A. being registered *post factum* as an unidentified person although the police in fact knew him. These matters required thorough investigation but no such investigation was undertaken. The Government's explanation was thus implausible and no other explanation had been offered.
Conclusion: violation (unanimously).
Article 2 (medical care) – The police delayed the provision of medical assistance and this contributed in a decisive manner to the fatal outcome. Furthermore, it was particularly significant that the case-file contained no trace of criticism or disapproval of the way in which

the matter was handled. There had therefore been a violation of the State's obligation to protect the life of persons in custody.
Conclusion: violation (unanimously).
Article 2 (effectiveness of the investigation) – The investigation commenced promptly and the authorities worked actively on it. However, failings in the autopsy prevented any possibility of establishing the object which might have caused the skull fracture. Furthermore, it was highly significant that the police officers were never asked to explain why the detention records had been forged, why they had not called for an ambulance straight away or why they had given apparently false information at the hospital. There were also other failings in the investigation, in particular with regard to the limited purpose of the reconstruction and the lack of attention paid to the other traces of injury. Finally, the testimony of the police officers was considered fully credible despite their suspect behaviour, and nothwithstanding the obvious contradictions between the two forensic reports the authorities accepted the conclusions of the second without seeking clarification. The investigation thus lacked the requisite objectivity and thoroughness and its effectiveness could not be gauged on the basis of the number of reports made, witnesses questioned or other investigative measures.
Conclusion: violation (unanimously).
Article 3 – The Government had not provided a plausible explanation for the injuries on A.'s body, injuries which were indicative of inhuman treatment. It was unnecessary to make a separate finding under Article 3 in respect of the deficiencies in the investigation.
Conclusion: violation (unanimously).
Article 5 – It was undisputed that A.'s detention was not based on a written order as required by domestic law. The law could not reasonably be interpreted as permitting confinement without a lawful order where there existed doubts as to the detainee's identity, and such interpretation ran contrary to the elementary guarantees of Article 5. In any case, the police identified A. at the time of his arrest. His detention was therefore unlawful. As the possible attempt to conceal the detention was in any event unsuccessful, it was unnecessary to address the question whether an issue of State responsibility for an unacknowledged detention might arise. The lack of a written order and of a proper record of the detention was sufficient to find that A.'s confinement was in breach of domestic law and contrary to the requirements implicit in Article 5 for the proper recording of deprivations of liberty.
Conclusion: violation (unanimously).
Article 13 – The criminal investigation was ineffective and that undermined the effectiveness of any other remedy that may have existed, including the possibility of joining the criminal proceedings as a civil party.
Conclusion: violation (unanimously).
Article 14 – While the applicant's complaint that the authorities' perception of her son as a gypsy was decisive in their attitudes and actions was grounded on serious arguments, it could not be concluded that proof beyond a reasonable doubt had been provided.
Conclusion: no violation (6 votes to 1).
Article 41 – The Court rejected the Government's objection based on the assertion that the Code of Criminal Procedure provided for the possibility of criminal proceedings being reopened in cases in which the Court had found a violation, opening the possibility for the applicant to submit a claim for damages. It awarded the applicant 19,050 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

LIFE
Murder in the "TRNC" allegedly perpetrated by or with the connivance of the authorities: *communicated*.

MANITARAS and others - Turkey (N° 54591/00)
[Section IV]

The applicants, Cypriot or British nationals of Greek Cypriot origin, complain that a member of their family was murdered in the north of the island where he lived, by or with the help of the Turkish authorities. They allege that the Turkish authorities gave them the deceased's body in a distressing and disrespectful manner. They further contend that they could not bury him in his home village because of restrictions on freedom of worship and repeated acts of vandalism on Greek Cypriot graves and had to take his body to the Republic of Cyprus to have him buried. A first *post-mortem* examination conducted in the "Turkish Republic of Northern Cyprus" by a general practitioner established that the deceased had died of a myocardial infarction. However, a second examination carried out in Nicosia by two specialists, in the presence of UN observers, attributed death to "severe trauma in the cervical vertebra due to the application of excessive force".
Communicated under Article 2, 3, 8, 13, 14 and 35(1) (exhaustion of domestic remedies).

POSITIVE OBLIGATIONS
Responsibility of the authorities for the deaths resulting from an accident at a municipal rubbish dump and effectiveness of domestic remedies: *violation*.

ÖNERYILDIZ - Turkey (N° 48939/99)
Judgment 18.6.2002 [Section I (former composition)]

Facts: At the material time of the events the applicant and the 12 members of his family were living in a shantytown in Ümraniye (Istanbul). This shantytown comprised a collection of slums haphazardly built on land surrounding a rubbish tip which had been used jointly by four district councils since the 1970s and was under the authority and responsibility of the main City Council of Istanbul. Some decontamination work was commenced in 1989, then stopped by order of a court. An expert report drawn up in May 1991 at the request of the district court, to which the case had been referred by the Ümraniye district council, drew the authorities' attention to the fact that the tip was in breach of the relevant technical regulations and the Environment Act and to the lack of any measures to prevent a possible explosion of the methane gas being given off by the decomposing refuse. The report gave rise to a series of disputes between the mayors concerned, with the mayor of Ümraniye calling for the adoption of measures to prevent the tip from being used. On 28 April 1993, while the proceedings instituted by the mayors were still in progress, a methane-gas explosion occurred on the waste-collection site and the refuse erupting from the pile of waste buried several houses, including that of the applicant, who lost nine members of his family. In 1993, a report drawn up by experts at the public prosecutor's request attributed blame for the accident primarily to the mayors of Istanbul and Ümraniye. The public prosecutor said that they should be prosecuted for unintentional homicide and negligence in the exercise of their duties and transmitted the case to the investigating administrative authorities. Following criminal and administrative investigations, it was established that the facts were due to the failure to act and negligence of the mayors of Ümraniye and Istanbul: the former had, in particular, failed in his duty to have the illegal dwellings surrounding the tip demolished, and the latter had failed to make the rubbish tip safe or order its closure, in violation of the applicable regulations. Criminal proceedings were brought against the two mayors, following which they were found guilty in 1996 solely of "negligence in the exercise of their duties" and ordered to pay fines of 610,000 Turkish lira (TRL). It was decided to stay execution of the

fines. The applicant subsequently lodged, on his own behalf and on behalf of his three surviving children, an action for damages in the Istanbul Administrative Court. The action was directed against the Ümraniye and Istanbul councils, which he deemed liable for the death of his relatives and the destruction of his property. Under a final judgment of 1995, the two councils were ordered to pay the applicant and his children TRL 100 million in non-pecuniary damages and TRL 10 million in pecuniary damages (at the time, these sums were roughly equivalent to 2,077 and 208 euros respectively), the latter amount covering only the destruction of household goods, excluding electrical appliances. This compensation has not yet been paid.

Law: Article 2 – This article imposed positive obligations on the state in the public sphere and was therefore applicable here. a. Responsibility for the death of the applicant's relatives: (i) implementation of preventive measures in respect of the rubbish tip serving Ümraniye and the neighbouring slum areas: national regulations governing the operation of waste storage sites and slum clearance and rehabilitation did exist. The national authorities should therefore have complied with those regulations. The 1991 expert report referring to the health hazards and the risks of explosion showed that the rubbish tip did not comply with the relevant technical standards because the local and ministerial authorities had failed to take the measures required under those regulations. Admittedly, some decontamination work had been commenced in 1989, but had been stopped by order of a court, ie a state organ, whose decision had prolonged the deplorable situation with regard to the rubbish tip. The expert report of 1991 had therefore merely highlighted a situation of which the municipal authorities were supposed to have knowledge and be in control, especially as there were specific regulations regarding such matters. Although the national authorities had not encouraged the applicant to set up home near the rubbish tip, they had not dissuaded him from doing so either. In short, there was no reason to depart from the national courts' findings regarding the extent of the authorities' negligence in relation to the dangers of the rubbish tip and the causal link between that negligence and the accident.

(ii) On the question of the public's right to information: an ordinary citizen could not be expected to know of the specific risks linked to the process of methanogenesis and landslides since that type of information could only be disseminated by action on the part of the administrative authorities. In the instant case, the authorities had had the information, but there was no evidence that any action had been taken to disseminate that information. Consequently, the administrative authorities had known or should have known that the inhabitants of certain slum areas in Ümraniye had been faced with a real threat to their lives. However, they had failed to remedy the situation and had not done all that could reasonably have been expected of them to avoid the risks in question. They had also failed in their duty to inform the inhabitants of the area of those risks. There had therefore been a violation of Article 2, unless the applicant's complaints could be deemed to have been remedied in the domestic proceedings by the effective implementation of the appropriate judicial machinery.

b. Redress offered by legal remedies (compliance with the requirements deriving from the procedural obligation inherent in Article 2): In the particular circumstances of this case, a domestic remedy in damages could not absolve the state from its obligation to implement law enforcement machinery meeting the requirements of Article 2.

(i) Adequacy and effectiveness of the remedies employed: with regard to the domestic criminal proceedings, the Istanbul Criminal Court had sentenced the two mayors to a fine - with a stay of execution - of the equivalent of 9.70 euros for negligence in the exercise of their duties. The allegations set out in the applicant's complaint and the public prosecutor's decision had also been based on the notion of homicide through negligence. Once the case had been transmitted to the investigating administrative authorities, however, the facts had no longer been considered from the angle of a possible breach of the right to life; that had weakened the substance of the investigation carried out thus far in that the subject of the trial had been limited to negligence as such. Furthermore, the size of the fines to which the defendants had been sentenced showed that the trial courts had been unaware of the degree of seriousness of the events. The reticence on the part of the criminal courts regarding the assessment of the case in terms of a breach of the right to life had been tantamount to granting

virtual impunity to the mayors, in violation of the state's obligation to respond to breaches of the right to life through strict and dissuasive enforcement of domestic criminal legislation. Consequently, the criminal proceedings, as conducted, could not be considered to have been an adequate and effective remedy. The same was true of the administrative proceedings. Despite the need for particular diligence to expedite the proceedings, the applicant's right to compensation had not been acknowledged until four years and 11 months after his first claims for compensation had been dismissed. Lastly, the compensation awarded to him of 2,077 euros, which was a questionable amount, had not yet been paid, in violation of the obligation on states to execute a final, enforceable judgment delivered against them. In brief, the remedies employed in the domestic proceedings had not complied with the requirements deriving from the procedural obligation under Article 2.
Conclusion: violation of Article 2 (5 votes to 2).
Article 1 of Protocol No.1 – The fact that he had occupied land owned by the Treasury for five years could not be deemed to be a possession and there was no basis on which to conclude that he had a valid claim to a transfer of title to the land. However, although it had been shown that the dwelling built by the applicant on that land had been erected in breach of the town planning regulations, the applicant had been the de facto owner of the main structure and component parts of the slum and of any personal effects that might be there. The dwelling constructed by the applicant and the fact that he had lived in it with his family represented a substantial pecuniary interest which, tolerated as it was by the authorities, amounted to a possession. The real and effective exercise of the right laid down in Article 1 of Protocol No.1 could require states to take positive measures of protection. In the instant case, the accumulation of omissions by the administrative authorities, who had failed to take all measures necessary to prevent the risk of explosion, and thus the resulting landslide, constituted a clear infringement of the applicant's right to peaceful enjoyment of his possessions, which could be construed as an "interference". Since those negligent omissions by the authorities had been penalised under Turkish administrative and criminal law, the interference had been manifestly contrary to domestic law. With regard to the issue of whether the applicant's complaint had been remedied under domestic law, it was found that the applicant's claims for pecuniary damages had not been carefully and expeditiously examined with a view to awarding him proportionate compensation, given that in the instant case there had not been any recognition by the trial courts of the administrative authorities' liability in respect of the applicant's complaint of loss of his possessions. In addition, the authorities had not yet made any payment to the applicant. The national authorities had neither acknowledged nor compensated the alleged violation.
Conclusion: violation (4 votes to 3).
Article 41 – Under Article 2, the Court awarded 17,000 euros in pecuniary damages and 133,000 euros in non-pecuniary damages. Under Article 1, Protocol No.1, the Court awarded 4,000 euros in pecuniary damages. It awarded a sum in respect of costs and expenses.

ARTICLE 3

INHUMAN TREATMENT
Ill-treatment in police custody: *violation.*

ANGUELOVA - Bulgaria (Nº 38361/97)
Judgment 13.6.2002 [Section I]
(see Article 2, above).

INHUMAN TREATMENT
Alleged ill-treatment on arrest and effectiveness of investigation: *no violation*.

BERLIŃSKI - Poland (Nº 27715/95 and Nº 30209/96)
Judgment 20.6.2002 [Section IV (former composition)]

Facts: The applicants, two brothers, practise bodybuilding. The manager of an athletics club called the police after the applicant refused to leave. The applicants claim that they were beaten by several police officers, both on arrest and subsequently while lying handcuffed on the floor of the police van in which they were taken to the police station. An investigation into the alleged ill-treatment was discontinued due to lack of evidence, the prosecutor concluding that the police had been compelled to use force due to the applicants' resistance. Proceedings were also brought against the applicants. Their request for a free defence lawyer remained unanswered. A lawyer was appointed a year later due to the court's concern about their mental state. They were eventually convicted of resisting and assaulting police officers.
Law: Article 3 – The degree of bruising recorded in the medical reports indicates that the injuries were sufficiently serious to constitute ill-treatment. It was not disputed that the injuries had been caused by police officers or that force had been used at the club; however, it was not possible to establish if ill-treatment had been inflicted in the van. The police had had to react to unexpected developments and account had to be taken of the fact that the applicants were bodybuilders who resisted the legitimate actions of the police and were later convicted of assault. The applicants thus lacked a critical judgment of their own conduct when faced with a simple obligation to submit to the legitimate requirements of the police, an obligation which is part of general civil duties in a democratic society. These circumstances counted heavily against the applicants, with the result that the burden on the Government to prove that the use of force was not excessive was less stringent. The seriousness of the injuries did not overshadow the fact that the recourse to physical force was made necessary by the applicants' own conduct, and the use of force against them could not be regarded as excessive. Moreover, the investigation into their allegations was thorough and effective.
Conclusion: no violation (unanimously).
Article 6(1) and (3)(c) – It was undisputed that the applicants lacked means to employ a lawyer for the criminal proceedings against them and that their request for an official lawyer to be appointed was ignored by the authorities, with the result that they had no defence lawyer for more than a year. Given that a number of procedural acts were carried out during that period, there was no justification for this restriction, which deprived the applicants of the right to adequately defend themselves during the investigation and trial.
Conclusion: violation (unanimously).
Article 41 – The Court made an award in respect of non-pecuniary damage.

INHUMAN TREATMENT
Alleged ill-treatment on arrest and at a sobering-up centre: *friendly settlement*.

H.D. - Poland (Nº 33310/96)
Judgment 20.6.2002 [Section IV (former composition)]

The applicant, a diabetic, claims that she was beaten by police after falling into a hypoglycaemic coma. The police took her to a sobering-up centre. The Government maintain that police officers used truncheons when the applicant, who they believed was drunk, resisted arrest. Criminal proceedings against the officers were eventually discontinued.
The parties have reached a friendly settlement providing for payment to the applicant of 10,000 Polish zlotys, covering pecuniary and non-pecuniary damage and costs.

INHUMAN TREATMENT
Detention on remand in solitary confinement for almost one year, allegedly resulting in mental health problems: *communicated*.

ROHDE - Denmark (N° 69332/01)
[Section I]

In December 1994 the applicant was charged with drug trafficking. The City Court ordered his detention on remand in solitary confinement, which was extended several times afterwards. In November 1995 the court decided that the applicant should not be kept in solitary confinement any more but should remain in detention until the trial. He was acquitted in May 1996. He brought proceedings to obtain compensation, submitting medical opinions which established that his mental health problems either resulted from or had been greatly aggravated by his detention in solitary confinement. Moreover, the National Board of Industrial Injuries assessed his degree of disability at 30 % and considered that he had lost one third of his working capacity. The High Court granted him compensation of 1,334,600 Danish kroner (DKK). The applicant was granted leave to appeal. The Supreme Court reduced the amount to DKK 1,109,600, covering loss of working capacity and disablement. The applicant's claims for non-pecuniary damage and loss of earning were rejected. The Supreme Court confirmed the High Court's finding that the applicant's case disclosed no appearance of a violation of Article 3 of the Convention.
Communicated under Article 3.

INHUMAN TREATMENT
Conditions of detention on remand: *admissible*.

KARALEVIČIUS - Lithuania (N° 53254/99)
Decision 6.6.2002 [Section III]

In 1994 criminal proceedings were brought against the applicant on suspicion of fraud. He fled from Lithuania but was arrested in Moscow and extradited to Lithuania on 30 December 1996. The following day the District Court ordered his detention on remand until 31 January 1997 on suspicion of destroying relevant documents. The court referred to the danger of his absconding or committing further offences. The court extended the detention on 24 January until 31 March, on 28 March until 31 May 1997 and on 30 May until 13 June 1997. On 6 August 1997 the applicant was committed for trial before the District Court, which ordered his continued detention without specifying any term. On 10 September 1998 the District Court convicted him, sentencing him to five years' imprisonment and ordering him to pay damages. The Regional Court reduced the amount of the damages. On 29 June 1999, on the applicant's appeal on points of law, the Supreme Court quashed the above decisions and remitted the case for reconsideration. On 30 July 1999 the District Court ordered the applicant's detention on remand until 1 September 1999 on suspicion of having destroyed documents. The court referred to the danger of absconding. On 31 August 1999 his detention was prolonged until 15 November 1999. On 30 December 1999 the District Court extended the detention until judgment was issued on the case. In March 2000 the District Court convicted the applicant, reducing the sentence by one third by reason of a law of amnesty. He was considered to have already served this sentence, given the time he had spent on remand. The court ordered his release on bail, with house arrest, until the entry into force of the judgment. In May 2000 the Regional Court dismissed his appeal. On that date the conviction took effect and the bail constraints ceased. In October 2000 the Supreme Court examined the applicant's appeal on points of law. It amended the decisions of the lower instances, reducing the sentence to three years' imprisonment. The applicant complained about the conditions of his detention at the Šiauliai Remand Prison where he was kept from 2 January 1997 to

22 September 1999 and from 28 September 1999 until his release on 6 March 2000. He alleged that he was kept in cells of less than 20m² holding from 10 to 15 inmates, that there was an open toilet in each cell and that the cells had no proper ventilation. Prisoners had one hour per day to walk in the prison yard. He also complained about the poor hygiene. In addition, he claimed that a number of letters to the Convention organs were censored by the prison authorities and that letters from the Court were opened and read in his absence by the prison authorities.
Admissible under Article 3 concerning the applicant's detention at the Šiauliai Remand Prison: As to the Government's contention that the applicant failed to exhaust domestic remedies, in the Valašinas v. Lithuania decision the Court concluded that no domestic remedy was available to complain about prison conditions following conviction. Although in the present case the issue concerned the applicant's detention on remand, the Government had not demonstrated that any adequate remedies existed, in theory or in practice, that would allow the Court to depart from its finding in the Valašinas decision.
Admissible under Article 5(1) as regards the lawfulness of the applicant's detention from 13 June 1997 to 6 August 1997, from 29 June 1999 to 30 July 1999 and from 15 November 1999 to 30 December 1999
Inadmissible under Article 5(1) (i) as regards his detention from 30 December 1996 to 13 June 1997: the courts were competent to decide on the question of the applicant's detention for the period in question by taking an appropriate decision and this period was covered by valid orders authorising the detention on remand. The applicant's detention during this period was thus compatible with domestic law for the purposes of Article 5(1). There was no evidence that it was arbitrary, given that the applicant had been suspected of committing various offences and that he had absconded during the investigation: manifestly ill-founded.
(ii) as regards his detention from 6 August 1997 to 10 September 1998: a period of detention based on a court order declaring that the remand in custody must remain unchanged is "lawful" within the meaning of Article 5(1): manifestly ill-founded.
(iii) as regards his detention from 10 September 1998 to 29 June 1999: this period was based on the conviction of September 1998 whereby the first instance court imposed a five-year sentence. Despite the fact that until the date of the appeal decision the applicant was considered as a prisoner on remand under domestic law, he was for the purposes of the Article 5(1)(a) a person convicted by a competent court throughout the period in issue. The fact that the conviction was subsequently quashed by the Supreme Court did not in itself render the period of detention in question "unlawful". The Court has consistently refused to uphold applications from persons convicted of criminal offences who complain that their convictions or sentences were found by appellate courts to have been based on errors of fact or law. In the present case, there was no evidence that the trial court which convicted and sentenced the applicant lacked competence in this respect or that the appellate court lacked jurisdiction to confirm the sentence on appeal. In addition, the Supreme Court did not acquit the applicant when it quashed his conviction: manifestly ill-founded.
(iv) as regards his detention from 30 July 1999 to 15 November 1999 and from 30 December 1999 until his release on 6 March 2000: these periods were covered by valid court orders authorising the applicant's detention on remand in custody: manifestly ill-founded.
Admissible under Article 8 (correspondence).

DEGRADING TREATMENT
Conditions in which the body of a deceased handed over by the authorities to his family: *communicated*.

MANITARAS and others - Turkey (N° 54591/00)
[Section IV]
(see Article 2, above).

ARTICLE 5

Article 5(1)(c)

LAWFUL DETENTION
Continued detention on remand without any legal basis: *admissible*.

KARALEVIČIUS - Lithuania (N° 53254/99)
Decision 6.6.2002 [Section III]
(see Article 3, above).

Article 5(4)

TAKE PROCEEDINGS
Absence of possibility of review of lawfulness of detention pending expulsion on national security grounds: *violation*.

AL-NASHIF and others - Bulgaria (Nº 50963/99)
Judgment 20.6.2002 [Section IV (former composition)]

Facts: The first applicant is a stateless person of Palestinian origin. He claims that he was expelled from Kuwait after the Gulf War and went to Bulgaria with his wife in 1992. Their children, the second and third applicants, were born there and acquired Bulgarian nationality. The first applicant was granted a permanent residence permit in 1995. That year, he contracted a Muslim religious marriage with another woman but continued to live with his first wife. In 1999, on the basis of a police report concerning the applicant's religious activities, his residence permit was revoked. His appeal was dismissed on the ground that the Passport Department had certified that he had committed acts against national security. A deportation order was then served on him and he was placed in detention. His various appeals were unsuccessful. He was kept in isolation for 26 days before being deported to Syria. As his wife had no income and he was unable to support the family, she and the children also went to Syria. However, they then had to go to Jordan.
Law: Government's preliminary objections (non-exhaustion, abuse of the right of petition) – The applicant lodged numerous appeals but they were not examined because national security was invoked. The Government had not explained why any other appeal would have had greater prospects of success. As to alleged abuse, while an application omitting events of central importance may in principle constitute an abuse, it was not established that this was the situation in the present case.
Article 5(4) – It was undisputed that no judicial appeal lay against detention pending deportation where deportation had been ordered on grounds of national security. Moreover, the detention order itself states no reasons and in the present case the applicant was in any event detained practically incommunicado and was not allowed to meet a lawyer to discuss any possible legal challenge to the measures against him. That situation was incompatible with Article 5(4) and its underlying rationale, namely the protection of individuals against arbitrariness. There are means which can be employed which accommodate legitimate national security concerns while according the individual a substantial measure of procedural

justice. In the present case, however, the applicant was not provided with elementary safeguards and did not enjoy the protection required by Article 5(4).
Conclusion: violation (unanimously).
Article 8 – The first applicant and his wife went to Bulgaria as a married couple and were apparently considered as such for all purposes. They had two children, and although the applicant contracted a religious marriage with another woman, it had no legal effect. Moreover, he continued to live with his first wife and their children. There were therefore no exceptional circumstances capable of destroying the family link between the first applicant and his children. It was undisputed that they were lawfully resident in Bulgaria; in addition, the children were born there and acquired Bulgarian nationality. The first applicant's deportation therefore interfered with the applicants' family life. As to whether the interference was in accordance with law, while the requirement of "foreseeability" does not go as far as to compel States to enact legal provisions listing in detail all conduct that may prompt a decision to deport an individual on national security grounds, there must be safeguards to ensure that the executive's discretion is exercised in accordance with the law and without abuse. Measures affecting fundamental human rights must therefore be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence and the individual must be able to challenge the executive's assertion that national security is at stake. Bulgarian law authorises the Ministry of the Interior to issue deportation orders without following any form of adversarial procedure, without giving any reasons and without any possibility for appeal to an independent authority. Moreover, it was highly significant that this legal regime had been the object of challenges and that the judiciary was divided. The interference with the applicants' family life could not be seen, therefore, as based on legal provisions that met the Convention requirements of lawfulness.
Conclusion: violation (4 votes to 3).
Article 13 – This provision requires that States make available an effective possibility to challenge a deportation order and to have the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality. It was undisputed in the present case that the first applicant's appeals were rejected without examination, on the basis of national security, as the courts are not entitled to question the genuineness of the national security concerns. Where national security considerations are involved, certain limitations on the type of remedies available may be justified but the remedy must be effective in practice as well as in law. While procedural restrictions may be necessary to ensure that no leaks detrimental to national security occur and while any independent authority may need to afford a wide margin of appreciation to the executive in matters of national security, that cannot justify doing away with remedies altogether whenever the executive invokes national security. The independent authority must be informed of the reasons for the deportation, even if these are not publicly available, and it must be competent to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. There must also be some form of adversarial proceedings, if necessary through a special representative after a security clearance. Furthermore, the issue of respect for family life must be examined. In the present case, no remedy affording such guarantees of effectiveness was available to the applicants.
Conclusion: violation (4 votes to 3)
Article 9 and Article 13 in conjunction with Article 9 – Not necessary to examine (unanimously).
Article 41 – The Court made awards in respect of non-pecuniary damage and in respect of costs and expenses.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Scope of judicial review of the grounds for dismissal from employment: *violation*.

KOSKINAS - Greece (N° 47760/99)
Judgment 20.6.2002 [Section I]

Facts: The applicant, a steward for the airline company Olympic Airways, was dismissed on suspicion of having indecently assaulted passengers, which he denied. The decision by the airline's dismissals board, against which no appeal lay, informed him that compensation would be paid. The applicant brought an action in the Athens Court of First Instance asking for his dismissal to be set aside and claiming compensation for non-pecuniary damage. He argued that insufficient reasons had been given for the decision, that it was arbitrary and that the compensation awarded was ridiculously small. The court set aside the dismissal decision and ordered the applicant to be reinstated in his post and the airline to pay him damages. The court held in particular that the dismissal decision was unfounded because it had been taken without the applicant's guilt having been established. This judgment was quashed on application by the airline. The Athens Court of Appeal pointed out that the civil courts did not have jurisdiction to examine the merits of the dismissals board's decision: their jurisdiction was confined to reviewing the lawfulness of the decision and its conformity with the principles of good faith and morality. The decision to dismiss the applicant was upheld as being justified and lawful. The Court of Cassation dismissed the applicant's appeal, holding that the dismissals board had given sufficient reasons for its decision.
Law: Article 6(1) – The applicant complained that there was no evidence in support of the charges brought against him and that his dismissal was therefore unfounded. In applying to the courts, he was asking them to examine the truthfulness of the charges on which the decision to dismiss him had been based. Such a review had only been carried out by the Court of First Instance, whose decision had been set aside by the higher courts, which had considered that they did not have jurisdiction to examine the truthfulness of the charges. Their jurisdiction had been confined to reviewing the lawfulness of the impugned decision and its conformity with the principles of good faith and morality. The applicant had therefore been unable to challenge the accusations against him before any court whose jurisdiction offered the guarantees required under Article 6(1).
Conclusion: violation (six votes to one).

ACCESS TO COURT
Immunity of Ministry of Defence in respect of non-disclosure of information on tests of toxic gases on humans: *admissible*.

ROCHE - United Kingdom (N° 32555/96)
Decision 23.5.2002 [Section III]
(see Article 8, below).

ACCESS TO COURT
Parliamentary immunity – decision of Senate resulting in discontinuation of criminal proceedings against a senator: *admissible*.

CORDOVA - Italy (N° 40877/98)
Decision 13.6.2002 [Section I]

At the material time, the applicant was employed as a public prosecutor. In that capacity, he conducted an investigation in respect of a person who had had dealings with a former President of Italy who had been appointed "senator for life". The former President subsequently sent the applicant letters written in an ironic tone, as well as presents in the form of children's games. The applicant regarded the posting of these items as injurious to his honour and reputation and lodged a complaint against the sender. Proceedings were brought against the senator for insulting a member of the legal service and the applicant applied to join the proceedings as a civil party. However, the Senate considered that the offence allegedly committed by the senator amounted to the expression of opinions in the course of his parliamentary duties and was therefore covered by the Constitution. Its president communicated this decision to the magistrate dealing with the case, who took note thereof and ordered the proceedings to be discontinued. The applicant requested the public prosecutor to appeal against the decision to discontinue the proceedings, this being a necessary step if he were to retain the possibility of referring a jurisdictional dispute to the Constitutional Court at a later stage. The prosecutor refused, finding that the reasons given by the Senate for rejecting the complaint were neither illogical nor manifestly arbitrary.
Admissible under Article 6(1): A decision by a parliamentary chamber stating that the conduct of one of its members fell within the scope of Article 68(1) of the Constitution ruled out any possibility of initiating or continuing criminal or civil proceedings aimed at establishing the liability of the member in question and obtaining compensation for any damage sustained. An appeal by the applicant under Article 576 of the Code of Criminal Procedure or a civil action for damages would have come to nothing because of the decision by the Senate, which had declared that parliamentary immunity applied in this case. Both remedies therefore lacked any chance of success. With regard to the possibility of raising jurisdictional disputes, the Italian legal system did not grant individuals direct access to the Constitutional Court to ask it to verify the constitutionality of a law or hear allegations that a state body had exceeded its powers. Only a court hearing a case on the merits or another state body could apply to the Constitutional Court, at a plaintiff's request or of its own motion. Accordingly, this step could not be regarded as a remedy whose exhaustion would be required under Article 35(1).

ACCESS TO COURT
Parliamentary immunity – annulment of conviction for defamatory statements made at electoral meeting by a Member of Parliament: *admissible*.

CORDOVA - Italy (n° 2) (N° 45649/99)
Decision 13.6.2002 [Section I]

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 latter lodged a criminal complaint alleging aggravated defamation. The Public Prosecutor's Office in Palmi committed S for trial and the applicant joined the proceedings as a civil party seeking damages. S was given a suspended prison sentence and was ordered to pay the applicant damages, whose amount would be assessed in separate civil proceedings. The judge deemed it unnecessary to stay the proceedings in order to obtain the opinion of the Chamber of Deputies because, in his view, the statements complained of had not been made

in the course of S's parliamentary duties and were therefore not covered by the constitutional guarantee parliamentary immunity (Article 68(1) of the Constitution). S appealed unsuccessfully against this 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 regarding the applicability of Article 68(1) of the Constitution, he had to forward a copy of the case file as speedily as possible to the parliamentary chamber of which the person concerned was a member. The proceedings were suspended until the chamber concerned reached a decision. S appealed to the Court of Cassation, which ordered the proceedings to be stayed and the file to be forwarded to the Chamber of Deputies. The Chamber of Deputies found that S had expressed his opinion in the course of the parliamentary duties. The Court of Cassation set aside the trial and appeal court's decisions on the grounds 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 inconsistent with the spirit of the Constitution.
Admissible under Article 6(1).

FAIR HEARING
Refusal to summon witnesses and unavailability of evidence covered by official secrecy: *no violation*.

WIERBICKI - Poland (Nº 24541/94)
Judgment (final) 18.6.2002 [Section I (former composition)]

Facts: The applicant was an editor-in-chief of a newspaper which in 1993 published a list of informants of the Communist secret police which had been submitted to Parliament by the Minister for Internal Affairs. The list was confidential but had been leaked to the public. The newspaper also published several names which it stated had been deleted from the list due to the lack of conclusive evidence. One of these persons, S.N., a candidate in the forthcoming elections, brought an action against the applicant. The applicant's request for certain witnesses to be heard was dismissed on the ground that the witnesses could only give evidence as to whether S.N.'s name appeared on the list and not as to whether he had in fact been an informant. The court also noted that the Ministry had refused to submit documents requested by the applicant, on the ground that they were covered by official secrecy and could only be disclosed for the purposes of criminal proceedings. The court ordered the applicant to revoke his statements publicly. The applicant's appeal was rejected.
Law: Article 6(1) – The applicant's newspaper published information which could clearly be considered defamatory. As it was undisputed that S.N.'s name had not been on the list submitted to Parliament, the applicant could not have supposed that the information was simply part of an official document. As a journalist, he was not under an obligation to prove that the statements were true but he could reasonably have been expected to have some reliable grounds for believing that they corresponded to the truth. However, in view of the reasons given for the deletion of S.N.'s name from the list, the applicant must have been aware that there was insufficient evidence to establish that S.N. had been an informant. Moreover, there was no indication that, had the applicant had any documentary evidence capable of supporting the allegation, he would not have been able to adduce such evidence before the courts. As to whether the Ministry's refusal to produce secret documents constituted an undue restriction on the applicant's right to adduce evidence in support of his case, the prohibition on disclosure was not a blanket one but limited disclosure to criminal proceedings and the applicant was or should have been aware that any documents containing such information were covered by official secrecy. Moreover, his request was not rejected *de plano*, since the court requested the Ministry to submit the documents. As to the refusal to hear witnesses, the courts examined the applicant's requests and gave detailed reasons for

their refusals, which were not arbitrary. Thus, the refusal to take evidence proposed by the applicant did not amount to a disproportionate restriction on his ability to present arguments in support of his case.
Conclusion: no violation (6 votes to 1).

FAIR HEARING
Reliance by the *Conseil de'Etat* on the Ministry of Foreign Affairs for examination of the conditions of reciprocity in application of an international treaty: *admissible.*

CHEVROL - France (N° 49636/99)
Decision 4.6.2002 [Section II]

In 1987, the applicant, who qualified as a doctor in Algeria, applied to the *département* council of the *ordre des médecins* (Medical Association) for registration as a member of the *ordre*. After an initial refusal based on the provisions of the Public Health Code, the applicant reapplied in 1995, citing Article 5 of the governmental declarations of 19 March 1962 known as the "Evian Agreements", which provides for mutual recognition of qualifications obtained in France and Algeria under the same conditions. The *département* council again rejected her application. Its decision was upheld by the regional council of the *ordre des médecins*, then by the national council. The applicant applied to the *Conseil d'Etat* for judicial review of the national council's decision, on the grounds of abuse of authority. The *Conseil d'Etat* asked the Ministry of Foreign Affairs for a preliminary opinion on the provisions of Article 5 of the governmental declaration of 19 March 1962 on cultural co-operation between France and Algeria. The Ministry filed submissions in which it expressed the view that the constitutional requirement of reciprocity for application of the provisions of Article 5 was not satisfied and that, accordingly, those provisions could not be applied in the applicant's favour. The *Conseil d'Etat* dismissed the applicant's application for judicial review. It pointed out that it was not for the administrative courts to determine whether the requirement of reciprocity for the application of treaties was satisfied and, on the basis of the Ministry of Foreign Affairs' submissions, found that the applicant was not justified in relying on the provisions of Article 5 of the Evian Agreements.
Admissible under Article 6(1).

REASONABLE TIME
Length of proceedings concerning guardianship and access of natural father to child: *communicated*.

SIEBERT - Germany (N° 59008/00)
[Section III]

The applicant is the father of a child, A., born out of wedlock in December 1993. The mother died after giving birth. In February 1994 the applicant acknowledged that he was the father. A. was kept in hospital until March 1994, after which her mother's half-sister, Mrs P., took care of her. In January 1994 guardianship of the child was conferred by the District Court on the Youth Office. The same day the applicant requested the court to grant him guardianship and two days later Mrs P. made a similar request. In March 1994 the court placed A. under Mr and Mrs P.'s guardianship. The applicant appealed against this decision but in December 1994 the Regional Court dismissed his appeal. In February 1995 he lodged a further appeal, which was dismissed by the Court of Appeal in February 1996. In April 1996 the District Court withdrew Mr P.'s rights as guardian of the child, leaving Mrs P. as sole guardian. The applicant appealed against this decision and asked to be granted guardianship. In June 1996 the Regional Court rejected his appeal. In August 1996 the applicant lodged a further appeal, which was rejected by the Court of Appeal in May 1997. In March 1996 and June 1997 he

lodged constitutional complaints but in December 2000 the Federal Constitutional Court refused to entertain them. In the meantime, in March 1995, the applicant had applied to another District Court to obtain a right of access to A. In August 1995 the District Court decided to suspend the access proceedings in order to consult the files of the guardianship proceedings which were pending at the time before the Court of Appeal. In February 1996 the applicant unsuccessfully asked for an interim decision on his right of access. In April 1996, following the Court of Appeal's decision of February 1996 in the guardianship proceedings, the court received the complete files. In May 1997 the District Court rejected the applicant's request for access. In August 1997 he appealed against this decision and in January 1998 the Regional Court dismissed his appeal. In February 1998 he lodged a constitutional complaint and asked for an interim decision to obtain access to his daughter. In December 2000 the Federal Constitutional Court refused to entertain his complaint. In a new set of proceedings, started in March 2001, the applicant again requested access to A.
Communicated under Article 6(1) (length of proceedings).

Article 6(1) [criminal]

APPLICABILITY
Forfeiture order allegedly amounting to a criminal charge: *inadmissible*.

BUTLER - United Kingdom (N° 41661/98)
Decision 27.6.2002 [Section III]
(see Article 1 of Protocol No. 1, below).

Article 6(3)(c)

FREE LEGAL ASSISTANCE
Delay in appointment of legal aid lawyer: *violation*.

BERLIŃSKI - Poland (Nº 27715/95 and Nº 30209/96)
Judgment 20.6.2002 [Section IV (former composition)]
(see Article 3, above).

ARTICLE 8

PRIVATE LIFE
Access to information on tests of toxic gases conducted by army on applicant in 1963: *admissible*.

ROCHE - United Kingdom (N° 32555/96)
Decision 23.5.2002 [Section III]

In 1963 the applicant, who was in the British army at the time, was subjected to tests consisting of experimental exposure to toxic gases. These tests were conducted by the Chemical and Biological Defence Establishment ("CBDE") with a view to advancing the protection of the United Kingdom's armed forces against chemical weapons. In 1987 the

applicant developed high blood pressure and now suffers from hypertension and bronchitis. He has not worked since 1988 and is registered as an invalid. In 1989 his doctor, who enquired of the CBDE, received information in a letter marked "medical in confidence". It was reported in the letter that the applicant had participated in a gas test in 1963, that the test had been preceded and succeeded by medical tests which had revealed no abnormality. The applicant persuaded his doctor to show him the letter in 1994. In February 1994 he wrote to the Minister of Defence requesting copies of his medical records and of the reports on the tests carried out on him. The CBDE's reply was that the Health Records Act 1990, which provided for an individual right to disclosure of medical reports, did not apply to records compiled before November 1991. It added, however, that it was Ministry of Defence policy to release medical records to a doctor on a "medical confidence" basis when needed. On that basis the applicant's doctor had been provided with information in 1989. The CBDE emphasised that it was up to the doctor how much of the information he wanted to convey to his patient. In the meantime, in June 1991, the applicant submitted a claim for a service pension based on hypertension and breathing problems. In January 1992 the Secretary of State rejected his claim. In November 1994, in a letter to the Secretary of State, the applicant's solicitors threatened to start proceedings, alleging negligence on the part of the Ministry of Defence and demanding all medical and laboratory records in the possession of the Secretary of State or of the CBDE during the period of experimentation, failing which the applicant would apply to the High Court for pre-action discovery. In August 1995 the Secretary of State issued a certificate pursuant to section 10 of the Crown Proceedings Act 1947 ("1947 Act") whereby the applicant's injury could be treated as attributable to service for the purposes of entitlement to a pension with the consequence that, following the 1947 Act, the Crown could not be sued in tort. In November 1998 the applicant lodged an appeal with the Pensions Appeals Tribunal ("PAT"). He later included an application for disclosure of official documents and information pursuant to Rule 6(1) of the Pensions Appeals Tribunal (England and Wales) Rules 1980 ("Tribunal Rules"). By order of February 2001 the President of the PAT directed that those documents be disclosed by the Secretary of State. In his response of July 2001, the Secretary of State stated that he was unable to give a definitive answer to the request for scientific and medical reports.

Admissible under Articles 6(1) (access to court), 8, 10, 13 and 14 of the Convention as well as Article 1 of Protocol No. 1: As regards the Government's argument that the applicant's failure to pursue the appeal to the PAT amounted to a failure to exhaust effective domestic remedies, the Secretary of State's response of July 2001 indicated that further investigations were required before a definitive answer on disclosure could be given and that the appeal to the PAT had not terminated. It was further noted that the parties' submissions on each of the applicant's complaints refer to the adequacy and effectiveness of the appeal proceedings before the PAT and of an application pursuant to Rule 6 of the Tribunal Rules. Therefore, the question of the applicant's completion of those procedures should be joined to the merits of his complaints. Besides, while the High Court found that section 10 of the 1947 Act was incompatible with Article 6(1) of the Convention, the present application related to a search for information prior to the entry into force, on 1 October 2000, of the Human Rights Act 1998. Accordingly, the Government's objection was rejected.

PRIVATE LIFE

Lack of facilities allowing handicapped persons access to buildings open to the public: *inadmissible*.

ZEHNALOVÁ and ZEHNAL - Czech Republic (N° 38621/97)
Decision 14.5.2002 [Section II]

The first applicant is physically disabled and the second applicant is her husband. In their home town, many public buildings are not equipped with access facilities for the disabled. In December 1994, the applicant informed the Municipal Office and District Office that these

buildings did not comply with the relevant legislation. The District Office replied that the approval certificates of the 219 buildings concerned were to be reviewed. In view of the delay in initiating the review procedure, the applicant asked the Ministry of Economic Affairs to conduct a review on its own initiative. The ministry replied that, in accordance with the law, the review would be conducted by the District Office, but did not set any deadline. The District Office rejected or took no action on most of the applicants' requests. Nevertheless, improvements were made to a number of the buildings in question following negotiations between the municipality and the owners. In November 1995, the applicants applied to the regional court to be exempted from costs and to have a lawyer appointed in order to prepare the applications relating to the review of the approval certificates which the Municipal Office had issued for 174 buildings. Their application was dismissed as having no chance of success. The applicants appealed to the Supreme Court, which declined jurisdiction, pointing out that the regional courts' decision was not open to appeal. In July 1996, the applicants applied to the Constitutional Court, complaining that many public buildings and buildings open to the public did not comply with the conditions laid down by decree regarding access facilities for the disabled. They also maintained that the procedure for reviewing the approval certificates had not been properly carried out by the authorities. In March 1997, the Constitutional Court dismissed their application.

Inadmissible under Article 8: The positive obligations deriving from this article might involve the adoption of measures designed to secure respect for private life even in the sphere of relations between individuals themselves. However, since the notion of respect was not precisely defined, states enjoyed a wide margin of appreciation. A state had obligations of this type where a direct and immediate link was established between measures sought by an applicant and the latter's private and/or family life. In the Botta v. Italy judgment, Article 8 had been declared inapplicable to situations concerning interpersonal relations of such broad and indeterminate scope that there could be no conceivable link between measures that the state was urged to take and the applicant's private life. In the instant case, it was necessary to determine the limits to the applicability of Article 8 and the boundary between the rights guaranteed by the Convention and the social rights guaranteed by the European Social Charter. Owing to the constant changes in European society, national governments were required to make increasing commitments in order to remedy existing shortcomings and, as a result, the state intervened increasingly in individuals' private lives. However, the sphere of state intervention and the notion of private life did not always coincide, the scope of the state's positive obligations being more limited. In the instant case, Article 8 could not be applied each time the first applicant's everyday life was disrupted, but only in the exceptional cases in which the lack of access to an establishment interfered with her right to personal development and her right to establish and maintain relations with other human beings and the outside world. However, she had failed to demonstrate the special link between lack of access to the buildings which she had mentioned and the particular needs of her private life. In view of the large number of buildings mentioned, one might legitimately doubt that she required access to them every day and that there was a direct and immediate link between the measures which the state was urged to take and her private life. In addition, by way of a subsidiary argument, the national authorities had not remained inactive, and the situation in the applicants' home town had improved in the last few years, as they themselves admitted. Article 8 was accordingly inapplicable in this case: incompatible *ratione materiae*.

FAMILY LIFE

Consent to adoption to be given by mother personally, although a minor: *communicated*.

SACHS - Germany (N° 4261/02)
[Section III]

In May 1997, the applicant, then aged 16, gave birth to a child. In March 1998, she made a declaration before a notary in which she gave her consent to the child's adoption. The child

has been living with foster parents since March 1998. In June 1998, however, the applicant expressed the wish to rescind her consent and recover her child. In December 1999, a public hearing was held before the guardianship court under the adoption procedure. By decision of April 2000, the guardianship court held the consent given by the applicant in March 1998 to have been irrevocable since the day on which it had been communicated to the court, in accordance with Article 1750.2 of the Civil Code. The court found that there were no grounds for invalidating the consent. In particular, the declaration was not invalidated by the fact that the applicant had been a minor at the time of making it. The declaration was of a personal nature and was to be made by the individual concerned, and not by her legal representatives, even though she had been a minor at the time, as provided under Article 1750.3 of the Civil Code. In the light of a number of opinions provided by the Youth Welfare Department and a psychological report to determine whether the adoption was consistent with the child's well-being, the court held that the conditions for adoption were met. In particular, the child had established strong relations with his new parents, with whom he had been living for over two years. The skin disease from which he was suffering had improved during that period and the court considered that the father's refusal to give his consent had been detrimental to the child's well-being. For this reason, the court considered that its own finding should replace the father's consent. In June 2000 the regional court dismissed the father's appeal against the substitution of the guardianship court's decision for his own consent. In July 2000, the guardianship court declared the child adopted. The applicant appealed against this decision, but the regional court informed her that the decision was not open to appeal. The applicant then applied to the Constitutional Court, which declared her application inadmissible.
Communicated under Article 8.

FAMILY LIFE
Natural father's right of access to his child, born of an adulterous relationship and regarded as the legitimate child of a married couple: *admissible*.

LÜCK - Germany (N° 58364/00)
Decision 13.6.2002 [Section III]

The applicant is the natural father of L., born in 1989. L.'s mother was married at the time of the child's birth and still is. In 1991, she began to limit contact between the child and the applicant, and prohibited all contact between them starting in March 1993. The applicant brought an action in the competent district court asking that the child's mother and her husband be obliged to grant him access. In January 1994, the court dismissed this request, pointing out that no such right of access was provided for under the law because the child was considered as having been born of the mother's marriage to her husband. In September 1995, without holding a hearing, the regional court upheld the lower court's decision, noting in particular that the applicant's request amounted to interference with the life of an existing family. It held that, as the case stood, there was no reason either to give the child a hearing or to request an expert opinion. The applicant's appeal against this decision was dismissed by the Court of Appeal and the applicant's application in July 1996 to the Federal Constitutional Court is still pending.
Admissible under Article 6 (1) (public hearing, length of proceedings, access to a tribunal), and under Article 8 alone and in conjunction with Article 14.

FAMILY LIFE
Adequacy of safeguards in relation to expulsion on grounds of national security : *violation*.

AL-NASHIF and others - Bulgaria (Nº 50963/99)
Judgment 20.6.2002 [Section IV (former composition)]
(see Article 5(4), above).

CORRESPONDENCE
Interception of telephone communications allegedly without the required statutory warrant: *communicated*.

LIBERTY, BRITISH RIGHTS WATCH AND THE IRISH COUNCIL OF CIVIL LIBERTIES - United Kingdom (N° 58243/00)
[Section IV]

In the 1990s the British Ministry of Defence operated an Electronic Test Facility in order to intercept 10,000 simultaneous telephone channels coming from Dublin to London and on the continent. In July 1999 a television programme alleged that between 1991 and 1997 all telephone, facsimile, e-mail and other data communications between England/Wales and Ireland had been intercepted by the Ministry of Defence without the warrants required by the Interception of Communications Act 1985 (the "1985 Act"). The applicants, civil liberties organisations based in London and Dublin, were in regular contact with each other during this period. In September 1999 they requested the statutory Tribunal to investigate the lawfulness of any warrants which had been issued in respect of their communications between England/Wales and Ireland. In December 1999 the Tribunal informed them that, in view of the result of the investigations conducted, it was satisfied that there had been no contravention of the relevant sections of the 1985 Act in relation to a relevant warrant or a relevant certificate. In the meantime, in September 1999, the applicants raised these matters with the Director of Public Prosecutions, requesting the prosecution of those responsible. The matter was passed to the police for investigation. In 2000 New Scotland Yard indicated that its enquiries had revealed no offence contrary to the 1985 Act.
Communicated under Articles 8 and 13.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of journalists for the offence of insulting a foreign Head of State: *violation*.

COLOMBANI and others - France (N° 51279/99)
Judgment 25.6.2002 [Section II]

Facts: In the context of the examination of Morocco's application for membership of the European Communities, a report on drug production and trafficking in that country was drawn up at the request of the Commission of the European Communities. The first version of the report mentioned the names of persons involved in drug trafficking. A second version was produced at the Commission's request, with the traffickers names edited out. This toned-down version of the initial report was published and discussed in the weekly newspaper "Le Monde". The original version remained confidential for a certain time, then began to circulate. One year and nine months after the original version of the report had been submitted to the Commission, Le Monde reviewed it in an article announced on the front page

of the newspaper under the headline "Morocco: leading world hashish exporter", with the sub-heading "A confidential report casts doubt on King Hassan II's entourage". The article appeared on page 2 under the headline "A confidential report implicates the Moroccan Government in hashish trafficking". Following a complaint by the King of Morocco, criminal proceedings were brought against the first applicant, publishing director of Le Monde, and the author of the article, the second applicant, for insulting a foreign head of state. They were acquitted at first instance on the grounds, inter alia, that the journalist had acted in good faith, pursuing a legitimate aim. They however found guilty of insulting a foreign head of state on appeal, on the basis of Article 36 of the law of 29 July 1881 on freedom of the press. This offence, which only applies in the event of a personal attack on a foreign head of state, is subject to specific legal rules which, unlike those governing defamation, place the burden of proving malicious intent on the plaintiff but do not allow the defence of truthfulness (*exceptio veritatis)* to be put forward as an exonerating factor. The court of appeal sentenced each of the applicants to a fine, ordered them to pay symbolic damages to King Hassan II and to pay costs, and ordered the newspaper to issue a press release publishing the details of the conviction. The court of appeal criticised them for malicious intent towards the royal entourage, for accusing the king of duplicity and hypocrisy, for failing to check that the content of the report was accurate, and for lacking good faith. They were also criticised for not having attempted to ascertain whether the report was still relevant at the time when the article was published and for having failed to consult the Moroccan authorities about the report, since they had failed to mention a white paper on this subject published by the Moroccan authorities after the initial version of the report had been submitted. The Court of Cassation upheld the decision.

Law: Article 10 – The applicants' conviction was seen as "interference" in the exercise of their right to freedom of expression. The interference, which was "prescribed by law", pursued the legitimate aim of protecting the reputation or rights of others. There remained the question of whether the interference was "necessary in a democratic society". When the press contributed to public debate on issues giving rise to legitimate concern, it should in theory be able to rely on official reports without having to carry out independent research. In the instance case, the information provided by the applicants was of legitimate public interest and they acted in good faith in supplying precise and credible information based on an official report whose accuracy did not require checking on their part. The grounds relied on by the domestic courts to convict the applicants were therefore unconvincing. Under domestic law, the offence of insulting a foreign head of state, unlike the ordinary offence of defamation, did not provide for any exemption from criminal liability in the event of the truth of the allegations being proved. The unavailability of the defence of truthfulness (*exceptio veritatis*) constituted an excessive measure for protecting a person's reputation and rights, even if that person was a head of state or government. The ordinary offence of defamation, which was proportionate to the aim pursued, was sufficient to protect any head of state from attacks on his honour or reputation. On the other hand, the offence provided for under Article 36 of the law of 29 July 1881 tended to confer on heads of state a status going beyond the general law and shielding them from criticism on the sole grounds of their function or status, without taking any account of the interest that lay in the criticism. This special protection afforded to foreign heads of state under the law, which gave them an inordinate privilege at variance with current political practices and ideas, did not satisfy any "overriding social need". In short, even though the reasons put forward by the respondent state were relevant, they were not sufficient to prove that the interference complained of was "necessary in a democratic society", notwithstanding the national authorities' margin of appreciation.

Conclusion: violation (unanimously).

Article 41 – The Court considered that there was a causal link between the sums which the applicants had been sentenced to pay and the violation found, and therefore awarded them those sums. The Court also awarded them a sum in respect of costs and expenses.

FREEDOM OF EXPRESSION
Conviction for incitement to hatred and hostility: *friendly settlement*.

ALİ EROL - Turkey (N° 35076/97)
Judgment 20.6.2002 [Section I]

The applicant, editor of a daily newspaper, was convicted of inciting to hatred and hostility.
The parties reached a friendly settlement under which the sum of 3,811.23 euros was to be paid to the applicant and in which the Turkish Government expressed the following positions:

- The rulings against Turkey in cases concerning prosecutions under Article 312 of the Criminal Code or the statutory provisions on the prevention of terrorism clearly showed that Turkish law and practice must as a matter of urgency be brought into line with the requirements set forth in Article 10 of the Convention. The interference complained of in the present case was a further example of this.
- The government therefore undertook to make all the necessary changes to their domestic law and practice in this area, as already set out in the National Programme of 24 March 2001.
- The government also referred to the individual measures set out in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106), which they would apply in circumstances such as those characterising the present case.

FREEDOM OF EXPRESSION
Journalist sentenced to prison after having reviewed a book written by PKK's leader in a newspaper: *admissible*.

HALİS - Turkey (N° 30007/96)
Decision 23.5.2002 [Section III]

The applicant worked as a journalist for a daily newspaper, *Özgür Gündem*. On 2 January 1994 *Özgür Gündem* published an article he had written, which included the review of a book by Abdullah Öcalan on the situation in south-east Turkey. In July 1994 the Public Prosecutor at the Istanbul State Security Court charged him with dissemination of propaganda about an illegal separatist terrorist organisation, pursuant to Article 7(2) of the Prevention of Terrorism Act. In March 1995 the State Security Court found him guilty and sentenced him to one year's imprisonment and a fine. The applicant unsuccessfully appealed to the Court of Cassation.
Admissible under Articles 6(1) (independence/impartiality) and 10.

FREEDOM OF EXPRESSION
Prohibition on distributing a book containing information on a deceased Head of State covered by medical secrecy: *communicated*.

PLON (Société) - France (N° 58148/00)
[Section II]

The applicant is a publishing company which acquired the publishing rights in respect of a book entitled "Le Grand Secret". This book was written, in collaboration with a journalist, by Dr Gubler, personal physician to French President François Mitterrand during the first 13 years of his two successive terms of office. The book discusses the prostate cancer from which President Mitterrand had been suffering from the beginning of his first term of office,

of which the French public was not informed until much later. The book describes the relations between President Mitterrand and his doctor and the way in which the two protagonists managed the illness on a day-to-day basis, in the utmost secrecy, in accordance with the President's wishes. In particular, the book describes the difficulties faced by Dr Gubler in concealing the President's illness, in the light of the latter's undertaking to publish a report on his health every six months. Distribution of the book began on 17 January 1996 (nine days after the President's death), but an injunction banning its distribution was issued the next day. The decision to ban the book was upheld on appeal. At the same time, the Paris Criminal Court, in a final judgment delivered in July 1996, had found Dr Gubler guilty of the offence of violating professional secrecy, and the legal representatives of the applicant company guilty of complicity in that offence, and had sentenced them respectively to a four-month suspended prison sentence, a fine of 30,000 FF and a fine of 60,000 FF. The ban on distribution of the book was upheld by the Paris regional court, following an application by President Mitterrand's widow and three children. The court of appeal sentenced Dr Gubler and the applicant company *in solidum* to pay 100,000 FF in damages to Mme Mitterrand and 80,000 FF to each of the other plaintiffs and upheld the ban on distribution of the book. The court declared the Mitterrand family's application inadmissible insofar as it was aimed at protecting President Mitterrand's private life, pointing out in this connection that the right of every individual to prohibit all disclosure of matters concerning his or her private life belonged only to the living. It went on the say that while some passages in the book contained violations of the Mitterrand family's private life, they could not justify prohibiting publication of the entire book. On the other hand, the court of appeal noted that all the information published in the book had been obtained by the author in the course of his duties as personal physician to the head of state, and was therefore covered by the medical secrecy which he was required to observe vis-à-vis his patient. Publication of this information was therefore a violation of professional secrecy. The court also held that certain restrictions could be placed on the exercise of freedom of expression, particularly in order to protect the rights of others. The applicant company's appeal was dismissed.
Communicated under Article 10.

ARTICLE 11

FORM AND JOIN TRADE UNIONS
Prohibition on strike by Government ordinance providing for compulsory state arbitration: *inadmissible*.

FEDERATION OF OFFSHORE WORKERS' TRADE UNIONS and others - Norway
(N° 38190/97)
Decision 27.6.2002 [Section III]

The first applicant is a federation of trade unions for workers in the North Sea oil industry, the OFS. The second and third applicants were members of the OFS. In 1994, the first applicant participated in negotiations concerning a new wage agreement in the sector. The parties having failed to reach an agreement, the first applicant issued a strike warning. After the unsuccessful intervention of a State Mediator, the Minister for Local Government and Labour summoned the parties to a joint meeting. After having heard the parties' respective arguments, the minister stated that he would recommend the Government to issue a provisional ordinance imposing compulsory arbitration of the dispute. The minister emphasised the highly detrimental consequences such industrial action would have on the country's finances. Pursuant to Article 17 of the Constitution, the Government adopted a provisional ordinance, according to which disputes relating to the revision of the agreement on wages were to be settled by the National Wages Board, a State body, and the provisions of

the Compulsory Arbitration Act 1952 should apply, prohibiting work stoppage and picketing. The applicant union's action before the City Court which aimed at having the compulsory arbitration declared invalid was rejected and its appeal to the Supreme Court was dismissed. The Supreme Court held that the longstanding practice of using compulsory arbitration to settle labour disputes in respect of major societal interests did not contravene the general legal principles of constitutional law and that it was established that the right to strike was not unlimited.

Inadmissible under Article 11: (i) As to whether the first applicant was a victim, in several cases concerning collective aspects of trade union freedom, including strike action, the Court has examined complaints brought by a trade union under this Article. There was no reason for a different approach in the present case, where it was the unions that called the strike action and later exercised the remedies available under domestic law against the contested restrictions. It should be borne in mind that, under the domestic systems of some Contracting States, the right or freedom to strike is vested in individuals acting in concert, whereas under the systems of other Contracting States it is a union privilege. The words "for the protection of his interests" in Article 11 cannot be construed as meaning that only individuals and not trade unions may make a complaint under this provision.

(ii) As to whether the second and third applicants had exhausted domestic remedies, the interests for which they sought protection under the Convention were identical to those pursued by the first applicant collectively on behalf of its members. No elements were adduced which could have suggested that the second and third applicants might have obtained a different outcome had they brought proceedings in the domestic courts, either together with the first applicant or in a separate action. The fact that they did not do so could not be considered as failure to exhaust domestic remedies.

(iii) Restrictions imposed by a Contracting State on the exercise of the right to strike do not in themselves give rise to an issue under Article 11. In the instant case, the prohibition on strikes imposed by the provisional ordinance was implemented after the trade union members had been allowed to exercise their right to strike for 36 hours. The strike took place after unsuccessful collective bargaining and compulsory mediation between the first applicant and the relevant industrial partners. Thus, before the prohibition was imposed, the trade-union members enjoyed several means of protecting their occupational interests. The dispute was then referred to the National Wages Board for independent resolution. It was assumed that the first paragraph of Article 11 applied to the matter complained of and that the impugned restriction amounted to an interference with the rights guaranteed under this Article. Since oil workers do not fall within the categories of civil service professionals referred to in the second sentence of paragraph 2, the three conditions set out in paragraph 1 were applicable. Firstly, the provisional ordinance had a legal basis in national law, namely Article 17 of the Constitution and the Compulsory Arbitration Act 1952. Secondly, it could reasonably be regarded as pursuing the legitimate aims of public safety, the protection of the rights and freedoms of others and the protection of health. Thirdly, as to whether the interference was necessary in a democratic society, the members of the OFS were able to exercise their right to strike as protected under Norwegian law. The strike, which involved all union members and affected all fixed installations on the Norwegian Continental Shelf, generated significant losses after only 36 hours. The provisional ordinance was adopted at a time when it was expected that a continued strike would have resulted not only in a substantial drop in production revenues for both private and State companies, but would have also adversely affected energy supply to industries and households in EU countries and Norway's credibility as a gas supplier to the EU. It was also considered that there would have been negative repercussions on the State budget, including the funding of the social security and the trade balance. There was nothing to indicate that the assessment made by the competent authorities was unreasonable. Furthermore, the technical installations risked being damaged if they remained unused for a long period, with ensuing consequences for health, safety and the environment. Thus, the strike was likely to have serious implications beyond the mere loss of revenue. In the exceptional circumstances of the present case, where the impugned measure was implemented for reasons that were not purely economic, the national authorities were

justified in resorting to compulsory arbitration. Against this background and having regard to the margin of appreciation to be accorded to the respondent State, the impugned measure was supported by relevant and sufficient reasons and there was a reasonable relationship of proportionality between the interference with the applicants' rights under Article 11 and the legitimate aims pursued: manifestly ill-founded.

ARTICLE 14

DISCRIMINATION (SEX)
Alleged discrimination against natural father as regards his right of access to his child: *admissible*.

LÜCK - Germany (N° 58364/00)
Decision 13.6.2002 [Section III]
(see Article 8, above).

DISCRIMINATION (SEX)
Different treatment of married women under pension legislation: *violation*.

WESSELS-BERGERVOET - Netherlands (Nº 34462/97)
Judgment 4.6.2002 [Section II]

Facts: The applicant's husband was granted an old age pension in 1984. However, the amount was reduced because he had not been insured during certain periods when he had worked abroad. In 1989 the applicant, on reaching the age of 65, was granted an old age pension, which was also reduced, pursuant to the provisions applicable until 1985, on the ground that she had not been insured during the periods when her husband had been working abroad. On the applicant's appeal, the Appeals Tribunal quashed the decision to reduce her pension, considering that the applicable provisions were discriminatory, since the pension of a married man in a similar position would not be subject to reduction. However, this decision was quashed by the Central Appeals Tribunal and the applicant's subsequent cassation appeal was rejected by the Supreme Court.
Law: Article 14 in conjunction with Article 1 of Protocol No. 1 – The Court had considered in its decision on admissibility that the applicant's rights to a pension could be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 and that, consequently, Article 14 of the Convention was applicable. The only reason for the applicant's exclusion from insurance was the fact that she was married to a man who was not insured due to his employment abroad. It was undisputed that a married man in the same situation as the applicant would not have been excluded in this manner and the reduction in the applicant's pension was therefore based exclusively on the fact that she was a married woman. As to the Government's argument that the undesirable accumulation of pension rights was an objective and reasonable justification for the difference in treatment, the legislation did not prevent a married man in the same situation as the applicant from accumulating pension rights. As to the argument that social attitudes at the material time were different in that most breadwinners were married men, even assuming such an argument had merit, it was of some relevance that the Convention and Protocol No. 1 had already entered into force in the Netherlands in 1954. Furthermore, the inequality in treatment materialised in 1989 when, given the prevailing social attitudes at that time, the aim pursued by the provisions concerned could no longer be upheld. In this respect, when the provisions were changed in 1985, no measures were taken to remove the discriminatory effect of the former provisions. There was thus a difference in treatment which did not have an objective and reasonable justification.

Conclusion: violation (unanimously).
Article 41 – The Court reserved the question of just satisfaction.

DISCRIMINATION (SEX)
Unavailability of widows' allowances to widower: *violation*.

WILLIS - United Kingdom (Nº 36042/97)
Judgment 11.6.2002 [Section IV]

Facts: The applicant's wife died in 1996. For most of their married life, she had been the primary breadwinner and had paid full social security contributions as an employed person. The applicant, who had given up work to nurse his wife and care for their children, worked part-time after her death but, as this proved uneconomic, he ceased his employment in order to care full-time for the children. He applied for benefits equivalent to those to which a widow in similar circumstances would have been entitled, namely a Widow's Payment and a Widowed Mother's Allowance, but was informed that the benefits did not exist for widowers.
Law: Article 14 in conjunction with Article 1 of Protocol No. 1 – The allowances were paid out of the National Insurance Fund, into which male and female earners were obliged to pay contributions. It had not been argued that the applicant did not satisfy the various statutory conditions for payment of the allowances, the refusal to recognise his entitlement being based exclusively on his sex; a woman in the same position would have had an enforceable right to the allowances. It was not necessary to address the question whether a social security benefit had to be contributory in order to constitute a "possession" for the purposes of Article 1 of Protocol No. 1. The right to the allowances was a sufficiently pecuniary right to fall within the ambit of that provision. Since the applicant was denied the allowances on the ground of a distinction covered by Article 14, the latter provision was also applicable. The applicant was entitled to significantly fewer financial benefits than he would have been if he were a woman. The refusal was based exclusively on the fact that he was a man; it had not been argued that he failed to satisfy any of the other statutory conditions. This difference in treatment between men and women was not based on any objective and reasonable justification. As far as a Widow's Pension was concerned, however, a widow in the applicant's situation would not qualify until 2006 at the earliest and might never do so. Since the applicant had not been treated differently, no issue of discrimination arose in that respect, and it was unnecessary to consider whether the complaint fell within the scope of Article 1 of Protocol No. 1.
Conclusion: violation (unanimously).
Article 14 in conjunction with Article 8 or Article 1 of Protocol No. 1 – In view of the above conclusion, the Court considered unanimously that it was unnecessary to examine the applicant's complaint in relation to the Widow's Payment and a Widowed Mother's Allowance under Article 14 in conjunction with Article 8. As to the Widow's Pension, it had found that no issue of discrimination arose in that respect, and it was therefore unnecessary to examine whether the complaint fell within the scope of Article 8. It concluded unanimously that there had been no violation of Article 14 in conjunction with either Article 8 or Article 1 of Protocol No. 1 in that respect. Finally, the Court concluded unanimously that it was not necessary to examine the applicant's complaint about discrimination suffered by his late wife.
Article 13 – This provision does not guarantee a remedy allowing primary legislation to be challenged before a national authority on the ground that it is contrary to the Convention.
Conclusion: no violation (unanimously).
Article 41 – The Court made awards in respect of pecuniary damage and in respect of costs and expenses.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES (United Kingdom)
Failure of Government to establish existence of effective remedies following refusal to pay widow's bereavement allowance to widower: *admissible*.

HOBBS - United Kingdom (N° 63684/00)
Decision 18.6.2002 [Section IV]

The applicant's wife died in February 1998. In October 2000 the applicant contacted the Inland Revenue and applied for a widow's bereavement allowance for the years 1998-99 and 1999-2000. He was informed that he did not qualify for the tax allowance, since the law provides for payments only to widows.
Admissible under Article 14 taken in conjunction with both Article 8 and Article 1 of Protocol No. 1: The Government argued that the applicant failed to exhaust two domestic remedies. The first one was judicial review proceedings in the High Court, by which, according to the Government, the applicant could have sought an order to the effect that the responsible authority would make a payment to him equivalent to the amount of the widow's bereavement allowance which he would have received had he been a woman. The second was an appeal to the Tax Commissioners. As to the possibility of judicial review proceedings, in the recent case of *Wilkinson v. Commissioners of Inland Revenue*, the High Court determined that a decision refusing a male claimant a widow's bereavement allowance equivalent to that to which he would have been entitled had he been a woman was not unlawful under the Human Rights Act 1998 (the "1998 Act"). The court reached this conclusion notwithstanding its view that such refusal constituted a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1. Although the court decided to make a declaration of incompatibility under section 4(2) of the 1998 Act in relation to section 262 of the Income and Corporation Taxes Act 1988, such a declaration is not binding on the parties to the proceedings in which it is made. Furthermore, a declaration of incompatibility provides the appropriate minister with a power, not a duty, to amend the offending legislation by order so as to make it compatible with the Convention. The minister can only exercise that power if he considers that there are "compelling reasons" for doing so. Moreover, the incompatibility which was subject to the declaration made in the *Wilkinson* case did not apply in relation to deaths occurring on or after 6 April 2000 by virtue of Article 34 of the Finance Act 1999. The Government did not comment as to whether this rendered the making of a remedial order under section 10(2) of the 1998 Act less likely in respect of cases involving claimants, like the applicant and *Wilkinson* himself, whose wives died before that date. As regards the prospect of an appeal to the Tax Commissioners, a pending appeal against a refusal of widow's bereavement allowance, brought by a claimant in a position equivalent to that of the applicant, was adjourned by the Tax Commissioners pending the outcome of the *Wilkinson* case. Furthermore the Tax Commissioners do not have the power to grant a declaration of incompatibility under section 4 of the 1998 Act and so, in this respect, their powers are even more limited than those of the High Court in judicial review proceedings. Therefore, the Government had failed to establish that either of the domestic remedies referred to was sufficiently "effective" to be capable of providing the applicant with redress for his complaint.

ARTICLE 44

Article 44(2)(a)

The following judgment has become final in accordance with Article 44(2)(a) of the Convention (the parties having declared that they will not request that the case be referred to the Grand Chamber) (see Information Note No. 40):

MALVEIRO - Portugal (Nº 45725/99)
Judgment 14.3.2002 [Section III]

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. 40):

KUTIĆ - Croatia (Nº 48778/99)
Judgment 1.3.2002 [Section I]

ADAMOGIANNIS - Greece (Nº 47734/99)
Judgment 14.3.2002 [Section I]

PAUL and AUDREY EDWARDS - United Kingdom (Nº 46477/99)
Judgment 14.3.2002 [Section II]

PUZINAS - Lithuania (Nº 44800/98)
Judgment 14.3.2002 [Section III]

DEVENNEY - United Kingdom (Nº 24265/94)
DEMETRIU - Romania (Nº 32935/96)
GRANATA - France (Nº 39626/98)
VALLAR - France (Nº 42406/98)
VAN DER KAR and LISSAUR VAN WEST - France (Nº 44952/98 and Nº 44953/98)
BENZI - France (Nº 46280/99)
ARNAL - France (Nº 47007/99)
GOUBERT and LABBE - France (Nº 49622/99)
CHAUFOUR - France (Nº 54757/00)
BEAUME MARTY - France (Nº 55672/00)
SIES - France (Nº 56198/00)
C.K. - France (Nº 57753/00)
Judgments 19.3.2002 [Section II]

ENTREPRISES METON and ETEP - Greece (Nº 47730/99)
APBP - France (N° 38436/97)
IMMEUBLES GROUPE KOSSER - France (Nº 38748/97)
ETCHEVESTE and BIDART - France (N° 44797/98 and N° 44798/98)

VASILOPOULOU - Greece (Nº 47541/99)
SAJTOS - Greece (Nº 53478/99)
Judgments 21.3.2002 [Section I]

A.T. - Austria (Nº 32636/96)
REGO CHAVES FERNANDES - Portugal (Nº 46462/99)
VAZ DA SILVA GIRÃO - Portugal (Nº 46464/99)
STAŠAITIS - Lithuania (Nº 47679/99)
Judgments 21.3.2002 [Section III]

NIKULA - Finland (Nº 31611/96)
Judgment 21.3.2002 [Section IV (former composition)]

BUTKEVIČIUS - Lithuania (Nº 48297/99)
MOULLET - France (Nº 44485/98)
LUTZ - France (Nº 48215/99)
GRAND - France (Nº 50996/99)
Société COMABAT - France (Nº 51818/99)
Judgments 26.3.2002 [Section II]

SCIARROTTA - Italy (Nº 40151/98)
DIEBOLD - Italy (Nº 41740/98)
LATTANZI and CASCIA - Italy (Nº 44334/98)
CONTARDI - Italy (Nº 46970/99)
MASTROMAURO s.r.l. - Italy (Nº 47479/99)
Judgments 28.3.2002 [Section I]

DUDU ÇALKAN - Turkey (Nº 19660/92)
MEHMET ÇELEBI - Turkey (Nº 20140/92)
ADILE KARTAL - Turkey (Nº 20144/92)
AHMET ÖZTÜRK - Turkey (Nº 20151/92)
MEHMET ÖZEN - Turkey (Nº 20152/92)
AZIZ SEN - Turkey (no. 2) (Nº 20155/92)
NARDONE - Italy (Nº 44428/98)
BIRUTIS and others - Lithuania (Nº 47698/99 and Nº 48115/99)
Judgments 28.3.2002 [Section III]

Leonardi - Italy (Nº 54278/00)
Prete - Italy (Nº 54279/00)
Giordano - Italy (Nº 54280/00)
Amici - Italy (Nº 54282/00)
Radicchi - Italy (Nº 54284/00)
Tatangelo - Italy (Nº 54285/00)
Andreozzi - Italy (Nº 54288/00)
D'Agostino - Italy (Nº 54290/00 and Nº 54310/00)
Caproni - Italy (Nº 54291/00)
Cerasomma - Italy (Nº 54292/00)
Fiore - Italy (Nº 54294/00)
Trovato - Italy (Nº 54295/00)
Manera - Italy (Nº 54296/00)
Aniceto - Italy (Nº 54297/00)
Sabetta - Italy (Nº 54298/00)
Jaculli - Italy (Nº 54301/00)
Incollingo - Italy (Nº 54302/00)
Spatrisano - Italy (Nº 54303/00)

Tamburrini - Italy (Nº 54305/00)
Masia - Italy (Nº 54306/00)
Mignanelli - Italy (Nº 54308/00)
Carretta - Italy (Nº 54309/00)
Soave - Italy (Nº 54311/00)
Manna - Italy (Nº 54312/00)
Castiello - Italy (Nº 54313/00)
Quacquarelli - Italy (Nº 54314/00)
Tortolani - Italy (Nº 54315/00)
Zullo - Italy (Nº 54317/00)
Picano - Italy (Nº 54318/00)
Sportola - Italy (Nº 54319/00)
Judgments 28.3.2002 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Shanty town built on land belonging to the State and inhabited by applicant and family without any title.

ÖNERYILDIZ - Turkey (N° 48939/99)
Judgment 18.6.2002 [Section I (former composition)]
(see Article 2, above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Destruction of shanty town as a result of an accident at a municipal rubbish dump: *violation*.

ÖNERYILDIZ - Turkey (N° 48939/99)
Judgment 18.6.2002 [Section I (former composition)]
(see Article 2, above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Loss of pension rights as automatic consequence of dismissal from civil service : *violation*.

AZINAS - Greece (Nº 56679/00)
Judgment 20.6.2002 [Section III]

Facts : In 1982, the Public Service Commission decided to dismiss the applicant from the civil service, as he had been convicted of stealing, breach of trust and abuse of authority. The dismissal had the consequence that the applicant forfeited his retirement benefits, including his pension, from the date of his conviction. His request for the decision to be annulled and his subsequent appeal were rejected.
Law : Article 1 of Protocol No. 1 – The right to a pension which is based on employment can in certain circumstances be assimilated to a property right, for example where special contributions have been paid or where, as in the present case, an employer has given a more general undertaking to pay a pension on conditions which can be considered to be part of the employment contract. Having regard to the relevant provisions of the Pension Law, the applicant, when entering the public service, acquired a right which constituted a "possession" and forfeiture of the retirement benefits constituted an interference with his property right. The interference was neither an expropriation nor a control of use and therefore fell to be

examined under the first sentence of the first paragraph of Article 1. It was undoubtedly necessary for the national authorities to take disciplinary measures in addition to the criminal conviction of the applicant, but while the imposition of the sanction of dismissal might be said to be aimed at protecting the public and safeguarding its trust in the integrity of the administration, the automatic forfeiture of the pension could not be said to serve any commensurate purpose. The consequences were particularly harsh because the applicant and his family were deprived of any means of subsistence and in the circumstances the appropriate balance between the protection of the individual's right of property and public interest requirements was not struck.
Conclusion: violation (6 votes to 1)
Article 41 – The Court reserved the question of just satisfaction.

CONTROL OF THE USE OF PROPERTY
Forfeiture of sum of money on the basis of legal presumption that it was intended for use in drug trafficking: *inadmissible*.

BUTLER - United Kingdom (N° 41661/98)
Decision 27.6.2002 [Section III]

The applicant, a heavy gambler on horses, often held large sums of money in cash for the purpose of gambling. He stated that he has never been convicted of any drug-related offences. Having ascertained that he could avoid tax on off-course betting by gambling offshore as a non-resident, he decided to buy an apartment in Spain and arranged to meet a lawyer there in September 1996. As he was nervous about taking the money himself, he entrusted 240,000 pounds sterling (GBP) to his partner's brother, H., who happened to be going to Spain for a holiday. He stated that he needed part of the sum to buy an apartment there and the rest for a race meeting in Paris where he intended to go afterwards. In June 1996 the customs authorities stopped H. at Portsmouth and found the money in the boot of his car. H. explained to the officers that the sum belonged to the applicant who wanted to purchase an apartment in southern Spain. An order for the detention of his money was granted by a Magistrates' Court on 19 September 1996 pursuant to the Drug Trafficking Act 1994 (the "1994 Act"). The applicant contacted the customs authorities to reclaim the money in October 1996. In February 1997 the customs authorities made an application under the 1994 Act for the forfeiture of GBP 239,010 seized from the applicant on the grounds that it was believed that the money was directly or indirectly the proceeds of drug trafficking and/or was intended for use in drug trafficking. In June 1997 the Magistrates' Court made an order for the confiscation of the sum. The applicant's appeal was unsuccessful, the forfeiture order being upheld by the Crown Court. The court noted that the money was contaminated to a limited extent by cannabinoids and that it included a large proportion of Scottish notes which are typically used by drug-traffickers to finance drug deals conducted abroad. Moreover, the south coast of Spain was known as the source of a large number of consignments of drugs destined for the United Kingdom. In view of the circumstantial evidence, the Crown Court found the explanations given by the applicant and H. unsatisfactory and held that it was more probable than not that the money would have been used for drug-trafficking. The Government stated that the applicant failed to produce evidence to substantiate his claim that he had made substantial winnings on cash bets since 1994.
Inadmissible under Article 6(2): Government's preliminary objection – The Government argued that the applicant had failed to exhaust available remedies, namely an appeal to the High Court by way of case stated and/or an application for judicial review. The essence of the applicant's complaint was that the relevant domestic law does not treat forfeiture proceedings as involving the determination of a criminal charge with the consequence that the procedural guarantees of Article 6, and notably the presumption of innocence, did not cover the proceedings. The remedies mentioned by the Government may have afforded him the opportunity to contest the decision to forfeit his money on the ground that it was against the

weight of the evidence or tainted with illegality. However, it was not established that they would have afforded him any prospects of success. In the event of case stated or judicial review proceedings, it was unlikely that the High Court would contest the facts as found by the Crown Court or its assessment of the evidence. Further, the applicant stated that the Crown Court proceedings did not disclose any error of law or that the decisions taken were in any way *ultra vires* such as to warrant an application to the High Court by way of judicial review proceedings. Finally, and more decisively, the High Court, either in case stated or judicial review proceedings, would not have entertained a challenge by the applicant to the evidentiary scheme of the 1994 Act. Therefore, the Government's preliminary objection was rejected.

As to the applicability of Article 6 under its criminal heading, no criminal charges were ever brought against the applicant. The forfeiture order was a preventive measure and could not be compared to a criminal sanction since it was designed to take out of circulation money which was presumed to be bound up with the international trade in illicit drugs. The proceedings which led to the making of the order did not involve the determination of a criminal charge. As to the applicant's reliance on the Phillips v. the United Kingdom judgment of 5 July 2001, the circumstances of the present case differed from it. In the Phillips case, the impugned confiscation order followed on from the applicant's prosecution, trial and ultimate conviction on charges of importing an illegal drug. It was found to be analogous to a sentencing procedure and to that extent attracted the applicability of Article 6. In that case, weight was attached to the fact that the purpose of the confiscation order was not the conviction or acquittal of the applicant and that the making of the confiscation order had no implications for his criminal record. These considerations were also relevant in the present case for concluding that Article 6 did not apply under its criminal head to the forfeiture proceedings. Further support for this conclusion could be found in the Air Canada and AGOSI v. the United Kingdom judgments: incompatible *ratione materiae*.

Inadmissible under Article 1 of Protocol No. 1: The seizure and forfeiture of the applicant's money amounted to an interference with the peaceful enjoyment of his possessions. Although the applicant was permanently deprived of his money following the forfeiture order, the impugned interference fell to be considered from the standpoint of the State's right to enforce such laws to control the use of property in accordance with the general interest. The forfeiture was effected pursuant to and in compliance with the provisions of the relevant sections of the 1994 Act and was thus in accordance with the domestic law. In assessing whether a fair balance was struck between the general interest of the community in the eradication of drug trafficking and the protection of the applicant's right to peaceful enjoyment of possessions, due weight had to be given to the wide margin of appreciation which the respondent State enjoyed in formulating and implementing policy measures in relation to drug trafficking. The powers vested in the customs' authorities were confined by the terms of the 1994 Act and their exercise was subject to judicial supervision. As to the applicant's argument that, unlike the custom's authorities, he was required at all times during the forfeiture proceedings to bear the burden of proof, it is not incompatible with the requirement of a fair hearing to shift the burden of proof to the defence in criminal proceedings. Nor is the fairness of a trial vitiated on account of the prosecution's reliance on presumptions of fact or law which operate to the detriment of the accused, provided such presumptions are confined within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence. These considerations had *a fortiori* to be applied to the forfeiture proceedings in the instant case, proceedings which did not involve the determination of a "criminal charge" against the applicant. In order to make out their case for the forfeiture of the applicant's money, the customs' authorities relied on forensic and circumstantial evidence, the reliability of which the applicant, assisted by counsel, was able to dispute at oral hearings before the Magistrates' Court and the Crown Court. It was open to the applicant to adduce evidence in order to satisfy the domestic courts of the legitimacy of the purpose of his visit to Spain, the reasons for taking such a large sum of money out of the country in the boot of a car and the source of the money. The domestic courts weighed the evidence before them, assessed it carefully and based the forfeiture order on that evidence. They refrained from any automatic

reliance on presumptions created in the relevant provisions of the 1994 Act and did not apply them in a manner incompatible with the requirements of a fair hearing. Therefore, the manner in which the applicant's money was forfeited did not amount to a disproportionate interference with his property rights or failure to strike a fair balance between respect for his rights under Article 1 of Protocol No. 1 and the general interest of the community: manifestly ill-founded.

ARTICLE 2 OF PROTOCOL No. 1

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

EREN - Turkey (N° 60856/00)
Decision 6.6.2002 [Section III]

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 in 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 in the case at the Supreme Administrative Court considered that the impugned decision should be annulled as devoid of any legal basis but despite his opinion the court decided not to annul the decision at issue. The applicant's subsequent appeals were to no avail.
Admissible under Article 2 of Protocol No. 1.

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Termination of the mandate of Members of Parliament as a result of the dissolution of their party by the Constitutional Court: *violation*.

SELİM SADAK and others - Turkey (N^{os} 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95)
Judgment 11.6.2002 [Section IV]

Facts: The applicants were members of the Turkish Grand National Assembly and a political party, the DEP (the Democracy Party - *Demokrasi partisi*), which was founded in May 1993. In November of that year, the Principal State Counsel at the Court of Cassation applied to the Constitutional Court to have the party dissolved. The application referred to statements made by various members of the DEP's central committee and statements made by its former chairman at two meetings in other countries. In March 1994, the Grand National Assembly lifted the applicants' parliamentary immunity at the request of the State Counsel at the competent Court of State Security. All the applicants were arrested and taken into custody as they left the parliament, except for two of them who remained within the building. In June 1994, the Constitutional Court made an order dissolving the DEP for terminating the

integrity of the state and the unity of the nation and undermining all the applicants' parliamentary mandates. In July 1994, the State Counsel filed submissions in which he accused the applicants of separatism and undermining the integrity of the state. The Court of State Security sentenced the applicants to prison sentences ranging from three to fifteen years. The Court of Cassation quashed the convictions of two of the applicants and upheld the others.

Law: Article 3 of Protocol No.1 – This article enshrined a characteristic of an effective political democracy and played a major role in the Convention system. It guaranteed the right of every individual to stand for election and, once elected, to exercise his or her mandate. Interference with the freedom of expression of a member of the parliamentary opposition called for the strictest possible supervision under the Convention. In the instant case, the applicants had been automatically deprived of their parliamentary mandates following the dissolution of the DEP. That penalty had not been imposed as a result of the applicants' political activities as individuals, but had been an automatic consequence of the dissolution of the party of which they were members. Since a constitutional amendment in 1995, only members of parliament whose words or deeds had caused the dissolution of a party had lost their parliamentary mandate. The measure concerned was an extremely harsh penalty: the DEP had been permanently dissolved with immediate effect and the applicants, who had been members of that party, had been banned from carrying on political activities and had been unable to continue to exercise their mandates. Consequently, the penalty imposed could not be regarded as proportionate to any legitimate aim relied on. The measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office, conferred on the applicants by Article 3 of Protocol No.1, and had infringed the unfettered discretion of the electorate which had elected them.

Conclusion: violation (unanimously).

Article 41 – The Court awarded each of the applicants 50,000 euros for damage. As regards costs and expenses, it awarded a total of 10,500 euros to seven applicants and a total of 9,000 euros to the remaining six applicants.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(1) of Protocol No. 4

FREEDOM OF MOVEMENT

Prohibition on entering specified area of city for 14 days: *no violation*.

OLIVIEIRA - Netherlands (Nº 33129/96)
Judgment 4.6.2002 [Section I (former composition)]

Facts : In 1983 the Burgomaster of Amsterdam, in response to the level of drugs-related activity in the city centre, authorised the police to order individuals to leave a specified area and not return within eight hours. The instruction was based on legislation which permitted the Burgomaster to issue all orders which he deemed necessary for the maintenance of public order or the limitation of general danger. In 1989 he empowered the police to order individuals to leave the area for 14 days. The instructions were subsequently modified so that only the Burgomaster himself could issue a prohibition order. In 1992 the Burgomaster issued such an order in respect of the applicant, on the basis of a series of police reports that the applicant had used or possessed hard drugs in the specified area and on each occasion had been ordered to leave for eight hours. On the last occasion, the applicant had been warned that a request for a 14-day prohibition order would be made if he committed such acts again. The applicant had nevertheless overtly used hard drugs again the same day and had consequently

been ordered to leave. In his decision, the Burgomaster noted that the applicant neither worked nor lived in the area. The applicant lodged an objection, arguing that the Burgomaster ought not to use his emergency powers since the situation could no longer be described as exceptional and there had been sufficient time to enact a by-law. Following a hearing before an advisory committee, the Burgomaster dismissed the objection. The applicant's appeal was rejected by the Council of State.
Law : Article 2 of Protocol No. 4 – There had been a restriction on the applicant's liberty of movement. The law gave the Burgomaster discretion to issue orders which he deemed necessary in order to prevent serious disturbances of public order and the national courts had considered that this constituted a sufficient legal basis. The Court accepted this. As to accessibility, the provision was set out in legislation and the case-law concerning its interpretation was published in domestic law reports. As to foreseeability, while the provision was rather general, the circumstances calling for the Burgomaster to issue orders he deemed necessary for the maintenance of public order were so diverse that it would scarcely be possible to formulate a law to cover every eventuality. The applicant had been ordered to leave the area on several occasions and had been warned that a 14-day prohibition would be requested. He was thus able to foresee the consequences of his acts and could regulate his conduct before an order was imposed. Moreover, as he could bring objection proceedings and a subsequent appeal, adequate safeguards were afforded against possible abuse. The measures pursued the legitimate aims of protecting public order and preventing crime. As to their necessity, the Court accepted that special measures might have to be taken to overcome the emergency situation in the area concerned at the relevant time and it could not be said that the national authorities overstepped their margin of appreciation when, in order to put an end to that situation, the Burgomaster issued a prohibition order in respect of the applicant. Taking into account that the applicant had already received several prohibition orders for eight hours but had nevertheless returned each time to the area to use hard drugs in public, that he was informed that if he committed such acts again in the near future a 14-day prohibition order would be requested and that he did not live or work in the area, the restriction on his freedom of movement was not disproportionate.
Conclusion: no violation (4 votes to 3)
Article 8 – The applicant's complaints under this provision coincided with those examined above.
Conclusion: no separate issue (unanimously).

LANDVREUGD - Netherlands (Nº 37331/97)
Judgment 4.6.2002 [Section I (former composition)]

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

Article 2(2) of Protocol No. 4

FREEDOM TO LEAVE A COUNTRY
Confiscation of passport: *admissible*.

NAPIJALO - Croatia (N° 66485/01)
Decision 13.6.2002 [Section I]

In February 1999 the applicant's passport was confiscated by the Croatian customs as he came back from Bosnia Herzegovina. Thereafter his passport remained in the hands of the authorities, although no proceedings were instituted against him. In March 1999 the applicant filed a civil action against the Ministry of Finance in the competent Municipal Court. In April

2001 his passport was returned to him by the police. He sought nonetheless a declaratory decision that in February 1999 his passport had been taken by the authorities and returned in April 2001. In November 2001 the court dismissed his claim. In the meantime, in April 1999, he had lodged an application with the County Court, claiming that his freedom of movement was breached and requesting that the Ministry of Finance be ordered to return his passport. In September 1999 his application was turned down and he was advised to start civil proceedings before a municipal court against the Ministry of Finance to recover his passport. The applicant's subsequent appeal to the Supreme Court was rejected in April 2000.

Admissible under Article 6(1) (applicability, length of proceedings).

Admissible under Article 2 of Protocol No. 4: No proceedings concerning the applicant's alleged customs offence were instituted against him and no decision was taken regarding the confiscation of his passport. Hence he was prevented from challenging the confiscation of his passport in the course of legal proceedings whereby the authorities would have established the relevant facts and given the reasons for this confiscation. Only proceedings of that character would have given the applicant a real opportunity to challenge the confiscation of his passport and establish a possible violation of his right to freedom of movement. The proceedings before the Municipal Court only concerned the return of his passport. In these proceedings, the passport was treated as his possession and not as a document issued by public authorities for the purpose of travelling outside Croatia. The proceedings before the County Court and the Supreme Court only dealt with the procedural question of whether the applicant was able to lodge a claim for the protection from an unlawful act. Neither of these proceedings would have allowed him to challenge any decision relating to the confiscation of his passport and therefore his complaints could not be rejected for failure to exhaust domestic remedies.

Other judgments delivered in June 2002

Article 2

ERDOGAN - Turkey (Nº 26337/95)
Judgment 20.6.2002 [Section III]

death of applicant's son in custody – friendly settlement (*ex gratia* payment of 100,000 euros and declaration by Government).

Articles 2, 3, 5, 8 and 13 and Article 1 of Protocol No. 1

ORHAN - Turkey (Nº 25656/94)
Judgment 18.6.2002 [Section I (former composition)]

disappearance of applicant's brothers and son after being taken into custody and effectiveness of investigation, destruction of homes and possessions by the security forces, availability of effective remedy and hindrance of the exercise of the right of petition – violation.

SIDDIK YAŞA - Turkey (Nº 22281/93)
Judgment 27.6.2002 [Section I]

killing of applicant's wife and son and destruction of home by security forces – friendly settlement (*ex gratia* payment of £89,000 (GBP) and declaration by Government).

Article 5(3)

ERYK KAWKA - Poland (Nº 33885/96)
Judgment 27.6.2002 [Section I]

ordering of detention on remand by prosecutor – violation.

FILIZ and KALKAN - Turkey (Nº 34481/97)
Judgment 20.6.2002 [Section III]

failure to bring detainees promptly before a judge – violation.

DENONCIN - France (Nº 41376/98)
Judgment 27.6.2002 [Section I]

length of detention on remand – struck out of the list (absence of intention to pursue application.

Article 5(3) and (4)

IĞDELI - Turkey (Nº 29296/95)
Judgment 20.6.2002 [Section III]

failure to bring detainee promptly before a judge and absence of possibility to challenge lawfulness of detention – violation.

Article 5(4)

MIGOŃ - Poland (Nº 24244/94)
Judgment 25.6.2002 [Section IV]

absence of right for detainee to attend or be represented at hearings on detention on remand, and refusal of access to prosecution's file in connection with continuation of detention on remand – violation.

SAMY - Netherlands (Nº 36499/97)
Judgment 18.6.2002 [Section II]

length of time taken to decide on request for release from detention with a view to expulsion – friendly settlement.

DELBEC - France (Nº 43125/98)
Judgment 18.6.2002 [Section IV]

L.R. - France (Nº 33395/96)
Judgment 27.6.2002 [Section I]

D.M. - France (Nº 41376/98)
Judgment 27.6.2002 [Section I]

length of time taken to decide on request for release from psychiatric detention – violation.

Article 6(1)

KOMANICKÝ - Slovakia (Nº 32106/96)
Judgment 4.6.2002 [Section IV]

court decisions taken in absence of party, despite legitimate excuse for absence – violation.

MARQUES FRANCISCO - Portugal (Nº 47833/99)
Judgment 6.6.2002 [Section III]

MEREU and S. NAVARRESE s.r.l. - Italy (Nº 38594/97)
Judgment 13.6.2002 [Section I]

TURKITE IS BANKASI - Finland (Nº 30013/96)
UTHKE - Poland (Nº 48684/99)
Judgments 18.6.2002 [Section IV]

length of civil proceedings – violation.

MAJSTOROVIĆ - Croatia (Nº 53227/99)
Judgment 6.6.2002 [Section I]

BELINGER - Slovenia (Nº 42320/98)
Judgment 13.6.2002 [Section III]

LINARD - France (Nº 42588/98)
Judgment 25.6.2002 [Section II]

TEKA LTD. - Greece (Nº 50529/99)
Judgment 26.6.2002 [Section I]

length of civil proceedings – friendly settlement.

MOYER - France (Nº 45573/99)
Judgment 25.6.2002 [Section II]

length of administrative proceedings – friendly settlement.

SIEGL - Austria (Nº 36075/97)
Judgment 20.6.2002 [Section III]

length of land condolidation proceedings – friendly settlement.

Article 6(1) and Article 10

YAĞMURDERELI - Turkey (Nº 29590/96)
Jugdment 4.6.2002 [Section II]

conviction for making separatist propaganda, and independence and impartiality of National Security Court – violation.

Article 6(1) and Article 13

DELIĆ - Croatia (Nº 48771/99)
Judgment 27.6.2002 [Section I]

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

Article 6 and Article 1 of Protocol No. 1

KATSAROS - Greece (Nº 51473/99)
Judgment 6.6.2002 [Section I]

delays by authorities in complying with court judgments and effect on property rights – violation.

S.B. - Italy (Nº 40037/98)
T. - Italy (Nº 40537/98)
Ol.B. - Italy (Nº 42444/98)
Judgments 13.6.2002 [Section I]

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

Article 8

FAULKNER - United Kingdom (Nº 37471/97)
Judgment 4.6.2002 [Section II]

interference with prisoner's correspondence – violation.

Article 41

PIALOPOULOS - Greece (Nº 37095/97)
Judgment 27.6.2002 [Section II (former composition)]

just satisfaction.

Article 1 of Protocol No. 1

BURHAN BILGIN - Turkey (Nº 20132/92)
LEYLI BILGIN - Turkey (Nº 20133/92)
MUNIR BILGIN - Turkey (Nº 20134/92)
CANLI - Turkey (Nº 20136/92)
GÜNAL - Turkey (Nº 20142/92)
ISMET ŞEN - Turkey (Nº 20153/92)
MAHMUT ŞEN - Turkey (Nº 20154/92)
KEMAL ŞEN - Turkey (Nº 20156/92)
MEHMET TAŞDEMIR - Turkey (Nº 20158/92)
Judgments 20.6.2002 [Section III]

delays in payment of compensation for expropriation – violation.

ÖZDILER and BAKAN - Turkey (Nº 33322/96)
ÖZDILER - Turkey (Nº 33419/96)
KARABIYIK and others - Turkey (Nº 35050/97)
ÖZKAN and others - Turkey (Nº 35079/97)
ÜNLÜ - Turkey (Nº 35866/97)
BAYRAM and others - Turkey (Nº 35867/97)
BEKMEZCI and others - Turkey (Nº 37087/97)
BIRSEL and others - Turkey (Nº 37414/97)
BAYRAM - Turkey (Nº 38915/97)
ATALAĞ -Turkey (Nº 38916/97)
Judgments 27.6.2002 [Section III]

delays in payment of compensation for expropriation – friendly settlement.

Article 4 of Protocol No. 7

SAILER - Austria (Nº 38237/97)
Judgment 6.6.2002 [Section I]

conviction in criminal proceedings after previous conviction in administrative proceedings arising out of same facts – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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