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

INFORMATION NOTE No. 87
on the case-law of the Court
June 2006

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

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ARTICLE 1

RESPONSIBILITY OF STATES
Alleged responsibility of Armenia for acts in and around Nagorno-Karabach: *communicated*.

CHIRAGOV and Others - Armenia (N° 13216/05)
[Section III]

See Article 1 of Protocol No. 1 below.

ARTICLE 2

LIFE
Suspect accidentally shot dead by police officer pursuing him: *no violation*.

YAŞAROĞLU - Turkey (N° 45900/99)
Judgment 20.6.2006 [Section II]

Facts: The applicant's husband ran away when two plain-clothes police officers arrived at his house and identified themselves. He continued running despite verbal warnings and warning shots by the police officers who gave chase. After two kilometres, as they were entering a field, one of the officers tripped over causing his gun to discharge and wound the applicant's husband, who was approximately 30 metres away. The policemen immediately took him to hospital, where he died. The police officer concerned, who was charged with intentional homicide and detained pending trial, claimed that he had tripped and fallen to the ground when the victim was lethally wounded. A full investigation was launched. The Assize Court found that the officer's account was implausible and sentenced him to over six years' imprisonment for involuntary manslaughter. The Court of Cassation quashed the judgment, in particular on the ground that there was no firm evidence to refute the police officer's version of events. The case was remitted to the Assize Court, which found that there was no case to answer on the grounds that the forensic report did not rule out the possibility – favourable to the defendant – that the weapon had discharged when he fell to the ground; that there was no evidence to contradict that defence; and that he had been acting in the course of his duties. The Court of Cassation upheld the judgment. The applicant was awarded compensation by an administrative court in respect of pecuniary and non-pecuniary damage.

Law: Article 2 – The Court could not find any reason to call into question the facts as established by the domestic courts. The suspect's escape had obliged the police officers to react immediately to the situation and adapt their conduct quickly. The officers had ordered the fugitive to stop and had then resorted to firing warning shots to force him to stop. It was only later on, when the police officer had tripped or fallen over, that the lethal shot had been fired accidentally. There was no evidence to suggest "beyond all reasonable doubt" that the killing had been intentional or that death had occurred in circumstances that were liable to engage the State's responsibility. There had been no violation of Article 2 under its substantive head.
The authorities had taken action on the very day of the death. They had identified the suspect, initiating criminal proceedings against him and remanding him in custody, and had taken all necessary measures to gather evidence (conclusive autopsy, numerous expert reports – including to examine the various possible explanations – fact-finding visit, interviewing of eyewitnesses). They had conducted a judicial investigation that satisfied the requirements of Article 2. The applicant had been able to play an active part in the Assize Court proceedings as an intervening party, going as far as commenting on the expert reports. There had been no violation of Article 2 under its procedural head.
Conclusion: no violation (unanimously).

Article 13 – The requirements of Article 13, which went further than the obligation under Article 2 to carry out an investigation, had been satisfied in this case by the identification of the person responsible,

his trial in a criminal court and the administrative court's award of compensation to the family of the deceased for both pecuniary and non-pecuniary damage: *manifestly ill-founded*.

LIFE
Death of an Aids sufferer in sobering-up cell at a police station: *violation*.

TAÏS - France (N° 39922/03)
Judgment 1.6.2006 [Section I]

Facts: The applicants' son, then aged 33 and suffering from Aids, was found dead in a police cell where he had been placed several hours earlier in a seriously inebriated state and with bruising caused earlier by various incidents following his arrest. Checks were made inside his cell every fifteen minutes from his arrival there at midnight until 5 a.m., and then every half hour until he was found dead at 7.30 a.m. The indication "nothing to report" had been added next to the times of the checks. An investigation into the cause of death was opened. The parents lodged a complaint alleging manslaughter by wounding and failure to assist a person in danger. The investigating judge came to the conclusion that, in the light of the expert reports, witness statements and investigations, the trauma that had caused the death, the exact origin of which remained unknown, had probably occurred while the victim was in custody, and that the most likely explanation was that he had fallen, whether voluntarily or involuntarily, from the concrete bench in the cell. The judge found that the custody officers at the police station could not be implicated and concluded that there was no case to answer. The Court of Appeal noted that the facts surrounding the death had occurred in a police station and ordered fresh statements from the persons who had been on the premises at the presumed time of death. The police officers declared that they had not entered the cell until the body was found. The Court of Appeal found that the most likely cause of death was a heavy fall onto a sharp corner of the concrete bench. In its view, the victim, who had remained highly intoxicated, and was exhausted after a restless night during which he had shouted at the police officers and stopped himself falling asleep, must have slipped on the excrement that had been smeared around the cell since 4 a.m. and fallen down, with all his weight and from a standing position, without the reflex to protect himself, as is not uncommon for alcoholics. An appeal by the applicants on points of law was dismissed.

Law: Article 2 – *Substantive obligations: Allegation of assault by police officers*: the Government had not been able to provide a plausible explanation for the discrepancy, or even contradiction, between the medical report drawn up before the victim was placed in the cell and the autopsy report, or for the cause of the injuries found on his body, even though the injuries could only have been caused during his detention. The Government had failed to provide a convincing explanation for the death that had occurred while the victim was being held in custody.

Alleged lack of care and supervision: the authorities had been under a duty to protect the life of the applicants' son but there had been gross shortcomings and negligence on their part. Between 1 a.m. and 7.30 a.m. no police officer had entered the cell where the applicants' son was sobering up, despite his having shouted all night and right up until a few moments before his death. His cries had been put down to his fraught frame of mind and his drunken state rather than being recognised as cries in agony or calls for help. He had not been provided with any care even though, from 4 a.m., a highly unpleasant smell had been emanating from the cell. Certain measures could have been taken to save the applicants' son: according to the second expert, the injuries might not have been fatal if they had been diagnosed in time in different circumstances. Given the victim's state of health on his arrival at the police station, and the long hours which followed, the police officers should at least have called a doctor to check on developments in his state of health. The inertia of the police officers in the face of his physical and mental distress and the lack of effective police and medical supervision had constituted a violation of the obligation to protect the life of a person in custody.
Conclusion: violation of Article 2 under its substantive head (five votes to two).

Procedural obligations: At the end of proceedings lasting ten years, the long investigation had failed to establish the actual cause of death and the uncertainty had only increased over time. The second expert opinion had been given nearly three years after the events and the investigating judge had not interviewed

the police officers himself until four years after the events. No detailed evidence had been taken from the victim's girlfriend despite the fact that she had been present in the police station on the night of the incident and could have given crucial evidence as to what she had heard, there being no other witnesses besides the police officers. A re-enactment of events, which had been refused by the investigating judge, might have helped to establish with greater certainty how the fatal injury had occurred.
Conclusion: violation of Article 2 under its procedural head (unanimously).

Article 41 – The Court made an award in respect of non-pecuniary damage and for costs and expenses.

LIFE
Lack of effective and speedy investigation into the death of the applicant's wife and the serious damage to his son's health, following delivery by caesarean section: *violation*.

BYRZYKOWSKI - Poland (N° 11562/05)
Judgment 27.6.2006 [Section IV]

Facts: In July 1999 the applicant's 27-year-old wife was about to give birth to their child and was admitted to a hospital. As there was no progress in the delivery and the child showed signs of heart distress, the next day, a decision was taken to perform a caesarean section. The wife was given an epidural, as a result of which she went into a coma. All resuscitation efforts failed. She was subsequently transported to the intensive therapy unit, where she died 19 days later. Their son was born by a caesarean section, suffering from serious health problems, mostly of a neurological character. He requires permanent medical attention. Following a request from the applicant, a police inquiry was opened into his wife's death on the same day. A post-mortem was carried out promptly. In December 1999 a criminal investigation was started into the suspected offence of manslaughter. Subsequently, the proceedings were stayed, pending the submission of the forensic report, and resumed in October 2000. Afterwards, the investigation was discontinued three times and then resumed on the ground that the evidence gathered so far in the case was incomplete and did not allow for the establishment of the relevant facts. The criminal proceedings are still pending. In 1999 the applicant also requested that disciplinary proceedings be brought in connection with the case. Those proceedings were stayed, resumed and then stayed again in April 2005. The relevant medical court found that the three-year time-limit for seeking the disciplinary liability of the doctor concerned had elapsed but also stated that, as the criminal investigations were still pending, the time-limit could be prolonged. The disciplinary proceedings are still pending. In July 2002 the applicant lodged a compensation claim against the hospital. In April 2003 those proceedings were stayed, pending the outcome of the disciplinary proceedings. The applicant's subsequent efforts to have the proceedings resumed failed.

Law: The Court noted that three sets of proceedings concerning the applicant's complaint under Article 2 of the Convention had been and were pending for periods ranging from four to almost seven years and that the applicant had used all the remedies available to him concerning the alleged medical malpractice. His complaint was therefore admissible. The Court found no indication that there had been any failure on the part of the State to provide a procedure whereby criminal, disciplinary or civil responsibility could be established. The initial measures to establish the facts of the case were taken promptly. Later on, however, the criminal investigations considerably slowed down. The investigations were discontinued three times and subsequently resumed in the light of shortcomings in the taking of evidence. The authorities examining the applicant's appeals against the decisions to discontinue them repeatedly noted the failure of the lower authorities to elucidate all the relevant circumstances. The Court considered that, since the remittal of cases for re-examination was usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings disclosed a serious deficiency in the operation of the judicial system. As regards the disciplinary proceedings, the Court noted that they were still pending and that it was unclear from the medical court's decision whether the time limit had been or just could have been prolonged, which left the applicant in a state of further uncertainty. To sum up, after almost seven years, there had been no final decision in any of the proceedings brought to establish the liability of those responsible for the death of the applicant's wife or those dealing with the birth of his son. Although the Court accepted that the medical questions involved in the case might have been of some

complexity, it did not find that that could justify the overall length of the investigation. Further, the authorities had repeatedly referred to the other sets of pending proceedings as a justification for staying them or for refusing to resume them. The Court appreciated that such decisions could have been dictated by reasonable considerations related to the fair and efficient administration of justice. However, having regard to the overall length of the period which had elapsed since the death of the applicant's wife and also to the fact that the procedures instituted with a view to establishing the circumstances of her death seemed rather to have hindered the overall progress in the proceedings, it could not be said that the procedures applied in order to elucidate the allegations of medical malpractice had resulted in an effective examination into the cause of the death of the applicant's wife. The Court also stressed the need for a prompt examination of cases concerning death in hospital settings. The knowledge gained and possible errors committed in the course of medical care should be established promptly and disseminated to the medical staff of the institution concerned to prevent the repetition of similar errors and contribute to the safety of users of all health services.
Conclusion: violation (unanimous).

Article 41 – 20,000 euros (EUR) for non-pecuniary damage.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Detention in over-crowded unsanitary prison: *violation*.

MAMEDOVA - Russia (N° 7064/05)
Judgment 1.6.2006 [Section I]

See below, Article 5(4).

INHUMAN OR DEGRADING TREATMENT
Refusal to terminate pregnancy of a person suffering from severe myopia, which resulted in considerable deterioration of her eyesight: *admissible*.

TYSIAC - Poland (N° 5410/03)
Decision 7.2.2006 [Section IV]

See below, Article 8.

INHUMAN OR DEGRADING TREATMENT
115-day hunger strike by detainee: *inadmissible*.

PANDJIKIDZE and six Others - Georgia (N° 30323/02)
Decision 20.6.2006 [Section II]

In 1999 the Security Ministry initiated a public prosecution against a group that was suspected of plotting to overthrow the incumbent regime. The investigation was carried out by an investigative group made up of thirteen investigating officials from the Security Ministry, one of whom was the head of the group, and other investigators from the Interior Ministry. The head of the investigative group allowed the Security Ministry to be joined to the proceedings as a civil party. Conversations of some of the applicants were recorded. Those of the applicants who were arrested complained that they had not had access to a lawyer until the judicial investigation stage, and that the lawyers assigned to them were not those of their choosing. Senior officials declared on the first national television channel, mentioning the names of three of the applicants, that terrorists had been arrested, that the overthrow of the regime had thus been forestalled, and that the individuals concerned faced life imprisonment and the confiscation of their

property. In 2001 a bench consisting of one judge and two lay magistrates sentenced the applicants to imprisonment for plotting against the regime. The applicants, who lodged an appeal on points of law, complained that the judicial investigation into their case had been conducted by the Security Ministry, even though the Minister had been a civil party in the case. Their appeal was dismissed. One of the applicants went on a 115-day hunger strike while being held in pre-trial detention.

Communicated under Article 3 (alleged ill-treatment in the police station, *inadmissible* in respect of the hunger strike), Article 6(1) [length of proceedings, independence of the investigating body, composition of the trial bench, non-adversarial use of recordings], Article 6(2) [statements on television prior to trial], Article 6(3)(c) [access to a lawyer during police custody and right to legal assistance of one's own choosing after judicial investigation has begun] and Article 6(3)(d).
Concerning the hunger strike by one of the applicants, to show disagreement with the criminal proceedings against him, he had never been force-fed and had not complained to the Court that the authorities should have taken such action. Even if his state of health must have declined, it did not appear from the case file that his life had been exposed to an obvious danger as a result of the authorities' attitude, and therefore that force-feeding would have been justified by any "medical imperative", or that he had been deprived of medical treatment appropriate to his state of health, or that he had been medically unfit to remain in prison: *manifestly ill-founded*.

ARTICLE 4

NORMAL CIVIC OBLIGATIONS
Discrimination against men due to negligible percentage of women requested to undertake jury service: *violation*.

ZARB ADAMI - Malta (N° 17209/02)
Judgment 20.6.2006 [Section IV]

See below Article 14.

ARTICLE 5

Article 5(4)

PROCEDURAL GUARANTEES OF REVIEW
Unfairness of proceedings to review the lawfulness of detention: *violation*.

FODALE - Italy (N° 70148/01)
Judgment 1.6.2006 [Section III]

Facts: Criminal proceedings were brought against the applicant, who was charged with a number of offences and in particular with being a member of a mafia-type organisation. On 12 July 1999 the investigating judge remanded him in custody. On an appeal by the applicant the detention order was set aside, on 2 August 1999, by the court's "specialised division" having jurisdiction for the review of precautionary measures. The public prosecutor appealed to the Court of Cassation, which fixed 15 February 2000 as the date of the hearing. However, no summons was served on the applicant or his lawyer. The Court of Cassation quashed the order of 2 August 1999 and remitted the case to the specialised division. At its hearing the applicant's counsel requested leave to adduce further evidence. He also argued that the judgment of 15 February 2000 was null and void as he had not been informed of the date of the hearing. The specialised division agreed to the production of the new evidence indicated by defence counsel but rejected the argument that the cassation judgment was null and void. On 13 April

2000 the specialised division upheld the investigating judge's decision of 12 July 1999 as regards two of the charges and set aside the remainder of the decision. The applicant was then arrested and remanded in custody. He appealed to the Court of Cassation, again claiming that the judgment of 15 February 2000 was null and void, but his appeal was dismissed. However, in the criminal proceedings against him, the applicant was acquitted of all the charges in an appeal court judgment, which was upheld by the Court of Cassation.

Law: Whilst the proceedings for review of the lawfulness of the applicant's detention had been brought when the applicant was not detained, the public prosecutor, by applying to have the order of 2 August 1999 set aside, had sought to restore the order remanding the applicant in custody. Accordingly, if the prosecutor's appeal had been dismissed, the decision to release the applicant would have become final but, if it was allowed, the question of the desirability of remanding the applicant in pre-trial detention would have been referred back to the appropriate court. In those circumstances, the proceedings before the Court of Cassation had been decisive for the issue of the lawfulness of the applicant's detention. Consequently, Article 5(4) was applicable to the proceedings in question. Having regard to the dramatic consequences of the deprivation of liberty on the fundamental rights of the person concerned, any proceedings under Article 5(4) of the Convention were required as a rule, as far as possible in the circumstances of a judicial investigation, to respect the fundamental principles of a fair trial, such as the right to adversarial proceedings. In the present case the Court of Cassation had set the public prosecutor's appeal down for hearing on 15 February 2000, but no summons had been served on the applicant or his lawyer. The applicant had therefore been denied the possibility of filing pleadings or making oral submissions at the hearing in reply to the prosecution's arguments. By contrast, the prosecution had been represented before the Court of Cassation. In those circumstances, the Court could not find that the requirements of adversarial process and equality of arms had been complied with.
Conclusion: violation (unanimously).

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

PROCEDURAL GUARANTEES OF REVIEW
Applicant refused leave to attend hearing in order to plead release on account of the particular conditions of her detention and to instruct counsel: *violation*.

MAMEDOVA - Russia (N° 7064/05)
Judgment 1.6.2006 [Section I]

Facts: On 23 July 2004 the applicant was arrested, charged with large-scale fraud and later detained on remand. A regional court rejected her appeal concerning the detention order, finding that the lower court had correctly assessed her "character" and other materials presented by the prosecutor. The appeal hearing on 10 August 2004 was attended by the prosecutor and counsel for the applicant, but not by the applicant herself despite her request to that effect. The courts ordered her continued detention several times, relying each time on the gravity of the charges and the risk that she might abscond, obstruct the course of justice or re-offend. In her appeals for release she alleged that she was detained in inhuman conditions. In some of the cells inmates were afforded less than 2 m^2 of personal space. The applicant was confined to her cell day and night, save for one hour of daily outdoor exercise. She was eventually released in August 2005.

Law: Article 3 – The Court reiterated that it was incumbent on the Russian Government to organise its penitentiary system in a way that ensured respect for the dignity of detainees, regardless of financial or logistical difficulties. The fact that the applicant had been obliged to live, sleep and use the toilet in a cell with so many other inmates had in itself been sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in her the feelings of fear, anguish and inferiority capable of humiliating and debasing her.
Conclusion: violation (unanimously).

Article 5(3) – It was the responsibility of the prosecutors to collect evidence and conduct the investigation in a way that ensured the applicant's trial within a reasonable time. She herself had not been obliged to co-operate with the authorities and could not be blamed for having taken full advantage of her right to silence. By failing to address concrete facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities had prolonged the applicant's detention for more than a year on grounds which could not be regarded as "relevant and sufficient".
Conclusion: violation (unanimously).

Article 5(4) – Given the importance of the first appeal hearing on 10 August 2004, the appeal court's reliance on the applicant's character, and her intention to plead release on account of the particular conditions of her detention, her attendance had been required to give satisfactory information and instructions to her counsel. The refusal of her request for leave to appear at that hearing had deprived her of an effective control of the lawfulness of her detention.
Moreover, it had taken the domestic courts over 29 days to examine each of the applicant's appeals against the detention orders. Such periods could not be considered compatible with the "speediness" requirement of Article 5(4), especially taking into account that their entire duration had been attributable to the authorities.
Conclusion: violations (unanimously).

Article 41 – EUR 16,000 for non-pecuniary damage.

ARTICLE 6

Article 6(1) civil

APPLICABILITY
Delay in registration of ownership change following inheritance proceedings: *violation*.

BUJ - Croatia (N° 24661/02)
Judgment 1.6.2006 [Section I]

Facts: In 1994 the applicant's mother died and inheritance proceedings were initiated. By decision of a municipal court in 1999 the property of the deceased was distributed between the applicant and his brother. Ownership of the property was to be registered after the decision had become final. An appeal lodged by the applicant's brother was declared inadmissible and was served on the applicant's representative in 2002. The applicant's ownership of the inherited property has to date not been recorded in the land register.

Law: Article 6(1) – The Government had argued that this provision did not apply as the inheritance proceedings *per se* had been non-contentious and the subsequent registration of ownership was to be done by the same local court of its own motion and not on a request by the applicant. At any rate, the applicant had failed to lodge a constitutional complaint, which was an effective remedy for the length of the inheritance proceedings.
With regard to the inheritance proceedings *per se*, the Court found it unnecessary to determine the issue of applicability, having accepted the Government's non-exhaustion argument. The inscription of the ownership change produced by the court decision in the inheritance proceedings was to be carried out *ex officio* by the land registry division of the same court. Hence those proceedings served as a functional equivalent to enforcement. Whether or not Article 6 had been applicable to the inheritance proceedings as such, an enforcement title determining civil rights did not necessarily have to result from proceedings to which this provision had applied. The municipal court's decision had constituted an enforcement title, regardless of the nature of the inheritance proceedings. Even though under domestic law the inscription of the applicant's right to ownership in the instant case would not be considered a constitutive one, the ensuing proceedings in the land registry were decisive for the effective exercise of his rights, that is to say the free enjoyment of his ownership. Prior to that inscription, the applicant continues to be severely

limited in disposing freely of his property. Consequently, Article 6(1) applied to those proceedings. The enforcement of the decision given in the inheritance proceedings, in the form of registration of property in the applicant's name, had been pending for more than four years, without a single decision to that end.
Conclusion: violation (unanimously).

Article 13 – The Court noted the lack of a remedy under domestic law whereby the applicant could have complained about the excessive length of the land registry proceedings.
Conclusion: violation (unanimously).

Article 41 – 2,400 euros for non-pecuniary damage.

APPLICABILITY
Prisoner legally unable to attend hearings in civil proceedings against prison authorities: *inadmissible (Article 6 inapplicable).*

SKOROBOGATYKH - Russia (N° 37966/02)
Decision 8.6.2006 [Section I]

Unhappy with the fact that several HIV-infected detainees had spent a week in the same prison as him in 1999, the applicant brought a civil action against the authorities, requesting a court to declare that stay unlawful and threatening to his life and to award him damages. Two court instances refused to have the applicant escorted to their hearings. The district court noted that it could not summon the applicant to the hearing because the Code of Civil Procedure did not provide for transporting of prisoners to courts. It informed him however that he could appoint a representative or waive his right to be present at the hearing. After a hearing in his absence his civil action was dismissed as unsubstantiated. The court noted that the placement of HIV-infected persons in the prison had been fully compatible with the domestic legislation and that no special precautions had been required, except those relating to catering. In addition to special catering arrangements the administration of the prison had supplied HIV-infected persons with separate tableware and medical equipment and they had not taken baths on the same day as other prisoners. Finally, after their departure the whole facility had been thoroughly disinfected. A regional court dismissed the applicant's appeal. As regards his argument that he had been denied the right to take part in the first-instance hearing, this court noted that the relevant rules did not provide for transportation of prisoners to hearings in civil cases. His detention could not be regarded as a valid excuse for his failure to attend the hearing and he had not appointed a representative.
The Court could accept that the applicant's claim had been "civil" in nature since he had demanded not only that the actions of the prison authorities be declared unlawful but also that he be awarded compensation for non-pecuniary damage allegedly caused through the authorities' fault. As to whether the dispute had been "genuine and serious", the Court noted that under domestic law compensation for non-pecuniary damage was only payable in respect of a proven prejudice resulting from actions or inactions of authorities breaching a plaintiff's rights. Throughout the proceedings the applicant had made no specific allegations of personal prejudice or interference with his individual rights which could, at least on arguable grounds, have called for an award of compensation under domestic law. His dissatisfaction was directed solely against the mere presence of HIV-infected prisoners in the same prison and the alleged unlawfulness of the related legal acts and administrative decisions. In the Court's view these circumstances provided a sufficiently clear indication that the dispute in question was not genuine and serious. Accordingly, Article 6(1) was not applicable in the instant case: *incompatible ratione materiae*.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Decision taken by the prosecution authorities to suspend a privatisation, not appealable to a tribunal : *violation*.

ZLÍNSAT, SPOL. S.R.O. - Bulgaria (N° 57785/00)
Judgment 15.6.2006 [Section V]

Facts: In May 1997 the applicant, a Czech company, took over from another company a contract to buy a hotel privatised by the municipality of Sofia in 1995. In July 1997 the Sofia City Prosecutor's Office ordered the suspension of the privatisation contract, which was considered unduly to favour the purchaser; later a criminal investigation was opened against a public official for apparent abuse of office. The applicant company was unaware of these developments until evicted in October 1997. The municipality of Sofia brought civil proceedings to contest the decision of the City Prosecutor's Department; eventually the Supreme Court of Cassation confirmed judgments of the lower courts that the contract was not unlawful. The applicant company also brought proceedings, only to be met – in 1999 – with a refusal of the prosecuting authorities to reopen the case, on the ground that the judgment given by the Supreme Court of Cassation on the municipality's appeal was binding on all parties to the case. In October 1999 the Sofia City Prosecutor's Office notified the police that in view of the judgment of the Supreme Court of Cassation the decisions of July and October 1997 were no longer enforceable.

Law: Article 6(1) – This provision applies under its civil head, the applicant company itself never having been the object of a criminal investigation or prosecution. The Prosecutor's Office is independent of the executive and prosecutors enjoy the same tenure and immunities as do judges. However, that cannot be seen as dispositive, as an independent and impartial tribunal within the meaning of Article 6(1) exhibits other essential characteristics such as the guarantees of judicial. The Sofia City Prosecutor's Office made the impugned decisions of its own motion, whereas a tribunal would normally become competent to deal with a matter if it is referred to it by another person or entity. Moreover, it appears that the making of the decisions did not have to be – and was, in fact, not – attended by any sort of proceedings involving the participation of the entity concerned, i.e. the applicant company. The law made no provision for the holding of hearings, and did not lay down any rules on such matters as the admissibility of evidence or the manner in which the proceedings were to be conducted. Finally, it appears from the wording of the relevant legal provisions that the Sofia City Prosecutor's Office enjoyed considerable latitude in determining what course of action to pursue, which appears hardly compatible with the notions of the rule of law and legal certainty inherent in judicial proceedings. It is true that appeals could be made against these decisions to the higher levels of the Prosecutor's Office. However, they were the hierarchical superiors of the Sofia City Prosecutor's Office and part and parcel of the same centralised system under the overall authority of the Chief Prosecutor. Moreover, it appears that the appeals procedure was not attended by due procedural safeguards. The Court further notes that in its judgment in the case of *Assenov and Others v. Bulgaria* it found that Bulgarian prosecutors could not be considered as officers authorised by law to exercise judicial power, within the meaning of Article 5(3), as they could subsequently act in criminal proceedings against the person whose detention they had confirmed. A similar rationale should apply in the present case. The decisions ordering the suspension of the performance of the privatisation contract and the applicant company's eviction from the hotel were made by the Sofia City Prosecutor's Office of its own motion. It then brought, in exercise of its powers, a civil action against the company, seeking the annulment of that same privatisation contract. It could thus hardly be deemed as sufficiently impartial for the purposes of Article 6(1). The same goes for the higher levels of the Prosecutor's Office, which upheld these decisions and subsequently acted against the applicant company in the proceedings before the Sofia Court of Appeals and the Supreme Court of Cassation. The mere fact that the prosecutors acted as guardians of the public interest cannot be regarded as conferring on them a judicial status or the status of independent and impartial actors. The Court therefore concluded that the various prosecutor's offices involved could not, in the circumstances, be regarded as independent and impartial tribunals providing the guarantees required by Article 6(1). In order for the obtaining situation to be in compliance with that provision, the prosecutors' decisions should have been subject to review by a judicial body having full jurisdiction. However, domestic law excludes judicial review of prosecutors' decisions made in exercise of their powers under the provisions on which they relied in the instant case. The requisite degree of judicial scrutiny was not afforded through the civil action brought by the Sofia City Prosecutor's

Office against the applicant company: the issue to be decided therein – whether the privatisation contract with the applicant company had been made under manifestly disadvantageous conditions – was entirely different from that of the lawfulness of the impugned prosecutors' decisions. It is true that after their completion the Sofia City Prosecutor's Office eventually stated that its decisions were no longer operative; however, this was by no means a direct result of a binding decision of the courts in these proceedings. Nor had it been established that judicial review was available in the form of an appeal against the prosecutors' decisions to a criminal court if and when the criminal proceedings would reach the judicial stage. The decisions in issue were not made in that context, but prior to the institution of any criminal proceedings. The prosecutors' decisions in the case at hand – which were decisive for the applicant company's use and possession of the hotel at least until the end of the civil action against it – were not subject to judicial scrutiny, as required by Article 6(1). The respondent Government did not advance any reasons justifying the lack of access to a court. The rationale applied by the Supreme Administrative Court in rejecting as inadmissible applications for judicial review of prosecutors' decisions was confined to arguments relating to the status of the Prosecutor's Office. However, as the Court had already found, that Office cannot be seen as being an independent and impartial tribunal within the meaning of Article 6(1). In these circumstances, the Court found no justifiable reasons for excluding judicial review of decisions interfering, as in the present case, with civil rights and obligations.
Conclusion: – *violation* (unanimously).

Article 1 of Protocol No. 1 – The interference with the applicant company's rights under this Article is in the nature of a "control of the use of property"; the second paragraph of the Article is applicable. As regards the requirement of "lawfulness", the statutory provisions on which the interference was based used particularly vague terms, which made it almost impossible to foresee under what conditions the competent prosecutors would choose to act and what measures they would take in the event they considered, without independent control, that an offence might be committed. It is true that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. However, there is no reported case-law interpreting and clarifying the exact import of the provisions at issue, in all probability on account of the impossibility of judicial review of prosecutors' decisions as the ones at hand. As a result, these rules, which appear to be of general application, serve as a catchall, giving the Prosecutor's Office unfettered discretion to act in any manner it sees fit, which may in some cases have serious and far-reaching consequences for the rights of private individuals and entities. This discretion and the concomitant lack of adequate procedural safeguards, such as elemental rules of procedure and, as already found by the Court, review by an independent body, and the resulting obscurity and uncertainty surrounding the powers of the Prosecutor's Office in this domain, lead the Court to conclude that the minimum degree of legal protection to which individuals and legal entities are entitled under the rule of law in a democratic society was lacking. It follows that the interference with the applicant company's possessions was not "lawful", within the meaning of Article 1 of Protocol No. 1.
Conclusion: *violation* (unanimously).

Article 41 – Damage: question reserved; costs and expenses: financial award, except in so far as related to expert reports, to which extent the question was likewise reserved.

EQUALITY OF ARMS
Failure to communicate summary of facts produced in proceedings before the disciplinary board by the reporting member: *inadmissible*.

HOUDART and VINCENT - France (N° 28807/04)
Decision 6.6.2006 [Section II]

See Article 10 below.

Article 6(1) criminal

REASONABLE TIME
Period to be taken into account: when the accused person was a fugitive during part of the proceedings: *violation*.

VAYİÇ – Turkey (N° 18078/02)
Judgment 20.6.2006 [Section II]

Facts: The applicant was detained pending trial, on suspicion of being a member of an illegal organisation. Five years later, he was released on bail. After two years, the State Security Court convicted him and sentenced him to 12 years and six months' imprisonment. The Court of Cassation later quashed the decision and the case was remitted. The proceedings resumed and several warrants were issued for the applicant's arrest as, since he had absconded, he did not respond to summonses issued by the court. The proceedings remained pending when the European Court adopted its judgment.

Law: Article 5(3) – The detention pending trial (5 years, 1 month) exceeded a reasonable time.
Conclusion: violation (unanimously).

Article 6(1) – The proceedings commenced the day of the applicant's arrest, and are still pending, but the applicant cannot rely on the period during which he was trying to avoid being brought to justice in his country. Indeed, the flight of an accused person has in itself certain repercussions on the scope of the guarantee provided by Article 6(1) as regards the duration of proceedings. When an accused person flees from a State which respects the principle of the rule of law, it may be assumed that he or she is not entitled to complain of the unreasonable duration of proceedings following that flight, unless sufficient reason can be shown to rebut this assumption. In the instant case, there is nothing to rebut this assumption. Therefore, the relevant period ended the day of the applicant's release pending trial. The period to be taken into account is therefore over five years and one month for one level of jurisdiction. By absconding following his release pending trial, the applicant also contributed to the length of the proceedings. However, at the time of his release, the proceedings had already lasted a very long time before one level of jurisdiction.
Conclusion: violation (unanimously).

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

Article 6(2)

PRESUMPTION OF INNOCENCE
Court decisions terminating proceedings on "non-exonerative" grounds left no doubt as to the defendant's guilt: *violation*.

PANTELEYENKO - Ukraine (N° 11901/02)
Judgment 29.6.2006 [Section V]

See Article 8 below.

ARTICLE 8

PRIVATE LIFE
Refusal to terminate pregnancy of a person suffering from severe myopia, which resulted in considerable deterioration of her eyesight: *admissible*.

TYSIAC - Poland (N° 5410/03)
Decision 7.2.2006 [Section IV]

Having suffered for many years from severe myopia (approximately -20 dioptres in each eye), the applicant decided to consult several doctors when she discovered in February 2000 that she was pregnant for the third time, as she was concerned that her pregnancy might have an impact on her health. The three ophthalmologists whom she consulted each concluded that, due to pathological changes in her retina, there would be a serious risk to her eyesight if she carried the pregnancy to term. However, despite the applicant's requests, they refused to issue a certificate for the pregnancy to be terminated, on the ground that though the retina might detach itself as a result of pregnancy, it was not certain. The applicant also consulted a general practitioner, who issued a certificate stating the risks to which her pregnancy exposed her both on account of the problems in her retina and the consequences of her giving birth again after two previous deliveries by caesarean. By the second month of her pregnancy, the applicant's myopia had already deteriorated to a level of -24 dioptres in each eye. She was examined by the head of the gynaecology and obstetrics department of a public hospital, Dr R.D., who found that there were no medical grounds for performing a therapeutic abortion. The applicant was therefore unable to have her pregnancy terminated and gave birth to her third child by caesarean in November 2000. Following the delivery, the applicant's eyesight deteriorated considerably as a result of what was diagnosed as a retinal haemorrhage. She was also informed that, as the changes to her retina were at a very advanced stage, there were no prospects of having them corrected by any surgical intervention. A panel of doctors concluded that her condition required treatment and daily assistance and declared her to be significantly disabled. The applicant lodged a criminal complaint against Dr R.D., but the investigation was discontinued by the district prosecutor on the ground that there was no causal link between the doctor's decision and the deterioration of the applicant's eyesight and that the haemorrhage in her eyes had in any event been likely. In her appeal to the District Court, the applicant alleged, *inter alia*, that she had been refused assistance in reading the relevant case-files. The District Court upheld the decision not to prosecute. No disciplinary action either was taken against the doctor, as no professional negligence had been established. The applicant, who is raising her three children alone, is now registered as significantly disabled and on that account receives a monthly pension equivalent to 140 euros. She cannot see objects more than 1.50 metres away and fears that she will eventually become blind.

Admissible under Articles 3, 8 and 13 of the Convention, both taken separately and in conjunction with Article 14 of the Convention.

PRIVATE LIFE
Disclosure of psychiatric information: *violation*.

PANTELEYENKO - Ukraine (N° 11901/02)
Judgment 29.6.2006 [Section V]

Facts: The applicant was suspected of fraud committed while acting in his capacity as a private notary. The Chernigiv Public Prosecutor issued a search warrant in respect of his office; the authorities seized a number of objects including personal possessions belonging to the applicant. Subsequently the prosecutor ordered the proceedings discontinued on the ground that, although it was proved that the applicant had committed the offence in question, it was too insignificant to warrant prosecution. The applicant challenged this finding before the competent courts, claiming that he had not committed any offence, but without success. In the meantime the applicant instituted proceedings against the prosecutor's office, seeking compensation for the material and moral damage which he had suffered as a result of the search

which had in his submission been unlawful; this was ultimately refused on the ground that the case against the applicant had been closed on "non-exonerative" grounds. Finally, the applicant brought civil proceedings against the Chernigiv Law College and its Principal for defamation, alleging that, during a hearing of the Attestation Commission, the Principal had made three statements about him which were libellous and abusive, including one rudely questioning his mental health. After obtaining evidence that the applicant had in the past suffered from mental illness, which was read out at a hearing in the presence of the parties and the public, the court went on to reject the applicant's claim on the ground that the applicant had failed to prove that the alleged remarks about his sanity had actually been made. On appeal, the appellate court upheld this judgment in substance but found the first-instance court at fault for divulging confidential information about the applicant's mental health.

Law: Article 8 (search of the applicant's office) – The search of the applicant's office amounted to an interference, within the meaning of Article 8, with his right to respect for his home. Domestic legislation contains safeguards against arbitrary interference by the authorities with the right to respect for home, including, *inter alia*, the obligation to serve the search warrant in advance on a person occupying the relevant premises and the prohibition on seizing any documents and items which do not directly relate to the case under investigation; however, as was in fact acknowledged by the domestic courts, the prosecution officials, although aware of the applicant's whereabouts, did not attempt to serve the search warrant on him and seized all documents from the office and certain personal items belonging to the applicant which were clearly unrelated to the criminal case. Interference not "in accordance with the law".
Conclusion: *violation* (unanimously).

Article 8 (disclosure of confidential psychiatric information) – Obtaining from a psychiatric hospital confidential information regarding the applicant's mental state and relevant medical treatment and disclosing it at a public hearing constituted an interference with the applicant's right to respect for his "private life". The Court of Appeal, having reviewed the case, came to the conclusion that the first instance judge's treatment of the applicant's personal information had not complied with the special regime concerning collection, retention, use and dissemination afforded to psychiatric data by the Data Act 1992. Moreover, the Court notes that the details in issue being incapable of affecting the outcome of the litigation (i.e. the establishment of whether the alleged statement was made and the assessment whether it was libellous), the Novozavodsky Court's request for information was redundant, as the information was not "important for an inquiry, pre-trial investigation or trial", and was thus unlawful for the purposes of the Psychiatric Medical Assistance Act 2000. Interference not "in accordance with the law".
Conclusion: *violation* (unanimously).

Article 6(2) – The Court does not consider it necessary to determine in the present case whether in principle the refusal to award compensation on the basis that the criminal proceedings were terminated on "non-exonerative" grounds in itself violates the presumption of innocence. It notes that in the present case the court decisions terminating the criminal proceedings against the applicant were couched in terms which left no doubt as to their view that the applicant had committed the offence with which he was charged.
Conclusion: *violation* (unanimously).

Article 13 (search) – The criminal case against the applicant was terminated at the pre-trial stage and the subsequent judicial review concerned purely procedural matters related to the investigator's closing of the criminal case on the given grounds. Therefore, these proceedings did not and could not include the assessment of the lawfulness of the particular investigative actions. Furthermore, although the applicant could have applied to a higher prosecutor in order to have the search of his office declared unlawful, and although the "authority" referred to in Article 13 does not necessarily have to be a judicial authority the Court notes that, even assuming that the prosecutor possessed the required independence, the prosecutor did not have the power to award any damages for the established wrongdoing on the part of the investigating authorities and so this remedy could not possibly have afforded any relief to the applicant.
Conclusion: *violation* (unanimously).

Article 13 (disclosure of the psychiatric information) – Although admittedly a request for a hearing *in camera* would have prevented the information coming to the knowledge of the public, it would not have withheld that information from the parties or the court case file. The complaint to the appellate court, though successful, proved ineffective in so far as the finding of unlawfulness did not result in the discontinuation of the disclosure of confidential psychiatric data in the court case file or any award to the applicant of compensation for damages suffered as the result of the unlawful interference with his private life.
Conclusion: *violation* (unanimously).

Article 41: EUR 2,315 for pecuniary and EUR 3,000 for non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Insufficiency of measures taken following the international abduction of a child: *violation*.

BIANCHI - Switzerland (N° 7548/04)
Judgment 22.6.2006 [Section V]

Facts: The applicant, an Italian national, married his wife in Italy, where the couple then took up residence. In November 1999 they had a son. In 2002 they separated and the mother took the child to Switzerland without authorisation. Divorce proceedings were subsequently instituted. In February 2003 the District Court of Pistoia (Italy) awarded custody of the child to the applicant, and that decision was confirmed as being appropriate by a psychiatric report in May 2003. The applicant applied to the Swiss authorities to have his son returned to Italy, relying on the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. In April 2003 the Swiss Federal Court, ruling at last instance, dismissed an appeal by the mother and ordered the return of the child to Italy. The child and his mother returned. In June 2003 the Pistoia District Court confirmed the applicant's right of custody. On 23 December 2003 the applicant handed the child over to the mother for a scheduled visit, but the mother then disappeared with her son. On 6 January 2004 the applicant applied to the District Court of Willisau (Canton of Lucerne, Switzerland) to obtain an order for the return of his son, relying on the Hague Convention. The next day that court ordered that the child be kept in Switzerland pending the outcome of the proceedings for the child's return. In March 2004 the child's mother was ordered by the Willisau prefect's office to pay a fine of 300 Swiss francs (approximately EUR 191) for child abduction, as provided for by Article 220 of the Swiss Criminal Code. In May 2004 the Willisau District Court rejected the applicant's application and found that, whilst the abduction had been unlawful under Article 3 of the Hague Convention, the conditions of Article 13 thereof were satisfied in the circumstances of the case and it could not order the return of the child, in spite of the father's right of custody, since the child had refused to return to Italy. However, the applicant, arguing that the district court judgment was null and void, appealed to the Canton of Lucerne Higher Court, which, on 12 July 2004, ordered that the child be returned by 31 July 2004 at the latest, if necessary with the help of the police. The evidence adduced by the mother was not sufficient for the court to establish the existence of a grave risk that his return would expose him to physical or psychological harm, within the meaning of Article 13 of the Hague Convention. But in late July 2004 the mother let it be known that she would not hand over the child and would refuse any contact between the child and his father until the Federal Court had ruled on the public-law appeal which she intended to lodge against the decision of 12 July 2004. The mother was questioned by the police in August 2004. Since that date, despite numerous steps taken by the Swiss police in an attempt to trace mother and child, their whereabouts have remained unknown. In a judgment of 15 October 2004 the Federal Court dismissed the mother's appeal and upheld the decision taken by the Canton of Lucerne Higher Court on 12 July 2004. An international arrest warrant was issued against the mother in November 2004.

Law: Article 8 – The decisions and proceedings complained of following the disappearance of the child had constituted an "interference", within the meaning of Article 8(2), in so far as they had prevented the applicant, at least temporarily, from exercising his right of custody over his son. The Court observed that the impugned District Court decision of 3 May 2004 had at least been based on the provisions of the Hague Convention, which were incorporated into Swiss law and had been applied with the – legitimate –

aim of protecting the child. As to the necessity of that interference in a democratic society, it was noteworthy first of all that the applicant had, on 6 January 2004, lodged an application in the Willisau District Court seeking the return of his son to Italy and that the court, on 7 January 2004, had ordered the child to be kept in Switzerland pending the outcome of the proceedings regarding his possible return. The Court expressed doubts as to whether that decision had been correct, given that it had to some extent endorsed the situation created by the indisputably illegal action of the child's mother in abducting the child in June 2002. Furthermore, the existence of a situation covered by Article 13 of the Hague Convention had received no mention in the operative part of the decision of 7 January 2004. The Court also, like the Italian Government, which was an intervening party, entertained doubts as to whether the decision of the District Court to conduct a fresh investigation of the case had been appropriate, given that the case had already been examined by it and had been determined by the Swiss Federal Court scarcely nine months earlier, on 23 April 2003. The Court noted in that connection that neither the Lucerne cantonal authorities nor the Swiss Government had claimed a fundamental change in circumstances which would have warranted reconsidering the legal situation already established by the Italian and Swiss courts. Account also had to be taken of the fact that the District Court had not offered the applicant favourable terms of contact during the pending proceedings, of a kind which might have enabled him to maintain his ties with his child. Further, the Court noted that Willisau District Court had not given a ruling until 3 May 2004, almost four months after the applicant had lodged his application for the child to be returned to Italy. Willisau District Court had ultimately rejected the applicant's application on the ground that the conditions laid down by Article 13 of the Hague Convention had been met. The Court expressed reservations as to the decision-making process which resulted in that judgment. In so far as the child had allegedly expressed considerable reluctance at the prospect of returning to Italy, the question arose whether reliance should have been placed on a single report drawn up on the basis of two meetings between the child (then aged four) and his father, four months after they had last had contact. In that context the Court also took the view that the child's reluctance at the prospect of returning – a point emphasised by the District Court – had mainly been attributable to the fact that the Lucerne cantonal authorities had neglected to take any of the measures that could reasonably have been expected of them to enforce the order for the child's return or, at least, to ensure regular contact between the child and his father while the proceedings were pending. On 12 July 2004, just over one month after the applicant's appeal had been referred to it (on 8 June 2004), the Canton of Lucerne Higher Court had ultimately set aside the decision of the court below, ordering that the child be returned by 31 July 2004 at the latest, if necessary with police assistance. The Court did not dispute the fact that the Lucerne cantonal authorities had taken numerous steps from September 2004 onwards in an attempt to trace the child and his mother. Nevertheless, it was very surprised at the events of 15 August 2004, when the mother had gone to the police station. It found it surprising that the officers in charge had allowed her to leave even though she had not handed over the child, despite the fact that she had already abducted him and had been penalised scarcely five months previously, by the Willisau prefect's office, for the offence of abducting a minor under the Swiss Criminal Code. In those circumstances, the Court accepted that the Lucerne cantonal authorities had taken a large number of measures from September 2004 onwards in order to trace the child and his mother. Nevertheless, their attitude during the period between the child's abduction and their last contact with his mother on 15 August 2004 had, taken as a whole, been somewhat lax and as such incompatible with the object and purpose of the Hague Convention and with its wording, which was particularly clear and rigorous. This passive attitude had led to the complete severance of contact between father and son, which had lasted almost two years and which, given the very young age of the child, was capable of resulting in a growing "alienation" between them that could not be said to be in the child's best interests: *violation* (unanimously).

Article 41 – EUR 15,000 for non-pecuniary damage.

PRIVATE LIFE
Allegations of interference in private life on account of criminal-code provisions prohibiting soliciting by prostitutes and advertising sexual services: *inadmissible*.

S.B. and D.B. - Belgium (N° 63403/00)
Decision 15.6.2006 [Section I]

See Article 10 below.

HOME
No legal possibility to cancel the registration at the applicant's home address of a previous owner who was unable to establish a new permanent residence: *violation*.

BABYLONOVA - Slovakia (N° 69146/01)
Judgment 20.6.2006 [Section IV]

Facts: In 1995 the applicant and her husband bought a house. Mr D., the former owner of the property, became homeless. Despite his and the applicant's various attempts to have his residence status removed from the official register, Mr D. continued to be registered as permanently resident at the address in question, since under the current legislation it was impossible to obtain cancellation of the permanent residence of a citizen who was unable to be registered as permanently resident elsewhere. The applicant submitted that official mail was being sent to Mr D. at her address and that the police had once come to her home looking for him, which she maintained had implications for her reputation among her neighbours. She had also been repeatedly obliged to explain the situation in various official contexts, such as in her claims for housing benefit and fees she was charged for the removal of household waste.

Law: The Court found that the impact on the applicant's Article 8 rights, resulting from the fact that D. could not secure his deregistration, was sufficiently serious to amount to an interference with her right to respect for private life and home. It further found that that interference derived directly from the provisions of the relevant law, which only permitted a former resident of a house to remove his or her name from the register where that person had established a new permanent residence elsewhere, which in the present case Mr D. had been unable to do. The Court did not find it established that Mr D. could set up a new permanent residence in a humanitarian establishment or that there was a lawful means for compelling him to register elsewhere if his economic position did not permit him to do so. The Government had advanced no argument in terms of public interest to justify this system. Therefore, no balance had been struck between the interests of the applicant and those of the community and there had been a failure in the domestic legal system to secure the applicant's rights to respect for her private life and home.
Conclusion: violation (unanimous).

Article 41: EUR 1,500 for non-pecuniary damage.

HOME
Search of private notary's office: *violation*.

PANTELEYENKO - Ukraine (N° 11901/02)
Judgment 29.6.2006 [Section V]

See above, under "Private Life".

ARTICLE 10

FREEDOM OF EXPRESSION
Penalty imposed under provisions of the Code of Medical Ethics by the disciplinary board of a medical association, on journalists registered as members of the association: *inadmissible*.

HOUDART and VINCENT - France (N° 28807/04)
Decision 6.6.2006 [Section II]

The applicants, who are qualified doctors and registered as such with the Paris Medical Association, are actually the editor and deputy editor of a monthly science magazine for the general public. In a September 1998 edition of their magazine they published a special supplement on French hospitals, including in particular a list of hospitals which had seen the worst results in four specialist fields. Among them was the Saint-Girons Hospital, specialising in the field of digestive surgery. On 8 October 1998 the head surgeon at the hospital lodged a complaint against the applicants with the medical council for the Paris area, which, referred the complaint to the regional medical council and requested to be joined to the proceedings on the ground that there had been a breach of the code of medical ethics. The regional medical council gave the applicants a reprimand, finding that they had been bound by the code of medical ethics and that they had imparted information in a sensational and derogatory manner, thus causing damage to the complainant and to his patients. The applicants, relying in particular on Articles 6 and 10 of the Convention, lodged an appeal with the disciplinary board of the national medical council. The board found, that the applicants had breached their duty of care in imparting information to the public, as provided for in the code of medical ethics. The applicants then lodged an appeal on points of law with the *Conseil d'Etat*, which dismissed their appeal. The *Conseil d'Etat* declared that the professional disciplinary bodies did indeed have jurisdiction because the applicants were registered as members of the medical association; that the report – simply a statement of facts – drawn up by the rapporteur appointed by the chairman of the disciplinary board did not necessarily have to be communicated to the parties; and that the disciplinary board of the regional medical council had not committed any mistake of law when it found that the provisions of the code of medical ethics concerning educational and health-related information imparted to the general public were applicable to facts relating to the applicants' journalistic activity.

Inadmissible under Article 10 – The reprimand given to the applicants clearly constituted interference with the exercise of their right to freedom of expression. The Court had to determine whether that interference fulfilled the requirements of Article 10(2), namely whether it was prescribed by law, pursued one or more legitimate aims and was necessary in a democratic society. As to the first requirement, the applicants' decision to register as members of the medical association whilst they were in fact engaged in journalism had made it perfectly foreseeable that they would be bound by the rules of medical ethics, in particular the rule concerning the duty of care in imparting health-related information to the public. That rule had been formulated with sufficient precision to enable the applicants to regulate their conduct, especially in the context of their journalistic activity. Moreover, the interference pursued a legitimate purpose, namely the protection of the rights of others. As to its necessity, and in particular whether the impugned measures were proportionate to the aim pursued, the Court could not but observe that the supplement in question, on account of its presentation, was of a sensational nature capable of arousing the interest of readers but also concern among users of the hospital services in question. In the articles written by the applicants or under their responsibility, there was no attempt to nuance the comments made or to take the precautions that would normally be appropriate when examining a sensitive and controversial subject. The domestic courts had thus based their decisions on relevant and sufficient grounds. Moreover, it was noteworthy that the reprimand given to the applicants by the professional disciplinary bodies was the most minor disciplinary measure available, that the penalties for defamation under the French "Freedom of the Press" Act were much harsher, and that the publication itself had not been restricted in any way. In sum, the penalty imposed on the applicants could not be regarded as disproportionate to the legitimate aim pursued and the impugned interference could thus be seen as "necessary in a democratic society": *manifestly ill-founded*.

Inadmissible under Article 10 in conjunction with Article 14 – In so far as the applicants had alleged that, in the exercise of their right to freedom of expression, they had suffered discrimination in relation to their membership of a professional association, the Court pointed out that discrimination arose when States, without objective or reasonable justification, afforded different treatment to individuals in analogous situations. But the fact that the applicants belonged to the medical association meant that they were not in a comparable situation to that of other journalists. Their voluntary registration as members of the association had rendered them subject to certain specific obligations provided for in the code of medical ethics and related to their status as doctors. There had thus been no difference in treatment that was not based on a difference in situation: *manifestly ill-founded*.

Inadmissible under Article 6(1) – The role of the rapporteur, appointed from among the judiciary, before the regional and national medical councils was to establish the facts and to prepare the case for hearing. As indicated by the *Conseil d'Etat*, the rapporteur's report simply consisted of a statement of the facts of the case and was only to be used by the body examining that case. Accordingly, it could be considered that the failure to communicate the report was not capable of placing one of the parties in a disadvantageous position compared with the other and thus of breaching the equality-of-arms principle: *manifestly ill-founded*.

FREEDOM OF EXPRESSION
Allegations of interference with freedom of expression on account of criminal-code provisions prohibiting soliciting by prostitutes and advertising sexual services: *inadmissible*.

S.B. and D.B. - Belgium (N° 63403/00)
Decision 15.6.2006 [Section I]

In January 2000 the first applicant was in a room used for group sexual relations in a homosexual bar when the premises were raided by the police. He claimed that he was brutally ejected from the room and was greatly disturbed by the arrogant manner in which he had been ordered to leave the premises and the insulting language directed at the staff and manager of the bar. On 16 May 2000 the applicant's counsel sent a request for information to the appropriate public prosecutor, who replied on 26 June 2000 that, after verification, no investigation had been opened. The applicant also complained of the fact that the classified advertisements in the press that he used in order to find other sexual partners could entail liability to prosecution on the basis of provisions in the Criminal Code making it an offence to advertise offers of prostitution or debauchery.
The second applicant, who identified herself as a self-employed prostitute working from a studio flat, complained that she had been forced to stop soliciting in the street because – she alleged – the police had repeatedly harassed her on the basis of the provisions in the Criminal Code penalising public incitement to debauchery, and that she had had to rent a costly flat where she had to wait for her clients. She also considered that she had been deprived of any means of advertising her business – even though it was not illegal – because of the existence of a provision in the Criminal Code making it an offence to advertise the services of a prostitute.

Inadmissible under Article 8 in respect of the first applicant – As to the police intervention of which the first applicant had been witness and victim, the Government had indicated that he could have lodged a complaint with the Standing Committee for Police and Inspection Services, or with the General Federal and Local Police Inspectorate. However, whilst those bodies could be called upon to examine complaints from private persons, their role was not to establish – still less to penalise – individual acts. They did not therefore satisfy the criteria to constitute a remedy that had to be exhausted by the applicant. However, with regard to the possibility for him – also mentioned by the Government – to lodge a criminal complaint, combined with a claim for damages as a civil party, with the judicial authorities, such an action could have enabled the applicant to obtain redress before the domestic courts for the alleged violation: non-exhaustion of domestic remedies.
In so far as the first applicant had complained that he could be prosecuted under the criminal-code provisions prohibiting debauchery, because of his partner-swapping homosexual activity, and that this would infringe his right to respect for his private life, the Court noted that only a person who kept a

brothel or who gained from the operation of such an establishment was liable to prosecution on such charges. The first applicant had failed to adduce any firm evidence to suggest that he, as a partner-swapping homosexual and an ordinary customer of that type of establishment, would be directly affected by the provisions creating the offence in question. The impugned police intervention had not in fact sought to ban that type of establishment or its customers. Moreover, the first applicant had not claimed that he was prevented from continuing to engage freely in his sexual activity, and the risk that his private life might be disclosed in connection with possible criminal proceedings against the manager of an establishment that he frequented was pure speculation: *manifestly ill-founded*.

Inadmissible under Article 10 in respect of the first applicant – In so far as he had complained of the criminal-law provisions prohibiting the advertising of prostitution or debauchery, the Court noted that the definition of the offence in question left considerable discretion to the trial court. Accordingly, there was nothing to prevent a court from classifying as debauchery the conduct of an individual in his "private life", including sexual orientation or sexual relations. However, the first applicant had failed to adduce any firm evidence to suggest that he was directly affected by the criminal-law provisions in question. Moreover, he had not established that the advertisements concerned had become subject to unreasonable censorship, since he had indicated, on the contrary, that their publication was not confined to specialist magazines. In addition, the prosecution of an ordinary reader was implausible, since it would be impracticable, and the applicant had not referred to any evidence or case-law to show that such advertisements actually resulted in prosecution: *manifestly ill-founded*.

Inadmissible under Article 10 in respect of the second applicant – In so far as she had alleged that the provision against public incitement to debauchery interfered with her right to impart information and prevented her from actively soliciting in the street, the Court first noted that the parties had agreed on the existence of interference in that connection and that such interference was prescribed by law. As to its proportionality, the interference in question was not absolute, since it was confined to active soliciting. The second applicant had thus remained entitled to engage in her professional activity in a studio flat that she rented and where she entertained clients. Accordingly, the interference in question was not disproportionate: *manifestly ill-founded*.

As to the complaint by the second applicant concerning the criminal-law provision prohibiting the advertising of prostitution, the Court observed that she had not adduced any evidence to suggest that such advertisements resulted in prosecution or that she was personally and directly affected by that provision: *manifestly ill-founded*.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Prohibition of meeting at cemetery intended to counter a gathering in memory of killed SS soldiers by commemorating Jews killed by the SS: *violation*.

<u>ÖLLINGER - Austria</u> (N° 76900/01)
Judgment 29.6.2006 [Section I]

Facts: The applicant is a member of parliament for the Green Party. In 1998 he notified the Salzburg police that, on All Saints' Day (1 November) from 9 a.m. until 1 p.m., he would be holding a meeting at the municipal cemetery in front of the war memorial in commemoration of the Salzburg Jews killed by the SS during the Second World War. He expected about six people to attend, carrying commemorative messages, and specified that there would be no chanting or banners. He noted that the meeting would coincide with a gathering in memory of SS soldiers killed in the Second World War.
The police prohibited the meeting in order to prevent disturbances of the Comradeship IV commemoration meeting which was considered a popular ceremony not requiring authorisation. Particular regard was to the experience of previous protest campaigns by other organisers against the gathering of Comradeship IV, which had disturbed other visitors to the cemetery and had required police intervention.

In 2000, the Constitutional Court dismissed a complaint by the applicant, although it did found the approach of the police authority and public security authority to have been too narrow. It observed that the prohibition of the intended meeting would not have been justified if its sole purpose had been the protection of the Comradeship IV ceremony. The prohibition had nevertheless been justified or even required in view of the State's positive obligation under Article 9 of the Convention to protect those practising their religion against deliberate disturbance by others. All Saints' Day was an important religious holiday on which the population traditionally went to cemeteries to commemorate the dead and disturbances caused by disputes between members of the assembly organised by the applicant and members of Comradeship IV were likely to occur in the light of the experience of previous years.

Law: The applicant's right to freedom of peaceful assembly and to freedom of expression had to be balanced against the other association's right to protection against disturbance of its assembly and the cemetery users' right to protection of their freedom to practice their religion. The applicant had emphasised that the main purpose of his assembly was to remind the public of the crimes committed by the SS and to commemorate the Salzburg Jews murdered by them. The coincidence in time and venue with the commemoration ceremony of Comradeship IV had been an essential part of the message he wished to convey. The unconditional prohibition of a counter-demonstration was a very far-reaching measure which would require particular justification, all the more so as the applicant, being a member of parliament, essentially wished to protest against the gathering of Comradeship IV and, thus, to express an opinion on a issue of public interest. The Court found it striking that the domestic authorities had attached no weight to that aspect of the case.
Considering whether the prohibition had been justified to protect the cemetery users' right to practise their religion, the Court noted a number of factors which indicated that the prohibition at issue had been disproportionate to the aim pursued. In no way had the assembly been directed against the cemetery users' beliefs or the manifestation of them. Moreover, the applicant had expected only a small number of participants and had envisaged peaceful and silent means of expressing their opinion, explicitly ruling out the use of chanting or banners. Thus, the intended assembly in itself could not have hurt the feelings of visitors to the cemetery. Moreover, while the authorities had feared that, as in previous years, heated debates might arise, it had not been alleged that any incidents of violence had occurred on previous occasions. In those circumstances, the Court was not convinced by the Government's argument that allowing both meetings while taking preventive measures, such as ensuring a police presence in order to keep the two assemblies apart, had not been a viable alternative which would have preserved the applicant's right to freedom of assembly while at the same time offering a sufficient degree of protection as regards the rights of the cemetery's visitors. The Austrian authorities had given too little weight to the applicant's interest in holding the intended assembly and expressing his protest against the meeting of Comradeship IV, while giving too much weight to the interest of cemetery users in being protected against some rather limited disturbances. In sum, the authorities had failed to strike a fair balance between the competing interests.
Conclusion: violation (six votes to one).

ARTICLE 13

EFFECTIVE REMEDY

Lack of effectiveness of domestic remedies concerning length of judicial proceedings: *violation*.

SÜRMELI - Germany (N° 75529/01)
Judgment 8.6.2006 [GC]

Facts: In May 1982 the applicant was involved in an accident with a cyclist and sustained injuries including a broken left arm. After negotiations with the cyclist's insurance company had failed, the applicant applied to the Regional Court in 1989, in particular seeking damages and a monthly pension. The proceedings comprised two phases. The first ended when the Regional Court held that the applicant was entitled to damages at a rate of 80% for the consequences of the accident. An appeal by the applicant against that decision was unsuccessful and his subsequent appeal on points of law was dismissed in 1993.

The second phase of the civil proceedings concerned the assessment of the amount of the damages and pension to be awarded to the applicant. It began in March 1994, after the case file had been sent back from the Federal Court of Justice to the Regional Court. In 2005 the Regional Court delivered its final judgment, making an award to the applicant for non-pecuniary damage. In its assessment of the award the court pointed out that the length of the proceedings could be taken into account only in small measure because the defendant could not be held responsible for the fact that the applicant had not brought his claim until seven years after the accident, making it more difficult to adduce evidence, that he had refused to allow the file from the proceedings in the Social Court of Appeal to be used in evidence and that he had objected on several occasions to the choice of experts appointed. The applicant subsequently appealed to the Court of Appeal, before which the proceedings are currently pending.
In 2001 the applicant lodged a constitutional complaint about the excessive length of the proceedings. The Federal Constitutional Court decided not to examine the complaint, without giving reasons for its decision. A second constitutional complaint was dismissed in June 2002 as being insufficiently substantiated. In May 2002 the applicant applied to the Regional Court for legal aid in order to bring an action for damages against the *Land* of Lower Saxony on account of the length of the proceedings in the Regional Court. His application was refused at first instance and on appeal on the grounds that the delays in the proceedings were due to the courts' excessive workload and that he had not provided sufficient details of the damage he had allegedly sustained.

Law: Article 13 – *As regards a constitutional complaint*, the Court observed that the right to expeditious proceedings was guaranteed by the German Basic Law and that a violation of that right could be alleged before the Federal Constitutional Court. Where that court found that proceedings had taken an excessive time, it declared their length unconstitutional and requested the court concerned to expedite or conclude them. However, it was not empowered to set deadlines for the lower court or to order other measures to speed up the proceedings in issue; nor was it able to award compensation. The only means available for it to ensure that pending proceedings were expedited was to declare that their length was in breach of the Basic Law and to call upon the court concerned to take the necessary steps for their progress or conclusion. The Federal Constitutional Court itself acknowledged the limited scope of its powers in declaring the length of proceedings to be unconstitutional. That being so, the Court found that the German Government had not shown that a constitutional complaint was capable of affording redress for the excessive length of pending civil proceedings. Accordingly, the applicant had not been required to raise before that court his complaint about the length of the proceedings in his case.
As regards an appeal to a higher authority, the Court noted that the Government had not advanced any relevant reasons to warrant the conclusion that that remedy, provided for in the German Judges Act, would have been capable of expediting the proceedings in the Regional Court.
As regards a special complaint alleging inaction, this remedy had no statutory basis in German law. Although a considerable number of courts of appeal had accepted it in principle, the admissibility criteria for it were variable and depended on the circumstances of the case. The Federal Court of Justice, for its part, had yet to give a ruling on the admissibility of such a remedy. Having regard to the uncertainty about the admissibility criteria for this remedy and to its practical effect on the proceedings in question, the Court considered that no particular relevance should be attached to the fact that the Court of Appeal had not ruled out such a remedy in principle. Moreover, the Federal Constitutional Court had not declared the applicant's constitutional complaints inadmissible for failure to exhaust domestic remedies. Accordingly, the Court concluded that a special complaint alleging inaction could not be regarded as an effective remedy in the applicant's case.
As regards an action for damages, the Court noted that a single judicial decision, such as the regional court decision relied on by the Government in support of their arguments – and given, moreover, at first instance – was not sufficient to satisfy it that there had been an effective remedy available in theory and in practice. In any event, the Court noted that even if the courts before which an action for damages was brought were to conclude that there had been a breach of judicial duties on account of excessively lengthy proceedings, they would not be able to make an award in respect of non-pecuniary damage, whereas in cases concerning the length of civil proceedings the applicants above all sustained damage under that head.
The Court therefore considered that none of the four remedies advocated by the Government could be considered effective within the meaning of Article 13.
Conclusion: violation (unanimously).

Article 6(1) – The Court noted that the proceedings in issue, which had begun on 18 September 1989 and were still pending in the German courts, had lasted more than 16 years and seven months to date. Notwithstanding both the conduct of the applicant, who had repeatedly asked for extensions of time and had objected several times to the Regional Court judges dealing with his case, and the arguments put forward by the Government, the Court considered that the length of the proceedings had exceeded a reasonable time.
Conclusion: violation (unanimously).

Article 41 – EUR 10,000 for non-pecuniary damage.

Article 46 – The Court took due note of the existence of a bill to introduce in German written law a new remedy in respect of inaction. It welcomed such an initiative, since a preventive remedy of that kind dealt with the root cause of the length-of-proceedings problem and appeared more likely to offer litigants adequate protection than compensatory remedies, which merely allowed action to be taken *a posteriori*. The Court encouraged the speedy enactment of a law containing the proposals set out in the bill in question and considered it unnecessary to indicate any general measures to be taken at national level in the execution of its judgment in the present case.

EFFECTIVE REMEDY
Remedies following search of notary office and disclosure of psychiatric information: *violations*.

PANTELEYENKO - Ukraine (N° 11901/02)
Judgment 29.6.2006 [Section V]

See Article 8 above.

EFFECTIVE REMEDY
Alleged lack of effective domestic remedies concerning access to abortion on therapeutical grounds: *admissible*.

TYSIAC - Poland (N° 5410/03)
Decision 7.2.2006 [Section IV]

See Article 8 above.

ARTICLE 14

DISCRIMINATION
Discrimination against men to negligible percentage of women requested to undertake jury service: *violation*.

ZARB ADAMI - Malta (N° 17209/02)
Judgment 20.6.2006 [Section IV]

Facts: From 1971 the applicant was placed on the list of jurors in Malta and remained on the list until at least 2002. Between 1971 and 1997 he served as both a juror and foreman in three different sets of criminal proceedings. In 1997 he was called again to serve as a juror, but failed to appear and was fined approximately EUR 240. As he had failed to pay the fine he was summoned before the Criminal Court. He pleaded that the fine imposed on him was discriminatory as others in his position were not subjected to the burdens and duties of jury service and the law and/or the domestic practice exempted women from jury service, but not men. His case was referred to the First Hall of the Civil Court, where the applicant

alleged that the Maltese system penalised men and favoured women; during the preceding five years only 3.05% of women had served as jurors as opposed to 96.95% of men. Moreover, the burden of jury service was not equitably distributed; in 1997 the list of jurors represented only 3.4% of the list of voters. The First Hall of the Civil Court rejected the applicant's claims. He appealed, stressing that jury service was a burden, as jurors were required to leave their work to attend court hearings regularly. It also imposed a moral burden to judge the innocence or guilt of a person. His appeal was rejected by the Constitutional Court. In 2003 and 2004, as a university lecturer, he sought exemption from jury service but his two applications were refused. His further request in 2005 was accepted on account of his full-time position as lecturer.

Law: Article 14 read in conjunction with Article 4(3)(d) – Compulsory jury service as it exists in Malta is one of the "normal civic obligations" envisaged in Article 4(3)(d). The applicant had not offered himself voluntarily for jury service and his failure to appear had led to the imposition of a fine, which could be converted into a term of imprisonment. On account of its close links with the obligation to serve, the obligation to pay the fine also fell within the scope of Article 4(3)(d). Article 14 was accordingly applicable.

Maltese law in force at the relevant time made no distinction between sexes, both men and women being equally eligible for jury service. The discrimination at issue was based on what the applicant described as a well-established practice, characterised by a number of factors, such as the manner in which the lists of jurors were compiled and the criteria for exemption from jury service. As a result, only a negligible percentage of women were called to serve as jurors. Although statistics were not by themselves sufficient to disclose a practice which could be classified as discriminatory, discrimination potentially contrary to the Convention might result not only from a legislative measure, but also from a *de facto* situation. In 1997 the number of men enrolled on the lists of jurors had been three times the number of women. In 1996 that difference had been even more significant as 174 men but only five women had served as jurors. Those figures showed that the civic obligation of jury service had been placed predominantly on men. Hence there had been a difference in treatment between two groups which, with respect to jury service, were in a similar situation.

Since 1997 an administrative process had been set in motion in order to bring the number of women registered as jurors in line with that of men. As a result, in 2004, over 6,000 women and over 10,000 men had been enrolled on the list of jurors. However, that did not undermine the Court's finding that at the relevant time only a negligible percentage of women had been enrolled and had actually been requested to perform jury service.

If a policy or general measure had disproportionate prejudicial effects on a group of people, the possibility of its being considered discriminatory could not be ruled out even if it was not specifically aimed or directed at that group. Moreover, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of sex as compatible with the Convention. The Government had argued that the difference in treatment depended on a number of factors. Jurors were chosen from the part of the population which was active in the economy and in the professions. Moreover, an exemption from jury service might be granted to those taking care of their family and more women than men could successfully rely on the relevant legal provision. Finally, "for reasons of cultural orientation", defence lawyers might have had a tendency to challenge female jurors. The Court doubted whether the factors indicated by the Government were sufficient to explain the significant discrepancy in the repartition of jury service. The second and third factors related only to the number of females who actually had performed jury service and did not explain the very low number of women enrolled on the lists of jurors. In any event, the factors highlighted by the Government only constituted explanations of the mechanisms which had led to the difference in treatment complained of. No valid argument had been put before the Court in order to provide a proper justification for it. In particular, it had not been shown that the difference in treatment had pursued a legitimate aim and that there had been a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

Conclusion: violation (six votes to one).

DISCRIMINATION
Authorities' refusal to assist the complainant, suffering from severe myopia, in reading documents and participating effectively in criminal investigation: *admissible*.

TYSIAC - Poland (N° 5410/03)
Decision 7.2.2006 [Section IV]

See Article 8 above.

DISCRIMINATION
Penalty imposed under provisions of the Code of Medical Ethics by the disciplinary board of a medical association, on journalists registered as members of the association: *inadmissible*.

HOUDART and VINCENT - France (N° 28807/04)
Decision 6.6.2006 [Section II]

See Article 10 above.

DISCRIMINATION
Presidential control over electoral commissions which had allegedly rigged election results in favour of pro-presidential parties: *communicated*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
[Section II]

See Article 3 of Protocol No. 1 below.

DISCRIMINATION
Azeri Kurds displaced from province near Nagorno-Karabach and allegedly unable to return: *communicated*.

CHIRAGOV and Others - Armenia (N° 13216/05)
[Section III]

See Article 1 of Protocol No. 1 below.

ARTICLE 41

JUST SATISFACTION
Compensation for disability not detected prenatally owing to error: *friendly settlement*.

DRAON - France (N° 1513/03)
MAURICE - France (N° 11810/03)
Judgments 21.6.2006 [Grand Chamber]

Facts: the applicants are the parents of children affected by severe congenital disabilities which, on account of medical error, were not detected during the prenatal examination. They brought proceedings against the negligent health-care establishments, but on account of the application to pending cases of the Law of 4 March 2002 on medical liability for the birth of a disabled child, which had entered into force while their claims were pending, although they obtained orders requiring the establishments to pay them compensation for non-pecuniary damage and the disruption to their lives, they did not receive compensation for the special burdens arising from their children's disabilities, which they might

legitimately have expected to obtain before the Law of 4 March 2002 was enacted. In two judgments on the merits, of 6 October 2005, the Grand Chamber held that the Law of 4 March 2002 had deprived the applicants, without sufficient compensation, of a substantial portion of the damages they had claimed, making them bear an individual and excessive burden, in breach of Article 1 of Protocol No. 1.

Law: The applicants requested in respect of pecuniary damage an amount corresponding to the sums they would have received as the law stood prior to enactment of the Law of 4 March 2002. The *Draon* case was struck out of the Court's list following a friendly settlement under the terms of which Mr and Mrs Draon were to receive EUR 2,488,113.27, including in particular a capital sum of EUR 1,428,540 plus interest, paid in respect of the provision of their child's needs by his parents throughout his life. The *Maurice* case was struck out of the Court's list following a friendly settlement under the terms of which the applicants were to receive EUR 2,440,279.14, including in particular a capital sum of EUR 1,690,000 plus interest, paid in respect of the provision of their child's needs by her parents throughout her life.

ARTICLE 46

EXECUTION OF A JUDGMENT
Government Bill introducing a remedy with a view to preventing procedural delays: *unnecessary for the Court to indicate general measures to be taken at national level.*

SÜRMELI - Germany (N° 75529/01)
Judgment 8.6.2006 [GC]

See Article 13 above.

EXECUTION OF A JUDGMENT
Respondent State to secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community.

HUTTEN-CZAPSKA - Poland (Nº 35014/97)
Judgment 19.6.2006 [Grand Chamber]

See Article 1 of Protocol No. 1 below.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of recovering property or obtaining adequate rent from tenants: *violation*.

HUTTEN-CZAPSKA - Poland (Nº 35014/97)
Judgment 19.6.2006 [Grand Chamber]

Facts: The applicant is one of around 100,000 landlords in Poland affected by a restrictive system of rent control (from which some 600,000 to 900,000 tenants benefit), which originated in laws adopted under the former communist regime. The system imposes a number of restrictions on landlords' rights, in particular, setting a ceiling on rent levels which is so low that landlords cannot even recoup their maintenance costs, let alone make a profit.
The property in question was taken under state management after the entry into force of a 1946 decree giving the Polish authorities power to assign flats in privately-owned buildings to particular tenants. The applicant's parents tried unsuccessfully to regain possession of their property. In 1974 a new regime on the state management of housing entered into force, the so-called “special lease scheme”. In 1975, the mayor issued a decision by which the ground floor of the house was leased to another tenant. In the 1990s

the applicant tried to have that decision declared null and void but only succeeded in obtaining a decision declaring that it had been issued contrary to the law.
In 1990 the District Court declared that the applicant had inherited her parents' property and, in 1991, she took over the management of the house. She then brought several unsuccessful sets of proceedings – civil and administrative – to regain possession of her property and to relocate the tenants.
In 1994 a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. According to one calculation, rents covered only about 60% of the maintenance costs. Severe restrictions on the termination of leases were also in place. The 1994 Act was replaced by a new act in 2001, designed to improve the situation, which maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases. For instance, it was not possible to charge rent at a level exceeding 3% of the reconstruction value of the property in question. In the applicant's case this amounted to 1,285 Polish zlotys (PLN) in 2004 (equivalent to 316 euros).
In 2000 and 2002 the Constitutional Court found that the rent-control scheme under both the 1994 Act and the 2001 Act was unconstitutional and that it had placed a disproportionate and excessive burden on landlords. The provisions in question were repealed and from 10 October 2000 until 31 December 2004 the applicant was able to increase the rent she charged by about 10% to PLN 5.15 a square metre (approximately 1.27 euros). On 1 January 2005, new provisions (the "December 2004 amendments") entered into force which allowed, for the first time, rents exceeding 3% of the reconstruction value of the property being rented to increase by not more than 10% a year. The new provisions still maintained State control over levels of rent. Those provisions, after being challenged by the Proscutor General of Poland before the Constitutional Court, were later repealed as unconstitutional. – The applicant's property has now been vacated.
On 22 February 2005 a Chamber of the Court held that there had been a violation of Article 1 of Protocol No. 1 and considered with regard to Article 46 of the Convention that the violation had originated in a systemic problem linked to the malfunctioning of Polish legislation (see Case-Law Report N° 72).

Law: Article 1 of Protocol No. 1 – The Grand Chamber of the Court agreed with the assessment of the applicant's situation set out in the Court's Chamber judgment, which found that the Polish authorities had imposed a "disproportionate and excessive burden" on the applicant, which could not be justified by any legitimate community interest. The Grand Chamber added, however, that the violation of the right of property in the applicant's case was not exclusively linked to the question of the levels of rent chargeable but, rather, consisted in the combined effect of defective provisions on the determination of rent and various restrictions on landlords' rights in respect of termination of leases, the statutory financial burdens imposed on them and the absence of any legal ways and means making it possible for them either to offset or mitigate the losses incurred in connection with maintenance of property or to have the necessary repairs subsidised by the State in justified cases.
The Court referred to its case-law confirming that in many cases involving limitations on the rights of landlords – which were and are common in countries facing housing shortages – the limitations applied had been found to be justified and proportionate to the aims pursued by the State in the general interest. However, in none of those cases had the authorities restricted the applicants' rights to such a considerable extent as in the applicant's case. In the first place, she had never entered into any freely-negotiated lease agreement with her tenants; rather, her house had been let to them by the State. Secondly, Polish legislation attached a number of conditions to the termination of leases, thus seriously limiting landlords' rights. Finally, the levels of rent were set below the costs of maintenance of the property such that landlords were not able to increase the rent in order to cover necessary maintenance expenses. The Polish scheme did not, and does not, provide for any procedure for maintenance contributions or State subsidies, thereby causing the inevitable deterioration of the property for lack of adequate investment and modernisation.
It was true that the Polish State, which inherited from the communist regime an acute shortage of flats available for lease at an affordable level of rent, had to balance the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests. It had to secure the protection of the property rights of landlords and respect the social rights of tenants, who were often vulnerable individuals. Nevertheless, the legitimate interests of the community in such situations called for a fair

distribution of the social and financial burden involved in the transformation and reform of the country's housing supply. That burden could not, as in the applicant's case, be placed on one particular social group, however important the interests of the other group or the community as a whole.
In the light of the foregoing, and having regard to the effects of the operation of the rent-control legislation during the whole period under consideration on the rights of the applicant and others in a similar situation, the Polish State had failed to strike the requisite fair balance between the general interests of the community and the protection of the right of property.
Conclusion: violation (unanimously).

Article 46 – *Application of the pilot-judgment procedure*: The Grand Chamber agreed with the Chamber's conclusion that the applicant's case was suitable for the application of the pilot-judgment procedure as established in the Court's judgments in *Broniowski v. Poland* (application no. 31443/96). It was common ground that the operation of the impugned housing legislation potentially entailed consequences for the property rights of a large number of people whose flats (some 600,000, or 5.2% of the entire housing resources of the country) were let under the rent-control scheme. Eighteen similar applications were pending before the Court, including one lodged by an association of some 200 landlords. The Court noted however that the identification of a "systemic situation" justifying the application of the pilot-judgment procedure did not necessarily have to be linked to, or based on, a given number of similar applications already pending. In the context of systemic or structural violations the potential inflow of future cases was also an important consideration in terms of preventing the accumulation of repetitive cases on the Court's docket, which hindered the effective processing of other cases giving rise to violations, sometimes serious, of the rights it was responsible for safeguarding.
Although the Polish Government maintained that the rent-control scheme no longer existed in Poland, the Court reiterated its view that the general situation had not yet been brought into line with the Convention standards.
The Grand Chamber shared the Chamber's general view that the problem underlying the violation of Article 1 of Protocol No.1 consisted in "the malfunctioning of Polish housing legislation". However, the Grand Chamber saw the underlying systemic problem as a combination of restrictions on landlords' rights, including defective provisions on the determination of rent, which was and still is exacerbated by the lack of any legal ways and means enabling them at least to recover losses incurred in connection with property maintenance, rather than as an issue solely related to the State's failure to secure to landlords a level of rent reasonably commensurate with the costs of property maintenance.

General measures: The Court noted that one of the implications of the pilot-judgment procedure was that its assessment of the situation complained of in a "pilot" case necessarily extended beyond the sole interests of the individual applicant and required it to examine that case from the perspective of the general measures that needed to be taken in the interest of other people who might be affected. Given the systemic nature of the underlying problem, the fact that the applicant's property had been vacated did not prevent the Court from ascertaining whether the cause of the violation for other people had been removed.
The Court held, by 16 votes to one, that the above violation originated in a systemic problem connected with the malfunctioning of Polish legislation in that: it imposed, and continues to impose, restrictions on landlords' rights and it did not and still does not provide for any procedure or mechanism enabling landlords to recover losses incurred in connection with property maintenance.
The Court further held, by 15 votes to two, that, in order to put an end to the systemic violation identified in the applicant's case, Poland had to, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, in accordance with the standards of protection of property rights under the Convention.
It was not for the Court to specify what would be the most appropriate way of setting up such remedial procedures or how landlords' interest in deriving profit should be balanced against the other interests at stake. However, the Court observed in passing that the many options open to the State certainly included the measures indicated by the Constitutional Court in its June 2005 Recommendations, setting out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered a "basic rent", "economically justified rent" or "decent profit".

Article 41 – The Court held unanimously that the question of pecuniary damages to be awarded was not ready for decision but awarded EUR 30,000 in respect of non-pecuniary damage.

DEPRIVATION OF PROPERTY
Azeri Kurds displaced from province near Nagorno-Karabach and allegedly unable to return: *communicated*.

CHIRAGOV and Others - Armenia (N° 13216/05)
[Section III]

The applicants are Azerbaijani nationals of Kurdish origin who lived in the province of Lachin located between Nagorno-Karabakh and the Republic of Armenia. Under the Soviet system of territorial administration, Nagorno-Karabakh was an autonomous region situated within the territory of the Republic of Azerbaijan. Nagorno-Karabakh's population was approximately 75 per cent ethnic Armenian and 25 per cent ethnic Azeri. In 1988 ethnic Armenians held demonstrations in Stepanakert, the capital of Nagorno-Karabakh, demanding the incorporation of Nagorno-Karabakh into Armenia. Similar demonstrations were held in Yerevan. The USSR Government rejected the Armenian demands for incorporation. In August 1991 Azerbaijan declared independence from the Soviet Union. In September 1991 the Soviet of the Nagorno-Karabakh Region announced the establishment of the Nagorno-Karabakh Republic and declared that it was no longer under Azerbaijani jurisdiction. In November 1991 the Azerbaijani Parliament abolished the autonomy previously enjoyed by Nagorno-Karabakh. In December 1991 the Soviet Union was dissolved. In January 1992 the parliament of the Nagorno-Karabakh Republic declared independence from Azerbaijan. The level of violence in Nagorno-Karabakh and surrounding regions eventually culminated in military conflict in and around Lachin. In 1992 the applicants fled to Baku with other villagers before the town of Lachin was captured, looted and burned.
In 1992 a peace process was instituted by the CSCE (now the OSCE). In 1997 the Minsk Group called for a two-stage peace process that referred to the need for all Armenian armed forces to withdraw from Nagorno-Karabakh and surrounding areas of Azerbaijan, and for the return of all refugees to their homes. In 1994 a ceasefire agreement was signed, but no political settlement of the conflict has so far been reached. According to the applicants, Armenian forces presently control most of Nagorno-Karabakh as well as five other territories outside and adjacent to Nagorno-Karabakh, including Lachin. The applicants have therefore been unable to return to Lachin. Before they were forced to leave their homes in 1992, their property rights had been governed by Azerbaijani law, whereas today their properties are located within an area under the effective control of Armenia and where Armenian law applies.
The applicants complain notably that they have lost all control over their properties and homes as a result of the continuing occupation of Lachin which prevents their return and the lack of any effective remedies available to displaced persons. There has been no attempt by the Armenian authorities to compensate the applicants for their losses. The applicants further complain that they were subjected to discrimination by the respondent Government by virtue of their ethnic and religious affiliation, since if they had been ethnic Armenian and Christian, they would not have been forcibly displaced from their properties and homes. The actions taken by the Armenian military and the Armenian-backed Karabakh forces have disproportionately affected Azeri Kurds. *Communicated* as a whole.

CONTROL OF USE OF PROPERTY
Decision taken by the prosecuting authorities to suspend a privatisation, not appealable to a tribunal: *violation*.

ZLÍNSAT, SPOL. S.R.O – Bulgaria (N° 57785/00)
Judgment 15.06.2006 [Section V]

See Article 6(1) [civil] above.

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
Immediate application during current parliamentary term of provision disqualifying those engaging in professional activities from sitting as MPs: *violation*.

LYKOUREZOS - Greece (N° 33554/03)
Judgment 15.6.2006 [Section I]

Facts: The applicant worked as a lawyer when he was elected as a member of parliament in April 2000 for a four-year term. In 2001 a revision of the Constitution made all professional activity incompatible with the duties of a member of parliament, subject to certain exceptions which were to be adopted by legislative action. In the absence of implementing legislation, the rule on disqualification entered into force on 1 January 2003, with no exceptions. A constituent lodged a complaint against the applicant's election. The applicant argued, *inter alia*, that the rule on disqualification could not apply in his case since he had been elected in 2000, prior to the enactment of the revision of the Constitution, and that he had practiced his profession without receiving any fees since the revision entered into force in 2003. In July 2003 the Special Supreme Court applied the constitutional revision and disqualified the applicant from holding his parliamentary seat.

Law: The applicant had been elected in accordance with the electoral system and the Constitution in force at the material time. Neither the applicant nor his electors could have imagined that his election might be called into question and considered flawed while his term of office was still in progress on the ground that simultaneously carrying on a profession was incompatible with his duties as a member of parliament. The incompatibility had not been announced prior to the elections and his disqualification during his term of office had come as a surprise both to him and his constituents. The rights guaranteed by Article 3 of Protocol No. 1 would be merely illusionary if the applicant or his constituents could be arbitrarily deprived of them at any moment. By considering the applicant's election under the new Article of the Constitution which entered into force in 2003, without taking into account the fact that he had been elected in 2000 in accordance with the law, the domestic court had caused the applicant to forfeit his seat and had deprived his constituents of the candidate they had chosen freely and democratically to represent them for four years, in breach of the principle of legitimate expectation. The Government had not advanced any grounds of pressing importance to the democratic order that could have justified the immediate application of the absolute disqualification.
Conclusion: violation (unanimous).

Article 41 – EUR 20,000 in respect of pecuniary damage.

FREE EXPRESSION OF OPINION OF PEOPLE

Alleged misadministration of electoral rolls, presidential control over electoral commissions and finalisation of country-wide vote tally without elections having been held in two districts: *communicated*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
[Section II]

In November 2003 the regular parliamentary election was held under both majority (single-mandate constituencies) and proportional systems. In the second of these voting systems, finalised by the vote tally of the Central Electoral Commission, the applicant party received 12% of the votes cast, which corresponded to 20 out of the 150 seats in Parliament reserved for candidates from party lists. The newly elected Parliament convened, but was ousted by the "Rose Revolution" forces at its first session. Later on, the Supreme Court of Georgia annulled the vote tally in the part concerning the election results under the proportional system. The results in single-seat constituencies remained in force. The repeat election was scheduled for March 2004 by the Interim President. In December 2003, the Central Electoral Commission

passed Decrees, according to which voters were expected to attend the electoral precincts and fill out special forms which would enable them to cast their ballots during the presidential election of January 2004. As soon as a new President was elected, the applicant party requested invalidation of the election results before the Supreme Court. Its claim was dismissed as unsubstantiated.
For the purposes of the repeat parliamentary election, the Central Electoral Commission passed another Decree, pursuant to which voters had to attend twice the electoral precincts in order to check that their names were included in preliminary and final electoral rolls. The voters missing from the lists should file the relevant petition, including on the election day itself. According to the applicant, on the eve of the repeat parliamentary election, the new President of Georgia declared through the mass media that he would not allow the presence of the Labour Party in Parliament. The repeat election was held in March 2004. Following different complaints about irregularities, the Central Electoral Commission annulled the election results for the two electoral districts in the Autonomous Republic of Ajaria and decided to hold a second repeat election there, in April 2004. On the election date, polling stations in those two districts failed to open. On the same day, and despite the failure to hold the second repeat election in the Autonomous Republic of Ajaria, the Central Electoral Commission tallied the March country-wide parliamentary election votes and issued the relevant Ordinance. It stated that about 1,5 million votes had been cast, while about 2,3 million voters had registered. The applicant party received 6 % of the vote, which was not enough to clear the 7% threshold and thus to obtain seats in Parliament.
The applicant appealed to the Supreme Court. Firstly, it challenged the rules on the composition of electoral rolls, claiming that the procedure for preliminary registration had *de facto* deprived many eligible voters of their right to cast votes on the election day and had permitted a ballot fraud whereby some voters could register in different electoral precincts and thus cast their vote more than once. Furthermore, the Central Electoral Commission had had no competence to change the rules on the composition of electoral rolls, this prerogative being reserved solely for Parliament. Secondly, the applicant complained of the composition of the electoral commissions, since, in every commission at all levels, 8 out of the 15 members were representatives of the presidential and pro-presidential parties. The applicant stated that its representatives in the various levels of electoral commissions had been threatened and prevented by other members from fulfilling their duties properly. Finally, the applicant claimed that the finalisation of the country-wide election results without elections being held in two districts in the Autonomous Republic of Ajaria had been unlawful. In view of the fact that there were at least 60,000 voters in those districts and that the applicant party needed only 16,000 votes in order to clear the 7% legal threshold, it complained that it had been unlawfully deprived of a genuine chance to obtain seats in Parliament. The Supreme Court rejected the applicant's appeal as unsubstantiated.
The chairperson of the applicant party, challenged, as a private person, the Decree of the Central Electoral Commission on the composition of electoral rolls and its Ordinance on the final vote tally before the Constitutional Court. He claimed that the system of preliminary voter registration, the disfranchisement of the two constituencies in the Autonomous Republic of Ajaria and the governmental control of the electoral administration had infringed the constitutional principle of free and fair elections. In May 2004 the Constitutional Court declared the claim inadmissible.
Communicated under Article 3 of Protocol No. 1 and Article 14 of the Convention in respect of both the repeat parliamentary elections of 24 March 2004 and the presidential election of 4 January 2004.

Articles 3, 10 and 13 of the Convention: *inadmissible*.

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Murashova v. Ukraine (Nº 16003/03), 29 June 2006 [Section V]
Zhmak v. Ukraine (Nº 36852/03), 29 June 2006 [Section V]

Relinquishment in favour of the Grand Chamber

Article 30

BEHRAMI and BEHRAMI - France (Nº 71412/01)

The application concerns the alleged negligence of French KFOR troops in the death of a child in the explosion of a bomb in Kosovo. The first applicant is a Kosovar, one of whose children was killed and another (the second applicant) severely injured, when a group of children played with undetonated cluster bombs dropped during the NATO bombardments in 1999. The applicant maintains that France is responsible for the death, because the incident took place in the part of Kosovo which is under the jurisdiction and control of French KFOR troops, who had failed to mark the site and/or defuse the bombs, which they knew to be in the area. The application was communicated under Article 2 in September 2003.

SARAMATI - France, Germany and Norway (Nº 78166/01)

The applicant, of Albanian origin, lives in Kosovo. He was arrested in July 2001 by two German officers belonging to the police of the United Nations Administration in Kosovo (UNMIK). A German KFOR (international security force mandated by the United Nations Security Council (UNSC) Resolution 1244) officer orally issued the arrest order and informed the applicant that he was being arrested by order of the Commander of KFOR (the COMKFOR - a Norwegian officer at the time). The applicant was taken to a KFOR camp under escort by American KFOR soldiers. His detention was extended by the COMKFOR, a French General as from October 2001. At the beginning of 2002, the applicant was convicted of attempted murder. His conviction has been quashed and the case remitted. The applicant complains of a breach of the respondent States' positive obligations to guarantee the Conventions rights of individuals residing in Kosovo. The application has been communicated under Article 5.

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. 84):

Tosun - Turkey (Nº 4124/02)
Judgment 28.2.2006 [Section II]

Satka and Others - Greece (Nº 55828/00)
Nakhmanovich - Russia (Nº 55669/00)
Aggeli - Greece (Nº 25559/03)
Pastellis – Cyprus (Nº 19106/03)
Judgments 2.3.2006 [Section I]

İzmir Savas Karsitlari Dernegi and Others - Turkey (Nº 46257/99)
Murat Demir - Turkey (Nº 42579/98)
Adem Bulut and Others - Turkey (Nº 50282/99)
Pilla - Italy (Nº 64088/00)
Devrim Turan - Turkey (Nº 879/02)
Nikolayev - Russia (Nº 37927/02)
Izzo - Italy (Nº 20935/03)
Judgments 2.3.2006 [Section III]

Van Glabeke - France (Nº 38287/02)
Berdji - France (Nº 74184/01)
Donadze - Georgia (Nº 74644/01)
Hocaoğullari - Turkey (Nº 77109/01)
Bačák – the Czech Republic (Nº 3331/02)
Judgments 7.3.2006 [Section II]

Kajas - Finland (Nº 64436/01)
Besseau - France (Nº 73893/01)
Leszczak - Poland (Nº 36576/03)
Hussain - the United Kingdom (Nº 8866/04)
Judgments 7.3.2006 [Section IV]

Eko-Elda AVEE - Greece (Nº 10162/02)
Menesheva - Russia (Nº 59261/00)
Poje - Croatia (Nº 29159/03)
Judgments 9.3.2006 [Section I]

Svipsta - Latvia (Nº 66820/01)
Novak - Slovenia (Nº 49016/99)
Eucone D.O.O. - Slovenia (Nº 49019/99)
Kveder - Slovenia (Nº 55062/00)
Klinar - Slovenia (Nº 66458/01)
Bauer - Slovenia (Nº 75402/01)
Žagar - Slovenia (Nº 75684/01)
Kramer - Slovenia (Nº 75705/01)
Meh - Slovenia (Nº 75815/01)
Dreu - Slovenia (Nº 76212/01)
Cmok - Slovenia (Nº 76430/01)
Žnidar - Slovenia (Nº 76434/01)

Baltić - Slovenia (Nº 76512/01)
Podkrižnik - Slovenia (Nº 76515/01)
Kukavica - Slovenia (Nº 76524/01)
Vidovič - Slovenia (Nº 77512/01)
Krašovec - Slovenia (Nº 77541/01)
Kumer - Slovenia (Nº 77542/01)
Mulej-Zupanec and Others - Slovenia (Nº 77545/01)
Judgments 9.3.2006 [Section III]

Sale - France (Nº 39765/04)
Zámečniková and Zámenčník – the Czech Republic (Nº 16226/04)
Judgments 21.3.2006 [Section II]

Korkmaz and Others - Turkey (Nº 35979/97)
Koç and Tambaş - Turkey (Nº 50934/99)
Lupacescu and Others - Moldova (Nº 3417/02, Nº 5994/02, Nº 28365/02, Nº 5742/03, Nº 8693/03, Nº 13681/03, Nº 31976/03 and Nº 32759/03)
Josan - Moldova (Nº 37431/02)
Judgments 21.3.2006 [Section IV]

Lerios - Cyprus (Nº 68448/01)
Krivokuća - Croatia (Nº 38770/02)
Judgments 23.3.2006 [Section I]

Krisper - Slovenia (Nº 47825/99)
Tokay and Ulus - Turkey (Nº 48060/99)
Anyig and Others - Turkey (Nº 51176/99)
Ulker and Others - Turkey (Nº 64438/01)
Judgments 23.3.2006 [Section III]

Melnik - Ukraine (Nº 72286/01)
Perk and Others - Turkey (Nº 50739/99)
Bendžius - Lithuania (Nº 67506/01)
Gaultier - France (Nº 41522/98)
Le Bechennec - France (Nº 28738/02)
Shcherbaky - Ukraine (Nº 31095/02)
Rázlová - the Czech Republic (Nº 20252/03)
Melnyk - Ukraine (Nº 23436/03)
Csáky - Hungary (Nº 32768/03)
Judgments 28.3.2006 [Section II]

Koss - Poland (Nº 52495/99)
Tomczyk Prokopyszyn - Poland (Nº 64283/01)
Judgments 28.3.2006 [Section IV]

Pekov - Bulgaria (Nº 50358/99)
Saday - Turkey (Nº 32458/96)
Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. - Turkey
(Nº 64178/00, Nº 64179/00, Nº 64181/00, Nº 64183/00 and Nº 64184/00)
Panier - Belgium (Nº 2527/02)
Nastos - Greece (Nº 35828/02)
Simaskou - Greece (Nº 37270/02)
Kollokas - Greece (Nº 10304/03)
Damilakos - Greece (Nº 13320/03)
Gianni and Others - Italy (Nº 35941/03)
Judgments 30.3.2006 [Section I]

Fetiš D.O.O. - Slovenia (Nº 75366/01)
Novak - Slovenia (Nº 75618/01)
Hrustelj - Slovenia (Nº 75628/01)
Cvetrežnik - Slovenia (Nº 75653/01)
Rojc - Slovenia (Nº 75687/01)
Cundrič - Slovenia (Nº 57566/00)
Zolger - Slovenia (Nº 75688/01)
Hafner - Slovenia (Nº 75695/01)
Rojnik - Slovenia (Nº 75697/01)
Videmšek - Slovenia (Nº 75701/01)
Kovačič - Slovenia (Nº 75742/01)
Mamič - Slovenia (Nº 75745/01)
Majhen - Slovenia (Nº 75773/01)
Slemensek - Slovenia (Nº 75810/01)
Goršek - Slovenia (Nº 75813/01)
Puž - Slovenia (Nº 76199/01)
Golenja - Slovenia (Nº 76378/01)
Pečnik - Slovenia (Nº 76439/01)
Kos - Slovenia (Nº 77769/01)
Sluga - Slovenia (Nº 77779/01)
Gorenjak - Slovenia (Nº 77819/01)
Planko - Slovenia (Nº 77821/01)
Judgments 30.3.2006 [Section III]

Statistical information[1]

Judgments delivered	June	2006
Grand Chamber	4	23(24)
Section I	43	132(138)
Section II	37	212(227)
Section III	65(67)	255(259)
Section IV	29(30)	226(240)
Section V	22	28(31)
former Sections	0	6
Total	**200(203)**	**782(825)**

Judgments delivered in June 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	2	4
Section I	43	0	0	0	43
Section II	37	0	0	0	37
Section III	65(67)	0	0	0	65(67)
Section IV	28(29)	1	0	0	29(30)
Section V	22	0	0	0	22
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former SectionIV	0	0	0	0	0
Total	**197(200)**	**1**	**0**	**2**	**200(203)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	18(19)	3	0	2	23(24)
Section I	130(136)	1	1	0	132(138)
Section II	205(220)	3	2	2	212(227)
Section III	246(250)	7	1	1	255(259)
Section IV	118(131)	5(6)	1	2	126(140)
Section V	28(31)	0	0	0	28(31)
former Section I	1	0	0	0	1
former Section II	3	0	0	0	3
former Section III	0	0	0	0	0
former Section IV	2	0	0	0	2
Total	**751(793)**	**19(20)**	**5**	**7**	**782(825)**

[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**	**2006**
I. Applications declared admissible			
Grand Chamber		0	0
Section I		13(14)	95(97)
Section II		1	25(26)
Section III		4	16(19)
Section IV		3	34(35)
Section V		0	8(10)
Total		**21(22)**	**178(187)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	4	28
	- Committee	832	3690
Section II	- Chamber	9(11)	44(47)
	- Committee	359	2749
Section III	- Chamber	37(55)	671(693)
	- Committee	416	3368
Section IV	- Chamber	17	110(111)
	- Committee	776	3857
Section V	- Chamber	6	18
	- Committee	402	1100
Total		**2858(2878)**	**15635(15661)**
III. Applications struck off			
Section I	- Chamber	16	63
	- Committee	8	30
Section II	- Chamber	5	75
	- Committee	7	60
Section III	- Chamber	10	39
	- Committee	5	37
Section IV	- Chamber	9	45(46)
	- Committee	11	46
Section V	- Chamber	20	40
	- Committee	3	19
Total		**94**	**454(455)**
Total number of decisions[1]		**2973(2994)**	**16267(16303)**

[1] Not including partial decisions.

Applications communicated	**June**	**2006**
Section I	68	380
Section II	49(52)	325(332)
Section III	119	441
Section IV	33	265
Section V	26	135
Total number of applications communicated	**295(298)**	**1546(1553)**

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1 :	Abolition of the death penalty

Protocol No. 7

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