CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 98
on the case-law of the Court
June 2007

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

CONTENTS

ARTICLE 13

Judgments

ARTICLE 14

Judgment

ARTICLE 34

Judgments

Inadmissible

ARTICLE 35

Judgment

Inadmissible

ARTICLE 2

POSITIVE OBLIGATIONS
Civil proceedings in alleged medical negligence case rendered ineffective by lengthy delays and procedural problems: *violation*.

ŠILIH - Slovenia (N° 71463/01)
Judgment 28.6.2007 [Section III]

Facts: In May 1993 the applicants' twenty-year old son died after going into anaphylactic shock following the administration of drugs to treat a skin allergy. There was medical evidence to suggest that myocarditis (inflammation of the heart muscle) may have been a contributory factor in the death, but the experts were divided as to whether this was a pre-existing condition. The applicants lodged a criminal complaint for medical negligence against the hospital doctor who had ordered the administration of the drugs, but it was dismissed for lack of evidence. In August 1994 they lodged a further request for a criminal investigation against the doctor and in July 1995 brought civil proceedings against both the doctor and the hospital. These were later stayed pending a final decision in the criminal proceedings. In the meantime the applicants filed various motions for changes of venue and judge. The criminal proceedings were discontinued in October 2000 for want of sufficient evidence. The applicants appealed unsuccessfully. The civil proceedings resumed in May 2001 and ended at first instance with the rejection of the applicants' claim in August 2006. An appeal is pending.

Law: (a) *Admissibility*: The death occurred before the Convention entered into force in respect of Slovenia and so the substantive complaint was incompatible *ratione temporis*. However, since the alleged procedural defects in the civil proceedings originated at the earliest on the date the proceedings were instituted, which was after the date Slovenia ratified the Convention, the Court had temporal jurisdiction to examine the applicants' complaint concerning the procedural aspect of Article 2.
Conclusion: procedural complaint admissible (unanimously).
(b) *Merits*: The Court accepted that the medical questions involved were of some complexity and that the decision to stay the civil proceedings was not in itself unreasonable as the evidence from the criminal proceedings could have been of relevance. It also accepted that the applicants had repeatedly challenged the judges sitting in their case and lodged motions for a change of venue. However, their conduct had had no effect on the length of the civil proceedings before their resumption in May 2001 while the delays in the criminal proceedings may have contributed to the length of that part of the civil proceedings. Thereafter, it had taken an additional five years for the district court to reach a verdict. The applicants' partial responsibility for the delays during that part of the proceedings did not justify the overall length of the proceedings. It was also unsatisfactory for the applicants' case to have been dealt with by at least six different judges at first instance while various matters that had been criticised by the Ombudsman – including a judge's failure to stand down, the trial judge's refusal to allow certain questions, and a decision to file unnecessary charges against the first applicant for allegedly insulting behaviour – had also contributed to the applicants' mistrust of the proceedings. Having regard to the above and noting that, after almost 12 years, the proceedings were still pending, there had not been an effective examination into the cause of and responsibility for the death.
Conclusion: procedural violation (unanimously).

Article 41 – EUR 7,540 to the applicants jointly for non-pecuniary damage.

ARTICLE 3

DEGRADING TREATMENT
Full body search of prisoner including systematic visual inspection of the anus after each prison visit during a period of two years: *violation*.

FRÉROT - France (N° 70204/01)
Judgment 12.6.2007 [Section II (former)]

Facts: The applicant was sentenced to life imprisonment. His crimes included murder, hostage taking, conspiracy, possessing and carrying weapons, breaches of the legislation on explosives and terrorism. He had been in prison for over six years when he was first told to open his mouth during a strip-search. When he refused, he was placed in a disciplinary cell. Subsequently, over several months, he was told to open his mouth during a number of strip-searches, either without warning or when he was leaving the visiting room, and twice on the occasion of trips outside the prison. If he refused he was taken to a disciplinary cell. He was subsequently transferred to a higher-security prison where, for two years, upon leaving the visiting room after each visit he was subjected to a strip-search including the obligation to "bend over and cough". He was subjected to a similar search after an Assize Court hearing. Whenever he refused to comply he was sent to a disciplinary cell.
The applicant applied for the annulment of provisions in circulars sent out by the Minister of Justice in 1986 concerning strip-searches and prisoners' correspondence in writing or by telegram. He also complained of the prison governor's refusal to pass on a letter to a friend in a different prison, containing information to help him apply for parole, on the ground that the letter did not correspond to the "definition of the notion of correspondence".
The *Conseil d'Etat* dismissed the applicant's complaint concerning strip-searches but annulled the ministerial circular concerning the prohibition of all correspondence between prisoners placed in punishment cells and their friends or relations or prison visitors. As to the applicant's letter to another prisoner, the refusal to pass it on was an internal regulatory measure, not amenable to judicial review.

Law: Article 3 – On the whole the Court found that the purpose of body searches, the procedure to be followed and the precautions to be taken when carrying out strip-searches, as prescribed in the 1986 circular and the Code of Criminal Procedure, were appropriate. This was so even when the prisoner was obliged, "in the specific case of a search for prohibited objects or substances" to "bend over and cough" in order to permit a visual inspection of the anus, provided that such a measure was permitted only where absolutely necessary in the light of the special circumstances and where there were serious reasons to suspect that the prisoner might be hiding such an object or substance in that part of the body. The applicant did not claim that the strip-searches had failed to follow the prescribed procedure or that their purpose, or that of any other search, had been to humiliate or demean him, or that the warders had lacked respect or behaved towards him in such a way as to indicate any such intention.
All the facts had to be taken into consideration, moreover. The applicant had often been strip-searched. The searches had been imposed in the context of events which clearly made them necessary in order to maintain security or prevent criminal offences: prior to confinement in a disciplinary cell, to make sure he had nothing on his person with which he might harm himself, or after he had been in contact with the outside world or other detainees, who might have passed him prohibited objects or substances, and the searches had not always included systematic anal inspections.
However, the Court was struck by the fact that, from one prison to another, the degree of intimacy of the search procedure varied. Over a period of more than three years in prison the detainee had been subjected to frequent body searches during which he had been told to open his mouth or "bend over and cough". He had however been subjected to anal inspections in only one of the nine establishments in which he had been held. The Government did not claim that each of these measures was based on serious suspicion that the applicant had "prohibited objects or substances" concealed in his anus; or even that a change in the applicant's behaviour had aroused particular suspicions in this regard. In the prison concerned detainees

were searched each time they left the visiting room and systematically ordered to "bend over and cough": there was a presumption that any prisoner returning from the visiting room was hiding objects or substances in the most intimate parts of his person. Anal inspections in such conditions were not based, as they should be, on a "convincing security imperative" or the need to prevent disorder or crime.
This explained how the applicant might feel that he was the victim of arbitrary measures, especially as the search procedure was laid down in an administrative circular and allowed each prison governor a large measure of discretion. That feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious encroachment on one's dignity undoubtedly prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, added to the other excessively intimate measures associated with strip-searches, led to a degree of humiliation which exceeded that which was inevitably a concomitant of the imposition of body searches on prisoners. Moreover, the humiliation felt by the applicant had been aggravated by the fact that on a number of occasions his refusal to comply with these measures had resulted in his being taken to a disciplinary cell. Accordingly, the strip-searches to which the applicant had been subjected while imprisoned in Fresnes, c between September 1994 and December 1996, amounted to degrading treatment.
Conclusion: violation (unanimously).

Article 8 (correspondence) – Refusal to pass on a letter, explaining how to go about applying for parole, from one detainee to another in a different prison amounted to "interference". The prison governor had not based his refusal on any of the reasons provided for in the Code of Criminal Procedure (which amply recognised the principle of freedom of correspondence for prisoners); he had considered that the letter "[did] not correspond to the definition of the notion of correspondence". However, no law or regulation provided for a definition of that notion and the Government made no claim that case-law made up for that fact; they referred to the "definition of the notion of correspondence" contained in the 1986 ministerial circular. These circulars, however, were only service instructions issued to subordinate staff by a higher administrative authority by virtue of its hierarchical powers; in principle they were not binding. Having been issued by a body with no legislative power, it could not be considered as a "law" within the meaning of Article 8, so the interference was not "in accordance with the law".
Furthermore, the definition of "correspondence" contained in the circular excluded letters "whose content [did] not specifically and exclusively concern the addressee". This definition was incompatible with Article 8 as it was based on the content of "correspondence" and resulted in the automatic exclusion of an entire category of private exchanges in which prisoners might wish to take part.
Conclusion: violation (unanimously).

Article 13 – The *Conseil d'Etat* had declared inadmissible the applicant's petition to set aside a decision in which the prison governor had refused to pass on his mail, citing as the sole reason the fact that such internal regulatory measures were not amenable to judicial review as being ultra vires. The French Government had not asserted that the applicant had had at his disposal any other remedy that met the requirements of Article 13.
Conclusion: violation (unanimously).

Article 41 – EUR 12,000 in respect of non-pecuniary damage.

For further details, see press release N° 406.

TORTURE AND INHUMAN TREATMENT
Force-feeding of prisoner on hunger strike in protest against prison conditions: *violation*.

CIORAP - Moldova (N° 12066/02)
Judgment 19.6.2007 [Section IV]

Facts: The applicant, a second degree invalid diagnosed as suffering from "mosaic schizophrenia", complained of the conditions in a remand centre where he was serving a prison sentence for fraud-related offences while awaiting trial on other charges. His complaints concerned overcrowding, a shortage of beds, rodent and parasite infestation, damp, a lack of proper ventilation or access to daylight, restricted electricity and water supplies, and a poor diet. He periodically went on hunger-strike to protest about the conditions and in 1994 and 1995 spent periods of up to 10 days in solitary confinement, apparently as punishment for his refusal to take food. At the beginning of August 2001 he went on a fresh hunger-strike to protest against violations of his and his family's rights. Two weeks later he cut his veins and attempted to set fire to himself. He was kept under medical supervision. On 24 August a doctor found his health to have deteriorated and ordered force-feeding. From then until 10 September he was force-fed a total of seven times. On each occasion the doctors noted that his health was "relatively satisfactory" or "satisfactory" and he was apparently fit enough to make two court appearances. He ended his hunger-strike on 4 October 2001.
In October 2001 he lodged a complaint about the pain and humiliation caused by the force-feeding, a process he described as follows. He was always handcuffed, despite never physically resisting. The prison staff forced him to open his mouth by pulling his hair, gripping his neck and stepping on his feet until he could no longer bear the pain. His mouth was then fixed in an open position by means of a metal mouth-widener and his tongue was pulled out of his mouth with a pair of metal tongs. A hard tube was inserted as far as his stomach through which liquidised food was introduced, provoking, on some occasions, sharp pain. When the metal holder was removed from his mouth, he bled, could not feel his tongue and was unable to speak. The instruments were not fitted with single-use, soft protection layers to prevent pain and infection. As a result of the process, one of his teeth had been broken and he had contracted an abdominal infection. The applicant's claims were ultimately rejected, the district court finding that his force-feeding was based on medical necessity and that handcuffing and other restrictive measures had been necessary for his own protection. The applicant's cassation appeal lodged with the Supreme Court of Justice was not examined by that court because he had failed to pay a (3 EUR) court fee. The applicant also complained that letters addressed to him personally from law-enforcement agencies, human-rights organisations and even a psychiatric hospital had been censored by the prison administration and of severe restrictions on visits from his relatives and girlfriend, which were conducted through a glass partition, making privacy and physical contact impossible. The Supreme Court found that the partition was justified for security reasons.

Law: Article 3 – (a) *Conditions of detention* – The conditions in which the applicant had been held for a prolonged period were inhuman, in particular as a result of extreme overcrowding, unsanitary conditions and the low quantity and quality of food.
Conclusion: violation (unanimously).
(b) *Force-feeding* – A measure which was of therapeutic necessity from the point of view of established principles of medicine could not, in principle, be regarded as inhuman and degrading. The same could be said about force-feeding when aimed at saving the life of a person on hunger-strike. However, the Court had to be satisfied that (i) medical necessity had been convincingly shown, (ii) the procedural guarantees had been complied with and (iii) the manner in which the force-feeding was carried out had not attained the proscribed level of severity.
(i) *medical necessity* – The applicant had been on hunger-strikes in the past, without being force-fed or considered to be in danger. Indeed, the punishment he had received as a result had included two 10-day periods of solitary confinement, which suggested that the force-feeding was not aimed at protecting his life but rather at discouraging further protest. Various inconsistencies were noted in the Government's case. For instance, although the applicant's condition had been considered serious enough to warrant force-feeding, he had been allowed to attend court hearings and deemed fit to continue his hunger strike. There was no evidence of medical tests being carried out before the initiation of force feeding. The

applicant's health had repeatedly been assessed as "relatively satisfactory" or even "satisfactory" by the duty doctor. In sum, there was no medical evidence that the applicant's life or health had been in serious danger and sufficient grounds to suggest that his force-feeding was in fact aimed at discouraging him from continuing his protest.

(ii) *procedural guarantees* – Basic procedural safeguards prescribed by domestic law, such as clarifying the reasons for starting and ending force-feeding and noting the composition and quantity of food administered, had not been respected.

(iii) *the manner in which the force-feeding was carried out* – The Court was struck by the manner of the force-feeding, including the unchallenged, mandatory handcuffing regardless of any resistance and the severe pain caused by metal instruments to force the applicant to open his mouth and pull out his tongue. Less intrusive alternatives, such as an intravenous drip, had not even been considered, despite the applicant's express request.

In short, the applicant's repeated force-feeding had not been prompted by valid medical reasons but rather with the aim of forcing him to stop his protest. It had been performed in a manner which unnecessarily exposed him to great physical pain and humiliation. Accordingly, it could only be considered as torture.

Conclusion: violation (unanimously).

Article 6 § 1 – The applicant was denied access to a court as a result of the Supreme Court's refusal, because of his failure to pay the court fee, to examine his complaint regarding the force-feeding. In view of the serious nature of his claim (torture), he should have been exempted from paying the fee, regardless of his ability to pay.

Conclusion: violation (unanimously).

Article 8 – (a) *Correspondence* – There was clear evidence that at least some of the applicant's correspondence had been opened by the prison administration. However, the applicant was not given access to the relevant prison rules until December 2003 and the Government had not submitted any evidence to show that the court orders required by domestic law had been obtained. The opening of the correspondence was not, therefore, "prescribed by law".

Conclusion: violation (unanimously).

(b) *Private and family life* – The very general wording of the only provision that could be considered as a legal basis for installing a glass partition in the cubicle for prison visits gave a very wide discretion to the authorities in individual remand centres. That fact, coupled with the failure to publish the applicable prison rules, strongly suggested that the interference with the applicant's rights was not in accordance with the law. However, it was unnecessary to take a definitive view on that issue as the interference was, in any event, not "necessary in a democratic society". The domestic courts had confined themselves to a perceived general need to preserve the safety of detainees and visitors. However, the applicant was accused of fraud and allowing him to meet his visitors would not have created a security risk. That conclusion was reinforced by the fact that he was in fact allowed such visits subsequently. Relevant also was the effect on the applicant of the lack of physical contact with his visitors for a lengthy period and of a relationship maintained solely by correspondence and communication through a glass partition. In the absence of any demonstrated need for such far-reaching restrictions, the authorities had failed to strike a fair balance between the aims relied on and the applicant's rights.

Conclusion: violation (unanimously).

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

INHUMAN OR DEGRADING TREATMENT
Inability of victims of an alleged criminal offence to challenge in court a prosecutor's decision not to institute proceedings: *violation*.

MACOVEI and Others - Romania (N° 5048/02)
Judgment 21.6.2007 [Section III]

Facts: Two of the applicants were injured by their neighbours in a dispute. They filed a criminal complaint for attempted murder and grievous bodily harm inflicted by several blows with an axe. However, the Romanian authorities refused to prosecute the assailants on those charges and insisted, as a condition for taking court action, that the applicants file a new complaint alleging assault instead. The prosecution service failed to heed the applicants' express wish to bring an action for attempted murder, rather than for assault and battery. A law has since opened up the possibility for any party to appeal to the court of first instance against a decision by the prosecution service to end the proceedings.

Law: Article 3 – An investigation had been carried out following the complaints filed by the two applicants for attempted murder and grievous bodily harm as a result of the violence inflicted on them. Such measures necessitated the filing of a complaint with the authorities responsible for the criminal investigation, namely the police or the public prosecutor's office. For this type of offence the classification of the facts was essential as it determined whether court action would be taken: only the prosecution service could refer a matter to the criminal courts. In constantly refusing to prosecute the assailants on the charge of attempted murder and insisting, as a condition for prosecuting them, that the applicants file a new complaint alleging assault, the prosecution service had encouraged the applicants to abandon their initial complaint or to change it. However, the applicants' allegations of attempted murder and grievous bodily harm were defendable in the light of the undisputed reality of the injuries mentioned in the medical certificates. That alone was enough to place the attack on the applicants within the protective scope of Article 3. Their classification of the facts had been in accordance with domestic case-law. However, although the violence suffered by the first applicant had knocked out one of his teeth and broken another, which amounted to mutilation according to the balance of judicial opinion, and although he had filed a complaint on that charge, the authorities had failed to follow it up. Yet whether or not the applicants' attackers were brought to account depended on that. As to the existence at the material time of a remedy enabling the applicants to appeal to a higher authority against the decision to end the proceedings for attempted murder, it had been neither adequate nor effective. Having refused to file a complaint for the offence suggested by the prosecution service, the applicants had been deprived of the right to have their case heard by a court, although adversarial criminal proceedings before an independent and impartial court afforded the soundest guarantees of effectiveness when it came to establishing the facts and determining criminal liability. The reform of the Code of Criminal Procedure had clearly demonstrated Parliament's desire to end the prosecution service's monopoly on committals. It had adjusted the balance in favour of the victims, who could now appeal against decisions discontinuing the proceedings. Under the legislation in force at the time, the applicants had not enjoyed the benefit of these new provisions. The criminal justice system as applied in this case had proved incapable of punishing those responsible. That was likely to diminish the public's trust in the justice system and in its adherence to the rule of law: violation concerning the procedural aspect.

Article 41 – EUR 3,000 to one of the applicants in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Prison polluted by foul air and putrid smells from a former waste tip situated in the locality: *communicated*.

BRÂNDUŞE - Romania (N° 6586/03)
[Section III]

The applicant was placed in pre-trial detention under suspicion of having incited someone to commit fraud. He was sentenced to ten years' imprisonment.
During his pre-trial detention the applicant was held on police premises. He had access to the toilets only twice a day. The rest of the time he and his cell-mates had to use a plastic bucket, which remained in the cell. When transferred to prison he had to share a cell measuring about 38 m2 with twenty-seven other detainees; the cell had eighteen beds and only one window and there was no hot water in the sink. His prison clothes were over twenty years old and sometimes he had no sheets or covers. The quality of the food was very poor. A warder stood by during the applicant's telephone conversations with people on the outside, and the applicant had to inform the prison authorities of the numbers he wished to call, so that they could be noted down in a register.
One of the prisons he was held in was about twenty yards away from an old refuse tip, which had been closed but not covered over or otherwise rehabilitated. People continued to discard refuse there. Flies, insects and birds would fly from the refuse tip into the cell, bringing a risk of infection, as the detainees also kept food in the cell, having nowhere else to put it. The waste also gave off sickening smells. In answer to a letter from the applicant, the prefect announced that a firm intended to buy the public land concerned and rehabilitate it. The municipality maintained that the old refuse tip had been closed and was no longer in use, and that a firm had drafted an environmental report and was keeping the site under constant supervision. A scheme to neutralise the refuse was under study. The applicant brought a case before the Court of First Instance, based on the Government's urgent order concerning certain rights of persons serving custodial sentences, complaining in particular of the hygiene conditions in police custody and in a prison, the lack of a refrigerator and the foul air and pestilential smells from the nearby rubbish dump he had to put up with in the prison in question. The court dismissed the case as ill-founded and the County Court rejected the appeal against that decision. An 'extremely powerful' fire subsequently engulfed the site, kindled by the emanations of methane from the deeper layers of refuse.
Communicated under Articles 3 and 8 of the Convention ; declared inadmissible as to the remainder.

EXTRADITION
Arrest in breach of domestic law and extradition in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment: *violation*.

GARABAYEV - Russia (N° 38411/02)
Judgment 7.6.2007 [Section I]

Facts: The applicant was a citizen of Russia and Turkmenistan. In September 2002 the Turkmen authorities requested the Russian authorities to detain and extradite him in connection with alleged banking offences. The applicant was arrested in Moscow and placed in detention. His lawyer pointed out to the Russian authorities that, as a Russian national, he could not be extradited to Turkmenistan. She also referred to human-rights reports indicating that the applicant would be at risk of torture or inhuman or degrading treatment if extradited. A Russian NGO and a member of the State Duma also wrote to the authorities, again referring to his Russian nationality, the risk of torture and the lack of guarantees of a fair-trial. On 18 and 24 October 2002 the applicant's lawyer challenged the orders for the applicant's detention and extradition in a city court, which, however, declined jurisdiction to hear the detention complaint and refused to review the decision regarding extradition in the applicant's absence. On 24 October 2002 the applicant was extradited to Turkmenistan. He says that he was shown a copy of the decision to extradite him for the first time at the airport and that his request to see a lawyer was rejected. In December 2002 the city court reviewed the decision to extradite him. It held that it was unlawful in view of his Russian nationality and had not been officially served on him or his lawyer. It also ruled that

his detention had been unlawful. The applicant claimed that while in detention in Turkmenistan he was threatened with torture and reprisals against his family, hit on the head and back and held in unsatisfactory conditions. He was questioned twice without a lawyer and the Russian consular authorities were denied access to him. In February 2003 the applicant was returned to Moscow, where he was arrested and detained pending trial on embezzlement charges. He later learnt that his mother had been sentenced to 14 years' imprisonment following a retrial and that similar sentences had been imposed on his sister and uncle. In March 2004 the applicant was found guilty of using a forged document and fined. He was acquitted of the other charges and released from detention. The Russian Government later gave assurances to the Court that, in view of his undisputed Russian nationality, the applicant would not be extradited to Turkmenistan.

Law: Article 3 – The competent authorities had been made sufficiently aware of the risk of ill-treatment in the event of the applicant's extradition as letters had been sent by the applicant, his lawyers and various public figures to the prosecutor general. Substantial grounds for believing that he faced a real risk of proscribed treatment therefore existed at the date of his extradition. However, no assurances regarding the applicant's safety had been sought and no medical reports or visits by independent observers had been requested or obtained; the applicant had been informed of the decision to extradite him only on the day of his transfer and had not been allowed to challenge it or to contact his lawyer; lastly, the domestic court which had ruled the extradition to be unlawful after it had already taken place had also failed to take into account the submissions under Article 3. The conclusion that the authorities had failed to carry out any proper assessment of the risk of ill-treatment prior to the applicant's extradition was reinforced by his uncontested account of his treatment in Turkmenistan following his extradition: he had spent most of his three-months detention in a 10 sq. m. cell he shared with two other inmates; he had been allowed very little or no exercise, been denied consular visits and had lived in constant fear for his life and his relatives' safety; and he had been physically assaulted by investigators on several occasions.
Conclusion: violation (unanimously).

Article 5 § 1 (f) – The applicant was detained in Russia under a detention order issued by a prosecutor in Turkmenistan without being confirmed by a Russian court, contrary to the provisions of the Code of Criminal Procedure. Accordingly, his detention pending extradition was not in accordance with a "procedure prescribed by law". Further, the city court had declared his detention unlawful from the outset as domestic law excluded, in unambiguous terms, the extradition of Russian nationals. The procedural flaw in the order authorising the applicant's detention was so fundamental as to render it arbitrary and invalid. That conclusion was further strengthened by the absence of judicial review of the lawfulness of the applicant's detention until after his extradition had taken place. The applicant's detention during the period in question was therefore unlawful and arbitrary.
Conclusion: violation (unanimously).

Article 5 § 3 – The period of one month and 19 days it had taken to bring the applicant before a judge following his arrest in Russia on his return from Turkmenistan was incompatible with the strict requirement for arrested persons to be brought promptly before a judge.
Conclusion: violation (unanimously).

Article 5 § 4 – Prior to the applicant's extradition the city court had declined jurisdiction to review the lawfulness of his detention. Although it had subsequently addressed that issue this was only after he had already been extradited. Thus, the lawfulness of the applicant's detention during the relevant period was not examined by any court, despite his requests to that effect. Accordingly, even supposing that the remedy required by Article 5(4) was available in national law, the applicant had not been able to benefit from it. The Court's findings regarding the arbitrariness of the detention were also of direct relevance here, since a court would have been much better placed to uncover the fundamental flaw in the detention order and order the applicant's release.
Conclusion: violation (unanimously).

Article 13 (in connection with Article 3) – The applicant had not been provided with an effective remedy in respect of his complaint that extradition would expose him to a risk of ill-treatment. In particular, he

was only informed of the decision to extradite him on the day of his transfer; in breach of domestic law, he was not allowed to contact his lawyer or to lodge a complaint; and the compatibility of the scheduled removal with Article 3 was not examined by the relevant authorities before it occurred.
Conclusion: violation (unanimously).

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

EXTRADITION
No immediate risk of extradition of a prisoner who swallowed a knife blade and refused to allow its removal because of a fear of ill-treatment and torture if extradited: *inadmissible*.

GHOSH - Germany (N° 24017/03)
Decision 5.6.2007 [Section V]

The applicant is wanted by the Indian authorities, under an arrest warrant, for criminal conspiracy and fraud in several cases involving sums in excess of two million euros. He was arrested in Germany and placed in custody pending extradition. In a verbal note India requested the applicant's extradition, to which the Court of Appeal agreed. The court subsequently rejected several appeals lodged by the applicant concerning the risk of exposure to ill-treatment in India, as the reality of the risk of ill-treatment and torture had not been demonstrated. The Federal Constitutional Court declined to consider a constitutional appeal lodged by the applicant. The applicant then swallowed a knife blade 10 cm long, which is still lodged in his stomach today. The Court of Appeal rejected a new appeal by the applicant, noting inter alia that the fact that the applicant had swallowed a knife blade and refused to have an operation to remove it only affected his fitness for transport, i.e. the enforceability of his extradition, not its admissibility. The Federal Constitutional Court declined to consider a new constitutional appeal lodged by the applicant. At regular intervals the Court of Appeal subsequently extended the applicant's detention pending extradition. According to a medical report, the blade might injure the applicant if he made certain movements while resisting transport. According to the prison authorities, the applicant's health has deteriorated but he refuses to undergo treatment.

Inadmissible under Article 3 – The Court held that an applicant could not claim to be a "victim" of an expulsion measure when that measure could not be enforced. By swallowing a knife blade which was still in his stomach and which he refused to have removed, the applicant had in effect created an obstacle to his extradition. The Court of Appeal had considered that his unfitness for transport did not affect the admissibility of the extradition but only its enforceability. Were the present obstacle to the extradition to be removed, the Court of Appeal would examine the applicant's health to determine whether he was fit to travel, would re-examine the risk of treatment prohibited under Article 3 of the Convention as a result of the criminal proceedings in India and the conditions of detention there, and would allow the applicant sufficient time to make submissions. As things stood, the applicant's extradition did not appear to be imminent and the applicant could not claim to be a victim of the alleged violations: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
CIVIL RIGHTS AND OBLIGATIONS
Dispute over a claim of corporate succession which had no basis in domestic law: *no violation*.

OAO PLODOVAYA KOMPANIYA - Russia (N° 1641/02)
Judgment 7.6.2007 [Section I]

Facts: In January 1992 the applicant was set up as a joint-stock company, its memorandum of association providing that it was the successor to the State Foreign Trade Agency "Soyuzplodoimport". In 1999, the applicant company notified the trademark registration authority that the trademarks of the "Soyuzplodoimport" had changed ownership through succession and consequently obtained trademark certificates in its own name. It subsequently used the trademarks as collateral in a number of commercial transactions with third parties. In 2001, within the framework of the supervisory review proceedings, the courts found that the applicant company had been created as a new entity and declared null and void the provisions on succession made in its memorandum of association.

Law: Article 1 of Protocol No. 1 – The applicant company had not presented any proof of the intention of the State Foreign Trade Agency "Soyuzplodoimport" to convert itself into another company or to reorganise itself so as to separate from its assets in favour of the applicant company. It had never succeeded in having its title to the legal succession established in domestic judicial proceedings. It had had, therefore, no "possessions" within the meaning of Article 1 of Protocol No. 1.
Conclusion: no violation (unanimously).

Article 6 – The applicant company had been defending a claim of corporate succession which had had no basis in domestic law: it followed that it had not had a "civil right" recognisable under domestic law. Therefore, there had been no basis for the rights guaranteed by Article 6 § 1 to arise.
Conclusion: no violation (by six votes to one).

RIGHT TO A COURT
Association with limited resources ordered to pay a multinational's costs in environmental-protection proceedings: *no violation*.

COLLECTIF NATIONAL D'INFORMATION ET D'OPPOSITION À L'USINE MELOX - COLLECTIF STOP MELOX ET MOX - France (N° 75218/01)
Judgment 12.6.2007 [Section II (former)]

Facts: The applicant association's aim is to oppose the manufacture, use and transport of the nuclear fuel MOX. When a decree authorised the enlargement of the Melox nuclear plant, which manufactures nuclear fuels using MOX, to enable it to increase its output, the applicant took legal action. With an environmental group it applied to the *Conseil d'Etat* to annul the decree. The COGEMA company (*Compagnie générale des matières nucléaires*), which runs the nuclear plant, took part in the proceedings, submitting that the applicants lacked any legitimate interest or locus standi and relying on Article L. 761-1 of the Administrative Courts Code. The *Conseil d'Etat* found against the applicant association and the environmental group and, under Article L. 761-1 of the Administrative Courts Code, ordered them to pay COGEMA FRF 5,000 for expenses incurred and not included in the costs.

Law: The applicant association complained that whereas it had taken action against an administrative decision, COGEMA, a private firm, had been allowed to take part in the proceedings, which meant that the applicant association had been faced with two adversaries. This imbalance had, it claimed, been accentuated by the fact that it had had to pay a sum to COGEMA. The fact that a similar point of view was defended by more than one party did not necessarily put the opposing party "at a substantial disadvantage in presenting its case". The proceedings had concerned an administrative decision providing a legal basis for one aspect of COGEMA's economic activity, so Article 6(1) applied to it and required that it should have access to the proceedings; the applicant association had been accompanied in the proceedings by the environmental group. The fact that they had been faced with two giants – the state and a multinational corporation – was not sufficient for it to be said that they had found themselves "at a substantial disadvantage" when presenting their joint case.
It remained that the *Conseil d'Etat* had ordered the applicant association, whose resources were limited, to pay expenses incurred by a prosperous multinational corporation. It had penalised the weaker party and taken a measure that was likely to deter the applicant association from taking legal action in the future to pursue its mission in accordance with its Articles of Association. However, defending causes such as the protection of the environment in the domestic courts was part of the important role non-governmental organisations played in a democratic society. When Article 6(1) was found to apply, the Court did not exclude the possibility that circumstances of this type might be at variance with the right to access to a court. However, the applicant association had had the possibility of appealing against the order to pay expenses under Article L. 761-1 of the Administrative Courts Code. The amount it was ultimately ordered to pay was half that recommended by the Government Commissioner, which tended to show that the *Conseil d'Etat* had taken the applicant's limited financial resources into account; the sum at issue was a moderate one and the applicant association was sharing the cost.
Conclusion: non-violation (unanimously).

ACCESS TO COURT
Refusal of legal aid for a claimant who was unable to pay the procedural costs for bringing an action – procedural guarantees afforded by the domestic legal-aid scheme: *violation*.

BAKAN - Turkey (N° 50939/99)
Judgment 12.6.2007 [Section II (former)]

Facts: The applicants' husband, father and brother respectively was accidentally killed by a gendarme during a police operation against third parties; the victim was accidentally hit by a ricochet when a warning shot was fired to stop a fugitive. The widow, acting in her own right and on behalf of her children, applied to a civil court for damages; she qualified for legal aid as she had no property and no income. The Civil Court declined jurisdiction in favour of the Administrative Court.
The Administrative Court refused her application for legal aid on the ground that at that stage of the proceedings, in the light of the evidence submitted to it, the action was ill-founded, and that she could not claim to be unable to pay costs as she was represented by a lawyer; it referred on this point to the case-law of the Supreme Administrative Court. The court ordered the applicant to pay court fees amounting to approximately twice the net minimum wage at the time. Court fees may be waived only if the applicant has been granted legal aid.
Having no source of income following the death of her husband, the applicant failed to pay the court fees within 60 days as ordered. Her lawyer requested confirmation of the legal aid awarded by the Civil Court as it was the same case, emphasising the fact that his client was impecunious and that he had not charged her for his services. The Administrative Court declared the application for damages not duly lodged on account of the applicant's failure to pay the court fees.
The gendarme who fired the fatal shot was initially convicted of causing death by negligence, but eventually acquitted.

Law: Article 2 – The authorities had not failed to discharge their positive obligation to take sufficient precautions to protect the victim's life, and they had carried out a satisfactory investigation.
Conclusion: non-violation (unanimously).

Article 6 § 1 (Access to a court) – The amount they had been required to pay in court fees represented an excessive sum for the applicants, who no longer had any source of income following the death of their relative. The Administrative Court had assumed that the applicants had sufficient resources based on the simple fact that they were assisted by a lawyer. That reason was irrelevant; the court had not taken the applicants' actual financial situation into account. Furthermore, the Administrative Court had ruled in no uncertain terms on the merits of the applicants' claim (cf. the finding of a violation in a similar case: *Aerts v. Belgium*, 1998).
As to the legal aid system, it did not offer all the procedural guarantees necessary to protect litigants from arbitrary decisions. No appeal lay against the decision concerning legal aid. Applicants were therefore unable to challenge the court's appraisal of the merits of their applications for legal aid as they were examined only once, based on written documents alone, without the parties being heard or having an opportunity to submit objections. The rejection of the request for legal aid – at the initial stage of the proceedings – had completely deprived the applicants of the possibility to have their case heard by a court.
Conclusion: violation (unanimously).

Article 41 – EUR 7,500 to the widow and children of the deceased and EUR 1,000 to his brother in respect of non-pecuniary damage.

ACCESS TO COURT
Wrongful refusal by the Supreme Court to hear, for failure to pay the prescribed fee, an appeal in a case of alleged torture: *violation*.

CIORAP - Moldova (N° 12066/02)
Judgment 19.6.2007 [Section IV]

(see Article 3 above).

FAIR HEARING
ADVERSARIAL TRIAL
Failure to communicate to the applicant decisions and documents sent by the public prosecutor to the court and a note from the judge to the court of appeal: *violation*.

FERREIRA ALVES - Portugal (n° 3) (N° 25053/05)
Judgment 21.6.2007 [Section II]

Facts: The applicant is estranged from his wife and was granted a right of access to their daughter. The mother subsequently sought to have of that right withdrawn. Acting in the interest of the child, as required by law, an official from the prosecution service had a social inquiry and a medical examination carried out. The applicant challenged that official's participation as he had been removed from an earlier case concerning him. The applicant was not informed of the position adopted by the prosecution official, who preferred not to take a decision but to await instructions from his superior.
The Attorney-General informed the court that the official concerned had been taken off the case at the time because the applicant had instituted criminal proceedings against him. The proceedings were no longer pending, however, so there was no longer any reason to keep him off the case. He appended documents to his reply. The applicant was again not informed of these developments. The court referred to them, however, when rejecting the applicant's challenge.
The applicant asked to be informed of the interventions of the prosecution service. The court replied that this was not permitted under the Portuguese system.
The document in which the prosecution service commented on the content of the medical reports and invited the court to summon experts to the hearing (which it did) was again not communicated to the applicant. The court ordered a new social inquiry. It also decided that the forthcoming hearing would not

be taped. The applicant appealed. As authorised by law, the Court of First Instance sent a note to the Court of Appeal reaffirming the merits of its decision. The note was not sent to the applicant. The Court of Appeal rejected the appeal. The applicant's right of access was eventually restricted but not withdrawn.

Law: (a) In the documents it had submitted to the court, which had not been sent to the applicant, the prosecution service addressed important substantive as well as procedural issues. From the point of view of adversarial hearings, little did it matter whether or not the prosecutor was in fact a "party" if he was able, especially by the authority vested in him, to influence the court's decision to the applicant's disadvantage.
(b) The note the Court of First Instance had sent to the Court of Appeal had not been sent to the applicant either. In it the court reaffirmed the reasons for the decision against which the applicant had appealed: it commented on the merits of the applicant's appeal, thereby suggesting, albeit implicitly, that the higher court reject it; in short, the purpose of the note had been to influence the appeal court's decision. It was true that the note had presented no new submissions, but it was for the parties alone to decide whether a document called for comment, no matter what actual effect the note might have had on the appeal court judges.
Conclusion: violation (unanimously): see also the judgment *Antunes and Pires v. Portugal*, no 7623/04, 21 June 2007.

Article 41 – Non-pecuniary damage: finding of violation sufficient.

FAIR HEARING
Failure by a court of appeal to examine one of the applicants' main grounds of appeal and one based on an alleged violation of the Convention: *violation*.

WAGNER and J.M.W.L. - Luxembourg (N° 76240/01)
Judgment 28.6.2007 [Section I]

(see Article 8 below).

EQUALITY OF ARMS
Anti-nuclear association faced with two opponents – the State and a multinational – when attempting to have authorisation to enlarge a nuclear site set aside: *no violation*.

COLLECTIF NATIONAL D'INFORMATION ET D'OPPOSITION À L'USINE MELOX - COLLECTIF STOP MELOX ET MOX - France (N° 75218/01)
Judgment 12.6.2007 [Section II (former)]

(see above).

EQUALITY OF ARMS
Outcome of pending civil litigation affected by statutory amendment favourable to the State and contrary to the applicants' interests: *violation*.

SCM SCANNER DE L'OUEST LYONNAIS and Others - France (N° 12106/03)
Judgment 21.6.2007 [Section III]

Facts: The applicants are SCM Scanner de l'Ouest Lyonnais and its members, radiologists who all used the same scanner. Scanning was a medical act covered by the Social Security the fee for which should have been classified "Z 90". However, a ministerial decree changed that classification and an interministerial letter provisionally classified it "Z 19", substantially reducing the size of the fee. This classification was repeated in several subsequent decrees. The whole procedure was referred to the

Conseil d'Etat for examination. The *Conseil d'Etat* annulled the decree, the above-mentioned letter and the subsequent decrees renewing the impugned classification. The applicants applied to the health insurance funds for reimbursement of the additional amounts due in respect of a certain period as a result of the reinstatement of the "Z 90" rating. When the funds refused to reimburse them they took the matter before the relevant friendly-settlement boards, which confirmed the decision not to reimburse. Meanwhile, a new provision was introduced into the law on Social Security financing validating the measures taken on the basis of the aforesaid decree, interministerial letter and subsequent decrees, without prejudice to final judicial decisions. The Constitutional Council had declared this provision to be in conformity with the Constitution. The applicants reiterated their requests for reimbursement and lodged various applications with the social security tribunal. That tribunal found against them and its judgments were all confirmed on appeal, on the ground that the legal validation measure deprived the applicants of any right to reimbursement. The Court of Cassation rejected their appeal on points of law against the appeal court's decision, stating that the legal provision had been introduced before they lodged their appeal, that it did not constitute interference by the State in proceedings in which it was a party and it did not challenge any final judicial decision.

Law: Article 6 § 1 – The impugned legal provision had expressly excluded final judicial decisions from its scope while at the same time settling once and for all the terms of the dispute, with retrospective effect as there were cases pending before the relevant courts at the time of its entry into force. In conformity with domestic law the applicants had taken preliminary, "administrative" action before several friendly-settlement boards; such preliminary administrative action was mandatory in general litigation involving social security. The Court accordingly considered, unlike the Court of Cassation, that the proceedings had already started when the law was passed, and that the matter at issue was precisely the payment of the additional remuneration concerned. The new legal provision had endorsed the position adopted by the State in pending proceedings, determining the merits of the dispute and rendering any further action vain. The compelling grounds in the general interest, it appeared, were simply the need to preserve the financial equilibrium of the health branch of the mandatory social security scheme. In principle, however, financial reasons alone did not suffice to justify such legislative interference. No correlation had been established between the financial risk invoked and the pending proceedings, the outcome of which had been determined by the new legalising Act. Excluding pending proceedings from the scope of that law would have maintained the equality of arms in those proceedings without preventing the law from achieving its aim, which was to guarantee the future applicability of the impugned ministerial decrees. So the disputed legislative measure, which had determined with final and retrospective effect the merits of the dispute between the applicants and the State before the French courts, had not been justified by compelling grounds in the general interest: *violation*.

Article 41 – EUR 7,000 in respect of pecuniary and non-pecuniary damages.

INDEPENDENT AND IMPARTIAL TRIBUNAL

Lack of impartiality of a Supreme Court judge whose son had been expelled from a school run by one of the parties to the dispute: *violation*.

TOCONO and PROFESORII PROMETEIŞTI - Moldova (N° 32263/03)
Judgment 26.6.2007 [Section IV]

Facts: During an application for the registration of a private school, a dispute arose between rival groups who wished to be registered as the school's founders. The case went to the Supreme Court of Justice, which overturned the judgment of the court of appeal and ruled against the applicants. The panel of the Supreme Court which heard the appeal included a judge whose son had been expelled from the school three years earlier by, *inter alia*, teachers from one of the applicant entities. The judge had allegedly threatened the school authorities with retaliation. The applicants did not learn of the composition of the panel until the day of the hearing. They complained of a lack of impartiality.

Law: It was not disputed that three years before the hearing in the Supreme Court, the judge's son had been expelled from the school and the judge had threatened the school authorities with retaliation. Under domestic law he was under a duty to inform the parties of a possible incompatibility. The Convention also imposed an obligation on every domestic court to check whether, as constituted, it was an "impartial tribunal". In the circumstances, the applicants' fears concerning the judge's impartiality were objectively justified.
Conclusion: violation (unanimously).

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

Article 6(1) [criminal]

FAIR HEARING
Partial disclosure on appeal in criminal proceedings of evidence in respect of which a public-interest immunity certificate had been issued: *no violation*.

BOTMEH and ALAMI - United Kingdom (N° 15187/03)
Judgment 7.6.2007 [Section IV]

Facts: The applicants, who were alleged to be members of a Palestinian group, were convicted of conspiracy in connection with car bombings on Israeli and Jewish targets in London. They were sentenced to 20 years' imprisonment and recommended for deportation. They appealed against conviction and sentence. Some months after the conclusion of the trial, they learnt from the press that the intelligence services had failed to disclose to the police information in their possession which the applicants considered might have assisted their defence. They sought disclosure but the Home Secretary signed a public-interest immunity certificate in respect of the information. The Court of Appeal then heard *inter partes* submissions on the procedure to be followed to decide the disclosure issue. It decided to view the material *ex parte* before ruling on the claim for public-interest immunity. Having done so, it ordered a summary of the undisclosed evidence to be released to the applicants and their representatives, but declined to order any further disclosure. It subsequently held that there was no reason to regard the applicants' convictions as unsafe. In explaining its approach to disclosure, it said that it was satisfied, *inter alia*, that prosecuting counsel had had access to everything they wanted to see, had examined all relevant and potentially material matter and had continued to keep the need for disclosure under review; the trial judge had been correct to rule as he did on the disclosure issue; no one had attempted to conceal any relevant or potentially material matter; public interest immunity had been rightly claimed, because it affected national security at the highest level and would, if disclosed, present a clear and immediate threat to life; and that, apart from the information that had since been disclosed in the summary, there was nothing of significance before it which had not been before the trial judge. The applicants were refused leave to appeal to the House of Lords.

Law: Following the disclosure hearing and well in advance of the resumed appeal hearing the Court of Appeal had disclosed to the applicants a summary of the information that had been withheld and an explanation for the non-disclosure. The Court of Appeal had observed that, save for the material which had been given to the applicants in summary form, there was nothing of significance before it which had not been before the trial judge and that no injustice had been done to the applicants, since the matter added nothing of significance and no attempt had been made by the defence at trial to exploit similar material which had been disclosed. Given the extent of that disclosure, the fact that the Court of Appeal had been able to consider its impact on the safety of the applicants' conviction and that the undisclosed material had been found to add nothing of significance to what had already been disclosed at trial, the Court considered that the failure to place the undisclosed material before the trial judge was, in the particular circumstances of the case, remedied by the subsequent procedure before the Court of Appeal.
Conclusion: no violation (unanimously).

See also, for examples of cases in which full disclosure at the appeal hearing was held to have remedied the withholding of evidence at trial: *Edwards v. the United Kingdom*, judgment of 25 November 1992, Series A no. 247-B; *Jasper v. the United Kingdom* [GC], no. 27052/95 – Information Note no. 15; *Fitt v. the United Kingdom* [GC], no. 29777/96 – Information Note no. 15; and *I.J.L., G.M.R. and A.K.P. v. the United Kingdom*, nos. 29522/95, 30056/96 and 30574/96 – Information Note no. 22. For cases in which the breach was not remedied on appeal, see *Rowe and Davis v. the United Kingdom*, no. 28901/95 – Information Note no. 15; *Atlan v. the United Kingdom*, no. 36533/97, 19 June 2001 – Information Note no. 31; and *Dowsett v. the United Kingdom*, no. 39482/98, ECHR 2003-VII – Information Note no. 54.

FAIR HEARING
Use at trial of statements obtained from the accused and witnesses through torture: *violation*.

HARUTYUNYAN - Armenia (N° 36549/03)
Judgment 28.6.2007 [Section III]

Facts: In 1998 the applicant was drafted into the army. In 2002 the applicant was found guilty of premeditated murder of a fellow serviceman and sentenced to ten years' imprisonment. The court relied, *inter alia*, on the applicant's confession and on the testimony of two other servicemen, while acknowledging that coercion had been applied to them. The police officers at issue were subsequently found guilty of abuse of power and sentenced to imprisonment. The court established that they had beaten the applicant and the two witnesses with a rubber club, squeezed their fingernails with pliers and clubbed their soles, causing injuries of various degrees. By threatening to continue the ill-treatment, they had forced the applicant to confess to murder, and the two servicemen to state that they had witnessed it. They had also threatened the victims with retaliation if they informed any higher authority about the ill-treatment. Referring to the above findings, the applicant lodged unsuccessful appeals against his conviction.

Law: The applicant had been coerced into making confession statements and the two witnesses into making statements substantiating his guilt. The statements obtained under duress had been used as evidence, despite the fact that ill-treatment had already been established in parallel proceedings instituted against the police officers in question. The domestic courts had justified the use of these statements by the fact that the applicant had confessed to the investigator and not to the police officers and by the fact that both witnesses had made similar statements later, at the confrontation and at the hearing. The European Court, however, was not convinced by such justification. Where there was compelling evidence that a person had been subjected to ill-treatment, including physical violence and threats, the fact that this person had confessed – or confirmed a coerced confession in his later statements – to an authority other than the one responsible for this ill-treatment should not automatically lead to the conclusion that such confession or later statements had not been made as a consequence of the ill-treatment and the fear that a person might experience thereafter. There had been ample evidence before the domestic courts that the witnesses had been subjected to continued threats of further torture and retaliation. Furthermore, the fact that they had still been performing military service could undoubtedly have added to their fear and affected their statements, which was confirmed by the fact that the nature of those statements had essentially changed after demobilisation. Hence, the credibility of the statements made by them during that period should have been seriously questioned, and these statements should certainly not have been relied upon. Regardless of the impact the statements obtained under torture had had on the outcome of the applicant's criminal proceedings, the use of such evidence had rendered the trial as a whole unfair.

Article 41 – EUR 4,000 for non-pecuniary damage.

FAIR HEARING
Obligation for the registered keeper of a vehicle to provide information identifying the driver where a road-traffic offence is suspected: *no violation*.

O'HALLORAN and FRANCIS - United Kingdom (N^{os} 15809/02 and 25624/02)
Judgment 29.6.2007 [GC]

Facts: Under section 172 of the Road Traffic Act 1988 the registered keeper of a vehicle can be required to provide information as to the identity of the driver where certain road-traffic offences are alleged to have been committed. It is an offence not to supply the information unless the keeper is able to show that he did not know and could not with reasonable diligence have ascertained the driver's identity. In separate incidents the applicants' vehicles were caught on speed cameras driving in excess of the speed limit. They were subsequently asked to identify the driver or risk prosecution. the first applicant admitted to being the driver in his case and was convicted of speeding after making an unsuccessful attempt to have his confession excluded as evidence. He was fined and his licence was endorsed. The second applicant invoked his right to silence and privilege against self-incrimination. He was convicted under section 172. He received a fine and his licence was endorsed.

Law: The Court did not accept the applicants' argument that the right to remain silent and the right not to incriminate oneself were absolute rights. In order to determine whether the essence of those rights was infringed, it focused on the nature and degree of compulsion used to obtain the evidence, the existence of any relevant safeguards in the procedure, and the use to which any material so obtained was put.
(a) *Nature and degree of the compulsion* – While the compulsion was of a direct nature anyone who chose to own or drive a car knew that they were subjecting themselves to a regulatory regime, imposed because the possession and use of cars was recognised to have the potential to cause grave injury. Those who chose to keep and drive cars could be taken to have accepted certain responsibilities and obligations including the obligation, in the event of the suspected commission of a road traffic offence, to inform the authorities of the identity of the driver on that occasion. Lastly, the nature of the inquiry the police were authorised to undertake was limited. Section 172 applied only where the driver was alleged to have committed a relevant offence and it authorised the police to require information only as to the identity of the driver.
(b) *Safeguards* – No offence was committed if the keeper of the vehicle showed that he did not know and could not with reasonable diligence have known who the driver of the vehicle was. The offence was therefore not one of strict liability and the risk of unreliable admissions was negligible.
(c) *Use to which the statements were put* – Although the first applicant's statement that he was the driver of his car was ruled admissible as evidence of that fact after his unsuccessful attempt to exclude it, the prosecution were nevertheless still required to prove the offence beyond reasonable doubt and the first applicant had been entitled to give evidence and call witnesses if he wished. The identity of the driver was only one element in the offence of speeding, and there was no question of a conviction arising in the underlying proceedings in respect solely of the information obtained as a result of section 172. In the second applicant's case the underlying proceedings were never pursued as he had refused to make a statement. Accordingly, the question of the use of his statement in criminal proceedings did not arise, as his refusal to make a statement was not used as evidence: it constituted the offence itself.
Having regard to all the circumstances of the case, including the special nature of the regulatory regime and the limited nature of the information sought by a notice under section 172, the essence of the applicants' right to remain silent and their privilege against self-incrimination had not been destroyed.
Conclusion: no violation (fifteen votes to two).

ARTICLE 8

APPLICABILITY
Mother living with her adopted daughter since the date of the foreign adoption order: *Article 8 applicable*.

WAGNER and J.M.W.L. - Luxembourg (N° 76240/01)
Judgment 28.6.2007 [Section I]

(see below).

PRIVATE LIFE
Failure by the authorities to take steps to neutralise a potentially hazardous former waste tip situated in the immediate vicinity of a prison: *communicated*.

BRÂNDUŞE - Romania (N° 6586/03)
[Section III]

(see Article 3 above).

PRIVATE AND FAMILY LIFE
Failure by the domestic authorities to comply with orders of the administrative courts setting aside concessions to work a gold mine: *violation*.

LEMKE - Turkey (N° 17381/02)
Judgment 5.6.2007 [Section II]

Facts: The case concerns the granting of permits to a company for the operation of a gold mine about 50 kilometres from where the applicant and her family live. Some local residents called for the withdrawal of the permits, claiming that the cyanide leaching process used by the mining company was hazardous. The Supreme Administrative Court upheld their request. However, the Ministry of Health adopted a decision authorising the continued exploitation of the mine on a trial basis, which decision was set aside by the Administrative Court. The Forestry Directorate authorised the mining to continue in the areas under its control, based on the ministerial decision. The Administrative Court adopted a decision suspending the effect of that authorisation. The Ministry of the Environment and Forestry issued the mining company with a favourable opinion following an environmental impact study. The Administrative Court nevertheless revoked the mining permit. The Council of Ministers authorised the company to continue mining gold and silver. The Supreme Administrative Court set aside that authorisation, emphasising that under environmental law and the directive on environmental impact studies, only the Ministry of the Environment and Forestry could introduce new provisions on the matter, certainly not the Council of Ministers. The decision was therefore against the law. It further considered that the favourable environmental impact study did not make the decision of the Council of Ministers any less illegal. Following an appeal by the administrative authorities on points of law, the case appears to be pending before the Supreme Administrative Court.

Law: Article 8 – Since the case of *Taşkin and Others v. Turkey*, no. 46117/99 (see Information Note no. 69), where the dangerous effects of a mining activity had been determined through an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life, Article 8 was applicable. The applicant and her family lived about fifty kilometres from the site of the impugned gold mining operation and she had been entitled under domestic law to take legal action to stop the exploitation of the mine, and had won her case. Her application was therefore to defend a specific

right she had been acknowledged to have under domestic law, on which the Turkish courts had pronounced judgment. The Supreme Administrative Court had considered that the authorisation to exploit the mine was by no means in the general interest and that the safety measures the company had agreed to take did not suffice to eliminate the risk inherent in the activity. However, the mine had not been ordered to shut down until ten months after delivery of the judgment. Mining had started again and the Council of Ministers had authorised the company to pursue its extraction activities. It was not until three years after the mining activities had started again that the Ministry of the Environment and Forestry had issued the mining company with a favourable opinion following an environmental impact study. So the Council of Ministers had authorised the mining activities to go ahead without previously carrying out the proper surveys and studies to assess and make provision for the likely effects of those activities. Until such study had been completed the authorities had deprived the procedural guarantees available to the applicant of any useful effect: *violation*.

Article 6 § 1 – The Supreme Administrative Court had set aside the decision of the Council of Ministers, emphasising that under environmental law and the directive on environmental impact studies, it was for the Ministry of the Environment and Forestry, not the Council of Ministers, to authorise mining activities. The Supreme Administrative Court had likewise concluded that the decision of the Council of Ministers had disregarded the judicial decisions adopted on the matter and rendered them inapplicable. That had undermined the rule of law, of which certainty of the law was an essential part. Accordingly, the Council of Ministers' decision had amounted to a failure by the authorities to comply in practice and within a reasonable time with the decision of the Supreme Administrative Court: *violation*.

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

PRIVATE AND FAMILY LIFE
Ban on bringing fresh divorce proceedings within three years of the dismissal of an initial petition no longer applicable owing to the expiry of the relevant period: *inadmissible*.

KARAKAYA (YALÇIN) - Turkey (N° 29586/03)
Decision 5.6.2007 [Section II]

The applicant was abducted and married one of her kidnappers, whose proposal of marriage she had previously declined. She filed a complaint against her husband, alleging that she had been forced to marry him. The husband denied the allegation and declared that the applicant had run away with him because her family was against their marriage. He contended that she had entered into the marriage of her own free will. The two accomplices in the abduction confirmed that they had taken her away by force but maintained that she had finally consented to elope and get married. The mayor who married the couple said that the applicant had consented to the marriage without showing any signs of being under pressure. The three men were charged with abduction. Because of the marriage, however, the Assize Court suspended the proceedings in respect of the husband. It also terminated the proceedings against the two accomplices. The applicant filed a petition for divorce with the District Court, for incompatibility. She alleged that she had been forced into the marriage, that she had had no sexual intercourse with her husband and that she did not live with him. The District Court granted the applicant time to apply for the annulment of her marriage for absence of consent. She did so but the District Court dismissed her claim in the light of the evidence, witnesses having testified that she had not opposed the marriage but had consented to it. The Court of Cassation upheld that decision and pointed out that it was too late to apply for the marriage to be annulled. The District Court rejected the petition for divorce. The applicant appealed, claiming that she had filed for divorce for incompatibility because it was too late for her to apply for the annulment of the marriage. The Court of Cassation upheld the District Court's decision. A new petition for divorce was filed with the Family Court, which dismissed it on the grounds that the three-year period required by law had not elapsed since the initial decision was adopted in the divorce proceedings. The Court of Cassation upheld that decision.

Inadmissible under Article 8 – More than three years had elapsed since the initial rejection of the applicant's petition for divorce and the applicant had not lived with her husband during that period. She now had access to a remedy that would allow her to terminate the impugned marriage. Having no reason to doubt the effectiveness of that remedy, the Court considered that an exception to the general principle that the exhaustion requirement should be taken into account at the time of lodging of the application was justified: *non-exhaustion of domestic remedies*.

Inadmissible under Article 6 – The applicant challenged the merits of the decision reached by the civil courts regarding the validity of her marriage, but it was not for the Court to verify the facts that had led a court to adopt a decision. As to the impossibility for the applicant to bring criminal proceedings against her alleged abductor, the Court pointed out that the Convention did not guarantee any right to prosecute third parties as such: *manifestly ill-founded*.

PRIVATE AND FAMILY LIFE
Impossibility for citizens of the former Socialist Federal Republic of Yugoslavia to obtain permanent resident status in Slovenia: *communicated*.

MAKUC - Slovenia (N° 26828/06)
[Section III]

Following the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), the applicants, former SFRY citizens who had their permanent residence in Slovenia, did not avail themselves of the opportunity to request Slovenian citizenship within the prescribed time-limit. As a consequence, in 1992 they lost permanent resident status and could no longer enjoy many of the social and economic rights and benefits which such status conferred. In total, more than 18,000 individuals were erased from the Register of Permanent Residents. In 1999, following the Constitutional Court's decision declaring unconstitutional the above measure, more than 10,000 of those affected were granted permanent residence status ex nunc by virtue of a new law. In 2003 the Constitutional Court found this law unconstitutional because, firstly, it did not afford permanent residence retroactively as from the date when the person concerned was removed from the Register. Secondly, the law failed to regulate the acquisition of permanent residence for citizens of former SFRY republics who had been forcibly removed from Slovenia. The Constitutional Court ordered the legislator to rectify the unconstitutional provisions within six months. A draft law is currently before Parliament. It would appear that approximately 4,300 individuals, the applicants among them, are still considered illegal residents in Slovenia.
Communicated under Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1. Remainder inadmissible.

FAMILY LIFE
Refusal to enforce a full adoption order by a foreign court in favour of a single woman: *violation*.

WAGNER and J.M.W.L. - Luxembourg (N° 76240/01)
Judgment 28.6.2007 [Section I]

Facts: Under an enforceable Peruvian judgment Ms Wagner, a national of Luxembourg, legally adopted a three-year-old girl in Peru who had been declared abandoned (the applicants).
They brought a civil action to have the Peruvian judgment declared enforceable in Luxembourg for purposes, in particular, of the child's civil registration, acquisition of Luxembourg nationality (she still had Peruvian nationality) and permanent residence in Luxembourg.
The court rejected the request on the ground that the Peruvian full adoption judgment had been in contradiction with the laws of Luxembourg, which were applicable under the conflict-of-law rule enshrined in the Civil Code and which prohibited full adoption by a single person. The applicants appealed, contending *inter alia* (in a section entitled "Public Policy Implications") that in placing Luxembourg law above an international agreement in order to refuse execution, the judgment was

incompatible with Article 8 of the Convention. Their appeal was declared unfounded, on the ground that the court had rightly held that the Peruvian decision was in contradiction with Luxembourg legislation on conflict of laws, under which conditions of adoption were governed by the law of the country of which the adopter was a national, which in Luxembourg restricted full adoption to married couples. The Court of Appeal concluded that it was unnecessary to examine the other conditions for declaring the decision enforceable, including compatibility with good international relations. The Court of Cassation confirmed the decision. It decided that the Court of Appeal had no need to answer the applicants' submissions under the heading "Public Policy Implications", that question having been made irrelevant by the court's decision not to apply the foreign law, and that the arguments contained in the applicants' appeal concerning Article 8 of the Convention "did not amount to a ground of appeal requiring a reply, given their doubtful, vague and imprecise nature". The applicants subsequently obtained an open adoption judgment in Luxembourg, which was the only possibility open to a single person of adopting a child there.

Law: Article 6 – It was the duty of the courts to duly consider and reply to a party's main submissions and, if those submissions concerned "rights and freedoms" guaranteed by the Convention or the Protocols thereto, to examine them with particular care and attention.
The issue of the incompatibility of the first-instance decision with Article 8 of the Convention – with particular reference to whether it was in accordance with good international relations – was one of the main grounds of appeal raised by the applicants, and as such called for a specific and explicit reply. The Court of Appeal, however, had failed to reply to it. The Court of Cassation had upheld that position, despite its case-law according to which the Convention produced direct effects in the Luxembourg legal system.
Conclusion: violation (unanimously).

Article 8 – This Article was applicable: Ms Wagner had behaved as the child's mother in every respect since the Peruvian adoption judgment, so "family ties" existed *de facto* between them.
The refusal to declare the Peruvian judgment enforceable – which stemmed from the absence of provisions in Luxembourg law enabling a single person to be granted full adoption of a child – amounted to "interference" with the applicants' right to respect for their family life.
The aim had been to protect the "health or morals" and the "rights and freedoms" of the child.
The question remained whether the interference had been "necessary in a democratic society". A broad consensus existed in the Council of Europe on the issue of adoption by unmarried persons, which was permitted without further restrictions in most of the member States.
It had been the practice in Luxembourg automatically to recognise Peruvian judgments granting full adoption (several single women had been able to register the judgment without applying for an enforcement order). On arrival in Luxembourg, the applicants had thus been entitled to expect that the Peruvian judgment would be registered. However, the practice of registering judgments had been suddenly abandoned and their case had been submitted to the judicial authorities. In refusing to declare the judgment enforceable those authorities had let the conflict-of-law rule take precedence over the social reality and the situation of the persons concerned. Since the Luxembourg courts had not officially acknowledged the legal existence of family ties created by the full adoption granted in Peru, those ties could not take full effect in Luxembourg. As a result, the applicants encountered obstacles in their day-to-day lives and the child did not enjoy the legal protection which would enable her to fully integrate into her adoptive family. As the child's best interests had to take precedence in cases of that kind, the Luxembourg courts could not reasonably disregard the legal status which had been created on a valid basis in Peru and which corresponded to family life within the meaning of Article 8.
Full adoption severed a child's links with its birth family and opened the way to full and complete integration into the new family, and the limits placed on it in Luxembourg law were meant to protect the interests of the adopted child. In this case, however, as the second applicant had been declared abandoned and placed in an orphanage in Peru, it would have been in the higher interest of the child not to refuse to enforce the Peruvian adoption judgment.
The courts could not reasonably disregard the family ties which existed *de facto* between the applicants and in so doing dispense with the need to examine the situation in detail.
Conclusion: violation (unanimously).

Articles 14 and 8 together – Although the first applicant had complied in good faith with all the rules laid down by the Peruvian procedure and the welfare assistant had issued an opinion in favour of the adoption in Luxembourg, the Peruvian full adoption judgment had not been recognised in Luxembourg. The second applicant had been subjected in her daily life to a difference in treatment compared with children whose full adoption granted abroad was recognised in Luxembourg. The child's links with her birth family had been severed and had not been replaced with full and complete links with her adoptive mother. The child therefore found herself in a legal vacuum, which had not been remedied by the fact that an open adoption had been granted in the meantime.
As she did not have Luxembourg nationality, the child could not, for instance, take advantage of the benefits accorded to Community nationals. Furthermore, for over ten years, since her arrival in Luxembourg, she had had to apply regularly for residence permits in Luxembourg and to obtain a visa to visit certain countries. As to Ms Wagner, she suffered in her daily life the indirect consequences of the obstacles facing her child.
There was no justification for such discrimination, especially since, prior to the events in question, full adoption orders had been automatically granted in Luxembourg in respect of other Peruvian children adopted by single mothers, and it had been decided in 2006, in a slightly different context, that a Peruvian adoption decision in favour of a Luxembourg woman was to be acknowledged as of right.
Conclusion: violation (unanimously).

Article 41: EUR 715 in respect of pecuniary damage and EUR 2,500 in respect of non-pecuniary damage.

For further details, consult press release no. 458.

HOME
Unjustified search and seizure at lawyer's home without safeguards: *violation*.

SMIRNOV - Russia (N° 71362/01)
Judgment 7.6.2007 [Section I]

Facts: The applicant is a lawyer. In 2000, his flat was searched and numerous documents and the central unit of his computer were seized. They were attached as "physical evidence" in a criminal case in which the applicant had acted as the defendants' representative. He complained to a court, claiming that the seizure had impaired his clients' defence rights. The court dismissed the complaint finding that the search at his flat had been justified and procedurally correct and that the order to attach objects as evidence was not amenable to judicial review. The applicant also submitted a civil claim for damages which has not been examined to date. The notebook and some documents were returned to him, but not the computer.

Law: Article 8 – The search of the applicant's flat had been a lawful interference with his right to respect for his home which had pursued the legitimate aims of furthering the interests of public safety, preventing crime and protecting the rights and freedoms of others. Given that the applicant himself had not been suspected of any criminal offence, the search had been carried out without sufficient and relevant grounds or safeguards against interference with professional secrecy, the order's excessively broad terms giving total freedom to the police to determine what was to be seized. The search order had not contained any information about the ongoing investigation, the purpose of the search or the reasons why it was believed that the search at the applicant's flat would enable evidence of any offence to be obtained. The *ex post factum* judicial review had done nothing to fill the lacunae in the deficient justification of the search order. The court had confined its finding that the order had been justified, to a reference to some documents, without describing the contents and relevance of any of them. Moreover, some of these documents appeared after the search had been carried out. The domestic authorities thus had failed in their duty to give "relevant and sufficient" reasons for issuing the search warrant. In sum, the search had impinged on professional secrecy to an extent that had been disproportionate to whatever legitimate aim had been pursed.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – The applicant's central computer unit had been retained by the Russian authorities for over six years already. This situation fell to be examined from the standpoint of the right of a State to control the use of property in accordance with the general interest. The retention of physical evidence might be necessary in the interests of proper administration of justice, which was a "legitimate aim" in the "general interest" of the community. The Court agreed with the applicant's contention, not disputed by the Government, that the computer itself had not been an object, instrument or product of any criminal offence. What had been valuable and instrumental for the investigation had been the information stored on its hard disk. That information had been examined by the investigator, printed out and included in the case file. In these circumstances, the Court could not discern any apparent reason for continued retention of the central unit. Nor had any such reason been advanced in the domestic proceedings. Its retention had not only caused personal inconvenience to the applicant but also had hindered his professional activities and had even had repercussions on the administration of justice. Russia had therefore failed to strike a "fair balance" between the demands of general interest and the requirement to protect the applicant's peaceful enjoyment of his possessions.
Conclusion: violation (unanimously).

Article 13 taken together with Article 1 of Protocol No. 1 – The domestic courts had declared inadmissible the complaint on the ground that the decision to retain the computer was not amenable to judicial review. The applicant had been told to apply to a higher prosecutor instead. However, a hierarchical appeal to a higher prosecutor did not constitute an "effective remedy". As regards the pending civil claim for damages, a civil court was not competent to review the lawfulness of decisions made by investigators in criminal proceedings. Therefore, the applicant had not had an effective remedy for that complaint.
Conclusion: violation (unanimously).

CORRESPONDENCE
Refusal, on the basis of a ministerial circular, to forward a prisoner's letter to a fellow prisoner and definition of the notion of "prisoner correspondence" depending on its content: *violation*.

FRÉROT - France (N° 70204/01)
Judgment 12.6.2007 [Section II (former)]

(see Article 3 above).

CORRESPONDENCE
Alleged lack of confidentiality of conversations on prison telephones owing to obligation to supply the telephone numbers and to converse in the presence of a warder: *communicated*.

BRÂNDUŞE - Romania (N° 6586/03)
[Section III]

(see Article 3 above).

ARTICLE 9

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools: *violation*.

FOLGERØ and Others - Norway (N° 15472/02)
Judgment 29.6.2007 [GC]

(see Article 2 of Protocol No. 1 below).

FREEDOM OF RELIGION
Authorities' refusal to register amendments to the statute of an Orthodox parish which decided to change canonical jurisdiction: *violation*.

SVYATO-MYKHAYLIVSKA PARAFIYA - Ukraine (N° 77703/01)
Judgment 14.6.2007 [Section V]

Facts: In 1990, the applicant parish was registered as a religious association belonging to the Ukrainian Orthodox Church of the Moscow Patriarchate. In December 1999 the Parishioners' Assembly, with 21 of its 27 members present, decided to withdraw from the jurisdiction and canonical guidance of the Moscow Patriarchate and to accept that of the Kyiv Patriarchate. An Archbishop of the Kyiv Patriarchate admitted the parish and appointed its prior. An application was lodged with the Kyiv City State Administration to register the amendments to its statute. In January 2000, the church premises were taken over by some three hundred clerics and lay people supporting the Moscow Patriarchate and electing new governing bodies for the parish, including the Parishioners' Assembly. The Parties are in dispute whether these people had been active members of the parish. The Kyiv City State Administration refused to register the amendments, as requested by the applicant, on the grounds that they contravened the parish statute. The Kyiv City Court confirmed the lawfulness of this decision, finding that the Parishioners' Assembly of December 1999 had not represented the entire religious community. The Supreme Court upheld this judgment, considering that the provisions of the parish statute concerning fixed membership had been contrary to the legislation because they had not allowed the majority of the religious group to manifest their religion by participating in the administration of church affairs. In December 2000, the Kyiv City State Administration registered the changes to the statute of the parish pursuant to the request of the new Assembly which had opted for the Moscow Patriarchate. In 2002 the applicant parish instituted proceedings seeking the return of property allegedly confiscated by the new Assembly in 2000 and compensation for damage. Their claims were rejected as unsubstantiated. The applicant parish members have been unable to use the church premises or to practise their religion in the church.

Law: The circumstances where a religious organisation had been in apparent conflict with the leadership of the church to which it had been affiliated, had required an extremely sensitive, neutral approach to the conflict on the part of the domestic authorities. The refusal to register the amendments to the applicant association's statute had constituted an interference with its right to freedom of religion under Article 9, taken alone or read in the light of Article 11. By this interference the domestic authorities had restricted the ability of the religious group concerned, which had had no legal entity status, to exercise the full range of religious and other activities. It had also prevented it from joining the Kyiv Patriarchate as an independent religious group administering the affairs of a church which it had built and had been accustomed to worship in. This interference had been prescribed by law, as it had been based on the Freedom of Conscience and Religious Organisations Act ("the Act"). As to the "foreseeability" requirement, it compelled the respondent State to enact legal provisions that listed in detail all the possible reasons and grounds for refusing to register changes to the statutes of religious associations. However, the

Act mentioned only one vague reason for such refusal: contravention of the existing legislation. Thus, the Court found it doubtful whether the provision at issue had been "foreseeable" and had provided sufficient safeguards against arbitrariness and possible abuse by the State registration body, which had unfettered discretionary powers in registration matters. The interference complained of had pursued a legitimate aim, namely the protection of public order and safety and the rights of others. The grounds given by the domestic authorities for refusing registration of the applicant association had been neither consistent, nor "relevant or sufficient". Contrary to the findings of the domestic courts, the Act did not specify that a religious group had to be composed of all persons or all believers attending religious services of a particular church. Furthermore, it did not restrict or prevent a religious organisation from determining at its own discretion the manner in which it would decide whether to admit new members, the criteria for membership and the procedure for electing its governing bodies. The State could not oblige a legitimately existing private-law association to admit members or exclude existing members. The internal organisation of the parish had been clearly defined in the statute. The domestic authorities, including the courts, had disregarded this structure, stating that the religious group concerned had been a mere minority of the "permanent members of the religious group" composed of some 300 people, who had not been invited to attend the meeting of the Parishioners' Assembly. The courts had ignored the internal regulations of the parish, and the history of the parish administration from 1989 to 2000 and had based their findings on an unclear provision of the Act. In sum, the interference with the applicant association's right to freedom of religion had not been justified. The lack of safeguards against arbitrary decisions by the registering authority had not been rectified by the judicial review conducted by the domestic courts, which had clearly been prevented from reaching a different finding by the lack of coherence and foreseeability of the legislation.
Conclusion: violation (unanimously).

FREEDOM OF RELIGION
Authorities' refusal to register a religious organisation and eviction of its members from a mosque: *communicated*.

JUMA MOSQUE CONGREGATION and Others - Azerbaijan (N° 15405/04) [Section I]

In 1992 the applicants formed a religious community and took possession of the Juma Mosque – an 11th century monument located within the ancient area of Baku, designated a UNESCO World Heritage Site. Subsequently, the applicant congregation was registered and allowed to use the mosque for religious purposes. In 1996, the amendments to the Law on the Freedom of Religion subordinated all the Muslim religious organisations and communities in Azerbaijan to the Caucasus Muslims Board and introduced a new procedure for their registration. In 2002 the State Committee for the Affairs of Religious Organisations rejected the congregation's application for re-registration as its foundation documents did not comply with the legislation and it had not been recommended by the Caucasus Muslims Board. In 2004 the district court granted the authorities' request to evict the members of the congregation from the mosque, finding that the congregation had not been registered as a religious organisation and had not acquired any lawful rights to use the mosque. The applicants appealed unsuccessfully. When enforcing the judgment, the police officers dragged the worshippers out of the mosque. Some were detained, fined for holding an unsanctioned religious meeting or pressured to sign statements that they would not attend the mosque again. Some members were arrested while holding a prayer in a private house. The mosque was "closed for repairs" and completely fenced off.
Communicated under Articles 3, 5, 9, 11 and 14 of the Convention.

ARTICLE 10

FREEDOM OF EXPRESSION
Lack of a distinction between statements of fact and value judgments in domestic law at the material time: *violation*.

GORELISHVILI - Georgia (N° 12979/04)
Judgment 5.6.2007 [Section II]

Facts: The applicant, a journalist, published a newspaper article criticising various politicians and government officials. In the context of the general problem of corruption in the public sector the article was part of a regular column which informed the public about the financial situation of political figures in the light of their property declarations. The article gave an overview of the financial situation of an exiled parliamentarian from the Abkhazian legislature in the light of his official property declaration. It included the following extracts: "The son in law probably gave a hand to his father-in-law [the parliamentarian], otherwise the latter could hardly have finished ... the construction of the summer house ..." and "One can only wonder whether [the parliamentarian] and people like him feed on air, without ever spending their earnings. Otherwise, how else could they manage to save so much?!" The parliamentarian brought defamation proceedings. These ended in the Supreme Court, which found that the applicant's criticism was unfounded and that she had been negligent. She and the editor were ordered to pay jointly EUR 46 and to retract the two sentences.

Law: Article 10 – The sole issue was whether the interference with the applicant's right to freedom of expression, which pursued the legitimate aim of protecting the reputation of others, was "necessary in a democratic society". The following elements were taken into account: the parties' positions, the subject matter of the publication and the domestic courts' qualification of the contested statements.
(a) *The respective positions of the parties*: The applicant was a journalist. Her duty was to provide information and ideas on matters of public interest and, although she was obliged to take account of the rights and reputation of others, she was allowed a certain amount of journalistic freedom which could involve exaggeration or even provocation. The other party to the proceedings was an exiled parliamentarian from the Abkhazian legislature. Politicians, by the very nature of their work had to accept public scrutiny and show a greater degree of tolerance when criticised.
(b) *The subject matter of the publication*: The article had not referred to anything confidential and contributed to a matter of important and ongoing public interest: corruption in the public sector. Its specific concern with this particular parliamentarian's assets had been intensified by his association with the sensitive issue of Abkhazia.
(c) *The domestic courts' qualification of the contested statements*: The interference was limited to the two sentences which cast doubt over how the parliamentarian could have constructed his summer house. The domestic law on defamation at the time made no distinction between value judgments and statements of fact and had led the Supreme Court to conclude that the comments concerned were statements of fact without even examining the possibility that they might be value judgments. That incomplete analysis represented an indiscriminate approach to the assessment of speech and was incompatible with freedom of opinion.
In the Court's view, the sentences expressed the applicant's opinion on the credibility of the property declaration, and did not constitute a gratuitous, personal attack. The applicant had not distorted or recklessly disregarded information which was publicly available and, as a journalist, was entitled to rely on an official document without having to undertake independent research. To find otherwise would undermine the vital role of the press as a public-watchdog in a democratic society. Accordingly, the Supreme Court had not given relevant and sufficient reasons to justify the interference with her right to impart information and ideas on matters of public concern and the interference had therefore not been necessary in a democratic society.
Conclusion: violation (unanimously).

Article 41 – EUR 1,500 in respect of non-pecuniary damage.

FREEDOM OF EXPRESSION
Order requiring a magazine to issue a statement explaining that a photograph of a murdered prefect had been published without the family's consent: *no violation*.

HACHETTE FILIPACCHI ASSOCIES - France (N° 71111/01)
Judgment 14.6.2007 [Section I]

Facts: A few days after the murder of a French Prefect, the weekly magazine *Paris-Match* published an article entitled "*La République assassinée*" (The Murdered Republic). A two-page colour photograph taken moments after the murder showed the Prefect's lifeless body lying on the ground in a pool of blood, facing the camera. To defend their right to private life the Prefect's widow and children sought injunctions, *inter alia* against the applicant company, which published *Paris-Match*, to have the copies of the magazine in which the photo appeared seized and to enforce the prohibition of their sale by means of coercive fines.
The urgent applications judge acknowledged that the publication had trespassed on the family's private life. Considering that the requested seizure order would be difficult to enforce in practice, he preferred to issue an injunction requiring the applicant company to publish a statement at its own expense in the following issue of *Paris-Match*, under the heading "Court injunction", informing readers that the photograph had been judged deeply distressing for the victim's widow and her children. The Court of Appeal upheld the decision, considering that publication of the photograph, while Prefect Erignac's close family were still mourning his loss, and given the fact that they had not given their consent, constituted a gross disturbance of their grief, and accordingly of the intimacy of their private life. It added that publication of a statement was legally justified under Article 9 § 2 of the Civil Code when its purpose was to cause the intrusion into the intimacy of the family's private life to cease. The Court of Appeal modified the content of the statement accordingly and combined it with a coercive fine.
The statement the applicant company was required to publish in its magazine and finally did publish was to inform readers that the photograph had been published without the consent of the Erignac family, who considered its publication an intrusion into the intimacy of their private life. The Court of Cassation dismissed an appeal on points of law by the applicant company.

Law: The obligation to publish a statement amounted to interference under Article 10 and the interference was "prescribed by law". Article 9 of the Civil Code gave judges the precisely circumscribed power to prevent or cause to cease an intrusion into the intimacy of private life. Although all the measures they could take under that Article were not listed expressly and exhaustively, they were not unknown to the publishing profession. There was established case-law which sanctioned the impugned measure and satisfied the conditions of accessibility and foreseeability. The interference had also pursued a legitimate aim – to protect the rights of others.
As to whether the interference had been "necessary in a democratic society", the Court took into account first of all the duties and responsibilities inherent in the exercise of freedom of expression. For example, the death of a close relative and the ensuing mourning must sometimes lead the authorities to take the necessary measures to ensure respect for the private and family lives of the persons concerned. In the present case, the photograph had been published in *Paris-Match* only 13 days after the murder and ten days after the funeral. The distress of the victim's close relatives should have led journalists to exercise prudence and caution, given that he had died in violent circumstances which were traumatic for his family, who had expressly opposed publication of the photograph. The result of publication, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim's close relatives, so they were justified in arguing that there had been an infringement of their right to respect for their private life.
The Court then examined to what extent the punishment might have a dissuasive effect on exercise of freedom of the press. The French courts had refused to order the seizure of the offending publications. The wording of the statement, which was different from the text in the first-instance proceedings, revealed

the care the French courts had taken to respect the editorial freedom of *Paris-Match*, which was characterised in particular by the policy of illustrating stories with hard-hitting photographs. That being so, of all the sanctions permitted, the order to publish the statement was that which, both in principle and as regards its content, least restricted the exercise of the applicant company's rights. The applicant company had not shown in what way the order to publish the statement had actually had a dissuasive effect on the way the magazine had exercised and continued to exercise its right to freedom of expression. *Conclusion*: no violation (five votes to two).

FREEDOM OF EXPRESSION
Dismissal of municipal employee for issuing a press release that appeared to vindicate the attacks on the World Trade Centre and the Pentagon: *inadmissible*.

KERN - Germany (N° 26870/04)
Decision 29.5.2007 [Section V]

Under the Law on Contracts for Federal Employees persons in the employ of federal, state or municipal bodies were required to recognise, and act in accordance with, the free democratic order within the meaning of the Basic Law. The applicant was dismissed from his job as an environmental engineer with the Lübeck municipality after issuing a press release on behalf of a right-wing extremist group on the day following the terrorist attacks on the World Trade Centre and the Pentagon on 11 September 2001. In the press release the United States were accused of terrorism, "one-eyed idiocy" and of acting "in the interest of a Zionist oligarchy". The 11 September attacks were described as "an act of liberation ... which had been overdue for a long time". The release ended with a general condemnation of terrorist attacks. In finding the applicant's dismissal to have been lawful, the court of appeal noted that municipal employees were required, when publicly commenting on current political affairs, to do so in a careful manner in order not to damage public confidence in their impartial, just and welfare-oriented performance and that it would not be possible for the municipality to continue the employment as it could not rely on the applicant respecting the free democratic order in the future. The applicant was refused leave to appeal on points of law and the Federal Constitutional Court declined to accept his constitutional complaint for adjudication.

Inadmissible: It had to be determined whether a fair balance had been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that public servants complied with their duty of discretion and obligation to respect the free democratic order. The court of appeal had reasoned that the press release issued by the applicant breached his obligation to recognise the free democratic order and that the applicant had approved of the attacks and tried to minimise their importance. It had also found that the municipality's interest in terminating the employment prevailed over the applicant's difficulty in finding alternative employment. That decision had been approved by both the Federal Labour Court and the Federal Constitutional Court. Having regard to all the circumstances, the court of appeal's assessment could not be said to have been arbitrary or to have failed to take the applicant's interests into account adequately. Its judgment was carefully reasoned. It had correctly comprehended the content and the consequences of the applicant's statements. By addressing the media, the applicant had failed to take the adverse effects of such activities on the integrity of the public service sufficiently into account. Therefore, the court of appeal's assessment of the duty of discretion incumbent on the applicant, even though he was employed in a technical sector at the municipal level, had not unduly restricted the freedom of expression of civil service employees. Having regard to the domestic courts' margin of appreciation the interference was not disproportionate to the legitimate aim pursued: *manifestly ill-founded*.

FREEDOM OF EXPRESSION
FREEDOM TO IMPART INFORMATION
Convictions of journalists for using and reproducing material from a pending criminal investigation in a book: *violation*.

DUPUIS and Others - France (N° 1914/02)
Judgment 7.6.2007 [Section III]

Facts: The applicants are two French journalists and a publishing company. An "anti-terrorist unit" at the Elysée Palace set up by the French President's Office in the 1980s engaged in telephone tapping and bugging. In the early 1990s the press published a list of people who had been placed under surveillance, including journalists and lawyers, arousing considerable media interest in what came to be known as the "Elysée eavesdropping operations" ("*les écoutes de l'Elysée*").
A judicial investigation was opened in the course of which G.M., deputy director of the President's private office at the material time, was placed under formal investigation for breach of privacy. While the investigation was still in progress the applicant publishing company published the book "The Ears of the President" (*Les Oreilles du Président*), which the other two applicants had written, describing the workings of the surveillance operations.
G.M. lodged a complaint: the book reproduced official records of statements made before the investigating judge and facsimiles of phone-taps which were identical to documents in the file concerning his case, whereas such evidence was protected by the confidentiality of the investigation. The applicants denied having obtained their information illegally; they refused to reveal their sources and claimed that the documents concerned had come into the journalists' possession well before the investigation started.
The court found that the documents concerned came from the judicial investigation file, which was only accessible to people bound by the confidentiality of the investigation or by professional confidentiality; they had therefore been communicated in breach of the confidentiality of the investigation or professional confidentiality, and the applicants, as experienced journalists, could not have been unaware of the fact that the documents had come to them illegally.
Because they had used and reproduced material from the judicial investigation file in their book, the applicants were found guilty of the offence of using information obtained through a breach of the confidentiality of the investigation or of professional confidentiality. They were ordered to pay a fine and also to pay G.M. damages; the applicant company was found to be civilly liable. The book continued to be published and no copies were seized. The Court of Appeal upheld the judgment. The Court of Cassation rejected the applicants' appeal.

Law: The conviction was prescribed by the French Criminal Code and its aim had been to protect G.M.'s right to a fair trial, with due respect for presumption of innocence, and to avoid any outside influence on the course of justice.
As to whether that interference was necessary in a democratic society, the subject of the book had concerned a debate which was of considerable public interest. It had made a contribution to an affair of state which was of interest to public opinion, and provided certain information and considerations about the numerous prominent figures whose telephones had been illegally tapped, about the conditions in which the operations had taken place and about the identity of the instigators.
While G.M., at the time one of the French President's main aides, was not strictly speaking a politician, he nevertheless had all the characteristics of an influential public figure, clearly involved in political life at the highest level of the executive.
The applicants' book had divulged information of interest to the public concerning an illegal telephone tapping and recording system targeting numerous public figures and organised at the highest level of the State. The public had a legitimate interest in the provision and availability of information.
On the other hand it was legitimate to want to grant special protection to the confidentiality of the judicial investigation, in view of the stakes involved in criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent.
However, at the time when the applicants' book was published, in addition to there being wide media coverage of the case, it was already well known that G.M. had been placed under investigation in this case, in connection with a pre-trial investigation which had started about three years earlier and would

eventually lead to his conviction and suspended prison sentence some ten years after the offending book was published. Moreover, the Government had failed to establish how the disclosure of confidential information could have had a negative impact on G.M.'s right to the presumption of innocence or on his conviction and sentence almost ten years later.
After the publication of the book and while the judicial investigation was ongoing, G.M. had regularly commented on the case in the press, so protecting the information on account of its confidentiality had not been an overriding requirement. The Court questioned whether there was still an interest in keeping information confidential when it had already been at least partly made public and was likely to be widely known, having regard to the media coverage of the case, both because of the facts and because of the celebrity of many of the victims of the surveillance.
It was necessary to take the greatest care in assessing the need to punish journalists for using information obtained through a breach of the confidentiality of an investigation or of professional confidentiality when they were contributing to a public debate of such importance. The applicants had acted in accordance with the standards governing their profession as journalists.
As to the punishment incurred, no order to destroy or seize the book had been issued and its publication had not been prohibited. The fine, however, although fairly moderate, and the additional damages, did not appear justified.
Conclusion: violation (unanimously) and no separate issue under Article 6 § 2.

ARTICLE 11

FREEDOM OF ASSOCIATION
Statutory ban on financing of a French political party by a foreign political party: *no violation*.

BASQUE NATIONALIST PARTY AND IPPARALDE - REGIONAL ORGANISATION - France
(N° 71251/01)
Judgment 7.6.2007 [Section I (former)]

Facts: The applicant party is the French "branch" of the Spanish Basque Nationalist Party. In order to be able to receive funds, in particular financial contributions from the Spanish party, the applicant party formed a funding association in accordance with the 1988 Political Life (Financial Transparency) Act. However, authorisation of the association, a prerequisite for its operation, was refused on the ground that most of the applicant party's resources derived from the support it received from the Spanish party. The 1988 Act prohibits the funding of a political party by any foreign legal entity; accordingly, political parties' funding associations may not receive financial contributions from a foreign political party. Subsequent appeals by the applicant party were dismissed. It complained before the Court of the adverse effects on its funds and on its ability to pursue its political activities, particularly in the electoral sphere, and relied on Articles 11 and 10, taken together, and Article 3 of Protocol No. 1.

Law: The case was considered under Article 11. In view of the impact of the circumstances in issue on the applicant party's financial capacity to engage fully in its political activities, there had been "interference", which had been "prescribed by law". The Government had submitted that the prohibition on the funding of French political parties by foreign parties or governments had been intended to avoid creating a relationship of dependency which would be detrimental to the expression of national sovereignty; the aim pursued thus related, in their view, to the protection of the "institutional order". The Court accepted that the concept of "order" ("*ordre*") within the meaning of the French version of Articles 10 and 11 of the Convention also encompassed the "institutional order".
As to whether the interference had been necessary in a democratic society, the fact that political parties were not permitted to receive funds from foreign parties was not in itself incompatible with Article 11. Furthermore, the choice of the French legislature not to exempt political parties established in other European Union member States from this prohibition was an eminently political decision, which accordingly fell within its residual margin of appreciation.

It remained to be determined what impact the prohibition had on the applicant party's ability to engage in political activities. The measure complained of did not call into question the applicant party's legality or amount to a legal impediment to its participation in political life or to censorship of the views it sought to expound in the political arena. Although the applicant party had to forgo financial assistance from the Spanish Basque Nationalist Party, it would still be able to fund its political activities through its members' contributions and donations from individuals, including non-French nationals.
There was nothing in law to prevent it either from receiving funds from other French political parties or from taking advantage of the French system of State funding of election campaigns. It was true that those sources of funding appeared hypothetical in the applicant party's particular case: in view of its political aims, it was unlikely to gain the support of another French party, while in view of its geographical sphere of activity, it was likely to take part in local rather than parliamentary elections, so that it scarcely appeared to be in a position to benefit from the State funding system (which was based on results in parliamentary elections). Its election candidates would nevertheless enjoy all the same benefits as those from other parties in terms of the funding of their election campaign. In conclusion, although the prohibition on receiving contributions from the Spanish Basque Nationalist Party had an impact on the applicant party's finances, the situation in which it found itself as a result was no different from that of any small political party faced with a shortage of funds.
Conclusion: no violation of Article 11, read separately or in conjunction with Article 10 (six votes to one).

FREEDOM OF ASSOCIATION
Refusal to register association on the ground that its aims were "political" and incompatible with the Constitution: *violation*.

ZHECHEV - Bulgaria (N° 57045/00)
Judgment 21.6.2007 [Section V]

Facts: The applicant is the chairman of the association "Civil Society for Bulgarian Interests, National Dignity, Union and Integration – for Bulgaria" whose aims include, in particular, repealing the Bulgarian Constitution of 1991, restoring the monarchy and "opening" the border between the former Yugoslav Republic of Macedonia and Bulgaria. He complained about the domestic courts' refusal to register the association on the ground that its aims were political and incompatible with the Constitution.

Law: Restoring the monarchy or campaigning for change to legal and constitutional structures were not in themselves incompatible with the principles of democracy. Neither could "the opening of" a border jeopardise a country's integrity or national security. It had not been suggested either that the association would use violent or undemocratic means to achieve its aims. Moreover, as associations were not allowed to participate in national, local or European elections there was no "pressing social need" to require every association deemed to pursue "political" goals to register as a political party, especially in view of the fact that the exact meaning of that term appeared quite vague under Bulgarian law. In sum, the reasons given by the domestic authorities to refuse registration of the association had not been relevant or sufficient and that refusal had had radical consequences for the association in that it had been prevented from commencing any activity.
Conclusion: violation (unanimously).

Article 41 – The Court accepted that Mr Zhechev had sustained non-pecuniary damage but held that the finding of a violation constituted sufficient compensation.

FREEDOM OF ASSOCIATION
Dissolution of a public association for alleged unlawful involvement in religious activities: *communicated*.

ISLAM-ITTIHAD ASSOCIATION - Azerbaijan (N° 5548/05)
[Section I]

The applicant was a public association established in 1991. According to its charter, its aims were, among other things, the repair and maintenance of abandoned mosques and other places of worship, organising pilgrimages to Islamic shrines, providing material and moral aid to orphanages as well as elderly, ill and disabled people, and publishing books of religious content. In 2002, a specialised commission concluded that it was difficult to establish whether the association functioned as a non-governmental organisation or a religious organisation: its actual headquarters were located in a mosque, its chairman was also a head of a religious community and all of its members were also members of that community. Following this report, the Ministry of Justice sent three official warnings to the association, noting that, in accordance with the Law on Non-Governmental Organisations, public associations were not allowed to engage in religious activities. The association denied any involvement in religious activities and argued that, in any event, the Law did not prohibit it from engaging in such activities. Moreover, the Azerbaijani legislation did not provide any precise definition of what constituted a "religious activity". In 2003, the district court ordered that the association be dissolved, finding that it had unlawfully engaged in religious activities and, despite the warnings, had failed to take any measures to cease such activity. The applicant appealed unsuccessfully.
Communicated under Articles 10 and 11 of the Convention.

FREEDOM OF ASSOCIATION
Authorities' refusal to register a religious organisation and eviction of its members from a mosque: *communicated*.

JUMA MOSQUE CONGREGATION and Others - Azerbaijan (N° 15405/04) [Section I]

(see Article 9 above).

ARTICLE 13

EFFECTIVE REMEDY
Low level of compensation award by the domestic court in a length-of-proceedings case: *no violation*.

DELLE CAVE and CORRADO - /Italy (N° 14626/03)
Judgment 5.6.2007 [Section II]

(see Article 35 § 1 below).

EFFECTIVE REMEDY
Lack of domestic remedy enabling a prisoner to challenge a refusal to forward correspondence: *violation*.

FRÉROT - France (N° 70204/01)
Judgment 12.6.2007 [Section II (former)]

(see Article 3 above).

ARTICLE 14

DISCRIMINATION (Article 8)
Refusal to recognise as valid in domestic law a full adoption order by a foreign court: *violation*.

WAGNER and J.M.W.L. - Luxembourg (N° 76240/01)
Judgment 28.6.2007 [Section I]

(see Article 8 above).

ARTICLE 34

VICTIM
Low level of compensation award by the domestic court in a length-of-proceedings case: *victim status upheld*.

DELLE CAVE and CORRADO - Italy (N° 14626/03)
Judgment 5.6.2007 [Section II]

(see Article 35 § 1 below).

VICTIM
Lack of victim status of an applicant whose position was to be reviewed by a court of appeal and whose extradition was not, therefore, imminent: *inadmissible*.

GHOSH - Germany (N° 24017/03)
Decision 5.6.2007 [Section V]

(see Article 3 above).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Refusal by penitentiary officials to send an application to the ECHR on the grounds of alleged non-exhaustion of domestic remedies: *failure to comply with obligations under Article 34*.

NURMAGOMEDOV - Russia (N° 30138/02)
Judgment 7.6.2007 [Section I]

Facts: In 1991 the applicant was convicted of aggravated robbery and sentenced to imprisonment in a correctional colony. In 2002, a district court brought his sentence into conformity with the new Criminal Code which provided for more lenient punishment for this offence. The applicant alleged that these proceedings had not been fair or public. He submitted an application to the European Court to the correspondence office of the colony. The application was returned to him and he was told that he had no right to petition international institutions until he had exhausted all domestic remedies. He sent a copy of his application to the Court through an informal channel and complained about the actions of the colony administration to a prosecutor's office. The prosecutor confirmed the lawfulness of the actions of the colony administration.

Law: Article 6 – The fact that the proceedings for bringing the sentence into conformity with the new Criminal Code had been conducted by a court did not, in itself, call for the conclusion that a "determination of the criminal charge" had been involved. As regards the issues for judicial determination in the instant proceedings, the relevant provisions expressly prohibited the court from making a fresh

evaluation of the facts underlying the original conviction or attributing a different characterisation of the facts in law. Unlike the supervisory-review proceedings, the proceedings at issue had not empowered the court to quash or alter the final conviction. If the maximum sentence for the same offence was lighter in the new Code than that imposed under the previous legislation, the court had to reduce it to the maximum set out in the new Code. That had been a mathematical operation excluding any discretion on the part of the judge. The proceedings in question had neither involved a "determination of a criminal charge" against the applicant, nor concerned the lawfulness of his conviction. They had not been decisive for the applicant's right to liberty and therefore did not determine his "civil rights and obligations". They had thus fallen outside the scope of the application of Article 6.
Conclusion: no violation (unanimously).

Article 34 – At the relevant time, Russia's Penal Code had not treated correspondence with the Court as privileged so that it was subject to censorship by penitentiary officials. Moreover, penitentiary officials had been formally directed not to send complaints addressed to bodies or organisations which, in their assessment, were not competent to deal with them. The Court could not see any other explanation why the applicant had sent his application through "informal channels", thus risking detention in the disciplinary wing, unless he had been unable to send his application through the colony's correspondence office. Accordingly, the Russian authorities had attempted to discourage, even prevent, the applicant from pursuing a Convention remedy.
Conclusion: violation (unanimously).

Article 41 – EUR 500 for non-pecuniary damage.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Delays in payment of compensation awarded by the domestic court in a length-of-proceedings case: *objection of failure to exhaust domestic remedies (execution proceedings) dismissed*.

DELLE CAVE and CORRADO - Italy (N° 14626/03)
Judgment 5.6.2007 [Section II]

Facts: The applicants sued their insurance company to obtain compensation for the injuries sustained by their child in a road accident. The court delivered its judgment eight years later. Relying on the Pinto Act, they applied for compensation for the fact that the proceedings had taken so long. The Court of Appeal found in their favour. It rejected the claim of pecuniary damage for lack of evidence and awarded each applicant EUR 1,032.92 on an equitable basis in respect of non-pecuniary damage, plus EUR 620 for costs and expenses. The applicants did not appeal on points of law. They did begin enforcement proceedings. The compensation was paid three years after the Court of Appeal's decision became final.

Law: Article 35 § 1 – Appealing on points of law had not been one of the remedies that needed to be exhausted in this case as the Strasbourg Court had considered it "effective" after the time during which the applicants could appeal to the Court of Cassation had expired.
The sums awarded to the applicants by the Court of Appeal under the Pinto Act – to compensate for the excessive length of the proceedings – should have been paid within six months of the time when the compensation decision became enforceable, without the applicants having to bring execution proceedings. Instead, they had been paid belatedly, and only after enforcement proceedings. That being so, their payment had not remedied the authorities' prolonged refusal to comply with the Court of Appeal's decision. The preliminary objections for non-exhaustion of domestic remedies were rejected.

Article 34 – The Court of Appeal had found, in "Pinto" proceedings which had lasted only five months, that the applicants' case had taken longer than a reasonable time, but the sum it had awarded them in respect of non-pecuniary damage was only about 10 % of that generally awarded by the Court in similar Italian cases. The applicants could still, therefore, claim to be "victims".

Article 6 § 1 (reasonable time) – The proceedings had lasted eight years and five months, and the compensation awarded by the domestic court based on the Pinto Act, considering the sum awarded and its belated payment, was insufficient.
Conclusion: violation (unanimously).

Article 13 – The mere fact that the amount of the compensation awarded under the "Pinto" Act was not large was not in itself a sufficient ground to dispute the effectiveness of the remedy concerned.
Conclusion: non-violation (unanimously).

Article 41 – EUR 3,600 to each applicant and EUR 3,800 in respect of the additional frustration caused by the belated payment by the Italian authorities of the EUR 1,032.92.

See also the judgment *Cocchiarella v. Italy* [GC], n° 64886/01, 29 March 2006, Information Note no. 85.

EXHAUSTION OF DOMESTIC REMEDY
Failure to plead appropriate grounds of appeal in proceedings before the Court of Cassation: *inadmissible*.

DOLINER and MAITENAZ - France (N° 24113/04)
Decision 31.5.2007 [Section III]

The applicants were board members and owned all the capital of a firm of brokers authorised to trade on the Paris Stock Exchange. The *Commission des Opérations de Bourse* (COB, France's Financial Services Authority) required brokers to provide proof of the origin of orders, as well as of the times of their receipt and transmission. The COB opened an investigation into the firm's activities to prove that the clients were transmitting their orders directly. The COB's president reported the findings of the investigation, based on recordings of telephone conversations between brokers and clients, to the public prosecutor at the *tribunal de grande instance*. They revealed that the information leaflets distributed by the firm to future clients were misleading as to the existence and quality of its real resources, and that the firm had carried out numerous transactions without prior orders, in breach of the agreements signed with the clients. The COB posted the findings of its report on its web site and sent them to press agencies in a press release. Several outlets published the information and one was convicted of defamation. The applicants were placed under investigation and tried in the Criminal Court. An appeal was lodged, followed by an appeal on points of law against the appeal judgment. They based their defence on an alleged violation of Article 6 § 2 of the Convention, arguing that the trial and appeal courts had failed to apply the principle of the presumption of innocence by reversing the burden of proof to their detriment. The Court of Cassation rejected their appeal.

Inadmissible under Article 6 § 2 – The violation of the presumption of innocence, because of the terms used by the COB in its press release, was not among the grounds of nullity relied on before the Court of Appeal or among the points of law brought up in the case before the Court of Cassation. Article 6 § 2 of the Convention was relied on before the Court of Cassation, but only as an objection to the reversal of the burden of proof by the courts below, not to the terms of the impugned press release. Appealing to the highest court would have given the applicants an opportunity to have their grievance examined and, in the event of a finding of failure to comply with the presumption of innocence principle, to have the judgments rendered in violation of that principle set aside: *non-exhaustion of domestic remedies*.

FURNISH ALL NECESSARY FACILITIES
Refusal by Government to disclose documents from ongoing investigation into an abduction and killing by servicemen or into allegations of harassment of the applicants: *failure to comply with Article 38*.

BITIYEVA and X - Russia (N^{os} 57953/00 and 37392/03)
Judgment 21.6.2007 [Section I]

Facts: On 25 January 2000 the first applicant, an active political figure who participated in anti-war protests, and her son were taken for questioning about their passports. According to the Government, they were arrested under vagrancy regulations. They were detained in the Chernokozovo detention facility, which the Government said was used as a reception and identification centre, although there were no documents to indicate its legal status prior to 8 February 2000, when responsibility was transferred to the Ministry of Justice of Chechnya. The first applicant complained of the conditions of her detention, in particular the lack of heating, overcrowding, poor food and hygiene, humiliation and being forced to witness the ill-treatment of other detainees, including her son. While there, she suffered from serious respiratory, heart and inflammatory diseases and claimed that she was denied medical assistance. Her condition deteriorated rapidly and on 17 February 2000 she was transferred to hospital. In mid-March she was issued with a certificate stating that her alleged participation in illegal armed groups had been investigated but no incriminating evidence had been found. Neither the first applicant nor her son were ever charged with any crime in relation to their detention. The first applicant lodged a complaint with the Court in April 2000. In May 2003 the first applicant and her husband, son and brother were shot and killed at the first applicant's home in the middle of the night by masked men wearing uniforms which eye witnesses identified as belonging to the Special Forces. An investigation was started the same day. The crime scene was examined by experts and witnesses were questioned. However, according to the second applicant (the first applicant's daughter) no autopsy was ordered and the bodies of her relatives were washed and buried the same day. Although she requested victim status in November 2003, it was not granted until December 2005. The case was adjourned and reopened by a supervising prosecutor four times, but the offenders were never identified. The second applicant also complained that she and her family had been subjected to harassment by the authorities after the killings. Her brother had been detained and ill-treated, her aunt had been questioned and she herself had been stopped and questioned. Although she had received assurances from investigators regarding her safety, she had felt intimidated by to the nature of his questions, which she claimed were not confined to the question of harassment but touched upon her application to the Court. In the course of the proceedings before the Court, the Court requested the Government to submit various documents. However, citing Article 161 of the Russian Code of Criminal Procedure, the Government refused to produce certain documents on the grounds that they contained information about the military and personal information on the participants in the proceedings.

Law: The first applicant's complaints:

Article 3 – The second applicant, as the first applicant's heir, had standing to continue the proceedings. The evidence, including the applicant's own allegations and the findings of the European Committee for the Prevention of Torture on conditions in Chernokozovo at the material time, attested to a serious deterioration in the first applicant's health during her detention. The Government had been unable to explain what kind of medical treatment had been administered to her or to give any details of her treatment. Accordingly, the deterioration in the first applicant's health, compounded by the poor conditions of detention and lack of adequate medical care, had entailed a level of suffering which amounted to inhuman and degrading treatment.
Conclusion: violation (unanimously).

Article 5 – The first applicant was detained for 24 days, allegedly for vagrancy. However, even assuming that to have been the true ground for her detention, her detention was not in conformity with domestic law as under the relevant legislation a prosecutor's order should have been obtained and the detention should

not have exceeded 10 days. In any event, the certificate issued to the first applicant in March 2000 stated that she was being investigated for alleged participation in illegal armed groups, so that the real reason for her detention was suspicion of a criminal offence. However, no charges were brought, no decision to detain or to release her was taken by a competent authority, and her detention was not formally linked to any criminal investigation. Accordingly, she had not benefited from the procedural safeguards applicable to persons deprived of their liberty and her detention was arbitrary and in total disregard of the requirement of lawfulness. This was compounded by the lack of any clear legal status for the detention centre in Chernokozovo. It was inconceivable that in a State subject to the rule of law a person could be deprived of his or her liberty in a detention facility over which for a significant period of time no responsible authority was exercised by a competent State institution. That situation fostered impunity for all kinds of abuses and was absolutely incompatible with the authorities' responsibility for individuals under their control. The first applicant's detention was therefore arbitrary and ran counter to the fundamental aspects of the rule of law.
Conclusion: violation (unanimously).

The second applicant's complaints:

Article 38 § 1 (a) – The Government had withheld disclosure of various documents from the investigation on the grounds that they contained information about the location and actions of military personnel and personal information about the participants in the proceedings. However, they had not asked the Court to make an order under Rule 33 § 2 of its Rules restricting, on national-security or privacy grounds, public access to documents deposited with the Court and Article 161 of the Code of Criminal Procedure, on which the Government relied, had already been found in previous cases not to preclude the disclosure of documents from a pending investigation file. The Government's explanations were insufficient to justify the withholding of the vital information requested by the Court and they had thus fallen short of their obligations to furnish all necessary facilities to the Court in its task of establishing the facts.
Conclusion: failure to comply (unanimously).

Article 2 – (a) *Substantive aspect* – The Court was entitled to draw inferences from the Government's failure to comply with Article 38 § 1 (a). Where an applicant had made out a prima facie case and the Court was prevented from reaching factual conclusions by the non-disclosure of relevant documents in the Government's possession, it was for the Government to argue conclusively why the documents could not serve to corroborate the applicant's allegations or to provide a satisfactory and convincing explanation of how the events in question occurred. The second applicant had submitted statements by eyewitnesses that indicated that the killers belonged to the military or special forces and her account was supported by an NGO which had reported the killings. She had therefore made out a prima facie case that her relatives had been extra-judicially executed by State agents. The Government had failed to provide any other explanation of the events. Their mere statement that the investigation had not found any evidence to support the involvement of Special Forces did not discharge them from the burden of proof. The deaths were therefore attributable to the State and no justification had been provided for the use of lethal force.
Conclusion: violation on account of the deaths (unanimously).
(b) *Procedural aspect* – Here, too, the Court could draw strong inferences from the Government's failure to produce key elements of the investigation, the assumption being that the disclosure was selective and intended to demonstrate the effectiveness of the investigation. Although certain important steps were taken on the day of the killings, the investigation into the deaths was never in fact completed and the individuals responsible were not identified or indicted. Even the most basic facts did not appear to have established such as the number of attackers, the sequence of events, the routes and weapons used or the motive for the killings. The second applicant was not granted victim status until 2005 and the only information communicated to the victims concerned procedural matters.
Conclusion: violation on account of the failure to hold an effective investigation (unanimously).

Article 3 – The Court followed its previous case-law in declining to extend the application of Article 3 to the relatives of persons who had been killed in violation of Article 2 (as opposed to the relatives of the victims of enforced disappearances or to cases of unjustified use of lethal force by State agents).
Conclusion: no violation (five votes to two).

Article 13 – The State had failed in its obligation under this provision as the ineffectiveness of the criminal investigation had undermined the effectiveness of other potential remedies, including civil remedies.
Conclusion: violation of Article 13 in conjunction with Article 2 (unanimously).

Article 34 – There was no direct evidence to support the second applicant's assertion that the killings of the first applicant and her family members were related to her application to the Court. A breach of Article 34 could not be found on the basis of mere supposition, even if the brutal and unresolved killing of the first applicant would inevitably have had a "chilling effect" on other current and prospective applicants, especially those living in Chechnya. As to the alleged intimidation of the second applicant, the Court was unable to conclude that the incident to which she had referred had any relation to her application to the Court as opposed to a security check. As regards the questioning of the second applicant by the investigators, the transcripts indicated that the interviews related mostly to the public prosecutor's duty to collect information about the applicant's criminal complaints and that the questions about her application to the Court were not central. She had not, for example, been requested to certify the authenticity of her complaints or to give details about their content.
In sum, the Court did not have sufficient material before it to conclude that the Government had put undue pressure on the second applicant in order to dissuade her from pursuing her application to the Court.
Conclusion: no breach of the obligation (unanimously).

Article 41 – EUR 10,000 for non-pecuniary damage sustained by the first applicant and EUR 75,000 for non-pecuniary damage sustained by the second applicant on account of the unlawful killing of four members of her family, the failure to investigate the killings and the lack of effective remedies.

See also, for previous failures to comply with Article 38: *Shamayev and Others v. Georgia and Russia* (no. 36378/02), reported in Information Note no. 74; *Imakayeva v. Russia* (no. 7615/02) – Information Note no. 91; *Baysayeva v. Russia* (no. 74237/01) – Information Note no. 96; and *Akhmadova and Sadulayeva v. Russia* (no. 40464/02) Information Note no. 97.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of obtaining adequate rent from tenants: *communicated*.

VOMOČIL - Czech Republic (N° 38817/04)
[Section V]

In 1995 the applicant acquired a block of flats subject to the rent-control scheme. He succeeded into the existing lease agreements. As a result of the rent ceilings provided for by law, the rent paid was almost four times lower than the average market rent in Brno. The annual aggregate rent did not cover the maintenance costs. Nor did it cover the cost of the loan, by means of which the applicant had financed the reconstruction of his house and the subsequent maintenance works. The Civil Code did not allow the lease contracts to be terminated or renegotiated in order to increase rents without the tenant's consent. In 2000, the Constitutional Court declared the law on the rent ceilings unconstitutional. In 2005, the applicant instituted proceedings seeking to order his tenants to conclude amendments to their respective lease contracts aimed at increasing the rent. The proceedings are now pending before the first-instance court. In 2006, a new law entered into force which entitled landlords to increase rents annually without the consent of tenants and provided for new rent ceilings. However, it did not remedy interferences with landlords' property rights which had occurred prior to its entry into force. The question of the constitutionality of this law is currently under review by the Constitutional Court.
Communicated under Articles 13 and 14 of the Convention and Article 1 of Protocol no. 1.

CONTROL OF THE USE OF PROPERTY
Lengthy retention of lawyer's computer attached as evidence in a criminal case: *violation*.

SMIRNOV - Russia (N° 71362/01)
Judgment 7.6.2007 [Section I]

(see Article 8 “Home” above).

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools: *violation*.

FOLGERØ and Others - Norway (N° 15472/02)
Judgment 29.6.2007 [GC]

Facts: The applicants, all members of the Norwegian Humanist Association, had children in primary school at the time of the events complained of. In 1997 the Norwegian primary-school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. This subject was to cover the Bible and Christianity in the form of cultural heritage and the Evangelical Lutheran Faith (the official State religion in Norway, of which 86% of the population are members); other Christian faiths; other world religions and philosophies; ethics, and philosophy. Under the previous system, parents had been able to apply for their child to be exempted from Christianity lessons. Under the 1998 Education Act however a pupil could be granted exemption only from those parts of KRL which the parents considered amounted to the practising of another religion or adherence to another philosophy of life, from the point of view of their own religion or philosophy of life. The applicants and other parents made unsuccessful requests to have their children entirely exempted from KRL.
In May 2006 the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber.

Law: The parents' complaint under Article 9 of the Convention and Article 2 of Protocol No. 1 fell to be examined under the latter provision, this being specifically directed towards the area of education.
The intention behind the introduction of KRL had been that, by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment. This intention was clearly consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.
The relevant provisions of the 1998 Education Act placed emphasis on the transmission of knowledge about not only Christianity, but also other world religions and philosophies. The aim was to avoid sectarianism and foster intercultural dialogue and understanding by bringing pupils together within the framework of one joint subject rather than allowing for full exemption which would result in splitting pupils into sub-groups pursuing different topics.
The fact that knowledge about Christianity represented a greater part of the curriculum than knowledge about other religions and philosophies could not in itself give rise to an issue under Article 2 of Protocol No. 1. In view of the place occupied by Christianity in Norway's national history and tradition, this had to be regarded as falling within the State's margin of appreciation in planning and setting the curriculum.
However, it was clear that preponderant weight was given to Christianity, notably through reliance on the so-called “Christian object clause” in the 1998 Education Act, according to which the object of primary and lower secondary education was to be, in agreement and cooperation with the home, among other things, to help give pupils a Christian and moral upbringing. The difference of emphasis was also reflected in the wording used in the legislation. Moreover, approximately half of the items listed in the

curriculum referred to Christianity alone, whereas the remainder of the items were shared between other religions and philosophies.
When taken together with the Christian object clause, the description of the contents and the aims of KRL set out in the 1998 Education Act and other texts forming part of the legislative framework suggested that the differences applied to the teaching of Christianity as compared to that of other religions and philosophies were not only quantitative but also qualitative. In view of these disparities it was not clear how the further aim of promoting understanding, respect and the ability to maintain dialogue between people with different perceptions of beliefs and convictions could be properly attained.
The Court then considered whether the possibility for parents to request partial exemption from KRL was sufficient to counter the imbalance noted. It noted firstly that the practical operation of the partial exemption arrangement gave rise to considerable problems. Thus parents needed to be adequately informed of the details of the lesson plans to be able to identify and notify to the school in advance those parts of the teaching that would be incompatible with their own convictions and beliefs. It must have been difficult for parents to keep themselves constantly informed about the contents of the teaching that went on in the classroom and to single out incompatible parts, particularly so where it was the general Christian leaning of the KRL subject that posed a problem.
Secondly, except for in instances where the exemption request concerned clearly religious activities (requiring no specific grounds), it was a condition for obtaining partial exemption that the parents give reasonable grounds for their request. Information about personal religious and philosophical conviction concerned some of the most intimate aspects of private life. Although parents were under no obligation to reveal their convictions and the school authorities' attention was drawn to the need to take due account of the parents' right to respect for private life, there was a risk that the parents might feel compelled to disclose to the school authorities intimate aspects of their own religious and philosophical convictions.
Thirdly, in the event of a parental note requesting partial exemption, the schools were to apply, in cooperation with the parents, a flexible approach, having regard to the parents' religious or philosophical affiliation and to the kind of activity at issue. Thus for a number of activities, for instance prayers, the singing of hymns, church services and school plays, observation by attendance could replace involvement through participation, the basic idea being that the exemption should relate to the activity as such, not to the knowledge to be transmitted through the activity. However, in the Court's view, this distinction between activity and knowledge must not only have been complicated to operate in practice but also seemed likely to have substantially diminished the effectiveness of the right to a partial exemption as such. Besides, on a purely practical level, parents might have misapprehensions about asking teachers to take on the extra burdens of such differentiated teaching.
The Court accordingly found that the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by the notion of differentiated teaching. This could hardly be considered consistent with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention. Moreover, the Court was not convinced that the possibility, invoked by the Government, for parents to have their children educated in private schools could dispense the State from its obligation to safeguard pluralism in State schools which are open to everyone.
Against this background, notwithstanding the many laudable legislative purposes associated with the introduction of KRL in the ordinary primary and lower secondary schools, the respondent State could not be said to have taken sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1.
Conclusion: violation (nine votes to height).

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

For further details, please see Press Release no. 464.

Other judgments delivered in June

Ali Koç v. Turkey (Nº 39862/02), 5 June 2007 [Section II]
Anık and Others v. Turkey (Nº 63758/00), 5 June 2007 [Section II]
Bağrıyanık v. Turkey (Nº 43256/04), 5 June 2007 [Section II]
Demrihan and Others v. Turkey (Nº 28152/02, Nº 28155/02 and Nº 28156/02), 5 June 2007 [Section II]
Gotthárd-Gáz Kft v. Hungary (Nº 28323/04), 5 June 2007 [Section II]
Hürriyet Yilmaz v. Turkey (Nº 17721/02), 5 June 2007 [Section II]
Onaran v. Turkey (Nº 65344/01), 5 June 2007 [Section II]
Sacettin Yıldız v. Turkey (Nº 38419/02), 5 June 2007 [Section II]
Yeşil and Sevim v. Turkey (Nº 34738/04), 5 June 2007 [Section II]

Akalinskiy v. Russia (Nº 2993/03), 7 June 2007 [Section I]
Artemenko v. Ukraine (Nº 33983/02), 7 June 2007 [Section V]
Baybaşin v. Netherlands (Nº 13600/02), 7 June 2007 [Section III] (just satisfaction)
Capone v. Italy (Nº 20236/02), 7 June 2007 [Section IV] (just satisfaction – friendly settlement)
Dominici v. Italy (Nº 64111/00), 7 June 2007 [Section IV] (just satisfaction – friendly settlement)
Dovguchits v. Russia (Nº 2999/03), 7 June 2007 [Section I]
Gennadiy Kot v. Russia (Nº 76542//01), 7 June 2007 [Section I]
Guţu v. Moldova (Nº 20289/02), 7 June 2007 [Section IV]
Igor Ivanov v. Russia (Nº 34000/02), 7 June 2007 [Section I]
Kukkonen v. Finland (Nº 57793/00), 7 June 2007 [Section IV]
Kuznetsova v. Russia (Nº 67579/01), 7 June 2007 [Section I]
Larin and Larina v. Russia (Nº 74286/01), 7 June 2007 [Section I]
Lysenko v. Ukraine (Nº 18219/02), 7 June 2007 [Section V]
Malahov v. Moldova (Nº 32268/02), 7 June 2007 [Section IV]
Mavrodiy v. Ukraine (Nº 32558/04), 7 June 2007 [Section V]
Mikadze v. Russia (Nº 52697/99), 7 June 2007 [Section I]
Murillo Espinosa v. Spain (Nº 37938/03), 7 June 2007 [Section V]
Naydenkov v. Russia (Nº 43282/02), 7 June 2007 [Section I]
Salt Hiper, S.A. v. Spain (Nº 25779/03), 7 June 2007 [Section V]
Sergey Zolotukhin v. Russia (Nº 14939/03), 7 June 2007 [Section I]
Shinkarenko v. Ukraine (Nº 31105/02), 7 June 2007 [Section V]
Zagorodnikov v. Russia (Nº 66941/01), 7 June 2007 [Section I]

Abramczyk v. Poland (Nº 28836/04), 12 June 2007 [Section IV]
Dodds v. United Kingdom (Nº 59314/00), 12 June 2007 [Section IV] (striking out)
Ducret v. France (Nº 40191/02), 12 June 2007 [Section II]
Ekrem v. Turkey (Nº 75632/01), 12 June 2007 [Section II]
Falzarano and Balletta v. Italy (Nº 6683/03), 12 June 2007 [Section II]
Flux v. Moldova (no. 3), (Nº 32558/03), 12 June 2007 [Section IV]
Forbes v. United Kingdom (Nº 65727/01), 12 June 2007 [Section IV] (friendly settlement)
Gallucci v. Italy (Nº 10756/02), 12 June 2007 [Section II]
Gianvito v. Italy (Nº 27654/03), 12 June 2007 [Section II]
Nevruz Koç v. Turkey (Nº 18207/03), 12 June 2007 [Section II]
Pititto v. Italy (Nº 19321/03), 12 June 2007 [Section II]
Rubacha v. Poland (Nº 5608/04), 12 June 2007 [Section IV]
Tamcan v. Turkey (Nº 28150/03), 12 June 2007 [Section II]
Ayral v. Turkey (Nº 15814/04), 14 June 2007 [Section III]
Ayrapetyan v. Russia (Nº 21198/05), 14 June 2007 [Section I]
Bashir and Others v. Bulgaria (Nº 65028/01), 14 June 2007 [Section V]
Berger v. Germany (Nº 55809/00), 14 June 2007 [Section V] (friendly settlement)

Cahit Solmaz v. Turkey (Nº 34623/03), 14 June 2007 [Section III]
Gorou v. Greece (no. 2) (Nº 12686/03), 14 June 2007 [Section I]
Graberska v. the former Yugoslav Republic of Macedonia (Nº 6924/03), 14 June 2007 [Section V]
Gürgen v. Turkey (Nº 61737/00), 14 June 2007 [Section III]
Has and Others v. Turkey (Nº 23918/02, Nº 23919/02, Nº 23921/02, Nº 23922/02, Nº 23924/02, Nº 23928/02, Nº 23933/02, Nº 23936/02, Nº 23941/02, Nº 23943/02,Nº 23946/02, Nº 23949/02, Nº 23956/02, Nº 23958/02 and Nº 23966/02), 14 June 2007 [Section III]
Hasan Erkan v. Turkey (Nº 29840/03), 14 June 2007 [Section III]
Hasan v. Bulgaria (Nº 54323/00), 14 June 2007 [Section V]
Hünkar Demirel v. Turkey (Nº 10365/03), 14 June 2007 [Section III]
İbrahim Güllü v. Turkey (Nº 60853/00), 14 June 2007 [Section III]
İnci (Nasıroğlu) v. Turkey (Nº 69911/01), 14 June 2007 [Section III]
Kehaya and Others v. Bulgaria (Nº 47797/99 and Nº 68698/01), 14 June 2007 [Section I] (just satisfaction)
Kirilova and Others v. Bulgaria (Nº 42908/98, Nº 44038/98, Nº 44816 and Nº 7319/02), 14 June 2007 [Section I]
Logvinov v. Ukraine (Nº 1371/03), 14 June 2007 [Section V]
Mehmet Çolak v. Turkey (Nº 38323/02), 14 June 2007 [Section III]
Mehmet Okçuoğlu v. Turkey (Nº 48098/99), 14 June 2007 [Section III]
Mörel v. Turkey (Nº 33663/02), 14 June 2007 [Section III]
Mücahit and Rıdvan Karataş v. Turkey (Nº 39825/98), 14 June 2007 [Section III]
Müslüoğlu and Others v. Turkey (Nº 50948/99), 14 June 2007 [Section III]
Nikola Nikolov v. Bulgaria (Nº 68079/01), 14 June 2007 [Section V]
Novak v. Croatia (Nº 8883/04), 14 June 2007 [Section I]
OOO PTK 'Merkuriy' v. Russia (Nº 3790/05), 14 June 2007 [Section I]
Ostapenko v. Ukraine (Nº 17341/02), 14 June 2007 [Section V]
Özden Bilgin v. Turkey (Nº 8610/02), 14 June 2007 [Section III]
Özmen and Others v. Turkey (Nº 9149/03), 14 June 2007 [Section III]
Parolov v. Russia (Nº 44543/04), 14 June 2007 [Section I]
Pitelin and Others v. Russia (Nº 4874/03), 14 June 2007 [Section I]
Ponomarenko v. Ukraine (Nº 13156/02), 14 June 2007 [Section V]
Savenko v. Russia (Nº 28639/03), 14 June 2007 [Section I]
Saygılı and Seyman v. Turkey (Nº 62677/00), 14 June 2007 [Section III]
Şişikoğlu v. Turkey (Nº 38521/02), 14 June 2007 [Section III]
Tarakçı v. Turkey (Nº 9915/03), 14 June 2007 [Section III]
Timishev v. Russia (no. 3) (Nº 18465/05), 14 June 2007 [Section I]
Zheltkov v. Russia (Nº 8582/05), 14 June 2007 [Section I]
Zvezdin v. Russia (Nº 25448/06), 14 June 2007 [Section I]

Amurchanian v. Poland (Nº 8174/02), 19 June 2007 [Section IV]
Antunes and Pires v. Portugal (Nº 7623/04), 19 June 2007 [Section II]
Botnari v. Moldova (Nº 19981/02), 19 June 2007 [Section IV]
EVT Company v. Serbia (Nº 3102/05), 19 June 2007 [Section II]
Macko and Kozubal' v. Slovakia (Nº 64054/00 and Nº 64071/00), 19 June 2007 [Section IV]
Pawlik v. Poland (Nº 11638/02), 19 June 2007 [Section IV]
Szebellédi v. Hungary (Nº 38329/04), 19 June 2007 [Section II]
W.S. v. Poland (Nº 21508/02), 19 June 2007 [Section IV]

Aryamin v. Ukraine (Nº 3155/03), 21 June 2007 [Section V]
Dura v. Romania (Nº 10793/02), 21 June 2007 [Section III] (friendly settlement)
Gardedieu v. France (Nº 8103/02), 21 June 2007 [Section III]
Georgoulis and Others v. Greece (Nº 38752/04), 21 June 2007 [Section I]
Havelka and Others v. Czech Republic (Nº 23499/06), 21 June 2007 [Section V]
Kampanellis v. Greece (Nº 9029/05), 21 June 2007 [Section I]
Kantyrev v. Russia (Nº 37213/02), 21 June 2007 [Section I]

Karagiannopoulos v. Greece (Nº 27850/03), 21 June 2007 [Section I]
Kudrina v. Russia (Nº 27790/03), 21 June 2007 [Section I]
Melnikova v. Russia (Nº 24552/02), 21 June 2007 [Section I]
Mitrevski v. the former Yugoslav Republic of Macedonia (Nº 33046/02), 21 June 2007 [Section V]
Noel Baker v. Greece (Nº 32155/04), 21 June 2007 [Section I]
Peca v. Greece (Nº 14846/05), 21 June 2007 [Section I]
Pridatchenko and Others v. Russia (Nº 2919/03, Nº 3103/03, Nº 16094/03 and Nº 24486/03), 21 June 2007 [Section I]
Redka v. Ukraine (Nº 17788/02), 21 June 2007 [Section V]
Roïdakis v. Greece (Nº 7629/05), 21 June 2007 [Section I]
Sova v. Ukraine (Nº 36678/03), 21 June 2007 [Section V]
Svistun v. Ukraine (Nº 9616/03), 21 June 2007 [Section V]
Thomas Makris v. Greece (Nº 23009/05), 21 June 2007 [Section I]
Tomljenović v. Croatia (Nº 35384/04), 21 June 2007 [Section I]
Vasilyev v. Ukraine (Nº 11370/02), 21 June 2007 [Section V]

Akkılıç v. Turkey (Nº 69913/01), 26 June 2007 [Section IV]
Artun and Güvener v. Turkey (Nº 75510/01), 26 June 2007 [Section IV]
Bayhan v. Turkey (Nº 75942/01), 26 June 2007 [Section II]
Belge v. Turkey (Nº 33434/02), 26 June 2007 [Section II]
Çakır v. Turkey (Nº 13890/02), 26 June 2007 [Section II]
Canan v. Turkey (Nº 39436/98), 26 June 2007 [Section IV]
Çarkçı v. Turkey (Nº 7940/05), 26 June 2007 [Section II]
Çelik and Others v. Turkey (Nº 74500/01), 26 June 2007 [Section IV]
Davut Aslan v. Turkey (Nº 21283/02), 26 June 2007 [Section II]
İldan v. Turkey (Nº 75603/01), 26 June 2007 [Section II]
İnal v. Turkey (Nº 12624/02), 26 June 2007 [Section II]
İzmirli v. Turkey (Nº 30316/02), 26 June 2007 [Section II]
Kapan and Others v. Turkey (Nº 71803/01), 26 June 2007 [Section II]
Kaymaz v. Turkey (Nº 6247/03), 26 June 2007 [Section II]
Kırancı v. Turkey (Nº 76400/01), 26 June 2007 [Section II]
Kizir and Others v. Turkey (Nº 117/02), 26 June 2007 [Section II]
Timur v. Turkey (Nº 29100/03), 26 June 2007 [Section II]
Tomić v. Serbia (Nº 25959/06), 26 June 2007 [Section II]
Turhan Atay and Others v. Turkey (Nº 56493/00), 26 June 2007 [Section II]
Ülger v. Turkey (Nº 25321/02), 26 June 2007 [Section II]
Veyisoğlu v. Turkey (Nº 27341/02), 26 June 2007 [Section II]
Yedikule Surp Pırgiç Ermeni Hastanesi Vakfi v. Turkey (Nº 50147/99 and Nº 51207/99), 26 June 2007 [Section II]
Yeniay v. Turkey (Nº 14802/03), 26 June 2007 [Section II]

Aiouaz v. France (Nº 23101/03), 28 June 2007 [Section III]
Boychenko and Gershkovich v. Russia (Nº 62866/00), 28 June 2007 [Section V]
Broka v. Latvia (Nº 70926/01), 28 June 2007 [Section III]
Dolgikh v. Ukraine (Nº 9755/03), 28 June 2007 [Section V]
Grosu v. Romania (Nº 2611/02), 28 June 2007 [Section III]
Kaya v. Germany (Nº 1753/02), 28 June 2007 [Section I]
Malechkov v. Bulgaria (Nº 57830/00), 28 June 2007 [Section V]
Pérez Arias v. Spain (Nº 32978/03), 28 June 2007 [Section V]
Rădulescu v. Romania (Nº 31442/02), 28 June 2007 [Section III]
Shukhardin v. Russia (Nº 65734/01), 28 June 2007 [Section V]
Sivoldayeva v. Russia (Nº 906/06), 28 June 2007 [Section I]

Statistical information[1]

Judgments delivered	June	2007
Grand Chamber	2(3)	7(8)
Section I	44(52)	197(217)
Section II	43(46)	138(208)
Section III	30(44)	134(155)
Section IV	22(23)	149(180)
Section V	29	109(120)
former Sections	3	24(26)
Total	**173(200)**	**758(914)**

Judgments delivered in June 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(3)	0	0	0	2(3)
Section I	43(50)	0	0	1(2)	44(52)
Section II	43(46)	0	0	0	43(46)
Section III	28(42)	1	0	1	30(44)
Section IV	18(19)	1	1	2	22(23)
Section V	28	1	0	0	29
former Section I	0	0	0	0	0
former Section II	3	0	0	0	3
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**165(191)**	**3**	**1**	**4(5)**	**173(200)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	7(8)	0	0	0	7(8)
Section I	183(202)	0	10	4(5)	197(217)
Section II	138(208)	0	0	0	138(208)
Section III	125(146)	2	3	4	134(155)
Section IV	127(134)	17(41)	2	3	149(180)
Section V	106(117)	2	1	0	109(120)
former Section I	0	0	0	1	1
former Section II	17(19)	0	0	2	19(21)
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Total	**707(838)**	**21(45)**	**16**	**14(15)**	**758(914)**

[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	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		4	22(5)
Section II		3	12
Section III		3	7
Section IV		1	11(2)
Section V		1	16
Total		**12**	**68(7)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	1	26
	- Committee	737	2776
Section II	- Chamber	16	57(22)
	- Committee	296	1525
Section III	- Chamber	6	30
	- Committee	509	2356
Section IV	- Chamber	2	33
	- Committee	447	1098
Section V	- Chamber	8	49(3)
	- Committee	687	3354
Total		**2709**	**11305(25)**
III. Applications struck off			
Grand Chamber		0	1
Section I	- Chamber	16	70
	- Committee	9	55
Section II	- Chamber	12	47(21)
	- Committee	6	39
Section III	- Chamber	8	46
	- Committee	8	36
Section IV	- Chamber	16	72
	- Committee	5	23
Section V	- Chamber	5	28
	- Committee	30	68
Total		**115**	**485(21)**
Total number of decisions[1]		**2836**	**11858(53)**

1. Not including partial decisions.

Applications communicated	June	2007
Section I	70	390
Section II	105	434
Section III	67	396
Section IV	34	228
Section V	21	176
Total number of applications communicated	**297**	**1624**

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