CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 54
on the case-law of the Court
June 2003

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

Statistical information[1]

Judgments delivered	June	2003
Grand Chamber	0	5(11)
Section I	7	95(99)
Section II	23	92(94)
Section III	15(17)	47(49)
Section IV	20	77
Sections in former compositions	0	10
Total	**65(67)**	**326(340)**

Judgments delivered in June 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	5	2	0	0	7
Section II	19	3	0	1[2]	23
Section III	12(14)	2	0	1[2]	15(17)
Section IV	16	4	0	0	20
Total	**52(54)**	**11**	**0**	**2**	**65(67)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4(10)	0	0	1[3]	5(11)
former Section I	4	0	0	0	4
former Section II	1	0	0	0	1
former Section III	4	0	0	0	4
former Section IV	0	0	0	1[4]	1
Section I	70(74)	23	0	2[5]	95(99)
Section II	73(75)	13	2	4[6]	92(94)
Section III	43(45)	3	0	1[2]	47(49)
Section IV	57	17	3	0	77
Total	**256(270)**	**56**	**5**	**9**	**326(340)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Just satisfaction.
3. Preliminary issue.
4. Revision.
5. One revision judgment and one just satisfaction judgment.
6. Two revision judgments and two just satisfaction judgments.

Decisions adopted		June	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		10	70(72)
Section II		7(8)	67(74)
Section III		7	49(50)
Section IV		25(26)	85(121)
former Sections		0	1
Total		**49(51)**	**272(318)**
II. Applications declared inadmissible			
Section I	- Chamber	7	38
	- Committee	450	2613
Section II	- Chamber	11	41(42)
	- Committee	416	2342
Section III	- Chamber	10	46(48)
	- Committee	192	1187
Section IV	- Chamber	8	56
	- Committee	363	1714
Total		**1457**	**8037(8040)**
III. Applications struck off			
Section I	- Chamber	7	15
	- Committee	2	19
Section II	- Chamber	4	22
	- Committee	6	24
Section III	- Chamber	5	30
	- Committee	1	9
Section IV	- Chamber	2	67(85)
	- Committee	4	20
Total		**31**	**206(224)**
Total number of decisions[1]		**1537(1539)**	**8515(8582)**

1. Not including partial decisions.

Applications communicated	Juin	2003
Section I	36	196(201)
Section II	23(24)	177(178)
Section III	57	308(316)
Section IV	27	183(220)
Total number of applications communicated	**143(144)**	**864(915)**

ARTICLE 3

INHUMAN TREATMENT
Ill-treatment in custody and effectiveness of the investigation: *violation*.

HULKI GUNEŞ - Turkey (N° 28490/95)
Judgment 19.6.2003 [Section III]
(see Article 6(3)(d), below).

INHUMAN TREATMENT
Ill-treatment in detention and effectiveness of the investigation: *violation*.

PANTEA - Romania (Nº 33343/96)
Judgment 3.6.2003 [Section II]
(see Article 5(3), below).

INHUMAN TREATMENT
Destruction of Roma houses by mob: *admissible*.

MOLDOVAN and others - Romania (Nº 41138/98 and Nº 64320/01)
Decision 3.6.2003 [Section II]

The 24 applicants are all Romanian nationals of Roma origin who lived in the same village. In September 1993 a row broke out between three Roma men and another villager that led to the death of the latter's son who tried to intervene. The three men fled to a nearby house. A large, angry crowd gathered outside, including the local police commander and several officers. The house was set on fire. Two of the men managed to emerge from the house, but were pursued by the crowd and beaten to death. The third was prevented from escaping from the building and died in the fire. The applicants allege that the police encouraged the crowd to destroy more Roma property in the village. By the following day, thirteen Roma houses had been completely destroyed and several more had been very badly damaged. Much of the applicants' personal property was also destroyed. In July 1994, three civilians were arrested and charged with extremely serious murder. They were released within a few hours, however, and their arrests warrants were cancelled. With regard to police involvement in the incident, the case was referred to the Military Prosecutor's Office. In September 1995 all charges against the local police commanders were dropped on the basis that their inability to stop the crowd did not in itself constitute participation. In August 1997, the Public Prosecutor issued an indictment against 11 civilians. A criminal trial, in conjunction with a civil action, began the following November, at which a succession of witnesses testified to the active involvement of the police in the killings and burnings. Judgment in the criminal case was delivered in July 1998. The court found that the accused had acted in different ways to eliminate the Roma from their village. The preliminary investigation was deemed inadequate. Five villagers were convicted of extremely serious murder; twelve villagers, including these five, were convicted of other offences. The court sentenced them to between one and seven years' imprisonment. The prosecution appealed against the leniency of the sentences. The appellate court convicted a sixth villager of extremely serious murder and increased the sentence of one of the defendants; the other defendants had their sentences reduced. In November 1999, the Supreme Court upheld the convictions for destruction of property but reduced the charge of extremely serious murder to one of serious murder for three of the

defendants. The following year, two of them received a presidential pardon. Shortly after the attack on Roma property, the Romanian Government allocated 25 million ROL for the reconstruction of the houses damaged or destroyed. Only four houses were rebuilt with these funds. In November 1994, the Government allocated a further 32 million ROL and four more houses were rebuilt. The applicants have submitted photographs to show that these houses were very badly built. Judgment in the civil case was delivered in January 2001. The Regional Court awarded damages for houses that had not been rebuilt and maintenance allowances for the children of the deceased. The applicants' claims for loss of personal property were all dismissed as unsubstantiated. Their claims for non-pecuniary damages were also dismissed.
Admissible under Articles 3, 6(1), 8 and 14.

EXPULSION
Expulsion of Tanzanian national with HIV: *communicated*.

NDANGOYA - Sweden (Nº 17868/03)
[Section IV]
(see Article 8, below).

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Detention for 15 months in ordinary remand centre despite order for confinement in custodial clinic: *communicated*.

MORSINK - Netherlands (Nº 48865/99)
Decision 3.6.2003 [Section III]

In September 1997 the applicant was convicted of assault causing grievous bodily harm and sentenced to fifteen months' imprisonment. In addition, as he was found to be suffering from a mental disorder, an order confining him to a custodial clinic was made (TBS order). The order took effect once the prison sentence had been served, in February 1998. However, the applicant was detained in an ordinary remand centre. In August 1998 the applicant lodged an appeal against the apparent *ex officio* extension of the six-month period permitted by the relevant legislation. In November 1998 the applicant lodged an appeal against another apparent *ex officio* extension of three months. The Minister of Justice filed written submissions in reply, following which the applicant's request for suspension of the decision to extend his detention by a further three months was rejected. In March 1999 the Appeals Board quashed the two extensions on formal grounds but substituted its own decision that they were justified in substance. There was no further appeal against this decision. The applicant was eventually put in a custodial clinic in June 1999.
Communicated under Article 5(1).
Inadmissible under Article 5(3): The applicant's continued detention on the basis of the TBS order could not be regarded as a form of pre-trial detention, but was detention after conviction by a competent court.

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Lawfulness of an urgent measure of provisional confinement: *no violation*.

HERZ - Germany (N° 44672/98)
Judgment 12.6.2003 [Section III]

Facts: In October 1996, a guardianship court ordered that the applicant be provisionally detained for not more than six weeks, without hearing the applicant owing to the urgency of the matter. The court based its decision on the diagnosis of the hospital doctor, obtained on the same day by telephone; the doctor, who had examined the applicant on the previous day and had already treated him on a number of occasions, again found that he was suffering from paranoid psychosis. According to the guardianship court, it was necessary to order the applicant's internment because he refused treatment and thus represented a danger to his own health and to public safety. On 11 November 1996, the applicant's lawyer appealed against the detention order and stated that he would provide the grounds of the appeal after consulting the court file. On 18 November 1996, the applicant absconded from the hospital. The grounds of the applicant's appeal were received at the court on 2 December 1996. On 13 December 1996, one day after the expiry of the detention order, the regional court dismissed the appeal against the provisional internment order on the ground that the applicant was no longer affected, as the effects of the order had lapsed on 12 December 1996. The court further stated that at the time when the grounds of the appeal had reached it, the applicant was at liberty and was therefore no longer concerned by the impugned measure. The applicant's subsequent appeals were dismissed.
Law: Article 5(1)(e) – The temporary detention order of October 1996, made without a written medical report and without hearing the applicant – which is permissible under domestic law in the event of immediate danger – is not unlawful because the court was required to reach a rapid decision. As regards the merits of the order, the Court observes that the national court made the detention order solely on the basis of a diagnosis obtained by telephone on the same day from the doctor treating the applicant. The numerous medical reports previously drawn up in respect of the applicant made contradictory findings as to the applicant's health; thus, a definitive conclusion as to his health did not appear easy to obtain. There is no reason to conclude that the situation, as presented to the judge responsible for the matter on the day on which he made the impugned order, did not warrant the decision to have the applicant medically examined and to order his provisional detention. Moreover, the order was made for a limited period of six weeks and had been made for the specific purpose of establishing whether or not the applicant was suffering from mental disease. Last, unlike in *Varbanov v. Bulgaria* (ECHR 2000-X), the applicant's provisional detention was ordered on the basis of a medical opinion. Having regard to the latitude which the Contracting States enjoy in relation to emergency detention, the procedure followed by the national court was consistent with the Convention.
Conclusion: no violation (unanimously).
Article 5(4) – *Existence of an effective remedy to secure a review of the lawfulness of the detention*: the detention was ordered by a court and the applicant was able to take judicial action against that decision. However, the applicant was unable to secure an effective review of the lawfulness of his detention since his actions were dismissed without an examination of the merits, on the ground that the measure depriving him of his liberty had expired and the applicant had in the meantime absconded from the hospital. The mere fact that a provisional detention order has expired cannot deprive the person concerned of the right to a review of the lawfulness of the measure even after its expiry, having regard in particular to the gravity of detention in a psychiatric institution, albeit provisional. Furthermore, the fact that the

applicant had absconded cannot be taken into consideration because he continued to be affected by the internment measure.
Conclusion: violation (unanimously).
Article 5(4) – *"Speedy" review of the lawfulness of the internment*: the applicant's lawyer had stated that he would provide the grounds for the appeal against the detention order only after he had been able to consult the file. The Court considers that the national court was therefore entitled to wait until the applicant provided the grounds of his appeal before adjudicating on the matter; for the purpose of examining this complaint, the Court therefore takes into consideration only the period of eleven days between the date of receipt of the grounds of the appeal and the date of the national court's decision and concludes that that period is not open to criticism. In the Court's opinion, the fact that the applicant had absconded from the hospital during that period assumes definite importance for the examination of the question of a speedy review; in such circumstances, the applicant's interest in having the court decide rapidly on his action concerning the lawfulness of his provisional detention which was in any event for a limited period is not sufficiently made out.
Conclusion: no violation (unanimously).
Article 41 – The Court awards a sum for non-pecuniary damage and a sum for costs and expenses.

Article 5(1)(f)

EXTRADITION
Period to be examined with regard to detention with a view to extradition: *no violation*.

RAF - Spain (N° 53652/00)
Judgment 17.6.2003 [Section IV]

Facts: The applicant is currently in prison in France. He was arrested in Spain in April 1997 on suspicion of being a member of a gang specialising in producing false identity papers and placed in provisional detention. At the same time, extradition proceedings were commenced and the applicant was ordered to be detained pending extradition under an international arrest warrant issued following an international detention order made by a French judge. Two years later, the Spanish investigating judge ordered the applicant's release; the applicant remained in detention for extradition purposes. In May 1999, the Málaga *Audiencia Provincial* sentenced the applicant to eight years' imprisonment and a fine. In May 2000, the court decided that the applicant could be temporarily handed over to the French authorities pending examination of his appeal by the Supreme Court. The French authorities agreed that the applicant should be temporarily handed over; the *Audiencia Nacional* made an order to that effect in January 2001, pursuant to the European Convention on Extradition. The applicant was handed over to the French authorities in February 2001.
Law: Article 5 – (a) *The lawfulness of the detention*: The applicant's detention by the Spanish authorities was always covered by one of the exceptions to Article 5(1) of the Convention, whether in paragraph (c), (f) or (a). The applicant therefore enjoyed sufficient guarantees to be protected from an arbitrary deprivation of freedom.
(b) *The duration of detention pending extradition*: The applicant was only in detention pending extradition, in the conditions provided for in Article 5(1)(f) of the Convention, during two periods: between April 1999, the day on which he was released for the purposes of the proceedings in Spain, and May 1999, the date of his conviction, and between January 2001, the date of the decision of the Spanish authorities to hand him over to the French authorities, and February 2001, the date on which he was actually handed over to the French authorities. That duration is not unreasonable.
Conclusion: no violation (unanimously).

Article 5(3)

JUDGE OR OTHER OFFICER
Ordering of detention by prosecutor: *violation*.

PANTEA - Romania (Nº 33343/96)
Judgment 3.6.2003 [Section II]

(extracts from press release)

Facts:Alexandru Pantea is a Romanian national who was born in 1947 and lives in Timişoara. A former public prosecutor, he now works as a lawyer. In April 1994 Mr Pantea was involved in an altercation with a person who sustained serious injuries. He was prosecuted and remanded in custody. He was released in April 1995 after his detention had been ruled unlawful and committed for trial on a charge of assault causing grievous bodily harm. The case is still pending in the Craiova Court of First Instance. The applicant asserted that at the instigation of the staff of Oradea Prison he had been savagely beaten by his fellow-prisoners and then made to lie underneath his bed, immobilised with handcuffs, for nearly 48 hours. He alleged that, suffering from multiple fractures, he had been transferred to Jilava Prison Hospital in a railway wagon, and that during the journey, which had lasted several days, he had not received any medical treatment, food or water, and had not been able to sit down because of the large number of prisoners being transported. He further alleged that while in Jilava Prison Hospital he had been obliged to share a bed with an Aids patient and had suffered psychological torture. The applicant lodged a complaint, accusing the prison warders and his fellow-prisoners of ill-treatment, but the complaint was dismissed by the Oradea military prosecution service, which ruled that the accusations against the prison warders were unsubstantiated and that the complaint against the applicant's fellow-prisoners was out of time. An action in which the applicant sought damages for his unlawful detention was also dismissed by the Timiş Court of First Instance on the ground that it was time-barred.
Relying on Article 3 of the Convention, the applicant complained of the treatment he had been subjected to while in prison. He further contended that the circumstances of his arrest and detention had been contrary to Article 5. He complained that he had not been brought promptly before a judge after his arrest, in breach of Article 5(3), that the Romanian courts had not speedily ruled on his application for release, in breach of Article 5(4), and that he had not obtained compensation for his unlawful detention, in breach of Article 5(5). Relying on Article 6, he complained of the length of the criminal proceedings against him and submitted that he had not been able to consult his lawyer during the investigation stage. Lastly, he complained of a violation of Article 8 of the Convention on account of the undue prolongation of his detention.
Law: Article 3 – *The allegation of ill-treatment*: On the question whether the ill-treatment had taken place, and if so how serious it was, the Court noted that no one had denied that the applicant had been assaulted when in pre-trial detention, while he was in the charge of the prison warders and management (although his other allegations had not been substantiated, for lack of evidence). Medical reports attested to the number and severity of the blows the applicant had received. The Court held that these facts had been clearly established and were sufficiently serious to constitute inhuman and degrading treatment. In addition, the Court considered that the treatment in question had been aggravated by a number of circumstances. Firstly, it was not in dispute that the applicant had been handcuffed on the orders of the prison's deputy governor while he continued to share a cell with his assailants. Secondly, there was no evidence that the treatment prescribed for the applicant had ever actually been administered. Moreover, when the applicant was taken to another prison a few days after the above incident, in which he had suffered a number of fractures, he had had to travel for several days in a prison service railway wagon in conditions which the Government had not

denied. Lastly, it appeared from the documents produced that when the applicant was taken into hospital he had not been seen and treated by the surgery department. In those circumstances, the Court considered that the treatment suffered by the applicant had been contrary to Article 3 of the Convention. As to whether this treatment was imputable to the Romanian authorities, the Court considered, in view of the circumstances of the case, that the authorities could reasonably have been expected to foresee that the applicant's psychological condition made him vulnerable and that his detention was capable of exacerbating his feelings of distress and his irascibility towards his fellow-prisoners, making it necessary to keep him under closer surveillance. The Court accepted the applicant's argument that it was illegal to place a person detained pending trial in the same cell as repeat-offenders or persons convicted in a decision which had become final. In addition, the cell in question was generally known in the prison as "a cell for dangerous prisoners". Moreover, the Court noted that several witnesses had given evidence that the prison warder had not come promptly to the applicant's aid and furthermore that he had been required to continue to occupy the same cell. In those circumstances, the Court held that there had been a violation of Article 3, as the authorities had failed to discharge their positive obligation to protect the applicant's physical integrity.
Conclusion: violation (unanimously).
As to whether the inquiry conducted by the authorities was adequate: With regard to the inquiry concerning the applicant's fellow-prisoners, the Court noted that the applicant's complaint had been dismissed because it had not been lodged within the time allowed by law, which varied from one category of offence to another. The applicant had complained of "attempted homicide" or "assault causing grievous bodily harm", but the public prosecutor's office had classified the offence as "common assault", with the result that the time allowed was reduced and the complaint dismissed. Moreover, it appeared from the facts of the case that the public prosecutor's office had not made sufficient effort to establish what consequences the incident had had on the applicant's health. That information was essential for the classification of the offence. With regard to the inquiry concerning the prison warders, the Court notes that in dismissing the applicant's complaint the public prosecutor's office had merely asserted that it was unsubstantiated. But in the absence of convincing explanations of the numerous discrepancies between the various items of evidence in the case, such a conclusion could not be accepted. It also appeared from the file that the applicant had appealed against the decision of the public prosecutor's office, but the Court had not received any information from the Government on that point. In the light of the above considerations, the Court considered that the authorities had not conducted a detailed and effective inquiry into the applicant's arguable allegation that he had been subjected to ill-treatment while in prison, and accordingly ruled that there had been a violation of Article 3 of the Convention in that respect.
Conclusion: violation (unanimously).
Article 5(1) – As regards the applicant's arrest when it could not reasonably be considered necessary to prevent him from fleeing after committing an offence, the Court considered that the failure to comply with the "procedure prescribed by law" at the time of the applicant's arrest, which had been recognised by the Romanian courts and admitted by the Government, had been clearly established and entailed a violation of Article 5(1)(c) of the Convention.
Conclusion: violation (unanimously).
Article 5(1) – As regards the fact that the applicant's detention continued after the validity of the warrant committing him to prison had expired on 19 August 1994, the Court observed, referring to its case-law, that the Oradea Court of Appeal had ruled that the applicant's continued detention after that date had been unlawful because no extension of his detention had been ordered by a judge, and that the Government had not denied that that was the case. The Court accordingly considered that the applicant's detention after 19 August 1994 had not been lawful for the purposes of Article 5(1)(c) of the Convention and that there had been a violation of that provision.
Conclusion: violation (unanimously).
Article 5(3) – As to whether the public prosecutor who ordered the applicant's detention was a judge for the purposes of Article 5(3), the Court referred to its case-law and observed that

since in Romania public prosecutors acted as officers of the State legal service, subordinate to the Attorney General in the first instance and then to the Minister of Justice, they did not satisfy the requirement of independence from the executive. It followed that the legal officer who had ordered the applicant's detention was not a judge within the meaning of Article 5(3). As to compliance with the requirement in Article 5(3) that everyone arrested must be brought promptly before a judge, the Court could not accept that it had been necessary to detain the applicant for more than four months before he was brought before a judge or other officer satisfying the requirements of the third paragraph of Article 5. There had therefore been a violation of Article 5(3) of the Convention.
Conclusion: violation (unanimously).
Article 5(4) – Three months and 28 days had elapsed before any court ruled on the applicant's request for release. Having regard to the circumstances of the case, the Court considered that the requirement of speedy determination laid down by Article 5(4) had not been satisfied and that there had therefore been a violation of the Convention in that respect.
Conclusion: violation (unanimously).
Article 5(5) – The Court considered that the effective enjoyment of the right to compensation for unlawful detention, guaranteed by Article 5(5) of the Convention, had not been secured by Romanian law in this case with a sufficient degree of certainty. There had therefore been a violation of the Convention in that respect.
Conclusion: violation (unanimously).
Article 6(1) – The Court noted that the proceedings had begun to affect the applicant's situation as soon as the prosecution began. However, it took as the starting-point for the assessment of their length the date on which the Convention came into force in Romania, namely 24 June 1994. The criminal proceedings, which were currently pending in a court at the first level of jurisdiction, had lasted eight years and eight months. Considering that the Romanian authorities could be held responsible for the overall delay in dealing with the case, the Court held that the proceedings failed to satisfy the "reasonable time" requirement in Article 6(1) of the Convention, and that that provision had been breached.
Conclusion: violation (unanimously).
Article 6(3)(c) – The Court took the view that the applicant's complaint that he had been unable to consult a lawyer was premature, since the proceedings against the applicant were still pending before the Romanian courts. It accordingly held that at the current stage there had been no violation of Article 6(3)(c).
Conclusion: no violation (unanimously).
Article 8 – As regards the applicant's allegation that his wife had been prevented from visiting him, the Court noted that this assertion was contradicted by the statement Mrs Pantea had made to the public prosecutor. As regards the applicant's other allegations relating to Article 8 of the Convention, the Court noted that these were not corroborated by any evidence in the file. It accordingly held that there had been no violation of Article 8 of the Convention.
Conclusion: no violation (unanimously).
Article 41 – Court awarded the applicant 40,000 euros for pecuniary and non-pecuniary damage and 6,000 euros for costs and expenses.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Lack of effective review of lawfulness of provisional psychiatric confinement: *violation*.

HERZ - Germany (N° 44672/98)
Judgment 12.6.2003 [Section III]
(see Article 5(1)(e), above).

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Examination of request for legal aid for criminal proceedings: *Article 6 not applicable*.

GUTFREUND - France (N° 45681/99)
Judgment 12.6.2003 [Section III]

Facts: The applicant was summoned to appear before the district court charged with a Class 4 minor offence and applied for legal aid. The legal aid office refused his application. On appeal, this decision was upheld by the judge who had already presided over the legal aid office; under the applicable provisions, legal aid could not be granted to a person being prosecuted before the district court for a minor offence other than a Class 5 minor offence. The applicant, who was legally represented, was found guilty but the court gave him a discharge.
Law: Article 6(1) – The procedure relating to an application for legal aid does not concern either the determination of guilt or the setting of the amount of the penalty and does not affect either the legal substance or the factual substance of a criminal charge.
For the applicant, what was at stake in the criminal proceedings was limited: he was prosecuted before a district court for a Class 4 minor offence and faced a maximum fine of 5,000 FRF. The procedure before the district court is "simple": it is oral and legal representation is not mandatory. In those circumstances, the "interests of justice" did not require that the accused be compulsorily assisted by a lawyer appointed by the court. Thus, the refusal of the application for legal aid was not decisive for the substance of the charge against the applicant. Accordingly, the criminal aspect of Article 6(1) does not come into play. As the "interests of justice" within the meaning of Article 6(3)(c) do not in this instance require the appointment of a lawyer by the court, the Convention does not guarantee the applicant a right to free assistance by a lawyer appointed by the court; nor, consequently, does it guarantee a right to legal aid. The national legislation on legal aid provides only for the possibility to receive legal aid. That possibility does not appear to constitute a "right" recognised in domestic law. The relevant decree implementing the law does not contain provisions on the grant of legal aid for minor offence proceedings other than for Class 5 offences. The applicant therefore did not have a defensible right recognised in domestic law. The civil aspect of Article 6(1) therefore did not come into play.
Conclusion: Article 6 inapplicable (unanimously).

ACCESS TO COURT
Obligation to lodge advance costs in proceedings before the Constitutional Court: *inadmissible*.

REUTHER - Germany (N° 74789/01)
Decision 5.6.2003 [Section I]
(see Article 35(1), below).

FAIR HEARING
Fairness of proceedings concerning reimbursement of the costs of gender re-assignment surgery: *violation*.

VAN KÜCK - Germany (Nº 35968/97)
Judgment 12.6.2003 [Section III]
(see Article 8, below).

FAIR HEARING
Immediate application of a new law to pending proceedings: *communicated*.

MAURICE - France (N° 11810/03)
[Section II]
(see Article 1 of Protocol No. 1, below).

REASONABLE TIME
Length of proceedings relating to eviction of tenants: *violation*.

TIERCE - San Marino (N° 69700/01)
Judgment 17.6.2003 [Section II]

Facts: In March 1993, proceedings were commenced against the applicant for cancellation of his tenancy contract and eviction for non-payment of rent. In August 1998, the *Commissario della legge* made an order for the applicant's eviction from the property, to be enforced immediately. The eviction took place in 1999. By judgment of October 2001, published in December 2001, the civil court of appeal allowed the applicant's appeal in part and reduced the amount of rent to be paid.
Law: Article 6(1) – The period to be taken into consideration began in March 1993 and ended in December 2001. It therefore lasted eight years and nine months. The cause of the length of the proceedings lies mainly in the complexity of the national proceedings, which are characterised by the need, unless the parties waive the relevant rights, to observe all the periods prescribed for submitting evidence (first and second), further evidence (first and second) and evidence in rebuttal, both at first instance and on appeal, which does not help to speed up the pace of the proceedings, and, moreover, in the fact that the civil courts do not have the power of initiative where the parties fail to act.
Conclusion: violation (6 votes to 1).
Article 41 – The Court awards the applicant 2,500 € for non-pecuniary damage.

IMPARTIAL TRIBUNAL
Participation in proceedings involving a university of a judge employed by the university as an associate professor: *violation*.

PESCADOR VALERO - Spain (N° 62435/00)
Judgment 17.6.2003 [Section IV]

Facts: The applicant lodged an administrative appeal against the decision of the rector of the University of Castilla-L Mancha (UCLM) removing him from his post as head of the administrative staff on the campus of the University of Albacete. The President of the High Court of Justice dealing with the matter was a visiting Professor of Law at the UCLM and received emoluments in that capacity. The applicant declared that he had become aware of this more than one and a half years after bringing his action and sought an order requiring the

judge to stand down. The court dismissed the application, taking the view that it should have been submitted earlier, since the applicant should by virtue of his duties as head of the administrative staff on the campus have been aware of the professional connection between the judge and the university. The court further stated that the applicant had failed to adduce evidence that he had not actually become aware of the situation until later. The Constitutional Court dismissed the applicant's *amparo* appeal.
Law: Article 6(1) – There is nothing to indicate that the applicant knew the judge, or event that he was under an obligation to know him, before he applied for an order requiring the judge to stand down. Also, the reason given by the court for dismissing the application for an order requiring the judge to stand down was based on a presumption that the applicant knew of the links between the judge and the defendant university, a presumption unsupported by any firm evidence. Furthermore, to require the applicant to show that he did not know the judge in question is tantamount to imposing an excessive evidential burden on him. As a visiting professor at the university, the judge had had regular and close professional links with the university for several years. He received not unsubstantial periodic emoluments from the university for his teaching activities. The twofold function of judge and visiting professor in receipt of emoluments from the opposing party may have led the applicant to entertain legitimate fears that the judge in question would not deal with his case with the requisite impartiality.
Conclusion: violation (unanimously).
Article 41 – The Court awards the applicant 2,000 € for non-pecuniary damage.

Article 6(1) [criminal]

CRIMINAL CHARGE
Request for legal aid for criminal proceedings: *Article 6 not applicable*.

GUTFREUND - France (N° 45681/99)
Judgment 12.6.2003 [Section III]
(see Article 6(1) [civil], above).

FAIR HEARING
Refusal to join five parallel sets of proceedings before the same court: *inadmissible*.

GARAUDY - France (N° 65831/01)
Decision 24.6.2003 [Section IV]
(see Article 17, below).

ADVERSARIAL PROCEEDINGS
Non-disclosure of material by prosecution: *violation*.

DOWSETT - United Kingdom (Nº 39482/98)
Judgment 24.6.2003 [Section II]

Facts: The applicant was convicted of murder in 1989. He was subsequently informed that the prosecuting authorities had withheld a large amount of undisclosed material, some of which he believed would have supported his defence. Some of the material was disclosed prior to the hearing of the applicant's appeal but other material was withheld, partly on the ground of "public interest immunity". The Court of Appeal dismissed the applicant's appeal, finding that there had been no miscarriage of justice.

Law: Article 6(1) – This provision requires that the prosecution authorities disclose to the defence all material evidence in their possession. The entitlement to disclosure of relevant evidence is not absolute, as there may be competing interests to be weighed against the rights of the accused. However, only such measures restricting the rights of the defence as are strictly necessary are permissible and any difficulties caused to the defence must be sufficiently counter-balanced by the procedures followed by the judicial authorities. A procedure whereby the prosecution assesses the importance of material and decides, without notifying the judge, to withhold it on grounds of public interest, cannot comply with Article 6. In the present case, the procedure whereby the Court of Appeal assessed, with the assistance of defence counsel, the nature and significance of the material disclosed after the trial was sufficient to satisfy the requirements of fairness in that respect. However, the Court of Appeal did not review the undisclosed material, and while the applicant could have asked the Court of Appeal to do so, the Court had in any event considered in the case of *Rowe and Davis* (ECHR 2000-II) that the review procedure was not sufficient to remedy the unfairness caused by the absence of scrutiny of undisclosed material by the trial judge. In these circumstances, an application to the Court of Appeal could not be regarded as an adequate safeguard. In conclusion, the Court reiterated the importance of material relevant to the defence being placed before the trial judge for a ruling on disclosure.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

REASONABLE TIME
Length of criminal proceedings: *no violation*.

PEDERSEN and BAADSGAARD - Denmark (Nº 49017/99)
Judgment 19.6.2003 [Section I]
(see Article 10, below).

Article 6(2)

PRESUMPTION OF INNOCENCE
Applicant acquitted of criminal charge found civilly liable by same court: *communicated*.

REEVES - Norway (Nº 4248/02)
[Section III]

The applicant, an American national who moved to Norway in 1993, separated from her husband in 1998, some months before their daughter was born. Mother and daughter lived in the family home until it was destroyed by fire at the end of 1998. In September 1999, the applicant was charged with setting fire to her house, causing 1 million NOK of damage, with the intention of obtaining compensation from her insurer. She was also charged with falsely reporting as stolen a number of personal items. The City Court found her guilty and sentenced her to two years' imprisonment. It also ordered her to refund the insurers. The applicant appealed to the High Court, which confirmed her conviction in relation to her false reporting of the theft of personal items and ordered her to pay compensation to the insurers. She received a 30-day sentence, from which the time already served (30 days) was to be deducted. Regarding the other charges, a majority of the judges (4) voted for conviction, but since five votes were required the applicant was acquitted. As for the payment of compensation, the judgment referred to the majority view that the applicant was guilty of starting the fire. The

professional judge who was in the minority on the question of criminal guilt considered that, on the balance of probabilities, the applicant was guilty of starting the fire. On the strength of this new majority the court ordered her to pay compensation.
Communicated under Article 6(2).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction based to decisive degree on statements of police officers whom the accused was unable to question or have questioned: *violation*.

HULKI GUNEŞ - Turkey (N° 28490/95)
Judgment 19.6.2003 [Section III]

Facts: In June 1992, the applicant, who was suspected of having participated in an armed confrontation with the gendarmes, was arrested by the security forces. When he was confronted by witnesses, three gendarmes identified him as one of the terrorists sought, but the applicant did not sign the record. The applicant was transferred to the district gendarmerie post for questioning; the evidence adduced before the court does not allow the circumstances to be established; the applicant claimed to have been subjected to ill-treatment. The medical examinations carried out while he was in custody revealed a number of grazes and bruises. In July 1992, the applicant was placed in provisional detention and prosecuted for separatism and undermining national security. He appeared before the National Security Court, which read the statements of the gendarmes who had identified him during the judicial investigation. The applicant challenged them and disputed the record of the witness confrontation and all the charges, and also the gendarmes' statements. The court decided, for "road safety reasons", to take evidence from the three gendarmes by commission rogatory. Thus, two photographs of the applicant were sent to a court charged with taking evidence from the witnesses. The applicant contended that the witness statements could not be regarded as evidence against him, since he had been identified from photographs and therefore without a confrontation. The applicant also refused to acknowledge his statements (in which he admitted the offences) made, under duress, at the stage of the judicial investigation. In March 1994, the National Security Court, composed of three judges, one a military judge, declared the applicant guilty as charged and sentenced him to death, commuted to life imprisonment. The Court took into account the gendarmes' evidence, the applicants' statements made during the investigation by the security forces and the records of the investigations. The Court of Cassation upheld the judgment. In April 1997, following communication of the application by the Court to the Turkish Government, a criminal investigation was opened into the ill-treatment allegedly received by the applicant. A villager who had witnessed the applicant's arrest stated that the applicant had taken refuge under the bed and that the gendarmes had used force to arrest him because he resisted arrest; this was confirmed by the mayor of the village. The investigation led to no action being taken. In the investigation into the events which had taken place when the applicant was being questioned at the district gendarmerie post, the doctor who had examined the applicant stated that the lesions which he had found could have been the consequence of blows. As the acts of violence had been committed in the exercise of the gendarmes' duties, the file was sent to an administrative committee, in application of the law on proceedings against officials. The administrative investigation led to no action being taken.
Law: Article 3 – In the absence of satisfactory explanations from the Government concerning the lesions noted in the medical reports on the applicant's physical condition, and in the light of the lack of thoroughness of the investigation in that regard, it is established that the applicant received at least a number of blows while in custody. The acts complained of were of a certain gravity, in addition whereto the applicant was kept in solitary confinement while

in custody, which lasted for fifteen days. The treatment complained of was inhuman and degrading.
Conclusion: violation (unanimously).
Article 6(1) and 6(3)(d) – The Court has found that there was a violation of the right to an independent and impartial tribunal owing to the composition of the National Security Court (cf. the *Incal* and *Çiraklar* judgments). In earlier cases the Court had held that a tribunal whose lack of independence and impartiality has been established cannot in any circumstances guarantee a fair trial and that, accordingly, there was no need to examine the complaints relating to the fairness of the proceedings before that tribunal. In this case, however, the Court considers that it must examine the complaint alleging lack of fairness in the proceedings before the Security Court, having regard in particular to the severity of the penalty imposed on the applicant, to the fact that the principal evidence accepted is disputed by the applicant and to the finding of a violation of Article 3 owing to the treatment inflicted on the applicant while he was in custody. The Court considers that it is only by doing so that it will be able to adjudicate on the merits of the applicant's main allegation that the charge against him could not have been regarded as substantiated had he had the benefit of a fair trial.
The trial court accepted that the applicant had committed the offences of which he was convicted by relying on statements by the applicant recorded while he was in custody, which were confirmed by other evidence, such as the confrontation which was also supposed to have taken place before the trial and the statements of the gendarmes obtained by means of a commission rogatory. The Court concluded that the conditions to which the applicant was subjected while in custody gave rise to a violation of Article 3. In that regard, it observes that Turkish legislation does not appear to attach to admissions obtained while the person concerned is being questioned but disputed before the court any decisive consequence for the perspectives of the defence. Although it is not its place to examine in the abstract the question of the admissibility of evidence in criminal law, the Court finds it regrettable that in this case the National Security Court did not make a preliminary determination of that question before going on to examine the merits of the case. Such a preliminary examination would have put the national courts in a position to sanction unlawful methods used to obtain incriminating evidence. Furthermore, the applicant did not have legal assistance at the stage of the investigation, during which the main evidence was obtained. In that regard, it was crucial that the prosecution witnesses were heard by the trial court, which alone could have examined at close quarters their conduct and the credibility of the versions which they gave. The applicant's conviction is decisively based on the statements of the gendarmes obtained in the course of the investigation and then by means of commission rogatory during the trial, in the absence of the applicant and his legal representative. The applicant was unable to examine or have examined the persons who made those statements, either during the investigation or during the trial. In spite of the applicant's requests, those witnesses for the prosecution were not heard and did not appear directly before the trial court. The absence of any confrontation before the trial court deprived the applicant, in part, of a fair hearing. The undeniable difficulties of the fight against terrorism cannot serve to limit to such an extent the rights of defence of an accused.
Conclusion: violation (unanimously).
Article 41 – The Court awards the applicant the sum of 25,000 € for the harm sustained. It awards costs and expenses.

ARTICLE 8

PRIVATE LIFE
Refusal to order private insurance company to reimburse costs of gender re-assignment surgery: *violation*.

VAN KÜCK - Germany (Nº 35968/97)
Judgment 12.6.2003 [Section III]

Facts: The applicant, who was born male, obtained authorisation from the District Court in 1991 to adopt a female name, by virtue of the Transsexuals Act. The applicant then brought an action against a private health insurance company for reimbursement of the costs of hormone treatment and a declarator of its liability to reimburse 50% of the costs of gender re-assignment surgery (the other 50% being met by the applicant's employment health insurance). In 1993 the Regional Court dismissed the action, finding on the basis of an expert report that while treatment would improve the applicant's social condition, it could not reasonably be regarded as necessary for medical reasons. The court considered that the applicant ought first to have tried extensive psychotherapy and added that it had not been shown conclusively that the treatment would relieve the applicant's situation. In 1995 the Court of Appeal dismissed the applicant's appeal, agreeing that the necessity of the treatment had not been proved. It further considered that the applicant was not entitled to reimbursement because she had caused the disease herself. In that respect it referred to the fact that the applicant had started to take female hormones, without medical advice, only after discovering that as a man she was infertile. The applicant had in the meantime proceeded with gender re-assignment surgery.
Law: Article 6(1) – The courts' evaluation of the expert opinion and their conclusion that improving the applicant's social situation did not satisfy the condition of medical necessity did not seem to coincide with the Court's findings in its recent judgments concerning transsexuals (e.g. the *Christine Goodwin* judgment of 11 July 2002), in particular that "transsexualism has wide international recognition as a medical condition for which treatment is provided in order to afford relief … including irreversible surgery." In any case, as specialist knowledge in the field was required, the courts should have sought further clarification from a medical expert. Moreover, since gender identity is one of the most intimate aspects of private life, it appeared disproportionate to require the applicant to prove the medical necessity of the treatment. Consequently, the courts' interpretation of "medical necessity" and their evaluation of the evidence was not reasonable. With regard to the Court of Appeal's reference to causes of the applicant's condition, it could not be said that there was anything arbitrary or capricious in a decision to undergo gender re-assignment surgery and the applicant had in fact already undergone such surgery by the time the Court of Appeal gave its judgment. In addition, the cause of the applicant's transsexuality was not addressed in the expert report and no further expert evidence was obtained by the Court of Appeal, which was not entitled to take the view that it had sufficient information to be able to assess that complex question. In the light of these factors, the proceedings, taken as a whole, did not satisfy the requirements of a fair hearing.
Conclusion: violation (4 votes to 3).
Article 8 – While the applicant's submissions under Article 8 had focused on the taking and evaluation of evidence as regards her transsexuality, a matter which already examined under Article 6, the facts also had repercussions on a fundamental aspect of her right to respect for private life, and it was appropriate to examine whether the courts, in dealing with the reimbursement claim, violated the State's positive obligations. The central issue was the courts' application of the criteria on reimbursement of the medical costs of gender re-

assignment surgery and not the legitimacy of such measures in general. Furthermore, what mattered was not the entitlement to reimbursement as such, but the impact of the court decisions on the applicant's right to respect for her sexual self-determination. Both the Regional Court and the Court of Appeal had questioned the medical necessity of gender re-assignment, without obtaining further medical information, and the Court of Appeal had in addition reached the conclusion that the applicant had deliberately caused her condition of transsexuality, without any medical competence and on the basis of general assumptions as to male and female behaviour. In the light of the recent developments, the burden placed on a person to prove the medical necessity of treatment in the field of one of the most intimate areas of private life, appeared disproportionate. In the light of these factors, no fair balance had been struck between the interests of the insurance company on the one hand and the interests of the individual on the other.
Conclusion: violation (4 votes to 3).
Article 14 in conjunction with Articles 6 and 8 – No separate issue arose under Article 14.
Conclusion: no separate issue (unnaimously).
Article 41 – The Court made awards in respect of non-pecuniary damage and in respect of costs and expenses.

FAMILY LIFE
Adequacy of measures taken by the authorities to ensure the return of a child to his father after he had been taken abroad by the mother: *violation*.

MAIRE - Portugal (N° 48206/99)
Judgment 26.6.2003 [Section III]

Facts: The (male) applicant, a French national, and S.C., a Portuguese national, are the parents of a boy born in 1995. In 1998, a French court pronounced the spouses divorced and ordered that the child reside at the applicant's home: the mother was given simple visiting rights. In 1996, the applicant had already obtained provisional custody of the child, by a decision of the same court. In June 1997, S.C. removed the child and took him to Portugal. The applicant applied to the French authorities for an order for the return of his child; the French authorities referred the matter to their Portuguese counterparts. In July 1997, State Counsel at the court of the place of residence of S.C., as stated by the applicant, lodged an application for a court order for the return of the child. In order to give the mother the opportunity to express her views on that application, the court ordered her to appear before it. In October 1997, S.C. had not been found, in spite of the steps taken: registered letters with acknowledgment of receipt had been sent and two inquiries had been made by the supervisory authorities of the place of residence. The Portuguese authorities took a considerable number of steps to locate S.C. In July 1998, S.C. informed the court that she had lodged an application before one of its divisions for transfer of the parental authority over her son. In April 1999, the Court, informed by the police of S.C.'s new address, ordered the immediate surrender of the child, whom the applicant had seen at that address. The order to hand over the child issued for that purpose could not be executed, as there was no reply at the address given, in spite of several visits by the authorities. In June 1999, the judge delivered his judgment. He stated that S.C. must be regarded as having been properly summoned, as she had already entered an appearance in the proceedings. He dismissed S.C.'s application to terminate the proceedings and decided to place the child in the care of the authorities. S.C. lodged a number of appeals, without success, but did not comply with the decision. The court referred the matter to the supervisory authorities, who found the child and S.C. in December 2001. The family affairs court entrusted the child to his mother. State Counsel applied for suspension of the judgment of June 1999, claiming that the child must be examined by child psychiatrists before being returned to the applicant, in view of the time which had elapsed since they were separated. The Court of Appeal granted the application, being of the view that the child appeared to have already been integrated into his new surroundings and that the

examinations in question were perfectly relevant. State Counsel lodged an application before the family court for determination of parental authority over the child. He requested the court to vary the judgment of the French court of June 1998, relying on the fact that the child was integrated into his new surroundings, and requested that provisional custody of the child be given to the mother. These proceedings were pending on the date on which the Court adopted its judgment.
Law: Article 8 – As regards the implementation of the rights recognised to the applicant to custody and exclusive parental authority over his son, it is necessary to determine whether the Portuguese authorities took all the steps which could reasonably be expected of them to facilitate the enforcement of the decision to that effect made by the French courts, which, in a case of this nature, had to be dealt with as a matter of urgency, as the passing of time can have irremediable consequences for the child and the parent not living with him. No satisfactory explanation has been given to justify the fact that the authorities responsible for the case did not succeed in locating the child's mother in order to summon her to appear before the court responsible for adjudicating on the application for the return of the child. Also unexplained is the period of one year between the date on which the mother entered an appearance in the proceedings and the date on which the court adopted its decision. The applicant's child was not found by the Portuguese police until four years and six months after the judicial request for his return made by the competent French authority. As these difficulties were essentially due to the mother's conduct, it was for the authorities to take the appropriate steps to impose sanctions for such lack of cooperation, as in the event of manifestly unlawful conduct on the part of the parent with whom the child is living, sanctions must not be excluded. If the internal legal order does not permit the adoption of effective sanctions, it is for each contracting State to provide itself with an appropriate and sufficient judicial arsenal. It is true that the interest of the child must prevail, and for that reason the Portuguese authorities were entitled to take the view that parental authority must ultimately be given to the mother. However, the long period which elapsed before the applicant's son could be found created a factual situation that was unfavourable to the applicant, particularly in view of the child's tender age. Thus, and notwithstanding the margin of appreciation enjoyed by the respondent State in such matters, the authorities failed to make appropriate and sufficient efforts to enforce the applicant's right to the return of his child and thus failed to have regard to his right to respect for his family life.
Conclusion: violation (unanimously).
Article 41 – The Court awards the applicant 20,000 € for non-pecuniary damage and a sum for costs and expenses.

FAMILY LIFE
Impossibility of reuniting mother and child notwithstanding the intervention of the courts and the social services: *inadmissible*.

R.F. - Italy (N° 42933/98)
Decision 26.6.2003 [Section I]

The applicant refused to recognise her daughter, V., when she was born in 1989, for reasons connected with her career, and the children's court of its own motion instituted proceedings in order to ascertain whether the child was abandoned, which might have led to its eventual adoption. The child was recognised by the natural father and the court discontinued the proceedings. Relations between the applicant and the child's father deteriorated and V. went to live with her father in the paternal grandparents' home. In May 1993, the applicant brought proceedings in order to be able to recognise V. and to obtain custody of her. The applicant succeeded on appeal, by a judgment of 1996. The applicant then sought leave to meet her daughter with a view to eventually securing custody of her. The proceedings initiated following that application were stayed between September 1997 and March 1998 because V.'s father had in the meantime appealed on a point of law against the judgment of May 1996.

In July 1998, the court provisionally ordered the social services to arrange meetings between the mother and V. and to report on those meetings. The social workers reported the obstructive conduct of V.'s grandparents. In May 2000, by a provisional interim decision, the court invited the social services to arrange the immediate resumption of the meetings between the applicant and her daughter and ordered V.'s father and grandparents to comply with its decision. In September 2000, the social services stated that the applicant had not met her daughter or made any attempt to cooperate in the organisation of the meetings scheduled for that purpose. The judge heard V., who said that she was living happily with her father and stated that her mother had not sought to contact her. Fresh attempts to arrange meetings failed, as the applicant twice refused, for family reasons, to meet her child. The court discontinued the matter in April 2001. It considered that it was clear from the applicant's conduct that she had decided to give priority to her career. The court formally noted that the father retained custody of the child and that it was impossible to establish any relationship between the applicant and her daughter. The applicant did not challenge the decision.
Inadmissible under Article 8: The interference with the applicant's right to respect for her family life had a legal basis and was sufficiently foreseeable and accessible. It pursued a legitimate aim, namely the protection of the rights and freedoms of others: the decisions taken by the national authorities show that the interest of the child and the protection of her mental development were their objectives. As regards the need for the interference in a democratic society, the decisions of the national judicial authorities were inspired, without exception, by the need to protect the greater interest of the infant. Although the meetings between the child and the applicant suffered as a result of the conduct of V.'s paternal grandparents, beyond a certain point the applicant no longer cooperated with the social services in arranging the meetings with her daughter, no longer sought to contact her and even refused to attend the meetings which had been scheduled. As regards the social services, apart from the fact that one expert report was late in being lodged, they showed diligence. The case-file does not support the conclusion that any obstacles were placed by the social services which made contacts between the applicant and V. difficult: manifestly unfounded.

FAMILY LIFE
Threatened separation from children on account of expulsion: *communicated*.

NDANGOYA - Sweden (Nº 17868/03)
[Section IV]

The applicant is a Tanzanian national currently serving a seven-year sentence for aggravated assault. He was married to a Swedish aid worker, whom he accompanied to Sweden in 1991. Both spouses were already infected with HIV. Two daughters were born to the marriage, in 1991 and 1996. The applicant received a residence permit in July 1996. He divorced his wife in 1997 or 1998. In 1999 he was convicted of aggravated assault. In addition to the term of imprisonment, the Court of Appeal ordered that he should be banned for life from Sweden. The applicant claims that he has a close relationship with his daughters and has produced letters in support of his claim. His place of detention is far from their home, creating psychological difficulties for his former spouse and his daughters. According to a medical expert, the applicant would have little chance of continuing his treatment for HIV if sent back to Tanzania. This would entail the development of Aids, leading to death in 3-4 years.
Communicated under Articles 2, 3 and 8.

HOME
Destruction of Roma houses by mob: *admissible*.

MOLDOVAN and others - Romania (Nº 41138/98 and Nº 64320/01)
Decision 3.6.2003 [Section II]
(see Article 3, above).

CORRESPONDENCE
Refusal of prison authorities to provide material for correspondence with the Court: *violation*.

COTLET - Romania (N° 38565/97)
Judgment 3.6.2003 [Section IV]

Facts: The applicant, who is serving a prison sentence for murder, lodged an application with the European Commission of Human Rights in 1995. He stated that the letters sent by the Commission had been opened when they reached him and that he was required to hand his letters to the Commission to the prison authorities in an unsealed envelope; subsequently, a letter from the Registry of the European Court of Human Rights reached him in an envelope which had been opened. His correspondence with the Commission and then with the Court was delayed. In March 1999, the applicant complained that he had been prevented from writing to the Court because the authorities refused to supply him with writing paper and envelopes. The applicant further stated that his correspondence with the Convention organs had attracted the hostility of the prison administration and expressed his fears on that subject.
Law: Article 8 – The refusal of the prison administration to supply the applicant with the envelopes, stamps and writing paper necessary for his correspondence with the Court constitutes a failure by the respondent State to comply with its positive obligation to ensure effective observance of the applicant's right to respect for his correspondence.
Conclusion: violation (unanimously).
Article 34 – The applicant's fears of being transferred to another prison or of experiencing "even more problems" owing to the discontent of the warders because of his correspondence with the Court were not denied by the respondent Government. The applicant did not wish to reveal the name of the prisoner who had helped him to translate the application form in case that prisoner should experience problems with the prison directorate. The Court considers that that may amount to acts of intimidation, which, combined with the failure of the prison authorities to give the applicant the necessary materials for his correspondence with the Court and also with the delays in forwarding and the systematic opening of his letters to or from the Court or the Commission constitute a form of illegal and unacceptable pressure which infringed the applicant's right of individual application, in breach of Article 34 of the Convention. That conclusion is all the more imperative in the present case, having regard to the vulnerability of the applicant, shut up in a closed space and thereby having few contacts with his close relatives or with the outside world.
Conclusion: violation (unanimously).
The Court concludes that there has been a violation of Article 8 owing to the delays in forwarding his letters to the Commission and the opening of the letters to or from the Commission and the Court (cf. the *Petra v. Romania* judgment of 23 September 1998).
Article 41 – The Court awards the applicant a sum for non-pecuniary and pecuniary damages. It awards costs and expenses.

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Refusal to register religious association on the ground it had not existed for at least 15 years: *communicated*.

KIMLYA - Russia (Nº 76836/01)
[Section I]

The applicant is the president of the Church of Scientology in the city of Surgut. The first centre for the study of Dianetics opened in Surgut in 1994 and obtained the status of social non-governmental organisation. In 1995, a new Russian law on non-governmental organisations was adopted. The centre's application for re-registration was rejected in 1999 on the basis that it was religious in nature. The authorities took legal action seeking to liquidate the centre in November 1999. The centre's attempt to register as a non-commercial partnership also failed because of its religious nature. In 2000, the applicant and a number of others founded the Scientology Group of Surgut City and established the Church of Scientology of Surgut City. The founding members sought to register as a local religious organisation. Their application was rejected because they were unable to show that they had been in existence for at least 15 years, a statutory condition. The applicant appealed to the Town Court, complaining of a violation of his constitutional freedom of religion and pointing to the serious obstacle that non-registration represented for his organisation. The court confirmed the authorities' decision and refused to entertain the applicant's constitutional arguments. The applicant appealed to the Regional Court, but without success. He applied twice for supervisory review to the Supreme Court of the Russian Federation, succeeding on the second attempt. In January 2002, the Regional Court quashed the earlier decisions, holding that if an application for state registration is not accompanied with the necessary documents the authorities may leave it without examination. The applicant contends that this means his association will simply have to wait until they meet the 15-year requirement before it can be registered.
Communicated under Articles 9 and 11.

MANIFEST RELIGION OR BELIEF
Refusal to register religious association: *communicated*.

JEHOVAH'S WITNESSES OF MOSCOW and others - Russia (Nº 302/02)
[Section I]
(see Article 11, below).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of producers of television programmes for defamation of a senior police officer: *no violation*.

PEDERSEN and BAADSGAARD - Denmark (Nº 49017/99)
Judgment 19.6.2003 [Section I]

Facts: The applicants produced two television programmes in 1990/1991 concerning the 1982 conviction of X. for murder. X. had been released from prison shortly before the first programme after serving almost eight years of a twelve-year sentence and had applied for his case to be reopened. In the television programmes, the conduct of the police investigation was strongly criticised. The second applicant interviewed a witness who maintained that she had told the police at the time that she had seen X. and his son at a particular place. After the interview, the commentator named the Chief Superintendent in charge of the investigation in the context of a series of rhetorical questions. A photograph of the officer was also shown. X. was subsequently granted a re-trial and acquitted. The applicants were then charged with defamation. On appeal, the High Court convicted them. It imposed a fine and ordered them to pay compensation. The Supreme Court upheld the convictions and increased the award of compensation.
Law: Article 6(1) – Making an overall assessment, the Court found that the proceedings, which lasted over 5 years and 9 months, had not exceeded a reasonable time.
Conclusion: no violation (6 votes to 1).
Article 10 – The applicants had taken a stand on the truth of the taxi driver's statement and presented the matter in such a way that viewers were given the impression that the police had suppressed her account. Their reference to the Chief Superintendent constituted an accusation which could not, even with the most liberal interpretation, be understood as a value-judgment. It therefore constituted a factual statement. The allegation emanated from the applicants themselves and it was therefore necessary to examine whether they had acted in good faith and complied with the ordinary obligation to verify the statement. The Supreme Court had found that the veracity of the allegation had never been proved and the applicants had relied on one witness, without checking the accuracy of her statement properly. The Court therefore found it doubtful that the applicants' research was adequate or sufficient to substantiate their allegation that the Chief Superintendent had deliberately suppressed a vital fact in a murder case. The Supreme Court had carried out a proper balancing exercise and was entitled to consider that the measure was necessary in a democratic society.
Conclusion: no violation (4 votes to 3).

FREEDOM OF EXPRESSION
Level of award made by jury in libel case against media group: *admissible*.

INDEPENDENT NEWS AND MEDIA - Ireland (Nº 55120/00)
Decision 19.6.2003 [Section III]

In December 1992, a national newspaper owned by the applicant published an article about the political negotiations that were taking place at that time to form a new government. The article linked one political leader to criminal activities and suggested he supported violent communist oppression and was anti-Semitic. In subsequent legal proceedings, a High Court jury found that the politician had been libelled. The trial judge provided the jury with some

general guidance on the question of damages, drawing on previous examples in Irish case law. However, neither he nor counsel could suggest an amount, which was entirely up to the jury. Following deliberation, the jury assessed damages at 300,000 IEP, three times higher than the previous maximum award. The applicant appealed to the Supreme Court, which held that the Irish common law was not inconsistent with either the constitutional guarantee of free speech or Article 10 of the Convention, since the principle of proportionality applied to jury awards. If these were found on appeal to be disproportionate, they would be set aside. For a judge to suggest figures to the jury would be an unjustifiable invasion into the domain of the latter. Each libel case was different and juries must have regard to its particular features. The court found that the amount awarded was not disproportionate to the injury suffered. One member of the court dissented, arguing that if the trial judge could give guidelines as to the level of damages, it would aid juries in their task without impinging on their exclusive competence to determine whether libel had been committed. She considered that the award should be reduced by half.
Admissible under Article 10.

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

PLON (SOCIETE) - France (N° 58148/00)
Decision 27.5.2003 [Section II]

The applicant company had acquired from a journalist and from Dr Gubler, who for several years had been personal physician to the President of the French Republic, François Mitterand, the publishing rights in a book entitled *Le Grand Secret* (*The Great Secret*), which considered the cancer from which President Mitterand had suffered from the beginning of his first term of office, and of which the French public were not officially informed until much later. The work described the relations between President Mitterand and Dr Gruber and the problems which the latter had experienced as a result of the concealment of that disease, when the President had undertaken to release a health bulletin every six months. The book was launched on 17 January 1996 – nine days after the death of President Mitterand – and its distribution was prohibited the following day by an interim measure. The decision banning publication was upheld on appeal. At the same time, the Paris Criminal Court, by a judgment of July 1996, which became final, had found Dr Gruber guilty of the minor offence of breach of professional secrecy and found the journalist who had co-authored the book and the legal representative of the applicant company guilty of aiding and abetting that offence; the court had imposed, respectively, a suspended sentence of four months' imprisonment, a fine of 30,000 FRF and a fine of 60,000 FRF. The Paris Regional Court upheld the ban on publication of *Le Grand Secret* and ordered Dr Gruber, the applicant company and its legal representative jointly and severally to pay damages of 100,000 FRF to Mrs Mitterand and 80,000 FRF to each of the President's three children. The Court of Appeal ordered Dr Gruber and the applicant company jointly and severally to pay 100,000 FRF damages to Mrs Mitterand and 80,000 FRF to each of the other claimants and confirmed the continuation of the ban on publishing the work. The court declared the Mitterand family inadmissible in so far as they sought protection of the private life of President Mitterand, stating that the right of everyone to prohibit any form of disclosure of his private life was enjoyed only by the living. It further held that although certain passages in the work contained violations against the private life of the Mitterand family, they could not justify a ban on the publication of the entire book. On the other hand, the Court of Appeal observed that all the matters published in the book and obtained by Dr Gruber in the exercise of his profession were covered by medical

secrecy. The court also considered that the exercise of the right to freedom of expression could give rise to certain restrictions, notably for the protection of the rights of others. The applicant company's appeal on a point of law was dismissed.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Conviction of writer for contesting crimes against humanity: *inadmissible*.

GARAUDY - France (N° 65831/01)
Decision 24.6.2003 [Section IV]
(see Article 17, below).

ARTICLE 11

FREEDOM OF ASSOCIATION
Refusal to register religious associations: *communicated*.

MOSCOW BRANCH OF THE SALVATION ARMY - Russia (Nº 72881/01)
[Section I]

The Salvation Army officially worked in Russia from 1913 to 1923, when it was dissolved as an "anti-Soviet organisation". It resumed its activities in Russia in 1992. That year, the applicant registered in Moscow as a religious organisation with legal personality. Subsequent to the enactment of the Law on Freedom of Conscience and Religious Associations in 1997, the applicant applied for re-registration in February 1999. The application was rejected on the basis of a number of alleged anomalies, including the characterisation of the applicant as the representative office of the international organisation of the Salvation Army. The applicant appealed to the District Court. That court upheld the grounds for the authorities' refusal of registration and further relied on the "paramilitary" nature of the Salvation Army. It was not swayed by the fact that the Salvation Army had successfully re-registered in other Russian regions. The applicant appealed to the City Court, which rejected the appeal for different reasons, pointing to the foreign ties of the applicant, which justified the administrative authorities' opinion that the applicant should seek registration as a representative office of a foreign religious organisation. The deadline for re-registration was 31 December 2000. Organisations that failed to obtain registration were subject to liquidation proceedings. The Moscow Justice Department took such proceedings in May 2001. The District Court allowed the application in September 2001, in light of the applicant's failure to notify the Justice Department of the continuation of its activity and its failure to re-register. The City Court upheld this ruling. The applicant meanwhile brought a complaint before the Constitutional Court, which gave its decision in February 2002. It ruled that re-registration could not be denied because of requirements that did not exist when the organisation was founded. An organisation could only be liquidated if it had ceased to function or was engaged in unlawful activity; merely formal reasons were insufficient. The case was subsequently remitted to the District Court, which dismissed the application for liquidation. However, the decisions refusing registration remain in force. The applicant alleges that the denial of re-registration has seriously obstructed its operations since it entailed onerous formalities and generated negative publicity.
Communicated under Articles 11 and 14.

JEHOVAH'S WITNESSES OF MOSCOW and others - Russia (Nº 302/02)
[Section I]

Jehovah's Witnesses have been present in Russia since 1891. The organisation registered with the USSR authorities in 1991, with the Russian authorities in 1992 and with the Moscow authorities in 1993. In 1995, a body affiliated to the Russian Orthodox Church known as the "Salvation Committee" filed a complaint against the management of the Moscow Jehovah's Witnesses making certain allegations against them: exorbitant membership dues, incitement of hatred of other religions. The prosecutor's office refused to initiate a criminal investigation, finding that the applicant association operated within the law and that there had been no complaints from private persons or legal entities about it. The Salvation Committee persisted in its efforts, making essentially the same complaint on four further occasions. Each time, the prosecutor's office reopened the case but then terminated the investigation for lack of cause, except for the fifth occasion, in 1998. The investigator concluded that the applicant association violated national and international law and was inconsistent with the Constitution. Although she terminated the criminal case, the investigator recommended that action for banning and liquidating the association be taken. The prosecutor acted on this advice in April 1998. He relied on five allegations against the applicant association, including incitement of religious discord, break up of families and endangering life through the refusal of medical treatment on religious grounds. The District Court proceedings began in September 1998 but were stayed in March 1999 to allow five experts to prepare reports on the issues involved. The hearing resumed in February 2001. Over forty witnesses and experts were heard. Four of the five experts prepared a succinct joint report that was critical of the Jehovah's Witnesses' faith. The fifth expert produced a lengthy dissenting report. The court dismissed all the allegations brought by the prosecution. On appeal, the City Court quashed the decision and remitted it to the District Court. At the rehearing in November 2001, the prosecutor stated that although she had no information about any individual member violating the law, her actions were based on the applicant association's literature. The hearing was adjourned and proceedings are still pending.

The applicant association also sought to re-register, as required by the 1997 Law on Freedom of Conscience and Religious Association. In all, it made five attempts to register, each one being refused by the Moscow Justice Department because of missing documents or minor errors. The association took legal action in October 2000 seeking to force the Justice Department to consider their application. In December 2000, the District Court, of its own motion, adjourned the hearing until February 2001. The association therefore missed the final date for re-registration stipulated in the 1997 law: 31 December 2000. In early 2001, the Justice Department issued the second formal refusal of registration, citing the ongoing liquidation proceedings in the District Court. Two of the applicants took legal proceedings in their own right in 2001. These were eventually dismissed, with the courts ruling that their individual religious freedom was not affected by the failure to re-register the association. In August 2002, the District Court ruled that the Justice Department's refusals were unlawful, but did not order registration of the association. Instead, the association had to make a new application for re-registration using the new forms introduced by the Justice Department in July 2002. The association appealed unsuccessfully.

The applicants submit that they were repeatedly vilified in the press from the outset of the liquidation proceedings.

Communicated under Articles 6, 9, 11 and 14.

CHURCH OF SCIENTOLOGY MOSCOW and others - Russia (Nº 18147/02)
[Section I]

The applicant association registered in Russia in 1994. Following the entry into force of the 1997 Law on Freedom of Conscience and Religious Associations, the association applied for re-registration. In July 1999, the Moscow Justice Department refused registration on the basis that the association's objectives and activities were not lawful and its president was under criminal investigation. According to the applicants, this investigation was subsequently terminated for lack of evidence. The association applied for registration five times in all. On each occasion, the Justice Department refused registration on the basis that certain unspecified documents were missing. The association therefore failed to meet the last deadline for registration: 31 December 2000. In parallel legal proceedings, the District Court found that the Justice Department's first and second refusals were unlawful and violated international human rights guarantees, including the Convention. The Justice Department failed to execute this judgment when it became final in December 2000. The Moscow City prosecutor sought supervisory review of the judgment. The City Court accordingly quashed it in March 2001 and remitted it for a fresh examination. The District Court subsequently ruled in favour of the Justice Department. The latter then filed an action for the liquidation of the association. In April 2002, the District Court found that this action was covered by the ruling of the Constitutional Court of 7 February 2002 and was therefore to be dismissed. The prosecution's appeal was unsuccessful.
Communicated under Articles 11 and 14.

KIMLYA - Russia (Nº 76836/01)
[Section I]
(see Article 9, above).

FORM AND JOIN TRADE UNIONS
Discrimination against members of independent trade union: *communicated*.

DANILENKOV and others - Russia (Nº 67336/01)
[Section IV]

The 32 applicants are members of the Kaliningrad branch of the Dockers' Union of Russia (DUR), established in 1995 as an alternative to the traditional Sea Transport Workers' Union. DUR participated in a collective bargaining round in 1996 that led to better pay and conditions. Its membership rose rapidly to 275 by October 1997, over half the workforce at the Kaliningrad docks. DUR led an unsuccessful strike in October 1997. The applicants allege that since then they have been subject to harassment and discrimination on the part of the management. Working practices were changed so as to exclude DUR members from the most lucrative jobs, leading to a very substantial drop in their earnings. Workers who resigned their membership of DUR were permitted to return to better-paid tasks. The applicants provide more examples of prejudicial acts against them by management, the effect of which was to shrink its membership to 24 by the end of 2001. All of these workers were made redundant. By 2002, DUR had ceased to operate at Kaliningrad seaport.
The DUR took legal action on behalf of its members. It also requested the prosecutor to institute criminal proceedings against the management for discrimination on grounds of trade union membership. The prosecutor refused to do so because a preliminary enquiry had failed to establish an intention to discriminate. In May 1999, Kaliningrad District Court dismissed DUR's case as unsubstantiated. On appeal, the Regional Court found this decision was neither lawful nor justified and remitted the case. In March 2000, the District Court ruled that DUR had failed to prove the management's intent to discriminate against them. It considered that

the decrease in the plaintiffs' earnings was due partly to their individual performance and partly to an overall reduction in the volume of cargo arriving at the seaport. On appeal by the applicants, the Regional Court declared itself incompetent to hear the case, since the existence of discrimination could only be established though criminal proceedings. Otherwise, it upheld the District Court's decision. The applicants launched new proceedings in 2001, seeking a declaration that their rights to equal pay for equal work and access to work had been violated. However, the justice of the peace dismissed the application on the basis that she lacked jurisdiction. The applicants' appeal was dismissed.
Communicated under Articles 11, 13 and 14.

ARTICLE 14

DISCRIMINATION (Article 8)
Exclusion of adopted child from inheritance: *admissible*.

PLA PUNCERNAU and PUNCERNAU PEDRO - Andorra (N° 69498/01)
Decision 27.5.2003 [Section IV]

The applicants are an adopted son and his mother. Their father/husband was the beneficiary and heir subject to a trust of his mother's estate under her will. The will stated that he was to leave the estate forming the subject-matter of the will to a child or grandchild of a marriage under civil or canon law, failing which the benefit of the estate would pass to the children and grandchildren of his elder sister, failing that to the son of his younger sister. The (female) applicant went through a canonic marriage with the heir. By codicil of 3 July 1995, the (male) applicant's adoptive father and the applicant's husband left the assets of his mother's estate to his adoptive son as remainderman and to his wife as tenant for life. Following his death, the testatrix's great-granddaughters – who were also potential heirs under the will– took the view that the (male) applicant, as an adopted child, could not benefit under the testatrix's will and brought a civil action. By their action, they essentially sought a declaration that the codicil of 3 July 1995 was void and inoperative and an order that the applicants should hand over to them all the assets of the estate. The Batlles d'Andorra court dismissed the action, holding in particular that the testatrix could not be said to have intended to exclude adopted or non-biological children from the estate. In May 2000, the High Court of Justice of Andorra, on appeal, set aside the contested judgment. The court held that various matters, resulting in particular from the Catalan and Andorran legal tradition, made it possible to infer from the wording of the will that the testatrix had not wished to include the adoptive children of the heir subject to the trust among the beneficiaries of the estate. The court annulled the codicil of 3 July 1995, declared the applicants the lawful heirs of their great-grandmother's estate and ordered the applicants to surrender the assets. The applicants appealed, without success.
Admissible under Article 8 taken in conjunction with Article 14. The Court dismisses the respondent Government's preliminary objection that these articles are inapplicable.

ARTICLE 17

DESTRUCTION OF RIGHTS AND FREEDOMS
Conviction of writer for contesting crimes against humanity: *inadmissible*.

GARAUDY - France (N° 65831/01)
Decision 24.6.2003 [Section IV]

The applicant is a philosopher and writer and was a politician. Following the publication of his work entitled *Les myths fondateurs de la politique israélienne* (*The myths at the root of Israeli politics*), a number of complaints, together with applications for civil damages, were lodged by a series of associations alleging crimes against humanity, racial public defamation and provocation of hatred or violence on grounds of race or religion. These complaints led to four judicial investigations being opened. A fifth investigation was opened by the State Prosecutor into the offence of denying crimes against humanity. The applicant was committed before the Paris Regional Court in five separate criminal proceedings involving two different editions of and a number of different passages from his work. The applicant sought to have the five proceedings joined but his application was rejected on the grounds that, although they concerned the same author, the proceedings related to two different editions of the same work and the separate files were the consequence of the various actions commenced either by the State Prosecutor or by different civil parties, each of whom had cited passages from the work which were different or of different scope. Following those proceedings, which were based on the Law of 29 July 1881 on press freedom, the applicant was found guilty of the less serious offences of denying crimes against humanity, public defamation of a group of persons, in this instance the Jewish community, and provocation of racial discrimination and hatred. He was given suspended prison sentences and fined and also ordered to pay compensation to the civil parties. The Court of Cassation dismissed the applicant's appeals on points of law. The five suspended prison sentences were combined. The amounts of the fines were added together (a total of 170,000 FRF), as were the amounts that the applicant was to pay to the associations which had joined the proceedings as civil parties (a total of 220,021 FRF).
Inadmissible under Article 10: The objection of inadmissibility raised by the Government is dismissed: the sole fact that the grounds of the appeal on a point of law submitted by the applicant in two of the five proceedings include arguments based less than the others on Article 10 is not sufficient to support a conclusion that the applicant failed to exhaust all domestic remedies. At least one ground relating to Article 10 of the Convention was submitted to the Court of Cassation in the context of each of the five criminal proceedings.
As regards the merits, there are limits to freedom of expression: the justification of a pro-Nazi policy cannot enjoy the protection of Article 10 and the denial or revision of clearly established historical facts – such as the Holocaust – are removed by Article 17 from the protection of Article 10. As regards the applicant's convictions for denying crimes against humanity, the Court refers to Article 17: in his book, the applicant calls in question the reality, degree and gravity of historical facts relating to the Second World War which are clearly established, such as the persecution of Jews by the Nazi regime, the Holocaust and the Nuremberg trials. Denying crimes against humanity is one of the most acute forms of racial defamation towards the Jews and of incitement to hatred of them. The denial or revision of historical facts of this type call in question the values underpinning the fight against racism and anti-Semitism and are capable of seriously disturbing public order. Such acts adversely affect the rights of others and are incompatible with democracy and human rights; those responsible indisputably have in mind objectives of the type prohibited by Article 17. The Court considers that the greatest part of the content and the general tone of the applicant's work, and therefore its purpose, are markedly negationist in nature and therefore run counter

to the fundamental values of the Convention, as expressed in the Preamble thereto, namely justice and peace. The Court considers that the applicant is attempting to divert Article 10 of the Convention from its purpose by using his right to freedom of expression for ends contrary to the letter and the spirit of the Convention. If such ends were admitted, they would contribute to the destruction of the rights and freedoms guaranteed by the Convention. Accordingly, under Article 17 of the Convention, the applicant cannot rely on Article 10 as regards the items relating to the denial of crimes against humanity: incompatible *ratione materiae*.

Next, the complaint is examined under Article 10 as regards the aspects of the work which criticise the conduct of the State of Israel and the Jewish community, in respect of which the applicant was convicted, *inter alia*, of racial defamation and incitement to racial hatred. However, the Court has serious doubts as to whether, having regard to the overall negationist tone of the work, the expression of such opinions may be protected by Article 10 of the Convention. In any event, the interferences, which were prescribed by law, pursued at least two of the legitimate aims provided for in the Convention: "the prevention of disorder or crime" and "the protection of the reputation or rights of others" and, having regard to the tenor of the applicant's writing, the grounds on which the national courts convicted him were relevant and sufficient. The interferences were also "necessary in a democratic society": manifestly ill founded.

Inadmissible under Article 6(1) (fair trial): The reason for the refusal to join the five criminal proceedings was based on considerations connected with the proper functioning of justice and, in the circumstances of the case, the authorities' conduct was compatible with the just balance which is to be struck between the various aspects of that fundamental requirement, for a number of reasons. First, the case presented problems from the aspect of the significant number of civil parties, who had initiated different actions, on different dates, concerning different passages from two editions of the applicant's work; the applicant was prosecuted for a number of offences, which differed as between them and were of a particular nature; furthermore, offences connected with publishing are governed by specific procedural rules. Next, the courts established a close relation between the five proceedings: the cases were heard and transferred on the same day before the three levels of jurisdiction, and all the records of the hearings, and all the previous measures taken during the judicial investigations, were placed in each file, so that the opportunities for the applicant to present his defence during the five proceedings were not limited. Last, the *quantum* of the penalties which were added together did not exceed the statutory limit of the longest prison sentence available had the five cases been joined; as regards the fines, although they were not ordered to be paid together, the total amount of the fines imposed in the five cases is far below the statutory maximum of the highest fine: manifestly ill founded.

Inadmissible under Articles 6(1) (impartiality of the Court of Appeal and impact of the media campaign on the trial) and 6(3)(d).

ARTICLE 34

VICTIM

Payment of *ex gratia* compensation and settlement of civil claims: *inadmissible*

RECHACHI and ABDULHAFID - United Kingdom (Nº 55554/00)
Decision 10.6.2003 [Section IV]

The first applicant is an Algerian national who has an asylum application pending in the United Kingdom; the second applicant is a British national. They were both arrested in May 1998 and charged under Section 16A (possession of articles suspected for terrorist purposes) and 16B (collection of information likely to be used for terrorist purposes) of the Prevention

of Terrorism (Temporary Provisions) Act 1989. Each was remanded in custody. The first applicant, who is a paraplegic, was held in the prison medical wing. He made numerous applications for bail and was finally released in December 1998. He claims that as the prison facilities were inadequate his health suffered during his detention. The second applicant was freed in October 1998 and the charges against him were dropped. In May 1999, an article in a legal journal suggested that Section 16A and 16B had lapsed in March 1998. The following month, the charges against the first applicant were formally discontinued on the basis that they did not form part of English law. The Home Secretary informed Parliament of the oversight. The applicants sought compensation from the Home Office's *ex gratia* scheme. Each was offered an interim payment of £50,000. The second applicant received a final *ex gratia* award of £75,000 in April 2003. There was no admission of liability in either case. The applicants also made a claim for damages against the Commissioner for the Metropolitan Police. They settled this claim in return for a payment of £15,000. The Commissioner acknowledged the illegality of the arrest and detention of the first applicant. Regarding the second, he contended that the arrest had been lawful, but acknowledged that the detention lacked a valid legal basis.

Inadmissible under Article 5(1)c and 5(5): The applicants had received substantial sums from the authorities that constituted adequate redress for their claims of unlawful arrest and detention. Although under the *ex gratia* scheme there was no acknowledgement of the alleged breach, the Commissioner for the Metropolitan Police had expressly acknowledged the unlawfulness of the applicants' detention as well as the lack of legal basis for the arrest of the first applicant. Once the applicants agreed to settle their claims, they renounced the right to have the lawfulness of their arrest and detention determined by the domestic courts and failed to pursue local remedies that could have led to an acknowledgement of the alleged breach of the Convention. The Home Secretary had already confirmed to Parliament that the relevant offences had lapsed, that certain persons had been erroneously charged and that the police had been instructed not to further rely on those provisions. The applicants could therefore no longer claim to be victims of a violation of Article 5(1), within the meaning of Article 34 of the Convention: manifestly ill-founded.

HINDER EXERCISE OF THE RIGHT OF PETITION

Pressure by prison authorities with regard to a detainee's correspondence with the Convention organs: *violation*.

COTLET - Roumanie (N° 38565/97)
Judgment 3.6.2003 [Section IV]
(see Article 8, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Germany)
Failure to pay sum required by the Constitutional Court of Bavaria in order for appeal to be examined: *inadmissible*.

REUTHER - Germany (N° 74789/01)
Decision 5.6.2003 [Section I]

In December 1999, a district court made a criminal order against the applicant. The prosecution withdrew the order and the district court decided, in June 2000, that the fees necessarily incurred by the applicant were to be paid by the State. The applicant's representative claimed reimbursement of some 950 euros. The district court rejected the representative's claim on the ground that he was not a lawyer approved by a German court and had not been approved by the court as the applicant's defending counsel. His fees were therefore not necessary within the meaning of the applicable law. Furthermore, the applicant had merely claimed a flat rate sum, which could not be reimbursed. The regional court upheld the decision. The applicant appealed to the Constitutional Court of Bavaria. The judge of the Constitutional Court informed the applicant of the obstacles to the admissibility and the merits of his action. In such cases, the Constitutional Court could require the person concerned to pay a certain sum before proceeding to examine the action. The judge allowed the applicant one month to respond, failing which the action would be considered settled. The applicant responded. By a decision of January 2001, the Constitutional Court, sitting as a bench of three judges, ordered the applicant to pay 1,500 DEM as an advance on fees (*Kostenvorschuss*). The decision was accompanied by a letter from the judge explaining that the action was inadmissible or manifestly ill founded. The applicant did not pay the sum demanded.
Inadmissible under Article 6(1) (fair trial): The applicant did indeed bring before the Constitutional Court the complaints which he subsequently raised before the Court from the aspect of the right to a fair trial. However, having refused to pay the sum which the Constitutional Court requested as an advance on the fees before adjudicating on the action, the applicant deprived the Constitutional Court of the opportunity to hear and determine those complaints. He therefore did not satisfy the condition laid down in Article 35(1) of the Convention. The letters from the judge of the Constitutional Court informing the applicant of the obstacles to the admissibility or the merits of his application cannot be regarded as a decision of the Constitutional Court, thus rendering it unnecessary for the applicant to request a formal decision of that court: failure to exhaust domestic remedies.
Inadmissible under Article 6(1) (access to a tribunal): The obligation to pay the Constitutional Court the sum of 1,500 DEM by way of an advance on fees before the court would adjudicate on the action is not a restriction on the right of access to a tribunal that is in itself incompatible with Article 6(1) of the Convention: manifestly ill founded.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 51):

C.S.Y. - Turkey (Nº 27214/95)
YASAR KEMAL GÖKÇELI - Turkey (Nº 27215/95 and Nº 36194/97)
STOICESCU - Romania (Nº 31551/96)
CHIRIACESCU - Romania (Nº 31804/96)
POSOKHOV - Russia (Nº 63486/00)
Judgments 4.3.2003 [Section II]

A.B. - Slovakia (Nº 41784/98)
MOLNÁROVÁ and KOCHANOVÁ - Slovakia (Nº 44965/98)
Judgments 4.3.2003 [Section IV]

IPSILANTI - Greece (Nº 56599/00)
KOUMOUTSEA and others - Greece (Nº 56625/00)
Judgments 6.3.2003 [Section I]

JASIŪNIENĖ - Lithuania (Nº 41510/98)
Judgment 6.3.2003 [Section III]

LEŠNÍK - Slovakia (Nº 35640/97)
Judgment 11.3.2003 [Section IV]

ORZEŁ - Poland (Nº 74816/01)
Judgment 25.3.2003 [Section IV]

SATKA and others - Greece (Nº 55828/00)
Judgment 27.3.2003 [Section I]

DIAS DA SILVA and GOMES RIBEIRO MARTINS - Portugal (Nº 53997/00)
Judgment 27.3.2003 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Claim for compensation by parents of a child born with a handicap which was not discovered during pregnancy, as a result of negligence: *communicated*.

MAURICE - France (N° 11810/03)
[Section II]

The applicants, who are married, are acting both on their own behalf and as legal representatives of their infant children. The female applicant, who had already given birth some years earlier to a handicapped child, gave birth to a second, C., who subsequently proved to be suffering from the same (serious) handicap, although the prenatal diagnosis requested by the parents certified that the child conceived was healthy. A report by the head of the laboratory which carried out the analyses revealed that the error in the prenatal diagnosis was the result of the confusion of the results of the analyses concerning the applicants' family with those of another family owing to confusion between two bottles. As the faulty diagnosis had prevented the choice of a voluntary termination if the child had been diagnosed *in utero* as handicapped, the applicants lodged a complaint seeking compensation for the non-pecuniary and pecuniary damages suffered as a result of C.'s handicap. The court expert concluded that there had been no negligence during the prenatal diagnosis carried out at the laboratory but that there had been "negligence in the organisation and functioning of the service, leading to the confusion of the results of two families tested at the same time". By an order of December 2001, the urgent applications judge at the Paris Administrative Court ordered the *Assistance publique-hôpitaux de Paris* (APHP) to make an advance payment of 152,499 euros. By a judgment of June 2002, the Paris Administrative Court varied the order and reduced the amount of provisional compensation awarded to the applicants to 15,245 euros. The applicants appealed to the Council of State on a point of law, relying on Article 6(1) of the Convention and on Article 1 of Protocol No. 1, on the ground that the immediate applicability to their pending case of the Law of 4 March 2002 was contrary to the Convention. In February 2003, the Council of State considered that the facts, which constituted definite negligence, entitled the applicants to compensation under Article 1 of the Law of 4 March 2002, which had entered into force since the intervention of the urgent applications judge of the Paris Administrative Court and was applicable to pending cases. The Council of State set the amount of the provisional compensation payable by the APHP in respect of the loss suffered by the applicants at 50,000 euros. As regards the merits, the case was pending before the Paris Administrative Court on the date on which the application was communicated to the respondent Government.
Communicated under Articles 35(1), 6(1) (fair trial) and 1 of Protocol No. 1.
The Court decides to give priority to the case, in application of Rule 41 of the Rules of Court.

PEACEFUL ENJOYMENT OF POSSESSIONS
Denial of option to extend lease from local authority, on the ground that the granting of the option was *ultra vires*: *violation*.

STRETCH - United Kingdom (Nº 44277/98)
Judgment 24.6.2003 [Section IV]

Facts: The applicant leased land from the local authority in 1969 for a 22-year period. The lease required the applicant to erect several buildings at his own expense and included a clause giving him an option to renew the lease for a further 21 years. In 1990 the applicant

gave due notice of his intention to exercise the option and negotiations took place as to the terms. However, the local authority subsequently informed him that the option could not be exercised, in particular because it was *ultra vires*. This was confirmed in court proceedings.
Law: Article 1 of Protocol No. 1 – The applicant had accepted the lease on the basis that he would be able to extend its term and neither party had been aware that there was any legal obstacle to that condition. In the circumstances, he had at least a legitimate expectation of exercising the option to renew and this could be regarded, for the purposes of Article 1 of Protocol No. 1, as attached to the property rights granted to him under the lease. The actions of the local authority could be regarded as frustrating the applicant's legitimate expectation and thus constituted an interference with his property rights. As to whether a fair balance was struck, the local authority obtained the agreed rent and there was no issue that it acted against the public interest or that any third party interests or the pursuit of any other statutory function would have been prejudiced by giving effect to the renewal option; moreover, there was nothing *per se* objectionable or inappropriate in a local authority including such a term in a lease. Since the local authority itself considered that it had power to grant an option, it was not unreasonable for the applicant and his legal advisers to entertain the same belief. The applicant not only had an expectation of deriving future return from his investment but the option to renew had been an important element in view of the building obligations undertaken and the otherwise limited period in which he could recoup his expenditure.
Article 41 – The Court awarded the applicant 31,000 euros in respect of pecuniary damage and 5,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

DEPRIVATION OF PROPERTY
Demolition of house built on jointly owned land without the consent of the joint owners, while proceedings concerning division of ownership pending: *violation*.

ALLARD - Sweden (Nº 35179/97)
Judgment 24.6.2003 [Section IV]

Facts: The applicant and her mother and siblings owned land jointly with other members of their family. In 1988 the applicant obtained a building permit for a house which was duly erected on the land. Following the death of the applicant's mother in 1989, the house was assigned to the applicant in 1991. In the meantime, most of the other joint owners had instituted proceedings against the applicant, seeking to have the house removed on the ground that it had been built without their consent. The District Court decided in May 1990 that the applicant had to remove the house and its decision was confirmed by the Court of Appeal in 1994. The applicant appealed to the Supreme Court and requested that no further action be taken pending the outcome of proceedings which she had instituted in 1990 to have the joint ownership dissolved and individual plots assigned to the family members. On 4 March 1996 the Supreme Court rejected the request to stay the proceedings and refused leave to appeal against the Court of Appeal's judgment. Meanwhile, the Real Estate Formation Authority had allowed the creation of separate plots but, referring to the Court of Appeal's judgment, had rejected the applicant's claim for the creation of a plot round her house. The applicant appealed to the Real Estate Court, which on 14 March 1996 obtained from the Central Office of the National Land Survey an opinion recommending that the applicant should be assigned a separate plot. However, several family members had instituted enforcement proceedings and in May 1996 the District Court refused the applicant's request for a postponement of enforcement. The Enforcement Office decided that the house would be demolished by a construction firm on 3 June 1996. The applicant appealed, requesting an immediate stay. The Court of Appeal ordered her to complete her appeal by 5 June. However, it in fact examined the case on 3 June and refused leave to appeal against the decision of the District Court. The Supreme Court refused leave to appeal and the house was duly demolished by a construction firm. In November 1996 the Real Estate Court decided that the property should be divided

into plots and assigned the applicant the plot on which the house had stood. The Court of Appeal upheld this decision and the Supreme Court refused leave to appeal. The applicant was subsequently granted permission to rebuild the house.
Law: Article 1 of Protocol No. 1 – The demolition of the house deprived the applicant of her possession, namely the house, which had been assigned to her in 1991. A deprivation of property effected in pursuit of legitimate social, economic or other policies may be "in the public interest", even if the community at large has no direct benefit from it and, since a requirement that the disposal of jointly owned property must have the consent of all joint owners lies at the heart of the notion of joint ownership, the demolition of a building erected without the necessary consent could reasonably be said to further the legitimate "public interest" of maintaining a functioning system of joint ownership. In the present case, the consent of the other owners had not been obtained and the applicant could not reasonably have been unaware that she risked certain legal consequences by erecting the house without their consent. However, the erection of the house was not illegal *per se*, since tacit approval would have sufficed; moreover, a building permit had been issued for the house and a permit for reconstruction was granted later. It remained to be examined whether a fair balance had been struck. In that respect, the Central Office had recommended shortly after the Supreme Court refused leave to appeal in the removal proceedings that a plot around the house should be assigned to the applicant. Moreover, the Court of Appeal had examined her appeal against the refusal to stay enforcement two days before expiry of the time-limit it had set her for completing her appeal and the Enforcement Office had proceeded with the demolition before the Court of Appeal delivered its decision. In addition, when the Supreme Court refused leave to appeal and rejected the request to stay the proceedings in March 1996, the proceedings concerning division of the property were still pending and it would have been reasonable to await their outcome, since the question of the demolition of the house was clearly linked with that issue. The interest of the other owners could not be considered to be particularly great, since the house was used exclusively by the applicant and immediate family and could not be seen from the plots used by the other joint owners. Although the applicant's difficulties were largely the result of a family conflict to which she appeared to have contributed, the measures taken failed to strike a fair balance and she had therefore had to bear an individual and excessive burden.
Conclusion: violation (unanimously).
Article 8 – The Court considered that it was not necessary to examine the applicant's allegation under this provision.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court awarded the applicant 100,000 euros in respect of pecuniary damage. It considered that the finding of a violation in itself constituted sufficient just satisfaction in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

SECURE THE PAYMENT OF TAXES
Retroactive law to make sale of stock options subject to income tax: *inadmissible*.

M.A. and others - Finland (Nº 27793/95)
Decision 10.6.2003 [Section IV]

The applicants are all directors of a limited liability company. In 1994, the company's annual general meeting decided that a bond loan with warrants be issued. All of the applicants subscribed for bonds under the subscription programme in April of that year. As the law then stood (Income Tax Act 1992), any potential gains from their shares would be treated as capital gains and taxed accordingly at a flat rate of 25% of the difference between the acquisition price and the sales price. There was a statutory presumption that the former was 30% of the latter. In September 1994, the Government tabled a Bill to amend the 1992 Act, which would treat stock options as an employment benefit and therefore subject to normal income tax. The tax would be applied at the time the option was exercised or transferred,

from 1995 onwards. In October 1994, the Board of Directors of the company decided to allow the transfer of stock option certificates earlier than originally agreed. The applicants exercised their stock options, the total net value of which was approximately 3.2 million euros.
Parliament decided that changes of this sort should not escape the amendment. Therefore, when the amendment took effect on 31 December 1994 it had retroactive effect wherever a company had made artificial changes so as to receive an undeserved tax benefit. With respect to "pure" cases, i.e. in which companies had not sought to avoid the effects of the imminent changes, there would be no retroactive effect. The decisive date for the amendment was 16 September 1994, the date on which the Bill had been introduced. The applicants were in the highest income tax bracket for 1994. Their tax burden was considerably heavier under the amended legislation. The applicants applied to their local Tax Rectification Boards, relying *inter alia* on Article 1 of Protocol No. 1. The Boards rejected their claims. They did not accept that when assessing taxable gains a deduction of 30% should be made, representing acquisition price. The applicants appealed unsuccessfully to the relevant County Administrative Courts and thereafter to the Supreme Administrative Court. That court found that the relevant tax on income was not a confiscatory measure, and that the applicants' taxable income corresponded to the actual gains from the sale of their stock options. This was not inconsistent with Article 1 of Protocol No. 1.
Had the applicants retained their stock options in accordance with the original agreement, their net value would have been approximately 32 million euros on 1 December 1988 (the original date after which transfer was permitted). If they had kept them until 30 December 1999, their net value would have been far higher, at approximately 148 million euros.
Inadmissible under Article 1 of Protocol No. 1: The Court examined the complaints from the angle of a control of the use of property "to secure the payment of tax". Even before the 1994 amendment took effect, the applicants would have been liable under the Income Tax Act, with the benefits of the lower purchase price being taxed as ordinary income and the profit from the sale of stock options treated as capital gain. The 1994 amendment certainly fell within the State's margin of appreciation despite the fact that it applied to existing arrangements. Its retroactive effect did not in itself violate Article 1 of Protocol No. 1. The Court considered that the applicants did not have an expectation protected by Article 1 of Protocol No. 1 that the tax rate would, at the time when they would have been able to draw benefits from the stock option programme according to it original terms, be the same as it was when they subscribed in 1994. A different assessment might be warranted if the amendment had been applied retroactively to "pure" cases, but this was not the applicant's situation. The main aim of the retrospective implementing provision was to prevent stock option arrangements from escaping it, which could not be regarded as unreasonable. The impact of the measure was not such as to amount to confiscatory taxation. Despite the significant financial consequences for the applicants, the measure did not impose an excessive burden on them. Their tax liability reflected their high earnings, based on real profits from the sale of their stock options. The impact of the measure was to be assessed at the relevant time, without regard to subsequent developments in the stock market. Taking into account States' margin of appreciation in taxation matters, the measure did not upset the balance between the protection of the applicants' rights and the public interest in the securing of the payment of taxes: manifestly ill-founded.

Other judgments delivered in June 2003

Articles 3, 5(3) and 6(3)(c)

ÜLKÜ DOĞAN and others - Turkey (Nº 32270/96)
Judgment 19.6.2003 [Section I]

alleged ill-treatment in police custody, failure to bring detainee promptly before a judge and denial of access to lawyer – friendly settlement (statement of regret, *ex gratia* payment, undertaking to adopt appropriate measures).

Articles 3 and 13

MERINÇ - Turkey (Nº 28504/95)
Judgment 17.6.2003 [Section II]

alleged ill-treatment in police custody in 1989 and effectiveness of criminal proceedings against purported perpetrators – friendly settlement (statement of regret, *ex gratia* payment, undertaking to adopt appropriate measures).

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

DİLEK - Turkey (Nº 31845/96)
Judgment 17.6.2003 [Section II]

alleged destruction of home by the security forces in 1994 – friendly settlement (statement of regret, *ex gratia* payment and undertaking to adopt appropriate measures).

Article 5(3)

ŞEN - Turkey (Nº 41478/98)
Judgment 17.6.2003 [Section II]

failure to bring detainee promptly before a judge in region subject to state of emergency in 1995 – violation.

Article 5(3) and 5(4)

BARUT - Turkey (Nº 29863/96)
Judgment 24.6.2003 [Section IV]

alleged failure to bring detainee promptly before a judge and alleged absence of review of lawfulness of detention – friendly settlement (*ex gratia* payment).

Article 6(1)

RUIANU - Romania (Nº 34647/97)
Judgment 17.6.2003 [Section II]

prolonged non-enforcement of court decisions – violation.

HALATAS - Greece (Nº 64825/01)
Judgment 26.6.2003 [Section I]

failure of authorities to comply with court judgment – friendly settlement.

WALSTON - Norway (Nº 37372/97)
Judgment 3.6.2003 [Section IV]

non-communication to party in civil proceedings of additional submissions made by opposing party's lawyer and omission of appeal court to communicate entire case-file to appellants after their lawyer stopped representing them – violation/no violation.

PASCOLINI - France (Nº 45019/98)
Judgment 26.6.2003 [Section I]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général* – violation.

EASTERBROOK - United Kingdom (Nº 48015/99)
Judgment 12.6.2003 [Section III]

fixing of tariff part of prison sentence by the Secretary of State after a lengthy delay – violation.

ORHAN KAYA - Turkey (Nº 44272/98)
IŞIK - Turkey (Nº 50102/99)
Judgments 5.6.2003 [Section III]

MUSTAFA YÜKSEL - Turkey (Nº 42430/98)
ÖZGÜR IŞIK - Turkey (Nº 44057/98)
DERTLI and others - Turkey (Nº 45672/99)
Judgments 24.6.2003 [Section IV]

independence and impartiality of State Security Courts – violation.

HALIT YALÇIN - Turkey (Nº 27696/95)
Judgment 24.6.2003 [Section IV]

independence and impartiality of State Security Court – friendly settlement (*ex gratia* payment).

GÓRSKA - Poland (Nº 53698/00)
Judgment 3.6.2003 [Section IV]

BEŇAČKOVÁ - Slovakia (Nº 53376/99)
CHOVANČÍK - Slovakia (Nº 54996/00)
KLIMEK - Slovakia (Nº 60231/00)
BÓNA - Slovakia (Nº 72022/01)
Judgments 17.6.2003 [Section IV]

SAHINI - Croatia (Nº 63412/00)
Judgment 19.6.2003 [Section I]

SIKA - Slovakia (Nº 69145/01)
Judgment 24.6.2003 [Section IV]

MOREIRA & FERREIRINHA, Lda. and others - Portugal (Nº 54566/00, Nº 54567/00 and Nº 54569/00)
Judgment 26.6.2003 [Section III]

length of civil proceedings – violation.

WYLĘGŁY - Poland (Nº 33334/96)
Judgment 3.6.2003 [Section IV]

length of civil proceedings, in particular before the Supreme Court – violation.

LECHOISNE and others - France (Nº 61173/00)
Judgment 17.6.2003 [Section II]

length of proceedings relating to land consolidation – violation.

MALEK - Austria (Nº 60553/00)
Judgment 12.6.2003 [Section I]

length of disciplinary proceedings against a lawyer – violation.

LUTZ - France (no. 2) (Nº 49531/99)
Judgment 17.6.2003 [Section II]

length of proceedings relating to placement under guardianship on grounds of mental incapacity – violation.

SLOVÁK - Slovakia (no. 2) (Nº 57985/00)
Judgment 3.6.2003 [Section IV]

SAGAN - Poland (Nº 6901/02)
Judgment 24.6.2003 [Section IV]

length of civil proceedings – friendly settlement.

RICHEUX - France (Nº 45256/99)
Judgment 12.6.2003 [Section III]

SCI BOUMOIS - France (Nº 55007/00)
SEIDEL - France (Nº 60955/00)
Judgments 17.6.2003 [Section II]

ASNAR - France (Nº 57030/00)
MICHEL RAITIERE - France (Nº 57734/00)
PLOT - France (Nº 59153/00)
MUSTAFA - France (Nº 63056/00)
Judgments 17.6.2003 [Section IV]

WIDMANN - Austria (Nº 42032/98)
Judgment 19.6.2003 [Section III]

BOUILLY - France (no. 2) (Nº 57115/00)
Judgment 24.6.2003 [Section II]

length of administrative proceedings – violation.

FERREIRA PINTO - Portugal (Nº 54704/00)
Judgment 26.6.2003 [Section III]

length of administrative proceedings – friendly settlement.

SUSINI and others - France (Nº 43716/98)
Judgment 3.6.2003 [Section II]

length of criminal proceedings which applicants had joined as parties seeking damages – friendly settlement.

BENMEZIANE - France (Nº 51803/99)
Judgment 3.6.2003 [Section II]

RAMAZANOĞLU - Turkey (Nº 39810/98)
Judgment 10.6.2003 [Section II]

ROYER - Austria (Nº 42484/98)
Judgment 12.6.2003 [Section I]

length of criminal proceedings – violation.

MOUESCA - France (Nº 52189/99)
Judgment 3.6.2003 [Section II]

length of criminal proceedings in respect of which a violation had already been found by the European Commission of Human Rights – violation.

Articles 8 and 13

CHALKLEY - United Kingdom (Nº 63831/00)
Judgment 12.6.2003 [Section III]

absence of legal basis for interception of conversation by means of listening device installed on private property, and absence of effective remedy – violation (cf. *Khan* judgment of 12 May 2000 and *P.G. and J.H.* judgment of 25 September 2001).

Article 10

CUMPĂNĂ and MAZĂRE - Romania (Nº 33348/96)
Judgment 10.6.2003 [Section II]

conviction of journalists for defamation – no violation.

Article 41

SERGHIDES - Cyprus (Nº 44730/98)
Judgment 10.6.2003 [Section II]

LALLEMENT - France (Nº 46044/99)
Judgment 12.6.2003 [Section III]

just satisfaction.

Article 1 of Protocol No. 1

PAULESCU - Romania (Nº 34644/97)
Judgment 10.6.2003 [Section II]

deprivation of property as a result of annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised – violation.

HATTATOĞLU - Turkey (Nº 37094/97)
Judgment 26.6.2003 [Section III]

delays in payment of compensation for expropriation – friendly settlement.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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