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COUNCIL OF EUROPE

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EUROPEAN COURT OF HUMAN RIGHTS

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

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ARTICLE 3

DEGRADING TREATMENT
Severe overcrowding in a detention facility: *violation*.

NOVOSELOV - Russia (Nº 66460/01)
Judgment 2.6.2005 [Section I]

Facts: The applicant was taken into custody after quarrelling with his neighbour and assaulting him. He was convicted for disorderly behaviour and sentenced to six months' imprisonment. The applicant served the sentence in a detention facility which he alleged was overcrowded, lacked proper ventilation or basic sanitary and hygienic conditions. During the detention he maintained that he had contracted scabies and that his health had been damaged. When released, a clinic examined him and certified that the applicant suffered from emaciation. The Government disputed most of the applicant's allegations, but conceded that he had been detained "during a period when the detention facilities were overcrowded". However, they submitted that "overcrowding of the detention facilities was caused by objective reasons (high delinquency rate and lack of State funding to maintain the standard of floor space for all detainees)". The applicant's actions claiming compensation for the "inhuman and degrading" conditions of detention were rejected by the domestic courts. The Government maintained that the courts had rightly refused to award compensation, as no fault on the part of the facility personnel could have been established.

Law: Article 3 – The Court did not consider it necessary to establish the truthfulness of each and every allegation of the parties, as it found there had been a violation of Article 3 on the basis of the facts presented by the applicant which the Government had not disputed, namely that the cells were overpopulated at the detention facility in question. It appeared that the applicant was afforded less than 1 m² of personal space and shared a sleeping place with other inmates. Save for one hour of daily outside exercise, the applicant was confined to his cell for 23 hours a day. This aspect weighed heavily in considering whether there had been a breach of this provision. In other comparable cases of prison overcrowding, the Court had not found a breach of Article 3 when the restricted space had been compensated by the freedom of movement enjoyed by the detainees during the day-time. Hence, in line with the Courts judgments in *Peers v. Greece* and *Kalashnikov v. Russia,* the Court found that the effects on the applicant of the extreme lack of space in the present case, was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him. The Government's admissions that the cell windows were covered with metal shutters blocking access of fresh air and natural light, and that the applicant had twice fallen ill with fever and contracted dermatitis while in detention were also relevant factors, notwithstanding that they had not been established "beyond reasonable doubt". As regards the Government's submissions that the overcrowding was due to objective reasons and that the facility officials could not be held liable for it, the Court reiterated that the absence of the purpose to humiliate or debase a victim cannot exclude a finding of a violation of Article 3. Even if there had been no fault on the part of the facility officials, the Court emphasised that the Governments were answerable under the Convention for the acts of any State agency since what was in issue in all cases before the Court was the international responsibility of the State.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 3,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Holding in detention for over ten months, with a view to expulsion, of a person whose asylum application had been refused: *inadmissible*.

NTUMBA KABONGO - Belgium (N° 52467/99)
Decision 2.6.2005 [Section I]
(see Article 5(1)(f), below).

INHUMAN OR DEGRADING TREATMENT
Holding in detention of a person with a cerebral disease which caused physical and psychological suffering, having had a tumour removed from the brain prior to incarceration: *inadmissible*.

REGGIANI MARTINELLI - Italy (N° 22682/02)
Decision 16.6.2005 [Section III]

The applicant has been incarcerated for manslaughter since 1997 and was given a final twenty-six-year prison sentence in 2001. Five years before she was remanded in custody, the applicant had had a brain tumour removed, followed by a major course of radiotherapy lasting several weeks. After the operation she began to suffer from occasional obtusion and from vertigo. During her detention the symptoms worsened and the applicant also suffered from fainting fits, headaches, anxiety and insomnia. Under domestic law, a stay of execution of a prison sentence, or house arrest, are granted only when the prisoner suffers from a particularly severe complaint which has reached a stage where the treatment and care available in prison are no longer sufficient, or from a "severe disability". The applicant lodged an application to be placed under house arrest on medical grounds. The court gave its ruling on the basis of the prison medical file, which recorded the treatment given to the applicant and the findings of private experts. The court rejected the application, observing that there had been no recurrence of the tumour and no permanent mental or physical impairments. Fresh examinations ruled out any recurrence of the tumour and revealed major cerebral impairments with behavioural and emotional effects. The applicant lodged a second application to be placed under house arrest on medical grounds. The court dismissed the request on the basis of reports by a medical expert and by the prison doctor. It found, *inter alia*, that the applicant's life had never been endangered by her numerous fainting fits, which had been treated promptly by prison staff. The applicant lodged a third application for house arrest. She was suffering increasingly from psychological, emotional and behavioural instability. The court held that the applicant's suffering, certified by experts and by the reports of prison doctors, was not the result of a "severe disability" that could justify a stay of execution of sentence. The court added that since there was no evidence of any recurrence of the tumour or of any lesions to the frontal lobes of the brain causing a prefrontal syndrome, the applicant's suffering (aggravation of psychological condition and increased emotional excitability) did not constitute a threat to her life and could be treated adequately inside the prison. The application was rejected. In January 2005 the applicant lodged a fresh application for a stay of execution of sentence, which was being examined when the instant decision was given.

Inadmissible under Article 3 of the Convention – The applicant's condition, causing both physical and psychological suffering, was the result of a surgical operation performed prior to her incarceration. At the time she was remanded in custody, there had been no cause for concern about her state of health and her suffering had gradually increased since then. The applicant's state of health could not be attributed to her imprisonment and the worsening of her suffering during her detention could not be imputed to the prison authorities. The development of the condition had been carefully monitored by the prison's medical team and doctors had intervened when she had had fits, deciding if necessary to commit her to specialised medical centres in order to review her state of health and provide her with the most suitable medical treatment. With respect to the appropriateness of holding the applicant in detention despite the gradual decline in her health, no one had ever expressed the opinion that her condition was incompatible with detention, even if the experts' findings were not totally consistent. The domestic courts had rejected the applications for a stay of execution of sentence in reasoned decisions, taking into account the opinions of experts. The last petition for a stay of execution was being examined when the Court gave its decision.

The Court could not substitute its views for those of domestic courts with respect to the appropriateness of holding an individual in detention, especially when, as in the present case, the national authorities had generally fulfilled their obligation to protect the applicant's physical well-being, in particular by providing suitable medical care. The case-file showed that the treatment of the applicant's condition in detention had been of the same quality as that which she could have received outside. In those circumstances, neither the applicant's state of health nor the distress she claimed to have been suffering were of a sufficiently severe nature, at the material time, to entail a violation of Article 3: manifestly ill-founded.

DEGRADING TREATMENT
Applicant allegedly prevented from abandoning prostitution given her liability to pay contributions in order to receive welfare benefits: *communicated*.

V.T. - France (N° 37194/02)
[Section II]

The applicant took part in a scheme to help her abandon prostitution and provide for her gradual reintegration into professional life. An organisation promoting a prostitution-free society confirmed that the applicant intended to give up prostitution and that she had taken steps to that end. The applicant's actions had included a request to be registered in a professional category that would require her to pay lower family-allowance contributions. Her request was rejected after various lengthy proceedings against the collection agency, and she was thus liable for the payment of substantial amounts together with default interest. The applicant claimed that she had been trying to abandon prostitution for some ten years, and that the obligation on her to pay family-allowance contributions was forcing her to continue that activity so that she could afford the payments.
Communicated under Articles 3 and 4 of the Convention.

ARTICLE 4

Article 4(3)(d)

NORMAL CIVIC OBLIGATIONS
Burden of jury service allegedly placed predominantly on males, as well as on persons who had previously served as jurors: *admissible*.

ZARB ADAMI - Malta (Nº 17209/02)
Decision 24.5.2005 [Section IV]
(see Article 14, below)

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Placement in a private clinic without a legal basis: *violation*.

STORCK - Germany (Nº 61603/00)
Judgment 16.6.2005 [Section III]

Facts: The applicant claimed that she had been placed in different psychiatric hospitals against her will, and that she had been wrongly diagnosed and forced to take medicaments that had ruined her physically and psychologically. Moreover, the medicaments had caused her to develop a post-poliomyelitis syndrome (an illness which she had suffered at the age of three) and she was presently 100% handicapped. Her main complaint concerned her placement in a locked ward of a private psychiatric institution in Bremen, from 1977 to 1979, at the demand of her father, following serious conflicts with her parents. At the time she was 18 years old, had not been placed under guardianship and had never signed a declaration consenting to her placement in that institution. Moreover, there had been no judicial decision authorising her detention in a psychiatric institution. On one occasion the applicant had tried to flee from the clinic but had been brought back by the police by force. In 1981, she had again been confined to this institution for some months. In 1991 and 1992, the applicant received treatment in the university clinic in Mainz. In 1994, a medical report prepared on the applicant's demand certified that she had at no point suffered from schizophrenia, and that her excessive behaviour had resulted especially from conflicts with her family (a second expert opinion confirmed these findings). In 1997, the applicant brought an action for damages against the private clinic in Bremen. The Regional Court allowed the action and found that her detention had been illegal, as it had not been ordered by a district court nor had the applicant given her consent. Therefore, the court found that the applicant was entitled to damages. However, the judgment was quashed by the Court of Appeal, which found that the applicant had implicitly concluded a contract on her medical treatment with the clinic, or that there had been an implicit contractual agreement between her father and the clinic concluded implicitly for her benefit. Likewise, it did not find that the treatment or dosage of medicaments had been erroneous. The applicant lodged a constitutional complaint against the Court of Appeal's decision, claiming that her rights to liberty and human dignity and her right to a fair trial had been violated. The Constitutional Court refused to entertain the complaints, holding that they were not of fundamental importance and that it was not its function to deal with errors of law allegedly committed by civil courts.

Law: The Government's preliminary objection (*res iudicata*): As the Court had set out in its decision on admissibility of October 2004, despite the fact that a committee had previously declared the application inadmissible, in exceptional circumstances and in the interests of justice, the Court had the power to reopen a case.

Article 5(1) (concerning the applicant's confinement in a private clinic from 1977 to 1979) – The applicant's factual situation in the clinic was largely undisputed, and she could therefore be considered as having been objectively deprived of her liberty. However, a subjective element of lack of consent to the confinement in question is also required for a breach of this provision to exist, and this aspect was at dispute between the parties. In this respect, it was established that the applicant had not signed the clinic's admission form. Moreover, the key factor for the Court was that the she had on several occasions tried to flee from the clinic. The Court was therefore unable to assume that the applicant had agreed to her continued stay in the clinic. In the alternative, assuming the applicant had no longer been capable of consenting following her treatment with strong medicaments, she could, in any event, not be considered as having validly agreed to stay in the clinic. Hence, the Court concluded that the applicant had been deprived of her liberty within the meaning of Article 5(1).

Responsibility of the State – As to whether the deprivation of liberty could be imputable to the State, the Court underlined three aspects which engaged Germany's responsibility under the Convention. Firstly, public authorities had been directly involved in the applicant's placement in the clinic when the police, by force, had brought her back to the clinic after she had fled. Secondly, the State could be found to have violated Article 5(1) in that the Court of Appeal had failed to interpret the provisions of civil law relating to the applicant's compensation claims in the spirit of Article 5. Thirdly, the State had also violated its positive obligations to protect the applicant against interferences with her liberty carried out by private persons. There had been no court order for her placement in the clinic and a public health officer had never assessed whether the applicant – what was more than doubtful – posed a serious threat to public safety. Consequently, the State had not exercised any supervisory control over the lawfulness of the applicant's detention in the clinic. The lack of effective State control was most strikingly shown by the use of force by the police to bring the applicant back to the clinic.

Lawfulness of the detention – The applicant had been deprived of her liberty against her will. Under these circumstances, German law required that the detention of mentally insane persons, mentally deficient persons or drug addicts was only lawful when it had been ordered by the competent district court. As there had been no court order authorising the applicant's confinement to the clinic, her detention had not been lawful and it was therefore unnecessary to decide whether the applicant suffered from a mental disorder of a kind warranting compulsory confinement. In conclusion, the applicant's confinement in a private clinic from 1977 to 1979 had breached her right to liberty as guaranteed by Article 5(1).
Conclusion: violation (unanimously).

Articles 5(4) and 5(5) (concerning the applicant's confinement in a private clinic from 1977 to 1979). The applicant's complaints under these provisions were essentially the same as those raised under Article 5(1), and covered by the Court's findings there under. Hence, no separate issues arose under them.

Article 8 – The applicant had constantly resisted her stay in the clinic, as well as the medical treatment, and at times was administered medicaments by force. Bearing in mind that even a minor interference with the physical integrity of an individual must be regarded as an interference with the right to respect for private life, the applicant's treatment carried out against her will had constituted an interference under this provision, irrespective of whether the treatment had been counter-indicated, as maintained by the applicant and corroborated by at least one expert.

Responsibility of the State – The interference with the applicant's private life could be imputable to the State for the same reasons as those above in respect of Article 5(1): the involvement of public authorities when the police brought her back to the clinic; the failure of the courts to interpret national law in the spirit of Article 8; and, the lack of effective State control over private psychiatric institutions, which implied the State's failure to comply with its positive obligations under this Article.

Justification – The interference with the applicant's private life had not been in accordance with the law. Her confinement to the clinic for medical treatment had not been authorised by a court order, as was required by German law in the circumstances of the case. Consequently, the interference with her private life had not been lawful within the meaning of Article 8(2).
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 75,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

LAWFUL DETENTION
Deferral of discharge from detention in psychiatric hospital: *no violation*.

KOLANIS - United Kingdom (N° 517/02)
Judgment 21.6.2005 [Section IV]

Facts: The applicant, who had been convicted of causing grievous bodily harm with intent and found to be suffering from a mental illness, was detained in hospital. She subsequently applied for her discharge from detention. Her application was reviewed by the Mental Health Review Tribunal ("MHRT"). Despite the contrary view of two experts, the MHRT concluded in August 1999 that the applicant was to be conditionally discharged on condition that she resided at the home of her parents and continue to take medication under proper psychiatric supervision. The discharge was deferred until arrangements had been made to meet these conditions. However, no psychiatrist or institution was found who was willing to supervise the applicant in accordance with the conditions imposed. The health authority concluded that there were no further steps it could take. The applicant's application for judicial review was rejected by the High Court in June 2000, which found that the health authority was not under an absolute duty to implement the MHRT's conditions, but rather to take all reasonable steps to attempt to satisfy those conditions. In August 2000, a differently constituted MHRT considered the applicant's case afresh, concluding that the applicant should be discharged on condition that she resided in accommodation approved by her doctor and continued with the prescribed medication. After the necessary arrangements had been made to meet the conditions, the applicant was discharged from hospital to a resettlement project hostel in December 2000. Her subsequent appeals against the judgment of the High Court of June 2000 were rejected.

Law: Article 5(1) – The Court could not accept the applicant's contention that the first MHRT decision ordering her conditional discharge could be interpreted as meaning that her compulsory confinement was no longer warranted. Her discharge was only appropriate if there was continued treatment or supervision to protect her own health and the safety of the community. In the absence of that treatment, her detention continued to be necessary. Moreover, although the conditions imposed for her release could not be met, there was no absolute obligation on the authorities to ensure fulfilment of the conditions. The Court was not persuaded that local authorities or doctors could have wilfully blocked the discharge of the applicant into the community without proper grounds or excuse. In conclusion, the applicant continued to suffer from an illness which justified compulsory detention within the exception of Article 5(1)(e).
Conclusion: no violation (unanimously).

Article 5(4) – The issue to be determined was whether the MHRT's inability to review with due speed the applicant's continued detention (of its own motion or on that of the applicant) had complied with the requirements of this provision. The second review by the MHRT took place over a year after the initial decision by the MHRT. During this period, the applicant was unable to have the issues from supervening events examined by a court. These were only reviewed by the MHRT after the Secretary of State, in the exercise of his discretion, referred the case back to this body. The lapse of twelve months until this referral took place could not be regarded as sufficiently prompt to remedy this defect.
Conclusion: violation (unanimously).

Article 5(5) – In view of the Court's finding of a breach of Article 5(4), and the fact that there was no enforceable right to compensation in the United Kingdom prior to the entry into force of the Human Rights Act 1998 (as conceded by the Government), there had also been a violation of Article 5(5).
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 6,000 euros in respect of non-pecuniary damage. It also made an award for costs and expenses.

Article 5(1)(f)

EXPULSION
Detention of more than ten months given the repeated refusals of the applicant to board an airplane with a view to expulsion: *inadmissible*.

NTUMBA KABONGO - Belgium (N° 52467/99)
Decision 2.6.2005 [Section I]

The applicant, a national of the Democratic Republic of the Congo, arrived at Brussels airport from South Africa, where she was a resident, on a false passport. The authorities found that the passport was false. The Aliens Office decided that the applicant should be refused entry and sent back, dismissing her request for political asylum. The authorities took the applicant to a detention centre on Belgian territory and initiated a procedure for her removal. A seat was reserved for her on a scheduled flight bound for South Africa. The applicant was transferred from the centre to Brussels airport, where she refused to board the aircraft. She was taken back to the detention centre. Three months later, during a second attempt to remove her, the applicant was escorted to the aircraft in handcuffs. She refused to board and was therefore taken back to the detention centre. The third attempt to remove her was unsuccessful for the same reason. After five months, the applicant disputed the decision to extend her detention on the ground that the maximum statutory period of detention had expired. The Court of Cassation held that it was not contrary to immigration law for a new detention order to be issued where the removal of a legally detained individual had been unsuccessful solely because of his or her unlawful opposition. The applicant's detention with a view to removal was extended by two months because of her refusal to comply with the expulsion measure. A fresh attempt failed because of the applicant's refusal to board the aircraft. Her detention was extended, and in the light of that new decision the applicant's appeal against the previous detention order was found to be devoid of purpose. The fifth attempt at removal failed because of the applicant's refusal to board. In the context of a general end-of-year pardon, the applicant was released and ordered to leave the country. She travelled to the United Kingdom, where she was given leave to remain. During each attempt to remove her, the applicant claimed that she had been held in isolation in a cellar on the day before she was supposed to leave, then locked up in the airport with her hands tied behind her back. She was not forcibly removed under police escort.
The plea of non-exhaustion of domestic remedies was rejected.

Inadmissible under Article 3 – Any mental suffering that the applicant may have undergone because of her detention for over ten months did not attain the minimum threshold of seriousness such as to constitute inhuman or degrading treatment. The extending of her detention for over ten months had not been intended to humiliate or degrade her and had not infringed her personality rights in contravention of Article 3: manifestly ill-founded.

Inadmissible under Article 5(1) – In construing the immigration law as authorising fresh detention measures against aliens who opposed their expulsion, the Belgian Court of Cassation had not made a manifestly erroneous application of the relevant statutory provisions or drawn arbitrary conclusions from them. In short, the extension of the applicant's detention had been ordered in accordance with a "procedure prescribed by law": manifestly ill-founded.

Inadmissible under Article 5(1) (f) – The applicant's detention had lasted for more than ten months, whilst the procedure for her expulsion had been pending. The authorities had undertaken this procedure with the requisite diligence and could not be reproached for any period of inactivity. They had taken sufficient and adequate measures to ensure that the applicant boarded the aircraft. Accordingly, the duration of the removal procedure (over ten months) did not appear unreasonable and it had been justified to keep her in detention for that ten-month period. In short, the applicant's detention was justified by the expulsion procedure "pending" against her: manifestly ill-founded.

Inadmissible under Article 5(4) – Only one of the appeals lodged by the applicant to challenge the lawfulness of her detention and to obtain her release had been declared purposeless because the competent authority had, in the meantime, issued a fresh detention order. That new decision had moreover been motivated by the most recent unsuccessful attempt to repatriate her. In short, it could not be said that there had been any systematic practice intended, by the issuance of fresh detention orders, to frustrate the appeals lodged by the applicant for a review of the lawfulness of her detention. Furthermore, the authorities had not failed to ensure "speedy" review of that lawfulness: manifestly ill-founded.

Article 5(4)

SPEEDINESS OF REVIEW
Adequacy of safeguards for a prompt review of lawfulness of psychiatric detention: *violation*.

KOLANIS - United Kingdom (N° 517/02)
Judgment 21.6.2005 [Section IV]
(see Article 5(1), above)

ARTICLE 6

Article 6(1) [civil]

RIGHT TO A COURT
Non-enforcement of "social tenancy" award by domestic court: *violation*.

TETERINY - Russia (N° 11931/03)
Judgment 30.6.2005 [Section I]
(see Article 1 of Protocol No. 1 below)

FAIR HEARING
Impossibility for a civil party to have access to the criminal file without the assistance of a lawyer: *no violation.*

MENET - France (N° 39553/02)
Judgment 14.6.2005 [Section II]

Facts: The applicant lodged a criminal complaint, with an application to join the proceedings as a civil party. A criminal investigation was opened and included the hearing of evidence by the investigating judge, who discontinued the proceedings. The applicant lodged an appeal. He chose not to be represented by a lawyer, and personally visited the Appeal Court registry in order to consult the investigation file. He was refused access to the file because he was not a lawyer. Under domestic law only lawyers representing parties are allowed to consult the investigation file, not the parties themselves. The Investigation Division upheld the discontinuation order. The applicant appealed unsuccessfully to the Court of Cassation.

Law: Article 6 (1) – This case concerned a civil party not represented by a lawyer who was refused access to the investigation file on that basis. Article 6 did not prohibit the reservation of access to the investigation file to lawyers. In the instant case, French law provided that access to the investigation file was reserved either for lawyers directly, or through lawyers, in order to preserve the secrecy of the investigation, as civil parties, unlike lawyers, were not subject to professional confidentiality rules. The secrecy of the investigation could be justified by reasons relating to the protection of the privacy of the parties to the proceedings and to the interests of justice, within the meaning of the second sentence of

Article 6 § 1. In view of the interests at stake, the restriction on the applicant's rights had not excessively impaired his right to a fair trial.
Conclusion: no violation (six votes to one).
N.B. for the case of a civil party represented by a lawyer during part of the proceedings, see *Frangy v. France*, no. 42270/98, judgment of 1.2.2005.

ADVERSARIAL TRIAL
Non-communication of observations and lack of public hearing in proceedings before the Constitutional Court: *violation* (as regards the non-communication).

MILATOVÁ and others - Czech Republic (N° 61811/00)
Judgment 21.6.2005 [Section II]

Facts: In 1991 the first applicant and her husband claimed restitution of their real property pursuant to the Land Ownership Act, alleging that they had been forced in 1985 to sell it to the State (the then Defence Ministry) under conditions that had been imposed on them. In 1995 the Land Office declared the applicants as the owners of a major part of the property, having found that the contract of sale had been concluded under duress on strikingly unfavourable conditions, within the meaning of the Land Ownership Act. In 1996 the Regional Court quashed that decision and sent the case back for further consideration as the existence of grounds for restitution of the property had not been sufficiently established. In 1997 the Land Office again decided that the applicants were the owners of the property. In 1998 the Regional Court, after having held a hearing and having received the applicants' further comments, again quashed the administrative decision, finding that the Land Office had not proved to its satisfaction that the sale had been carried out under duress. The case was again remitted to the Land Office, which issued a fresh decision in 1998. In accordance with the opinion of the Regional Court, by which it was bound by virtue of the Code of Civil Procedure, the Land Office now ruled that the applicants were not the owners of the property because the contract of sale had not been concluded under duress. It was therefore unnecessary to examine whether the contract of sale had been concluded on strikingly unfavourable conditions. This decision was upheld by the Regional Court later in 1998.
In 1999 the applicants lodged a constitutional appeal against the Regional Court's two judgments of 1998 and the Land Office's decision of the same year. They challenged the assessment of the evidence and the Regional Court's incorrect interpretation of the notion of "duress". They also criticised the failure of the Regional Court to assess properly the notion of "strikingly unfavourable conditions". A judge rapporteur of the Constitutional Court invited the Regional Court and the various parties joined to the proceedings to submit written observations on the appeal. Observations were submitted by the Military Repair Enterprise, arguing that the appeal should be dismissed, and by the Regional Court, noting, *inter alia,* that the appeal had been lodged outside the sixty-day time-limit in so far as directed against its first judgment of 1998. The Constitutional Court Act did not oblige the judge rapporteur to transmit any such observations to the appellant, and they were not sent in the present case. The Constitutional Court eventually found, without having held a public hearing, that the appeal, in so far as directed against the Regional Court's first judgment of 1998 had been filed out of time and was unsubstantiated to the extent that it concerned that court's second judgment of that year.

Law: For the applicants to have to consult the case file at the Constitutional Court and obtain a copy of any written observations was not of itself a sufficient safeguard to secure their right to an adversarial procedure. As a matter of fairness it was incumbent on the Constitutional Court to inform them that observations had been filed and that they could, if they so wished, comment on them in writing. The Regional Court had examined the applicants' appeal against the Land Office's decisions at a public hearing covering both the facts and the law, enabling them to submit any evidence they considered useful or necessary in support of their case. Whereas the proceedings in the Constitutional Court had been conducted without a public hearing, those proceedings had been limited to points of law. Accordingly, the fact that no public hearing was held in those proceedings was sufficiently compensated by the public hearings held at the decisive stage of the proceedings, when the merits of the applicants' restitution claims had been determined. The Constitutional Court had not expressly relied on documentary evidence which

had not previously been adduced by the Military Repair Enterprise or the applicants in support of their arguments in the proceedings before the Land Office and the Regional Court. Nevertheless, the defendant's written observations and those of the Regional Court had been submitted in reply to the applicants' constitutional appeal and constituted reasoned opinions on the merits of that appeal, manifestly aiming to influence the decision of the Constitutional Court by calling for the appeal to be dismissed. Thus, having regard to the nature of the issues to be decided by the Constitutional Court, it could be assumed that the applicants had a legitimate interest in receiving a copy of the written observations of the defendant and the Regional Court. The Court did not need to determine whether the omission to communicate the document had caused the applicants prejudice, the existence of a violation being conceivable even in the absence of prejudice. As it was for the applicants to judge whether or not a document called for their comments, the onus was on the Constitutional Court to afford the applicants an opportunity to comment on the written observations prior to its decision. Accordingly, the procedure followed had not enabled the applicants to participate properly in the constitutional proceedings and had deprived them of a fair hearing.
Conclusion: violation (unanimously).

Article 41: The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage but awarded a certain amount in costs and expenses incurred in the Convention proceedings.

Article 6(1) [criminal]

FAIR HEARING
Alleged unfairness of misdemeanour proceedings related to an attempted illegal border crossing: *communicated*.

BERISHA AND HALJITI - The former Yugoslav Republic of Macedonia (Nº 18670/03)
[Section III]
(see Article 4 of Protocol No. 4, below)

ORAL HEARING
Lack of an oral hearing before judges examining the merits of a case in which a penal fine was imposed: *communicated*.

TANYAR and Others - Turkey (N° 74242/01)
Decision 7.6.2005 [Section II]
(see Article 9, below).

IMPARTIAL TRIBUNAL
President of a chamber judging an accused, who was his opposing party in a parallel procedure, disproportionately sanctioned the accused for his behaviour: *violation*.

CHMELÍŘ - Czech Republic (N° 64935/01)
Judgment 7.6.2005 [Section II]

Facts: Criminal proceedings had been brought against the applicant. He was found guilty by the trial court and lodged an appeal. He then requested the withdrawal of the president of the High Court division before which his appeal was pending, alleging that he had previously had an intimate relationship with that judge. The High Court decided not to order the judge to stand down and considered that the applicant was in fact seeking to delay the proceedings. One month later the applicant brought an action for the protection of personality rights against the president of the division hearing his appeal and requested the

withdrawal of the judge on that ground. A week later the president of the division decided that the applicant had insulted the court through the false allegations contained in his first request for withdrawal and declared that those allegations represented an insolent and unprecedented attack on him and were intended to delay the proceedings. The applicant was fined and warned that a similar attack could in the future be classified as a criminal offence. Two weeks later the division presided over by the same judge dismissed the applicant's second request for his withdrawal, on the ground that it amounted to provocative obstruction and a fresh attack on the judge's moral integrity. The applicant was unsuccessful in his appeals against the dismissal of his requests for withdrawal. The appeal he had lodged against his criminal conviction was dismissed, as was his further appeal in which he complained of a lack of impartiality in the appeal proceedings.

Law: Article 6(1) – The president of the division which had heard the appeal lodged by the applicant had also been the defendant in the civil action brought by the applicant for the protection of personality rights, and those two sets of proceedings had overlapped for almost seven months. For that reason, in the context of the criminal proceedings against him, it could not be excluded that the applicant had reason to apprehend that he continued to be perceived as an opponent by the president. In addition, that judge had not expressly addressed the grounds of the second application for withdrawal (action against him for the protection of personality rights) or commented on his feelings about that action brought against him by the applicant. He had made no formal statement capable of dispelling any doubts the applicant might have had. Those circumstances were capable of giving the applicant cause for fear, which had been strengthened by the decision to impose a fine on him because of his conduct in the proceedings. The reasoning of that decision suggested that the president of the division had been unable to distance himself sufficiently from the comments made about him by the applicant in the context of the first request for withdrawal. The applicant's conduct had been assessed by the judge concerned in relation to his personal understanding, his feelings, his sense of dignity and his standards of behaviour, since he had felt personally targeted and insulted. Thus, his own perception and evaluation of the facts and his own judgment had been involved in the process of determining whether the court had been insulted in that specific case. To that could be added the severity of the penalty imposed (which consisted of the highest possible fine provided for by the Code of Criminal Procedure), and the warning given to the applicant to the effect that any similar attack in future was likely to be classified as a criminal offence. In short, the judge concerned had overreacted to the applicant's conduct. As a result, the applicant had had objective cause to fear that the president of the division hearing his appeal against criminal conviction lacked the requisite impartiality, and the applications submitted by the applicant had been unsuccessful in remedying any shortcomings in the criminal proceedings.
Conclusion: violation (unanimously).

Article 41 – The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

ARTICLE 8

PRIVATE LIFE
Denied registration of uncontested paternity in respect of stillbirth: *violation*.

ZNAMENSKAYA - Russia (N° 77785/01)
Judgment 2.6.2005 [Section I]

Facts: In August 1997, in the thirty-fifth week of the applicant's pregnancy, the embryo asphyxiated in her womb. Mr Z., who had been the applicant's husband until their divorce, was entered as the stillbirth's father in the birth certificate and in the birth register. The applicant submitted however that the biological father of the stillbirth had been Mr G., with whom she had been living since 1994. They were unable to file a joint declaration of paternity because G. had been placed in detention in June 1997, following which the applicant had been unable to see him. In October 1997 G. died. In August 2000 the applicant

requested the District Court to establish G.'s paternity in respect of the stillbirth and to amend the child's surname and patronymic name accordingly. She relied on Article 49 of the Family Code according to which, if a child is born to parents who are not married to each other and there is no joint declaration or declaration by the child's father, the paternity of the child shall be established in court proceedings on the application of either parent. The court shall then have regard to any evidence capable of establishing the child's paternity with certainty. In November 2000 Z. also died. In March 2001 the District Court ordered the discontinuation of the proceedings, holding that Article 49 of the Family Code only applied to living children. The City Court upheld that decision, finding that the case could not be examined as a civil action because the stillborn child had not acquired any civil rights.

Law: The core of the applicant's grievance was the impossibility of having her stillbirth's patronymic name and surname amended so as to reflect its biological descent from her late partner G., notwithstanding the legal presumption that her husband Z. was the father of the child. The case was therefore distinguishable from situations where domestic authorities had opposed the parents' choice of a child's forename or their request to give a child the mother's surname rather than the father's. Nor was the case-law concerning a person's request to change his or her own surname applicable, because a stillborn child could not be considered to have acquired a right to respect for his private or family life separate from that of his mother. Bearing in mind that the applicant must have developed a strong bond with the embryo, whom she had brought almost to full term, and that she had expressed the desire to give him a name and bury him, the establishment of his descent undoubtedly affected her "private life". The existence of a relationship between the applicant and G. was undisputed and no one had contested his paternity. As the child was stillborn, the establishment of paternity did not impose a continuing obligation of support on anyone involved. It appeared therefore that there were no interests conflicting with those of the applicant. In refusing the applicant's claim the domestic courts did not refer to any legitimate or convincing reasons for maintaining *status quo*. Moreover, the Government had accepted that the domestic courts had erred and that under the applicable family-law provisions the applicant's claim should have been granted. A situation where a legal presumption was allowed to prevail over biological and social reality, without regard to both established facts and the wishes of those concerned and without actually benefiting anyone, was not compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life.
Conclusion: violation (four votes to three).

Article 41: The Court awarded EUR 1,000 for non-pecuniary damage.

PRIVATE LIFE
Failure of the authorities to resettle a family living in a severely polluted area and to design or apply effective measures to reduce industrial pollution: *violation*.

FADEYEVA - Russia (Nº 55723/00)
Judgment 9.6.2005 [former Section I]

Facts: The applicant lives in an important steel-producing centre. In 1982, she moved with her family to a flat situated at about 450 metres from a steel-plant. Although the authorities had delimited a buffer zone around the plant's premises – "the sanitary security zone" – with the aim of separating the plant from the town's residential areas, in practice thousands of people (including the applicant's family) lived there. A Decree of 1974 obliged the authorities to resettle certain inhabitants of the sanitary security zone. In the 1990's the Government adopted two programmes to improve the environmental situation in the plant. The latter of these programmes stated that the "environmental situation in the city had resulted in a continuing deterioration in public health". Some of the measures envisaged in the programme included the resettlement of people living in the sanitary security zone. In 1995, the applicant brought a court action seeking resettlement outside the zone, arguing that the concentration of toxic elements and noise levels in the sanitary security zone was dangerous to health and life. In 1996, the Town Court, referring to the Decree of 1974, found that the authorities ought to have resettled all of the zone's residents but that they had failed to do so. However, no specific order to resettle the applicant was given by the court, it merely

stated that the local authorities had to place her on a "priority waiting list" to obtain new local authority housing. The court also stated that the applicant's resettlement was conditional to the availability of funds. The first-instance court issued an execution warrant, but the bailiff discontinued the enforcement proceedings on the ground that there was no "priority waiting list" for new housing for residents of the sanitary security zone. In 1999, the applicant brought a fresh action against the municipality, seeking immediate execution of the 1996 judgment. The Town Court dismissed the action, finding that the applicant had been duly placed on the general waiting list. Moreover, it held that the judgment of 1996 had been executed and that there was no need to take any further measures. Both parties have submitted to the Court a number of documents containing information on industrial pollution in the town. A report prepared by a Dr Chernaik, commissioned by the applicant, concluded that he would expect the population residing within the zone to suffer from above-average incidences of several diseases.

Law: Article 8 – The degree of disturbance caused by the plant and the effects of pollution on the applicant are disputed by the parties. As the Court has already pointed out, see ***López Ostra v. Spain***, the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of this provision. According to the materials submitted to the Court since 1998 (when the Convention entered into force in Russia, and is therefore the period to be taken into consideration), the pollution levels with respect to a number of rated parameters had exceeded the domestic norms. Given the Government's failure to produce a number of documents requested by the Court, it could be concluded that at certain periods the situation could have been even worse than it appeared from the available data. The fact that the domestic courts in the present case recognised the applicant's right to be resettled showed that the existence of an interference with the applicant's private sphere was taken for granted at the domestic level. It was therefore a presumption that the pollution had become potentially harmful to the health and well-being of those exposed to it. Thus, the very strong combination of indirect evidence and presumptions made it possible to conclude that the applicant's health had deteriorated as a result of her prolonged exposure to the industrial emissions from the plant, and had adversely affected the quality of life at her home, to a degree sufficient to bring within the scope of Article 8. As to the attribution of the alleged interference to the State, the plant had been privatised in 1993, and there had thus been no direct interference from the Russian Federation. However, under the Court's case-law, the failure to regulate a private industry in environmental cases may engage a State's responsibility. Following the plant's privatisation in 1993, the State continued to exercise control over the plant (operating conditions, supervision, etc.). The municipal authorities were aware of the continuing environmental problems and applied certain sanctions in order to improve the situation. Thus, the Court concluded that the authorities were certainly in a position to evaluate the pollution hazards and to take adequate measures to prevent or reduce them. The combination of these factors was sufficient to raise an issue of the State's positive obligation under Article 8. As to the legitimate aim of the interference, the Government argued that the applicant's immediate resettlement would inevitably breach the rights of other residents entitled to free housing. It also referred to the fact that the plant contributed to the economic system of the region, which the Court considered served as a legitimate aim. Although Russian legislation did not indicate clearly what should be done with those persons living in the security zone, in a situation where pollution exceeded safe levels, it appeared that the only solution was to place the applicant on a waiting list. The legislation made no difference between those persons who were entitled to new housing on a welfare basis and those whose everyday life was seriously disrupted by toxic fumes from a neighbouring enterprise. The applicant was placed on the waiting list, but her situation did not change. Therefore, the measure applied by the domestic courts made no difference to the applicant: it did not give her any realistic hope of being removed from the source of pollution. Moreover, the State had authorised the operation of a polluting enterprise in the middle of a densely populated town. Although it had established that a certain territory around the plant should be free of any dwelling, legislative measures in this respect were not implemented in practice, and the State did not offer the applicant any effective solution to help her move from the dangerous area. The polluting enterprise had operated in breach of domestic environmental standards and there was no information that the State had designed or applied effective measures taking into account the interests of the local population affected by the pollution which would have been capable of reducing the industrial pollution to acceptable levels. Despite the wide margin of appreciation of the State in the sphere of environmental practices, a fair balance between the interests of the community and

the applicant's effective enjoyment of her right to respect for her home and private life had not been struck.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 6,000 euros in respect of non-pecuniary damage. It also made an award for costs and expenses.

PRIVATE LIFE
Interference with physical integrity by forced medical treatment: *violation*.

STORCK - Germany(Nº 61603/00)
Judgment 16.6.2005 [Section III]
(see Article 5, above)

PRIVATE LIFE
Placement on the Internet of a defamatory advertisement concerning a minor by an unidentified person, and refusal of the courts to order the service provider to divulge the person's identity: *communicated*.

K.U. - Finland (Nº 2872/02)
[Section IV]

The applicant was twelve years old when an advertisement was placed on an Internet dating site by an unknown person(s) in his name. The advertisement revealed details on the applicant (age, picture, and accurate phone number, save for one number) and stated that he was looking for an intimate relationship with a boy of his age or older. The applicant became aware of the announcement when he received an answer from a man offering to meet him. The applicant's father requested the police to identify the man and prefer charges against him. The service provider refused to divulge the identity of the holder of the Internet address in question, regarding itself bound by confidentiality under telecommunications law. Upon request by the police, the courts refused to oblige the service provider to divulge the said information, on the basis of the legislation in force. The person who answered the advertisement was subsequently identified and charges brought against him. However, the director of the company which provided the Internet service could not be charged for breach of the Act on Personal Information because the alleged offence had become time-barred.
Communicated under Articles 8 and 13.

FAMILY LIFE
Failure of the authorities to provide a non-custodial father assistance enabling him to effectively enforce his parental rights: *violation*.

ZAWADKA - Poland (Nº 48542/99)
Judgment 23.6.2005 [Section III]

Facts: The applicant's former partner gave birth to their common son in 1994. Two years later, during a stay of the applicant abroad, the mother moved out of the house where they were living together taking their son. In 1996, the District Court issued an interim order that the child should be placed with the mother. That same year the parents reached a friendly settlement, which stipulated, *inter alia*, that their son's place of residence would be with his mother, but that the applicant would be able to spend every second weekend with his son at home. As the mother failed to comply with the settlement, the applicant requested that a court guardian assist him in meetings with his son. He also requested the courts to fine the mother and instituted criminal proceedings against her. The courts stayed the proceedings on the ground that the friendly settlement agreement had not specified the dates of the applicant's access to his son and was therefore impossible to enforce. In 1997, after an altercation with the mother, the applicant took his

son away from the mother (he nevertheless informed the courts and prosecution authorities about the incident). The District Court ordered him to return the child to the mother, but the applicant went into hiding with his son. In 1998, the courts limited the applicant's parental rights, and later that year, completely deprived him of these rights for his continuing hiding with the child. The police subsequently took his son away from the applicant and handed him over to the mother. The applicant requested the courts to prevent the issue of a passport to his son as the mother intended to abduct him abroad, and again requested assistance in the enforcement of his access rights. He was informed that none of the court guardians had agreed to assist him in the arrangements for contact with his son. In 2001, the Regional Court re-instated the first of the 1998 judgments which gave the applicant some access rights, albeit of a limited nature. However, it stayed the enforcement of the orders concerning contact between the applicant and his son because he was unable to indicate his son's place of residence. The proceedings are stayed.

Law: Article 8 – The Court has consistently held that this Article includes a right for a parent to have measures taken with a view to his or her being reunited with the child. However, the right of a non-custodial parent to have measures taken is not absolute. In the present case, following the signing of the friendly settlement between the parents and the applicant's petition to be assisted by a court guardian to obtain compliance with the agreement, the courts stayed the proceedings and as a result the applicant did not obtain any assistance in respect of the enforcement of the settlement. In 1998, the domestic courts seriously limited the applicant's parental rights for his abduction of the child and disrespect to the courts. However, the Court was not convinced that the applicant's lack of cooperation with the courts could justify such a far-reaching limitation of parental rights, especially as there were no grounds to believe that contact with his son was detrimental for the child. Similarly, the Court did not find that the deprivation of the applicant's parental rights was justified on the grounds pointed out by the domestic courts, that is, that to tackle the mother's lack of cooperation and enforce his access rights the applicant should have availed himself of legal remedies. This was what the applicant had been trying to do since 1997, but his petitions had been ineffective. In 1998, when he again requested assistance in the enforcement of his access rights, he was informed that none of the court guardians had agreed to assist him. An unmotivated refusal of assistance of this type was incompatible with the State's positive obligations under Article 8. Moreover, the applicant had also requested the courts to take steps that would prevent the mother from taking their son abroad, but a passport was apparently issued, as she later left Poland with the child. The Court's view was that the authorities had failed to weigh carefully the conflicting interests of the mother's right to travel and the applicant's right of access to his child. In its overall assessment of the case, the Court noted that the applicant's parental skills had never been seriously challenged, and concluded that in the circumstances of the case, which had resulted in the applicant permanently losing contact with his child, the domestic authorities had failed in their positive obligation to provide the applicant with assistance which would have made it possible for him to effectively enforce his parental and access rights.
Conclusion: violation (four votes to three).

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

FAMILY LIFE
Applicant who criticises the measures taken after his divorce concerning his son, who was abducted abroad by the mother: *admissible*.

KOONS - Italy (N° 68183/01)
Decision 7.6.2005 [Section IV]

The applicant is a national of the United States who had married a Hungarian national. They had a son, who was born in New York. After their separation a US court provisionally granted parental authority to both parents and fixed New York as the child's place of residence. The mother, however, took the child with her to Italy. The US court granted a divorce, gave parental authority to the father and confirmed New York as the child's place of residence. The applicant sought the return of the child pursuant to the Hague Convention of 1980 on the Civil Aspects of International Child Abduction, but his application was

rejected on the ground that the Convention was not yet in force in Italy. An Italian court granted interim custody of the child to the mother in Italy, but that decision was subsequently annulled. The US judgment could not be executed in Italy, in particular on the ground that it prevented the mother from exercising her parental rights. At the mother's request, the Italian courts granted a divorce and decided to give custody of the child to the mother, on the principal ground that, at that time, the child had been living with her for four years (after she had brought him there from the United States). Even though experts had designated the father as being more capable of bringing up the child, the judges decided that it was in the child's best interest for him to remain in his day-to-day environment. The applicant obtained a right of access, which was to be exercised in Italy. Subsequently the judges refused once again to grant the applicant a right of custody, on the grounds that the child had grown up in Italy, had been living with his mother and had no contact with his father, once again invoking the necessity, in the interest of the child, to avoid any change in his circumstances. A court later ordered, in the interest of the child and further to an expert opinion, that the child should be placed in State care with the maintaining of his place of residence at the mother's home. In the meantime, an Italian criminal court had found the mother guilty of child abduction.

Admissible under Article 8 of the Convention. Whilst proceedings concerning a request for a change in custody were admittedly pending, the right of custody claimed by the applicant had already been examined by three levels of court in Italy and the condition of the exhaustion of domestic remedies was thus fulfilled.

FAMILY LIFE
Decision ordering the return of the applicant's daughter with the father, who lived abroad: *communicated*.

ESKINAZI and CHELOUCHE - Turkey (N° 14600/05)
[Section II]

Subsequent to her marriage, the applicant, having joint French and Turkish nationality and belonging to the Jewish faith, who was residing in Turkey, paid regular visits to her husband, having joint French and Israeli nationality, who had to remain in Israel for professional reasons. Their daughter (the other applicant) was born in Israel. She accompanied her mother on her travels between France, where the couple intended to settle, Israel and Turkey. When the child was four years old, her mother took her with her to Turkey, where she petitioned for divorce. She was granted interim custody of the child. The father in turn petitioned for divorce before an Israeli rabbinical court, which also assumed jurisdiction to rule on the custody of the child. That court, composed of religious judges, and before which the applicant was never a party, ordered her to return the child to Israel within seven days, failing which her action would be classified as wrongful removal of a child under the Hague Convention of 1980 on the Civil Aspects of International Child Abduction. In addition, the rabbinical judges authorised the father to confiscate the child's passport on her return and to take any possible steps to preserve his parental rights. They thus ordered that the mother and daughter be prohibited from leaving Israeli territory on their return. The Israeli authorities initiated proceedings involving their Turkish counterparts in order to obtain the child's return to Israel pursuant to the Hague Convention and to the decisions of the rabbinical court. In the context of those proceedings, in Turkey, the applicant had the custody of her daughter withdrawn and the prosecutor then initiated proceedings for the return of the child in which both parents were heard. That led to a decision by the Turkish court that the child should be returned to her father in Israel. The court considered that, whilst the parents enjoyed joint parental rights, the applicant had convinced the father that she would travel with her daughter to Turkey as usual and return within ten days, which she had in fact failed to do, in disregard of the father's wishes. Moreover, during her first four years the child had spent the best part of her life in Israel, the State in which she had become habitually resident within the meaning of the Hague Convention. The order for the child's return became final after she turned five.
Communicated under Article 6 § 1 and Article 8 of the Convention.

FAMILY LIFE
Expulsion to Turkey, where applicant had never lived, on account of serious crimes: *communicated*.

KAYA - Germany (Nº 31753/02)
[Section I]

The applicant, who is a Turkish national, was born in Germany and lived there with his family until his expulsion from the country. Up to then, he had only visited Turkey on two or three occasions. In 1999, when the applicant was twenty years of age, he was convicted for two attempts of aggravated trafficking in human beings, having forced his former partner, who was working as a prostitute, to surrender the main part of her earnings, and attempted to force another woman into prostitution, on both occasions with the use of physical violence. He was also convicted on charges of battery, illegal purchase of drugs and drunken driving, and sentenced to three years and four months' imprisonment. The municipal authorities subsequently ordered the applicant's expulsion to Turkey. Although he had been born in Germany and possessed a valid residence permit, his expulsion was necessary for reasons of public safety and in the interest of general deterrence. The applicant's appeals against expulsion were rejected, and he was deported to Turkey in April 2001. In 2002, the applicant married a German national of Turkish origins, who lived in Germany. He filed a request to the authorities to set a time-limit to his exclusion order, which has now been fixed for October 2006. The applicant complains that his expulsion was disproportionate to the fact that he had lived his whole life in Germany, did not maintain any contacts in Turkey, and that his family relied on his support, in particular his parents, who were being treated for depression.
Communicated under Article 8.

HOME
Failure of the authorities to resettle a family living in a severely polluted area and to design or apply effective measures to reduce industrial pollution: *violation*.

FADEYEVA - Russia (Nº 55723/00)
Judgment 9.6.2005 [former Section I]
(see above/voir ci-dessus)

ARTICLE 9

MANIFEST RELIGION
Use of an apartment for religious gatherings subject to agreement of neighbours, and imposition of fine for having organised such a gathering in an apartment: *inadmissible*.

TANYAR and Others - Turkey (N° 74242/01)
Decision 7.6.2005 [Section II]

The applicants, who belong to an independent Turkish Protestant church, organised religious gatherings with up to about forty participants in a private apartment that they had purchased in a condominium, without the prior agreement of the other co-owners. As freedom of worship is protected by the Constitution, subject to respect for the rights of others, the authorities requested the applicants to take the requisite steps by seeking the agreement of the neighbours. After the neighbours lodged complaints because of the disturbance caused by the meetings, the authorities ordered the removal of the plaque bearing the name of the religious community that the applicants had put up at the entrance to the building. The courts which upheld that order, referring in particular to Article 9 of the Convention, emphasized that freedom of religion should be exercised in conformity with the statutory rules and should respect the rights and freedoms of others. The other co-owners did not give their agreement and the authorities therefore ordered the applicants to stop using their premises as a place of worship. The authorities added

that they always granted facilities to religious communities as part of the measures they took to provide for the actual exercise of freedom of religion, without any distinction. A legislative reform then authorised the municipality to build places of worship in accordance with urban planning rules. The applicants accordingly asked the authorities to make a place of worship available to them. The authorities responded that they could not grant the request, as there were no premises available. Before that, the applicants had been fined under the criminal-law provisions prohibiting the organisation of religious meetings in premises not intended for such purpose. No hearings were held either by the lower criminal court which ordered the fine or by the higher criminal court which heard the appeal against the order.

Inadmissible under Article 9 – the requisite formalities under Turkish law did not concern the recognition or exercise of any particular form of worship and could not therefore be assimilated to prior authorisation or to intervention from a religious authority. The impugned domestic formalities were intended, on the contrary, to protect the rights and freedoms of others and public order, and the criminal law prohibited religious meetings on premises which were not designated for such use. In the instant case, the domestic authorities had sought to balance compliance with those formalities against the freedom of worship requirements in Article 9 of the Convention. The fining of the applicants was justified in principle and proportionate to the intended objective of protecting the rights and freedoms of others and order: manifestly ill-founded.
It was not established that the private premises of the applicants could not be used as a place of worship if the agreement of the co-owners of the building had been obtained, and once that had been refused the authorities had pointed out that there were a number of churches and synagogues in the town, and that facilities for worship were always made available to religious communities. Although, following the legislative reform, the application by the applicants to obtain a place of worship had been dismissed, they could have challenged that decision in domestic courts, relying in particular on the freedom of religion guaranteed by Article 24 of the Constitution and on the needs of their community to obtain the construction of a church or the attribution of other premises. However, they had not done so: non-exhaustion of domestic remedies.
Communicated under Article 6(1) [lack of public hearing in criminal proceedings].

MANIFEST RELIGION
Obligation for the applicant to return to the State a church where it practised its religious cult for many years, following an inter-church conflict: *communicated*.

GRIECHISCHE KIRCHENGEMEINDE MÜNCHEN UND BAYERN E. - Germany (N° 52336/99)
[Section III]

In 1828 the State had made available to the Greek Orthodox community a church of which it remained the owner. 150 years later, following disagreements with the Greek Church, which had until then been sending priests for the parish, the applicant – a religious community using the church for worship - appointed its own priest and celebrated mass according to other precepts. The State then called for the return of the church in order to make it available to the Greek Church. Whilst the civil court dismissed the State's claim, the administrative court ordered the return of the church, considering, on the basis of a comparative examination of the number of members and churchgoers, that the transfer of the church to the other religious community would be more consonant with the initial intention of the donator of the place of worship. The appeals lodged by the applicant community were unsuccessful. The Federal Constitutional Court considered that the withdrawal of the church premises was not contrary to the principle of State neutrality *vis-à-vis* religion. The State had not acted in order to interfere in a conflict between two religious communities, but to review, in its capacity as owner, whether the provision of the church remained consonant with the initial intention of its donator. Moreover, the decision did not infringe the applicant community's right to conduct its affairs independently. The applicant community was obliged to return the church premises, which the State then made available to the other religious community.
Communicated under Article 9 taken alone and in conjunction with Article 14, and under Article 1 of Protocol No.1.

FREEDOM OF EXPRESSION
Highest award ever made by jury in a libel case against a media group, and alleged absence of adequate safeguards against disproportionate awards: *no violation*.

INDEPENDENT NEWS AND MEDIA and INDEPENDENT NEWSPAPERS IRELAND LIMITED - Ireland (Nº 55120/00)
Judgment 16.6.2005 [former Section III]

Facts: The applicants are registered companies which form part of the same media group (the second applicant is a wholly owned subsidiary of the first applicant). In December 1992, a national newspaper owned by the second 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, as 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 had not been 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.

Law: Article 10 – The award of damages had constituted an interference with the applicants' freedom of expression, it had been "prescribed by law" and pursued the legitimate aim of protecting the "the reputation and the rights of others". The Court considered that the *Tolstoy Miloslavsky* judgment – where its review had been confined to the award assessed by the jury, but not to the jury's finding of libel – was to be the point of departure in examining this case. The essential question to be answered was whether there had been adequate and effective domestic safeguards, at first instance and on appeal, preventing disproportionately high awards. The applicants maintained that the jury should have received more specific guidance on the level of damages to be awarded at first instance, and that compared to the *Tolstoy Miloslavsky* case, where a violation of Article 10 was found, the jurors had received less guidance. However, in the present case the trial judge gave the jury two concrete indications, not provided in the *Tolstoy Miloslavsky* case, as to the level of damages to be awarded. He provided an example of a minor defamation case, thus allowing the jury to assess the relative seriousness of the impugned defamatory article, and then clearly directed to the jury that, if it was to award damages, they would have to be substantial. Thus, the guidance to the jury was somewhat more specific than in the *Tolstoy Miloslavsky* case. As regards review at second instance, the applicants argued that the Supreme Court had not exercised a stricter review than the inadequate appellate review in the *Tolstoy Miloslavsky* case. The Court however considered this incorrect, as it was precisely one of the main points of distinction between the two cases. In its appellate review, the Supreme Court had taken into account a number of relevant factors, for example the gravity of the libel, the effect on the politician in question and on his negotiations to form a government at the time of publication, the extent of the publication, the conduct of the first applicant newspaper and the consequent necessity for the politician to endure three long and difficult trials. Having assessed these factors, it concluded that the jury would have been justified in going to the top of the bracket in its damages award. Moreover, the applicants' allegation that the appellate review had been incapable of remedying the "defects" at first instance (as the first-instance decision maker had not

received all relevant information) had not prevented the Supreme Court from carrying out its own assessment of the proportionality of the award. In conclusion, having regard to the circumstances of the case, notably the measure of appellate control, it had not been demonstrated that there had been ineffective or inadequate safeguards against a disproportionate award of the jury in the present case.
Conclusion: no violation (six votes to one).

FREEDOM OF EXPRESSION
Injunction prohibiting exhibition of a painting showing public persons in sexual positions: *admissible*.

WIENER SECESSION VEREINIGUNG BILDENDER KÜNSTLER – Austria (Nº 68354/01)
Decision 30.6.2005 [Section I]

The applicant, an association of artists, organised an exhibition which among other works included a painting depicting a number of people from public life nude and in sexual positions (the faces were blown up photos from newspapers). One of the persons who appeared in the painting, M., was at the time an Austrian politician and member of the National Assembly. M. brought proceedings against the applicant, which were dismissed by the Commercial Court on the ground that the painting, which resembled a comic strip, obviously did not represent reality. However, the court acknowledged that the painting could have produced a debasing effect on M., but that the applicant association's freedom of artistic expression outweighed M.'s personal interests. Moreover, as the painting had been subsequently damaged by a visitor who had covered it in red paint, M. was no longer recognisable and there was therefore no danger of recurrence. However, in appeal proceedings, the Court of Appeal found that the painting constituted a "debasement of M.'s public standing" and issued an injunction prohibiting the applicant association from showing the painting at exhibitions or publishing photos of it, and ordered the payment of compensation.
Admissible under Article 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of political party by the Constitutional Court: *admissible*.

FAZİLET PARTİSİ (Parti de la vertu) and KUTAN - Turkey (N° 1444/02)
Decision 30.6.2005 [Section III]

The first applicant, a political party, was created in December 1997 and dissolved in June 2001. It was then an opposition party with 111 members of parliament and was chaired by the second applicant, an MP. In May 1997 Principal State Counsel at the Court of Cassation applied to the Constitutional Court for the dissolution of the party, on the ground that it had become a centre of anti-secularist activity. He contended that the leaders and members of the party were advocating or actively promoting certain practices, in particular the wearing of the Islamic headscarf, which were contrary to the principle of secularism enshrined in the Constitution, and that the *Fazilet* was the continuation of the *Refah*, which had been definitively dissolved because of its illegal activities. In June 2001 the Constitutional Court pronounced the dissolution of the party. It invoked the positions taken by the party's chairman and leaders in favour of the Islamic headscarf being worn in schools, universities, public administrations and in the National Assembly, as well as statements advocating the setting-up of a theocratic regime. Given the party's electoral potential and the possibility of its political model being implemented, the party represented a threat to public order, to the freedom of thought of others, and to the secular democratic order. The Constitutional Court decided to strip two party members of their MP status and prohibited three others from being founders or members of any other party for a period of five years.
Admissible under Articles 9, 10, 11, 14, 17 and 18 and Article 3 of Protocol No. 1.
(see also Article 3 of Protocol No. 1, below).

FREEDOM OF ASSOCIATION

Prohibition to found, adhere to and head a political party for a period of five years: *admissible*.

SILAY - Turkey (N° 8691/02)
Decision 30.6.2005 [Section III]

Following the dissolution of the Welfare Party (*Refah Partisi*), the applicant, an MP from the dissolved political movement, joined the political party *Fazilet Partisi* and served until the April 1999 general elections, which marked the end of the term of office for which he had been elected. In May 1999 Principal State Counsel applied to the Constitutional Court for the dissolution of the party, on the ground that the *Fazilet* had become a centre of anti-secularist activity and that it was the continuation of the *Refah*. Among the actions and statements of the leaders and members of the *Fazilet* he invoked the book written by the applicant. In June 2001 the Constitutional Court pronounced the dissolution of the *Fazilet* on the ground that it had become a "centre of activities contrary to the principle of secularism", considering *inter alia* that the applicant had, through the contents of his book, incited the public to act against the public authorities. As an additional penalty, the Constitutional Court prohibited the applicant from becoming a founder member, ordinary member or leader of another political party for a period of five years.
Admissible under Articles 10 and 11 and Article 3 of Protocol No. 1.
(see also Article 3 of Protocol No. 1, below).

ARTICLE 14

DISCRIMINATION (SEX)
Burden of jury service allegedly placed predominantly on males, as well as on persons who had previously served as jurors: *admissible*.

ZARB ADAMI - Malta (Nº 17209/02)
Decision 24.5.2005 [Section IV]

The applicant was placed on a list of jurors in 1971. Since then, he has undertaken jury service on three occasions, but failed to appear when called to act in a new set of proceedings in 1997. The applicant received a fine of approximately 240 euros, but as he did not pay it he was summoned to the courts, where he pleaded that the fine imposed on him was discriminatory because it subjected him to burdens and duties to which other persons in the same position were not subjected, in particular because once a person had been placed on a list he would remain on it until disqualified, whilst other persons who were eligible were being exempted from such a civic obligation. Moreover, the applicant maintained that the law and practice *de facto* exempted females from performing the social duty of jury service. He submitted statistics to the domestic courts showing that during the preceding five years in practice only 3.05% of women as opposed to 96.95% of men served as jurors. In a judgment in 2001, the Constitutional Court rejected the applicant's complaints as neither the law nor the rules on the compilation of the list of jurors were in any way discriminatory on the basis of sex. The court, however, acknowledged that the number of women being exempted from jury service was high but that there were social, family and cultural reasons for such exemptions. The Constitutional Court also accepted the applicant's complaint that the way the lists were compiled seemed to punish those persons who were on the list (and suggested the system be amended), but did not consider that he had been subjected to burdensome treatment for the simple reason that he had to serve as a juror three times over a span of seventeen years. In any event, the applicant should have made use of ordinary remedies to seek exemption from jury service, and not just ignore the summons to act as juror. Between 2000 and 2005 the applicant requested to be exempted from jury service on three occasions. His claims were refused, except for his request in 2005, when he was removed from the list of jurors on grounds that he was at the time a full-time university lecturer (which was a legal cause of exemption).

Admissible under Article 14 in conjunction with Article 4(3)(d). The Government's objection (non-exhaustion): The remedies advanced by the Government were not sufficiently certain in practice, as they either gave the national courts an unfettered discretion or would have led to the remittance of the fine, but not to exemption from jury service. Moreover, the applicant had raised a plea of unconstitutionality, which was one of the several remedies available. The application could therefore not be rejected on these grounds.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSION
Non-enforcement of "social tenancy" award by domestic court: *violation*.

TETERINY - Russia (N° 11931/03)
Judgment 30.6.2005 [Section I]

Facts: In 1994 a district court allowed the first applicant's claim against a town council for provision of State housing, for which he was eligible as a judge. The town council was ordered to grant or purchase for him a flat or house with a habitable surface of no less than 65 square metres. The judgment could not be enforced, however, because the town authorities did not possess any available housing or the financial resources to purchase a flat. The first applicant's various complaints were to no avail. In 2002 he requested the district court to change the method of execution in the sense that the value of the flat be paid to him in cash. These proceedings were eventually discontinued by the bailiff in 2003 on account of the town council's lack of funds for constructing or purchasing housing. In 2004 the town council offered the first applicant a flat of 25 square metres, arguing that no State housing had been constructed since 1994 and that it was therefore not in a position to offer him a flat corresponding to the court award. The applicants did not accept the offer. Later in 2004 the enforcement proceedings were re-opened but the judgment of 1994 has not yet been enforced.
The RSFSR Housing Code 1983 provided (until March 2005) that Russian citizens were entitled to possess flats owned by the State or municipal authorities or other public bodies, under the terms of a tenancy agreement. Certain "protected" categories such as judges had a right to priority treatment in the allocation of flats. A decision on granting a flat was to be implemented by way of issuing the citizen with an occupancy voucher from the local municipal authority. This voucher served as the legal basis for taking possession of the flat designated therein and for the signing of a tenancy agreement between the landlord, the tenant and the housing maintenance authority.

Law – Article 6(1) of the Convention: Execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6. It is not open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt. While a delay in the execution of a judgment may be justified in particular circumstances, that delay may not be such as to impair the essence of the right protected under Article 6(1). A party should not be prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State. The 1994 judgment had remained unenforced in its entirety to date and the offer made by the town council in 2004 had not met the terms of that judgment. By failing for years to take the necessary measures to comply with the final judicial decision in the present case, the Russian authorities have deprived the provisions of Article 6(1) of all useful effect.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1: The concept of "possessions" within the said provision is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as property rights, and thus as "possessions" for the purposes of this provision. The right to any social benefit is not included as such among the rights and freedoms guaranteed by the Convention and the right to live in a particular property not owned by an applicant does not as such constitute a "possession". A claim based on which an

applicant can claim to have at least a "legitimate expectation" of obtaining effective enjoyment of a particular pecuniary asset may nevertheless fall within the notion of a "possession". Hence a "claim" even to a particular social benefit can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable.
By virtue of the 1994 judgment the town council was to place at the first applicant's disposal a flat with certain characteristics. The judgment did not require the authorities to give him ownership of a particular flat, but rather obliged them to issue him with an occupancy voucher in respect of any flat satisfying the court-defined criteria. On the basis of the voucher, a so-called "social tenancy agreement" would have been signed between the competent authority and the first applicant. Under that agreement he would have been entitled to possess and make use of the flat and, under certain conditions, to privatise it. Accordingly, from the moment of the 1994 judgment the first applicant had had an established "legitimate expectation" to acquire a pecuniary asset. Accordingly, his claim to a "social tenancy agreement" was sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1. The impossibility for him to obtain the execution of the judgment for more than ten years constituted an interference with his right to peaceful enjoyment of his possessions for which the Government had not advanced any plausible justification.
Conclusion: violation (unanimously).

Article 41: The Court ordered the Government to secure, by appropriate means, the enforcement of the award made in the 1994 judgment. In addition, the Court awarded EUR 3,000 in respect of non-pecuniary damage.

PEACEFUL ENJOYMENT OF POSSESSIONS
Annulment of a property title and a donation in favour of a foundation created by a religious minority, on grounds that such foundations were not entitled to acquire goods: *admissible*.

YEDİKULE SURP PİRGİÇ ERMENİ HASTANESİ VAKFI – Turkey (N^{os} 50147/99 and 51207/99)
Decision 14.6.2005 [Section II]

The applicant is a foundation constituted under Turkish law, created during the Ottoman Empire, belonging to a non-Muslim religious minority within the meaning of the Lausanne Treaty. It acquired ownership of a building by donation and subsequently had its property officially entered in the land register, but the Treasury obtained the annulment of the property title and the re-registration of the property in the name of the former owner. The court applied the case-law established in May 1974, whereby the acquisition of property by purchase or donation was prohibited for foundations which belonged to religious minorities as defined in the Lausanne Treaty and which had omitted to declare in their constitution that they had capacity to acquire real estate. The applicant foundation acquired the ownership of another building by donation. The Treasury obtained the annulment of the donation on the basis of the same case-law of May 1974. During the proceedings a judicial expert indicated that the applicant foundation's constitution empowered it to acquire real estate. After a change in the law, foundations were recognised as having capacity to acquire and alienate real estate, subject to administrative authorisation. The applicant foundation then applied for the two properties of which it had been dispossessed by judicial decision to be entered in the land register under its own name. Its applications were dismissed on the ground that the property was already registered either in its own name or in that of a third party.

Admissible under Article 6(1) [fair trial], Article 1 of Protocol No. 1, and Article 14, after joinder to the merits of the plea of non-exhaustion of domestic remedies.

DEPRIVATION OF PROPERTY
Forfeiture of non-declared money at customs checkpoint of Moscow airport: *violation*.

BAKLANOV - Russia (Nº 68443/01)
Judgment 9.6.2005 [Former Section I/Ancienne Section I]

Facts: The applicant, who lives in Riga, asked an acquaintance to deliver 250,000 US dollars ("USD") to Moscow, where he intended to go and live (for this purpose, he had previously negotiated a real estate deal with a Moscow-based agent). The applicant's acquaintance failed to declare the money at the customs checkpoint and was charged with smuggling. The District Court convicted him on this ground under Article 188-1 of the Criminal Code. As regards the money, it was forfeited to the Treasury as an object of smuggling. The appeal by the applicant's acquaintance was refused, as was an application for supervisory review by the Deputy President of the Supreme Court claiming that smuggled money could only be confiscated if proven to have been acquired criminally. The applicant complains that the District Court forfeited his, an innocent party's, money without any basis in law.

Law: Article 1 of Protocol No. 1 – The seizure of the applicant's money had constituted an interference with his property rights within the meaning of this provision. This Article authorised a deprivation of possessions or a State's right to control the use of property if these were "prescribed by law". As regards the requirement of lawfulness in the present case, the Court recalled that confiscation of forfeited goods was not provided for by Article 188-1 of the Criminal Code, which served as a basis for the conviction of the applicant's acquaintance (as was the case prior to the reform of this piece of legislation). The Code of Criminal Procedure permitted the forfeiture of "criminally acquired" assets or money, but there was no evidence to the effect that the applicant's money had been acquired in such a manner, nor did it appear that the national courts had relied upon this provision forfeiting the money. As to the rulings of the Supreme Court and Constitutional Court relied upon by the Government in support of their arguments, these could not serve as an established interpretation of domestic legislation on the basis of which the forfeiture could be effected. Thus, having regard to the national courts' lack of reference to any legal provision as a basis for the forfeiture of an important sum of money, and to the apparent inconsistencies of case-law compared to national legislation, the Court considered that the law in question was not formulated with such precision as to enable the applicant to foresee the consequences of his actions. It followed that the interference with the applicant's property could not be considered lawful.
Conclusion: violation (six votes to one).

Article 41 – The Court awarded the applicant 3,000 euros in respect of non-pecuniary damage.

DEPRIVATION OF PROPERTY
Obligation to return to the reunified German State, without compensation, property allocated to ascendants during the GDR regime: *no violation.*

JAHN and Others – Germany (Nos 46720/99, 72203/01 and 72552/01)
Judgment 30.6.2005 [Grand Chamber]

Facts: The five applicants, all German nationals, inherited land that had been allocated to their ascendants, subject to certain restrictions on disposal, following the land reform implemented in the Soviet Occupied Zone of Germany in 1945. In March 1990 the so-called Modrow Law came into force in the German Democratic Republic, lifting the restrictions on the disposal of land that had been applicable until then, whereupon those in possession of the land acquired full title to it. After German reunification, however, some heirs (including the applicants) of persons who had acquired land under the land reform were compelled to reassign their property to the tax authorities of their respective *Land* without compensation in accordance with the second Property Rights Amendment Act passed in July 1992 by the German federal parliament. Heirs of owners of land acquired under the land reform had to reassign it to the tax authorities if, on 15 March 1990, they were not carrying on an activity in the agriculture, forestry

or food-industry sectors in the GDR, had not been carrying on an activity in one of those sectors during the previous ten years or were not members of an agricultural cooperative in the GDR.
A Chamber of the Court had found that even if the circumstances pertaining to German reunification had to be regarded as exceptional, the lack of any compensation for the State's taking of the applicants' property had upset, to the applicants' detriment, the fair balance which had to be struck between the protection of the right of property and the requirements of the general interest. Accordingly, the Chamber had concluded, unanimously, that there had been a violation of Article 1 of Protocol No. 1, rendering it unnecessary to examine the allegation of a breach of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (see Case-Law Reports N° 60).

Law – Article 1 of Protocol No. 1 to the Convention: The Grand Chamber, like the Chamber, found that the interference in question had to be regarded as a deprivation of property and that it had been "provided for by law". It also agreed with the Chamber that the impugned measures had been "in the public interest", namely to correct the effects of the Modrow Law which the German authorities had considered unfair. The question remaining was whether a "fair balance" had been struck between the demands of the general interest of the community and the requirements of the protection of the individual's property rights. As the taking of property without any compensation whatsoever could be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances the Court had to examine, in the light of the unique context of German reunification, whether such circumstances had existed. In the first place the Court noted that the Modrow Law had been passed by a parliament that had not been democratically elected, during a transitional period between two regimes that had inevitably been marked by upheavals and uncertainties. In those conditions, even if the applicants had acquired a formal property title, they could not be sure that their legal position would be maintained. The Court also noted the fairly short period of time that had elapsed between German reunification and the enactment of the second Property Rights Amendment Act. Having regard to the huge task facing the German legislature when dealing with, among other things, all the complex issues relating to property rights during the transition to a democratic, market-economy regime, including those relating to the liquidation of the land reform, the German parliament could be deemed to have intervened within a reasonable time to correct the effects of the Modrow Law in so far as they had been perceived to be unfair. Lastly, the reasons for passing the second Property Rights Amendment Act were also a decisive factor to be taken into consideration. The German parliament could not be deemed to have been unreasonable in considering that it had a duty to correct the effects of the Modrow Law for reasons of social justice so that the acquisition of full ownership by the heirs of land acquired under the land reform did not depend on the action or non-action of the GDR authorities at the time. Given the "windfall" from which the applicants had undeniably benefited as a result of the Modrow Law under the rules applicable in the GDR to the heirs to land acquired under the land reform, the fact that this had been done without paying any compensation had not been disproportionate. Having regard, in particular, to the uncertainty of the legal position of heirs and the grounds of social justice relied on by the German authorities, the Court concluded that in the unique context of German reunification, the lack of any compensation did not upset the "fair balance" which had to be struck between the protection of property and the requirements of the general interest.
Conclusion: no violation of Article 1 of Protocol No. 1 (eleven votes to six).

Article 14 taken together with Article 1 of Protocol No. 1: The purpose of the second Property Rights Amendment Act of 14 July 1992 had been to correct the effects of the Modrow Law in order to ensure equality of treatment between heirs to land acquired under the land reform, that is, those whose land had been allocated to third parties or returned to the pool of state-owned land in the GDR before the Modrow Law came into force and those who did not satisfy the conditions for allocation, but in respect of whom the GDR authorities had at the relevant time omitted to effect the transfers and enter them in the land register. The provisions of the Law of 1992 had been based on an objective and reasonable justification.
Conclusion: no violation (fifteen votes to two).

CONTROL OF USE OF PROPERTY
Impounding of leased aircraft in pursuance of UN sanctions regime and EC Council Regulation. Protection of fundamental rights by EC law equivalent to that of the Convention system, unless the presumption to that effect was rebutted: *no violation.*

BOSPHORUS HAVA YOLLARI TURIZM VE TICARET ANONIM ŞIRKETI ("BOSPHORUS AIRWAYS") - Ireland (N° 45036/98)
Judgment 30.6.2005 [Grand Chamber]

Facts: In May 1993 an aircraft leased by "Bosphorus Airways", an airline charter company registered in Turkey, from Yugoslav Airlines ("JAT") was seized by the Irish authorities. It had been in Ireland for maintenance by TEAM Aer Lingus, a company owned by the Irish State, and was seized under EC Council Regulation 990/93 which, in turn, had implemented the UN sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro). The applicant's challenge to the retention of the aircraft was initially successful in the High Court, which held in 1994 that Regulation 990/93 was not applicable to the aircraft. However, on appeal, the Supreme Court referred a question under Article 177 of the EEC Treaty to the European Court of Justice (ECJ) on whether the aircraft was covered by Regulation 990/93. The ECJ found that it was and, in its judgment of 1996, the Supreme Court applied the decision of the ECJ and allowed the State's appeal. By that time, the applicant's lease on the aircraft had already expired. Since the sanctions regime against FRY (Serbia and Montenegro) had also been relaxed by that date, the Irish authorities returned the aircraft directly to JAT. The applicant consequently lost approximately three years of its four-year lease of the aircraft, which was the only one ever seized under the relevant EC and UN regulations.
Before the Court the applicant company complained that the manner in which Ireland had implemented the sanctions regime to impound its aircraft had been a discretionary decision capable of being reviewed under Article 1 of Protocol No. 1 which had been violated.

Law: It was not disputed that the impoundment of the aircraft had been implemented by the Irish authorities on its territory following a decision by the Irish Minister for Transport. In such circumstances the matter fell within the "jurisdiction" of the Irish State within the meaning of Article 1 of the Convention. As to the legal basis for the impoundment the Court observed that EC Regulation 990/93 had been generally applicable and binding in its entirety, thus applying to all Member States none of which could lawfully depart from any of its provisions. In addition, its direct applicability was not, and could not be, disputed. The Regulation had become part of Irish domestic law with effect from 28 April 1993, when it had been published in the Official Journal, prior to the date of the impoundment and without the need for implementing legislation. The impoundment powers had been entirely foreseeable and the Irish authorities had rightly considered themselves obliged to impound any departing aircraft to which they considered Article 8 of EC Regulation 990/93 applied. Their decision that it did so apply had later been confirmed by the ECJ. The Court furthermore agreed with the Irish Government and the European Commission (intervening in the case) that the Supreme Court had no real discretion to exercise in the case, either before or after its preliminary reference to the ECJ. In conclusion, the impugned interference had not been the result of an exercise of discretion by the Irish authorities, either under EC or Irish law, but rather had amounted to compliance by the Irish State with its legal obligations flowing from EC law and, in particular, Article 8 of EC Regulation 990/93.
As to the justification of the impoundment the Court found that the protection of fundamental rights by EC law could have been considered to be, and to have been at the relevant time, "equivalent" to that of the Convention system. Consequently, a presumption arose that Ireland had not departed from the requirements of the Convention when it had implemented legal obligations flowing from its membership of the EC. Such a presumption could be rebutted if, in a particular case, it was considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a constitutional instrument of European public order in the field of human rights. The Court took note of the nature of the interference, of the general interest pursued by the impoundment and by the sanctions regime and of the ruling of the ECJ, a ruling with which the Supreme Court had been obliged to comply. It could not be said that the protection of Bosphorus Airways' Convention rights had been manifestly deficient. It followed that the presumption

of Convention compliance had not been rebutted and that the impoundment of the aircraft did not give rise to a violation of Article 1 of Protocol No. 1.
Conclusion: no violation (unanimously).

ARTICLE 3 OF PROTOCOL No. 1

CHOICE OF THE LEGISLATURE
Members of Parliament deposed of their parliamentary mandate: *admissible*.

KAVAKÇI - Turkey (N° 71907/01)
Decision 30.6.2005 [Section III]

In 1999 the applicant, who belonged to the political party *Fazilet Partisi,* was returned as member of parliament to the Grand National Assembly of Turkey. She took the oath wearing an Islamic headscarf but was obliged to leave the chamber in the face of strong protests from certain parliamentarians. In June 2001 the Constitutional Court considered that, pursuant to Article 69 § 9 of the Constitution, the actions and statements of certain party leaders and members, including those of the applicant, justified the dissolution of the party on the ground that it had become a "centre of activities contrary to the principle of secularism". As an additional penalty, the Constitutional Court prohibited the applicant from founding, joining or leading another political party for a period of five years. The applicant had previously been stripped of her MP status because she had forfeited her Turkish nationality after obtaining United States nationality without the authorisation of the national authorities.
Admissible under Articles 9 and 14 and Article 3 of Protocol No. 1.

ILICAK - Turkey (N° 15394/02)
Decision 30.6.2005 [Section III]

In April 1999 the applicant, who belonged to the political party *Fazilet Partisi,* was returned as member of parliament to the Grand National Assembly of Turkey. In May 1999 she accompanied the MP Merve Kavakci, who took the oath in the National Assembly wearing an Islamic headscarf. On pronouncing the dissolution of the party in June 2001, the Constitutional Court decided to strip the applicant of her MP status, pursuant to Article 84 of the Constitution, and prohibited her from founding, joining or leading another political party for a period of five years.
Admissible under Articles 10 and 11 and Articles 1 and 3 of Protocol No. 1.
(see also Article 11 above)

ARTICLE 4 OF PROTOCOL No. 4

PROHIBITION OF COLLECTIVE EXPUSLION OF ALIENS
Single decision from authorities refusing an asylum request of two persons: *inadmissible*.

BERISHA AND HALJITI - The former Yugoslav Republic of Macedonia (Nº 18670/03)
Decision 16.6.2005 [Section III]

The applicants are spouses and nationals of Serbia and Montenegro, from the Kosovo province. They are of Roma ethnic origin. They claim that they were harassed by Albanians from their village on a daily basis, and forced by members of the Kosovo Liberation Army and other villagers to leave their house. In 1999, they fled Kosovo and obtained humanitarian protection in the former Yugoslav Republic of Macedonia. In view of the inappropriate living conditions of the campsite, they went back to Kosovo, where the first applicant was hired as an interpreter for the KFOR administration. They allege to have continued being frequently subjected to verbal assaults, and that the first applicant, who was involved in

work in favour of Roma rights, suffered constant discriminatory practices by his Albanian colleagues. After the first applicant lost his job, they returned to the former Yugoslav Republic of Macedonia and applied for asylum. Their request was dismissed, as was their subsequent appeal to the Supreme Court, which found that their fear of persecution was based solely on their general feeling of insecurity due to their ethnic origin. Although the applicants were requested to leave the country, they stayed and were subsequently stopped by the police in an attempt to enter Greece illegally. They were tried the following day in court and found guilty of a minor offence in breach of the Law on border crossing. The applicants were fined, banned from entering the country for 2 years, and expelled to Serbia and Montenegro. In 2003, they fled Kosovo again and were granted asylum in Hungary on account of the unstable and insecure situation in Kosovo.

Communicated under Article 6, concerning the alleged unfairness of the misdemeanour proceedings (stemming from the applicants' inability to understand or speak the language of the court, and the alleged breach of their rights of defence: lack of legal representation¸ legal aid and of interpretation).

Inadmissible under Article 4 of Protocol No. 4: The applicants complained that they had been subjected to collective expulsion, contrary to this provision, since the authorities had issued a single decision for both of them without providing reasonable and objective examination of the particular circumstances of each. However, the Court found that the mere fact that the authorities had issued a single decision for both of them, as spouses, was a consequence of their own conduct: they had arrived together to the former Yugoslav Republic of Macedonia, lodged their asylum request jointly, produced the same evidence and submitted joint appeals. In these circumstances, the applicants' deportation did not reveal any appearance of a collective expulsion: manifestly ill-founded.

Other judgments delivered in June

Claes and Others - Belgium (Nº 46825/99, Nº 47132/99, Nº 47502/99, Nº 49010/99, Nº 49104/99, Nº 49195/99 and Nº 49716/99), 2.6.2005 [Section I]
Cottin - Belgium (Nº 48386/99), 2.6.2005 [Section I]
Goktepe - Belgium (Nº 50372/99), 2.6.2005 [Section I]
Karra - Greece (Nº 4849/02), 2.6.2005 [Section I]
H.G. and G.B. - Austria (Nº 11084/02 and Nº 15306/02), 2.6.2005 [Section I]
Giannakopoulou - Greece (Nº 37253/02), 2.6. 2005 [Section I]
Zolotas - Greece (Nº 38240/02), 2.6. 2005 [Section I]
Nikolopoulos - Greece (Nº 21978/03), 2.6. 2005 [Section I]
Nafpliotis - Greece (Nº 22029/03), 2.6. 2005 [Section I]
Dalan - Turkey (Nº 38585/97), 7.6. 2005 [Section II]
Pamak - Turkey (Nº 39708/98), 7.6. 2005 [Section II]
Kilinç - Turkey (Nº 40145/98), 7.6. 2005 [Section II]
L.C.I. - Czech Republic (Nº 64750/01), 7.6. 2005 [Section II]
Calheiros Lopes and Others - Portugal (Nº 69338/01), 7.6. 2005 [Section II]
Fuklev - Ukraine (Nº 71186/01), 7.6. 2005 [Section II]
Real Alves - Portugal (Nº 19458/02), 7.6.2005 [Section II]
Kirilova - Bulgaria (Nº 42908/98), 9.6.2005 [Section I]
I.I. - Bulgaria (Nº 44082/98), 9.6.2005 [Section I]
Baumann - Austria (Nº 76809/01), 9.6.2005 [Section I (former/ancienne)]
Kuzin - Russia (Nº 22118/02), 9.6.2005 [Section I]
Vokhmina - Russia (Nº 26384/02), 9.6.2005 [Section I]
Tavlikou Vosynioti - Greece (Nº 42108/02), 9 .6. 2005 [Section I]
R.R. - Italy (Nº 42191/02), 9 .6. 2005 [Section III]
Picaro - Italy (Nº 42644/02), 9.6.2005 [Section III]
Castren Niniou - Greece (Nº 43837/02), 9.6.2005 [Section I]
Panagakos - Greece (Nº 43839/02), 9.6.2005 [Section I]
Aggelopoulous - Greece (Nº 43848/02), 9.6.2005 [Section I]
Fraggalexi - Greece (Nº 18830/03), 9.6.2005 [Section I]
Charalambos - Greece (Nº 21276/03), 9.6.2005 [Section I]
Kaskaniotis - Greece (Nº 21279/03), 9.6.2005 [Section I]
OOO Rusatommet - Russia (Nº 61651/00), 14.6.2005 [Section II]
Mayali - France (Nº 69116/01), 14.6.2005 [Section II]
Houbal - Czech Republic (Nº 75375/01), 14.6.2005 [Section II]
Pisk-Piskowski - Poland (Nº 92/03), 14.6.2005 [Section IV]
Ergin - Turkey (nº 1) (Nº 48944/99), 16.6.2005 [Section III]
Ergin - Turquie (nº 2) (Nº 49566/99), 16.6.2005 [Section III]
Ergin - Turkey (nº 3) (Nº 50691/99), 16.6.2005 [Section III]
Ergin - Turkey (nº 4) (Nº 63733/00), 16.6.2005 [Section III]
Ergin - Turkey (nº 5) (Nº 63925/00), 16.6.2005 [Section III]
Ergin and Kaskin - Turkey (nº 1) (Nº 50273/99), 16.6.2005 [Section III]
Sisojeva - Latvia (Nº 60654/00), 16.6.2005 [Section I
Labzov - Russia (Nº 62208/00), 16.6.2005 [Section I]
Ergin and Kaskin - Turkey (nº 2) (Nº 63926/00), 16.6.2005 [Section III]
Balliu - Albania (Nº 74727/01), 16.6.2005 [Section III]
Arvanitis - Greece (Nº 35450/02), 16.6.2005 [Section I]
Pitra - Croatia (Nº 41075/02), 16.6.2005 [Section I]
Perincek - Turkey (Nº 46669/99), 21.6.2005 [Section II]
Bzdusek - Slovakia (Nº 48817/99), 21.6.2005 [Section IV]
Blackstock - United Kingdom (Nº 59512/00), 21.6.2005 [Section IV]

Palenik - Czech Republic (Nº 64737/01), 21.6.2005 [Section II]
Pihlak - Estonia (Nº 73270/01), 21.6.2005 [Section IV]
Turek - Czech Republic (Nº 73403/01), 21.6.2005 [Section II]
Bulynko - Ukraine (Nº 74432/01), 21.6.2005 [Section II]
Alexandr Bulynko - Ukraine (Nº 9693/02), 21.6.2005 [Section II]
Kubiznakova - Czech Republic (Nº 28661/03), 21.6.2005 [Section II]
Latasiewicz - Poland (Nº 44722/98), 23.6.2005 [Section III]
Zimenko - Russia (Nº 70190/01), 23.6.2005 [Section III]
Ghibusi - Romania (Nº 7893/02), 23.6.2005 [Section III]
Potiri - Greece (Nº 18375/03), 23.6.2005 [Section I]
Hasan Kilic - Turkey (Nº 35044/97), 28.6.2005 [Section IV]
I.O. - Turkey (Nº 36965/97), 28 .6.2005 [Section IV]
Karakas and Yesilirmak - Turkey (Nº 43925/98), 28 .6.2005 [Section IV]
Virgil Ionescu - Romania (Nº 53037/99), 28.6.2005 [Section II]
Gallico - Italy (Nº 53723/00), 28.6.2005 [Section IV]
La Rosa - Italy (no. 2) (Nº 58274/00), 28.6.2005 [Section IV]
Fourchon - France (Nº 60145/00), 28.6.2005 [Section II]
Bach - France (Nº 64460/01), 28.6.2005 [Section II]
Zednik - Czech Republic (Nº 74328/01), 28.6.2005 [Section II]
Hermi - Italy (Nº 18114/02), 28.6.2005 [Section IV]
Bekir Yilmaz - Turkey (Nº 28170/02), 28.6.2005 [Section IV]
Kacar - Turkey (Nº 28172/02), 28.6.2005 [Section IV]
Mehmet Yigit and Others - Turkey (Nº 28175/02), 28.6.2005 [Section IV]
Fatime Toprak - Turkey (Nº 28179/02), 28.6.2005 [Section IV]
Nasan Toprak - Turkey (Nº 28180/02), 28.6.2005 [Section IV]
Mehmet Yigit - Turkey (Nº 28189/02), 28.6.2005 [Section IV]
Ozgur and Turhan - Turkey (Nº 28512/03), 28.6.2005 [Section IV]
Temel and Taskin - Turkey (Nº 40159/98), 30.6.2005 [Section I]
Nakach - Netherlands (Nº 5379/02), 30.6.2005 [Section III]
Bove - Italy (Nº 30595/02), 30.6.2005 [Section III]
Zafiropoulos - Greece (Nº 41621/02), 30.6.2005 [Section I]
Gika - Greece (Nº 394/03), 30.6.2005 [Section I]
Grylli - Greece (Nº 1985/03), 30.6.2005 [Section I]
Patsouraki - Greece (Nº 18582/03), 30.6.2005 [Section I]
Patelaki-Skamagga - Greece (Nº 18602/03), 30.6.2005 [Section I].

Referral to the Grand Chamber

Article 43(2)

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

RAMIREZ SANCHEZ - France (N° 59450/00)
Judgment 27.1.2005 [Section I]

The case concerns the prolonged placement of a terrorist detainee in solitary confinement, and the existence of a remedy in domestic law permitting a detainee to contest his placement in solitary confinement.

Judgments which have become final

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. 73):

Linnekogel - Switzerland (N° 43874/98)
Birol - Turkey (N° 44104/98)
Judgments 1.3.2005 [Section IV]

Brudnicka and Others - Poland (N° 54723/00)
Judgment 3.3.2005 [Section III (former composition)]

Gümüs and Others - Turkey (N° 40303/98)
Şirin - Turkey (N° 47328/99)
Kilinç - Turkey (N° 48083/99)
Soudek - Czech Republic (N° 56526/00)
Özüpek and Others - Turkey (N° 60177/00)
Judgments 15.3.2005 [Section II]

Gezici - Turkey (N° 34594/97)
Judgment 17.3.2005 [Section I]

Kljajić - Croatia (N° 22681/02)
Gika and Others - Greece (N° 33339/02)
Refene-Michalopoulou and Others - Greece (N° 33518/02)
Apostolaki - Greece (N° 34206/02)
Judgments 17.3.2005 [Section I]

Türkoğlu - Turkey (N° 34506/97)
Bubbins - United Kingdom (N° 50196/99)
Judgmentss 17.3.2005 [Section III]

Güngör - Turkey (N° 28290/95)
Ay - Turkey (N° 30951/96)
Judgments 22.3.2005 [Section II]

Zmaliński - Poland (N° 52039/99)
Judgment 22.3.2005 [Section IV]

M.S. - Finland (N° 46601/99)
Fabišik - Slovakia (N° 51204/99)
Szenk - Poland (N° 67979/01)
Rosca - Moldova (N° 6267/02) 22.3.2005
Judgments 22.3.2005 [Section IV]

Akkum and Others - Turkey (N° 21894/93)
Kiurchian - Bulgaria (N° 44626/98)
Baburin - Russia (N° 55520/00)
Rieg - Austria (N° 63207/00)
Stoichkov - Bulgaria (N° 9808/02)

Lulić and Becker - Croatia (N° 22857/02)
Judgments 24.3.2005 [Section I]

Osinger - Austria (N° 54645/00)
El Massry - Austria (N° 61930/00)
Sandor - Romania (N° 67289/01)
Epple - Germany (N° 77909/01)
Judgments 24.3.2005 [Section III]

Alinak - Turkey (N° 40287/98)
Guiraud - France (N° 64174/00)
Kokol and Others - Turkey (N° 68136/01)
Judgments 29.3.2005 [Section II]

Ege - Turkey (N° 47117/99)
Matheron - France (N° 57752/00)
Harizi - France (N° 59480/00)
Judgments 29.3.2005 [Section IV]

Gudeljević - Croatia (N° 18431/02)
Judgment 31.3.2005 [Section I]

Article 44(2)(c)

On 6 June 2005 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Musumeci - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]
(see Information Note No. 71)

Mykhaylenky and Others - Ukraine (No. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02)
Judgment 30.11.2004 [Section II]
(see Information Note No. 69)

Klyakhin - Russia (No. 46082/99)
Judgment 30.11.2004 [Section II]

Sciacca - Italy (N° 50774/99)
Judgment 11.1.2005 [Section IV]
(see Information Note No. 71)

Molin Insaat - Turkey (N° 38424/97)
Dubenko - Ukraine (No. 74221/01)
Judgments 11.1.2005 [Section II]

Capeau - Belgium (N° 42914/989)
Judgment 13.1.2005 [Section I]
(see Information Note No. 71)

Buzatu - Romania (N° 34642/97)
Judgment 27.1.2005 [Section III]

Ayhan (N° 1 and N° 2) - Turkey (N° 45585/99 & N° 49059/99)
Judgment 10.11.2004 [Section III]

Kilian - Czech Republic (N° 48309/99)
Judgment 7.12.2004 [Section II]

Beller - Poland (N° 51837/99)
Judgment 1.2.2005 [Section IV]

Vural - Turkey (N° 56007/00)
Derkach and Palek - Ukraine (No.34297/02 and No.39574/02)
Judgments 21.12.2004 [Section II]

Sharenok - Ukraine (No. 35087/02)
Judgment 22.2.2005 [Section II]

Lebegue - France (N° 57742/00) -
Judgment 22.12.2004 [Section III]

Py - France (N° 66289/01)
Judgment 11.1.2005 [Section II (former composition)]
(see Information Note No. 71)

Farbtuhs - Latvia (N° 4672/02)
Judgment 2.12.2004 [Section I]
(see Information Note No. 70)

Androne - Romania (N° 54062/00)
Judgment 2.12.2004 [Section III]

Cossec - France (N° 69678/01)
Judgment 14.12.2004 [Section II]

Statistical information[1]

Judgments delivered	**June / juin**	**2005**
Grand Chamber	2(4)	4(6)
Section I	33(40)	159(166)
Section II	23	128(129)
Section III	15	60(61)
Section IV	19	81(127)
former Sections	7	18
Total	**99(108)**	**450(507)**

Judgments delivered in June 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(4)	0	0	0	0
Section I	33(40)	0	0	0	33(40)
Section II	22	1	0	0	23
Section III	15	0	0	0	15
Section IV	18	0	1	0	19
Former Section I	3	0	0	1	4
former Section III	3	0	0	0	3
Total	**96(103)**	**1**	**1**	**1**	**99(106)**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4(6)	0	0	0	4(6)
former Section I	6	0	0	1	7
former Section II	3	0	0	0	3
former Section III	8	0	0	0	8
former Section IV	0	0	0	0	0
Section I	153(160)	4	2	0	159(166)
Section II	114	10(11)	3	1	128(129)
Section III	48(49)	7	3	2	60(61)
Section IV	76(122)	2	2	1	81(127)
Total	**412(468)**	**23(24)**	**10**	**5**	**450(507)**

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

Decisions adopted		June	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		36	160(162)
Section II		18(20)	121(125)
Section III		49(50)	110(115)
Section IV		19	64(68)
Total		**122(125)**	**445(470)**
II. Applications declared inadmissible			
Grand Chamber		0	1(3)
Section I	- Chamber	10(11)	44(45)
	- Committee	491	3283
Section II	- Chamber	8	49
	- Committee	783	2758
Section III	- Chamber	7	50
	- Committee	736	2739
Section IV	- Chamber	17(18)	84(87)
	- Committee	756	2981
Total		**2808(2810)**	**11989(11995)**
III. Applications struck off			
Section I	- Chamber	14	32
	- Committee	8	34
Section II	- Chamber	9	36
	- Committee	11	42
Section III	- Chamber	1	17
	- Committee	41	76
Section IV	- Chamber	2	25
	- Committee	8	66
Total		**94**	**328**
Total number of decisions[1]		**3024(3029)**	**12762(12793)**

1. Not including partial decisions.

Applications communicated	June	2005
Section I	57	299
Section II	93	429
Section III	52	246
Section IV	31	156(157)
Total number of applications communicated	**233**	**1130(1131)**

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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