CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 28
on the case-law of the Court
March 2001

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

Statistical information[1]

		March/mars	2001
I. Judgments delivered			
Grand Chamber		4	10
Chamber I		3	80(82)
Chamber II		51	58
Chamber III		10	57(60)
Chamber IV		33	36
Total		**101**	**241(246)**
II. Applications declared admissible			
Section I		4	20(27)
Section II		49(50)	101(102)
Section III		10(13)	74(78)
Section IV		55	65(67)
Total		**118(122)**	**260(274)**
III. Applications declared inadmissible			
Section I	- Chamber	1	10
	- Committee	142	352
Section II	- Chamber	19(20)	35(36)
	- Committee	96	217
Section III	- Chamber	9	28
	- Committee	121	405(406)
Section IV	- Chamber	8	23(33)
	- Committee	182	469
Total		**578(579)**	**1539(1551)**
IV. Applications struck off			
Section I	- Chamber	4	5
	- Committee	6	13
Section II	- Chamber	28(202)	29(203)
	- Committee	7	10
Section III	- Chamber	2	5
	- Committee	5	10
Section IV	- Chamber	0	1
	- Committee	2	4
Total		**54(228)**	**77(251)**
Total number of decisions[2]		**750(929)**	**1876(2076)**
V. Applications communicated			
Section I		22(25)	80(84)
Section II		24	105(106)
Section III		12	56(58)
Section IV		53(56)	102(106)
Total number of applications communicated		**111(117)**	**343(354)**

[1] The statistical information is provisional.
[2] Not including partial decisions.

Judgments delivered in March 2001					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	3(5)	0	1	0	4(6)
Section I	1	2	0	0	3
Section II	35	16	0	0	51
Section III	9(10)	1	0	0	10(11)
Section IV	33	0	0	0	33
Total	**81(84)**	**19**	**1**	**0**	**101(104)**

Judgments delivered in January - March 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	8(10)	0	1	1[1]	10(12)
Section I	69(71)	10	1	0	80(82)
Section II	42	16	0	0	58
Section III	52(56)	4	1	0	57(61)
Section IV	36	0	0	0	36
Total	**207(215)**	**30**	**3**	**1**	**241(249)**

[1] Just satisfaction.
[2] Of the 199 judgments on merits delivered by Sections, 11 were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Serious injuries sustained by applicant while under control of police officers : *no violation*.

BERKTAY - Turkey (N° 22493/93)
*Judgment 1.3.2001 [Section IV]

Facts: In 1993 the second applicant, D., was arrested by the police and taken to his home so that it could be searched. During the search he was seriously injured after falling from the balcony. He alleged that it was the police officers who caused his fall. The first applicant was prevented by the police from taking his son to a health centre for the tomography, which according to the duty doctor consulted at the public hospital, his condition required as a matter of urgency. The first applicant was first forced to accompany the police to security headquarters to sign a form incriminating his son. The second applicant was put into intensive care and remained in a coma for approximately two weeks. Six days after the incident the first applicant lodged a complaint with the public prosecutor's office requesting an investigation. He and his wife were heard by the public prosecutor. They said that they had signed their deposition under duress. The six police officers who had carried out the search were prosecuted for negligently performing their duties. In July 1996 they were acquitted by the criminal court. The Government contested the applicants' allegations and their version of events. The Commission assembled documentary evidence and heard a number of witnesses in Turkey.
Law: Preliminary objection (non-exhaustion) – The Government was estopped from raising objections regarding the admissibility of the application at that stage.
Assessment of the evidence – It appeared, firstly, that after his arrest and during the search at his home the second applicant was under the control of five police officers and in custody. Secondly, in the light in particular of the shortcomings and inconsistencies in the police officers' statements, the evidence indicated that the applicant had been taken on to the balcony by the police officers to look for a document and was under their control when the incident that resulted in his being seriously injured occurred.
Article 2 – Although the seriousness of the second applicant's injuries had endangered his life, the Court was not persuaded that the acts of the police officers when searching his home when the second applicant was under their control were of such type or degree to amount to a violation of Article 2 of the Convention. No separate question arose in that connection with regard to the alleged delay in providing him with necessary medical attention. Those aspects would be considered further under Article 3. It did not appear necessary to examine whether for the purposes of Article 2 of the Convention the authorities had failed to discharge their obligation to protect the second applicant's right to life or to carry out an effective investigation into the use of force.
Conclusion: no violation (unanimously).
Article 3 – As regards the second applicant, it was for the Government to provide a reasonable explanation as to the cause of his injuries. However, they had confined themselves to alluding to the outcome of the domestic criminal proceedings in which decisive weight had been attached to the allegation that the second applicant had thrown himself off the balcony. That account did not appear convincing, however. Regard being had to the fact that the authorities were accountable for persons in their control and to all the evidence that had been adduced, the respondent State was responsible in the circumstances of the case for the injuries caused by the second applicant's fall while in the control of six police officers.
Conclusion: violation (unanimously).

While it had to be recognised that the first applicant had suffered anguish and distress when he was taken to the police station and forced to sign a previously prepared deposition while his son was in a coma, it nonetheless appeared that D. had received suitable medical attention from the hospital doctors. Having examined all the circumstances of the case, the Court held that it had not been established that the treatment concerned had attained the minimum level of severity required by Article 3.
Conclusion: no violation (unanimously).
In view of the special circumstances of the case, the alleged lack of an effective investigation had to be examined under Article 13.
Article 13 – On the basis of the evidence before it, the Court had held that the respondent State's responsibility had been engaged under Article 3. The second applicant's complaints were accordingly "arguable" for the purposes of Article 13 and the authorities were under an obligation to conduct an effective investigation into the circumstances in which D. had been injured. In the case before the Court, depositions had been obtained by the public prosecutor after the incident and an administrative inquiry started. It was particularly striking that the applicants were at no stage informed of progress in the criminal proceedings before the criminal court. The criminal court had not summonsed them to attend and they had not been permitted to see the evidence in the file. The applicants had deposed before police officers in 1994 in connection with the investigation of the case and the first applicant said he had been made to sign under duress. In addition, the criminal court had obtained depositions only from the three police officers concerned and one of them had deposed through the letters rogatory procedure. Despite significant discrepancies between their versions of events, the criminal court had not instigated an investigation. Nor had it sought to hear either evidence from the police officers or the complainants' version of the incident; it had relied instead entirely on the accounts of the three police officers and, while noting that the second applicant had been in the custody of the defendant officers just before his fall, had acquitted them without any further explanation on the ground that there had been no causal link between their actions and the second applicant's injuries. Thus, irrespective of whether or not they would have succeeded in persuading the criminal court that the police had committed a tort, the applicants had been entitled to an explanation in adversarial proceedings from the police regarding their acts or omissions.
Conclusion: violation (unanimously).
Article 5 – The second applicant had been in the control and custody of five police officers while his home was being searched. The reasons for his arrest are not clearly apparent from the case file. Likewise, there was insufficient evidence on the case file to give rise to reasonable suspicion against him. Furthermore, since the Government had furnished no evidence apart from the arrest warrant as grounds for suspecting the second applicant of an offence, their explanations did not satisfy the minimum requirements of Article 5(1)(c).
Conclusion: violation (six votes to one).
Article 34 (former Article 25) – The applicants had not adduced concrete independent evidence of measures of intimidation or harassment aimed at preventing their pursuing their proceedings before the Convention institutions. Furthermore, the first applicant had said that no pressure had been brought to bear on him to withdraw his application. As regards the second applicant, there was nothing in the custody record of the incident to suggest that he had been questioned about lodging his application with the Commission.
Conclusion: no violation (unanimously).
Article 41 – although the second applicant had not established any direct causal link between the violations that had been found and the loss of earnings that had allegedly been caused by his mental illness, he had nevertheless sustained bodily injury as well as non-pecuniary damage. The Court decided to award him the sum of GBP 55,000 under that head. Reiterating its finding of a violation of Article 13, it also awarded the first applicant GBP 2,500 for non-pecuniary damage. The Court awarded an amount on account of costs and expenses.

LIFE
Death following alleged ill-treatment on arrest: *friendly settlement*.

KÖKSAL - Netherlands (N° 31725/96)
Judgment 20.3.2001 [Section I]

The applicants, Turkish nationals, are respectively the father and son of Hüseyin Köksal, who was arrested for drunken driving. It is undisputed that he was roughly treated on arrest. Despite standing orders, he was not examined by a doctor until later in the day. He was transferred to hospital, where he died shortly afterwards as a result of an aneurysm. During the subsequent criminal investigation into his death, medical evidence indicated that it was unlikely that the bleeding had been caused by external violence but that such violence could have exacerbated the bleeding. One of the policemen involved in the arrest was charged with causing bodily harm but was acquitted.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicants of 140,000 guilders. The Government expressed their deepest regret at the death of Hüseyin Köksal and the events leading up to it, without, however, acknowledging any violation of the Convention.

Article 2(2)(b)

EFFECT LAWFUL ARREST
Deserters shot dead by military police upon attempt of arrest: *communicated*.

NACHOVA and others - Bulgaria (N° 43577/98)
RANGELOVA and others - Bulgaria (N° 43579/98)
[Section IV]

Privates Angelov and Rangelov died in controversial circumstances during an attempted arrest by military police. The applications were lodged respectively by the daughter and partner of Private Angelov and the parents of Private Rangelov. In 1996, the soldiers were arrested for having been absent without leave during military service. They were sentenced to imprisonment for nine and five months respectively but escaped from the place where they were detained and sought refuge at the home of Private Angelov's grandmother. A warrant for their arrest was issued and sent to the military police. Following an anonymous message, the military police located them and sent four military policemen to the village where the grandmother lived. As the officers arrived in front of her house, the soldiers tried to escape. They were shot by the commanding officer and died on their way to hospital. A criminal investigation into their deaths was opened: the scene of the shooting was inspected by the military investigator and autopsies were carried out. The commanding officer, the other officers, the grandmother, the neighbours and relatives of the soldiers were heard by the investigator. A forensic examination of the blood stains found where the shooting had taken place was carried out; the blood appeared to match the soldiers' blood groups. Their families were given access to the investigation files but their request to have witnesses re-examined was rejected. The investigator, giving great weight to the commanding officer's statements, reported that the latter had warned the soldiers before shooting and had aimed at them only because they had not surrendered to his oral commands and warning shots in the air. Moreover, he had attempted to shoot at their legs in order to catch them alive and had thus acted in compliance with Regulation 45 of the Military Police Regulations, according to which military police officers may use firearms to arrest a person serving in the army who has

committed or is about to commit an offence and does not surrender after having been warned. The Military Prosecutor, in view of the investigator's recommendation, closed the preliminary investigation into the deaths. The applicants' appeals to the Armed Forces Prosecutor's Offices and Investigation Review Department in the Armed Forces Prosecutor's Office were rejected.
Communicated under Article 2.

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment in police custody: *friendly settlement*.

GELGEÇ and ÖZDEMIR - Turkey (Nº 27700/95)
Judgment 1.3.2001 [Section II]

The case concerns the applicants' complaint that they were subjected to ill-treatment while in policy custody. Criminal proceedings against several policemen ended in acquittals.
The parties have reached a friendly settlement providing for payment of £7,500 (GBP) to each applicant in respect of pecuniary and non-pecuniary damage.

ÇAVUŞOĞLU - Turkey (Nº 32983/96)
Judgment 6.3.2001 [Section III]

The case concerns the applicant's complaint that he was subjected to ill-treatment while in policy custody.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicant of 75,000 French francs (FRF).

INHUMAN TREATMENT
Serious injuries sustained by applicant while under control of police officers : *violation*.

BERKTAY - /Turkey (N° 22493/93)
*Judgment 1.03.2001 [Section IV]
(see Article 2, above).

DEGRADING TREATMENT
Mental suffering of father impeded by police officers when trying to get medical help for his injured son : *no violation.*

BERKTAY - Turkey (N° 22493/93)
*Judgment 1.03.2001 [Section IV]
(see Article 2, above).

INHUMAN TREATMENT
Conditions of detention pending expulsion: *violation*.

DOUGOZ - Greece (Nº 40907/98)
*Judgment 6.3.2001 [Section III]

Facts: The applicant, a Syrian national, claims that he was sentenced to death in Syria. He fled to Greece, where he was arrested and sentenced to imprisonment on several occasions, notably for drug-related offences. While in Greece, he was granted refugee status by the UNHCR. In June 1997, while serving a prison sentence, he asked to be sent back to Syria, claiming that he had been granted a reprieve there. The following month, after a court had ordered his release on licence and expulsion to Syria, he was placed in detention pending his expulsion. He complains about the conditions of his detention in Drapetsona detention centre, where he was held for several months, referring in particular to overcrowding, lack of beds and bedding, poor hygiene and lack of room for physical exercise. In April 1998, he was transferred to the police headquarters, where he was held for a further few months and the conditions of detention were similar (as borne out by a report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment). In May 1998 the first instance criminal court rejected the applicant's request to lift the expulsion order, referring to his previous claim that he was no longer subject to persecution in Syria. It did not mention his complaint that his detention was unlawful. In December 1998, he was expelled to Syria.
Law: Article 3 – Conditions of detention may amount to inhuman or degrading treatment. In that respect, account has to be taken of the cumulative effects of the conditions, as well as of specific allegations. The applicant's allegations are corroborated by the conclusions of the CPT report and the Government did not deny the allegations concerning overcrowding and lack of beds and bedding. The CPT stressed that the cellular accommodation and detention regime at police headquarters were unsuitable for periods in excess of a few days, the occupancy levels being grossly excessive and the sanitary facilities appalling. Moreover, the Government described the conditions at Drapetsona as being the same as at police headquarters. Consequently, the conditions of the applicant's detention, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of time during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3.
Conclusion: violation (unanimously).
Article 5(1)(f) – The provision invoked by the Government as the legal basis for the applicant's detention pending expulsion applies to the expulsion of aliens by administrative order and provides for the detention of an alien on condition that the execution of an administrative order for expulsion taken by the Minister of Public Order is pending and that the alien is considered to be a danger to public order or might abscond. However, in this case the applicant's expulsion was ordered by a court and not by an administrative decision, and the applicant was not considered a danger to public order. While the Deputy Public Prosecutor at the Court of Cassation gave an opinion that a joint ministerial decision applied by analogy to cases of expulsion ordered by courts, the opinion of a senior public does not constitute a "law" of sufficient quality for the purposes of Article 5(1), which has therefore been breached.
Conclusion: violation (unanimously).
Article 5(4) – The requests for release which the applicant submitted to the Ministers of Justice and Public Order cannot be considered effective remedies whereby he could challenge the lawfulness of his detention, since they depended on the discretion of the Ministers. Moreover, the first instance criminal court failed to rule on the applicant's claim concerning his detention. Consequently, the domestic legal system did not afford the applicant an opportunity to have the lawfulness of his detention pending expulsion determined by a court.
Conclusion: violation (unanimously).

Article 41 – The Court rejected the applicant's claim for pecuniary damage but awarded him 5,000,000 drachmas (GRD) in respect of non-pecuniary damage and costs.

INHUMAN TREATMENT
Ill-treatment during detention on remand : *admissible*.

PANTEA - Romania (N° 33343/96)
Decision 6.3.2001 [Section I]

The applicant, a former public prosecutor, was involved in a serious altercation. Criminal proceedings were instituted against him. In June 1994 he was questioned about the incident by the public prosecutor and in July committed for trial on a charge of attempted homicide. In December 1994 he lodged a criminal complaint against the public prosecutor for, *inter alia*, wrongful arrest and applied for his immediate release. In the night of 10 to 11 January 1995 he was transferred to a new cell in Oradea prison. He maintains that he was savagely beaten that night by the two prisoners with whom he shared his new cell. Despite his cries for help, the prison warden, S.P., refused to intervene. When he lapsed into semi-consciousness, the deputy director of the prison, V.P., allegedly entered the cell and attached to him underneath his bed with handcuffs. The applicant remained in that position for forty-eight hours. As a result of the assault, the applicant sustained a number of wounds. He was taken to the Oradea Neurological and Psychiatric Hospital where, on examination, the doctor concluded that the applicant was suffering from paranoid schizophrenia. The applicant was moved to Oradea Regional Hospital where X-rays were taken that revealed fractures to his skull, thorax and spine. The prison infirmary concluded that the applicant's previously diagnosed behavioural problems were responsible for his injuries. In spite of his condition, the applicant was transferred in a prison van to the neuropsychiatric unit of Jilava Prison Hospital, which is more than five hundred kilometres from Oradea. He claims that he was subjected to psychological torture there and was not given any treatment for, among other things, the injuries to his skull. On his return to Oradea Prison, he was readmitted to the infirmary. he complains of the conditions there. In a final judgment of 6 April 1995 the court of appeal ordered his release, quashed all the procedural steps taken by the public prosecutor's office and returned the case file to the public prosecutor's office so that the case could be reinvestigated. The applicant was released. He has since spent time in hospital and undergone surgery. As regards the criminal proceedings concerning the ill-treatment he suffered, it would seem that in January 1995 he made a verbal complaint to the prison governor about the ill-treatment inflicted by his fellow prisoners. In July 1995 he lodged a written complaint with the public prosecutor's office against the warder, S.P., V.P. and the two prisoners. In December 1995 he lodged a complaint with the Oradea military public prosecutor's office and the civil public prosecutor's office, as he had received no response to his complaint. On 26 June 1996 a medical examination was ordered. In a medical report of 27 August 1997 it was stated that the applicant had sustained injuries as a result of being hit. In a decision of 20 October 1997 the Oradea military public prosecutor's office dismissed the applicant's complaint, finding that the accusations against the warders were unfounded and that even if the applicant's fellow prisoners had caused his injuries, that complaint had to be dismissed as being out of time. The applicant challenged that decision before the public prosecutor's office. The Court has no information regarding the outcome of that challenge. The Government put forward a different version of the facts.
Admissible under Article 3: as regards the preliminary objection raised by the Government (non-exhaustion), it had to be noted that after making an initial oral complaint in January 1995, the applicant repeated his complaints in July 1995 by lodging a criminal complaint with the public prosecutor's office. However, the public prosecutor's office did not order a medical report until a year after the complaint had been lodged and sixteen months after the oral complaint was made. The medical report was not delivered until two years after the events complained of. The complaint had been dismissed on 20 October 1997 on the ground that the

part concerning the warders was unfounded and the part concerning the other prisoners out of time. The applicant had lodged an appeal against that decision. The Government had not pointed to any other remedy that would have enabled the applicant to secure the identification and punishment of those responsible. Thus, the applicant had exhausted all the possibilities available under the Romanian penal system and was not required, in the absence of any decision to institute criminal proceedings further to his complaint, also to attempt to obtain compensation by bringing a civil action in damages. The objection had to be dismissed and the complaint declared admissible.
Admissible under Article 5(1), (3) and (4).
Admissible under Article 5(5): as regards the preliminary objection raised by the Government (non-exhaustion), a private individual could not lodge a constitutional appeal directly with the Constitutional Court. That remedy was not therefore an accessible one for the purposes of Article 35. As for an action for compensation under Article 504 of the Criminal Code, Article 505 laid down that claimants could lodge an application for compensation within one year after a final acquittal or an order discharging the proceedings. However, the applicant had not been acquitted and no discharge order had been made. Furthermore, the Government had not pointed to any authority from the case-law of the national courts supporting their argument. Consequently, the objection had to be dismissed and the complaint declared admissible.
Admissible under Article 6(1) and (3) and Article 8.

DEGRADING TREATMENT
Number written by pen on the hands of applicants in the process of being expelled : *inadmissible.*

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]

The first four applicants are Slovakian nationals of gypsy origin. The fifth applicant is the *Ligue des droits de l'homme* (Human-Rights League), an association. The first four applicants asserted that when the police had taken no action after they had been assaulted in Slovakia, they had fled their country for Belgium, where they had requested political asylum on 12 November 1998. On 3 March 1999 orders were made declaring their asylum applications inadmissible, refusing them the right to enter Belgium and requiring them to leave the territory within five days. On 5 March 1999 the applicants lodged an appeal under the expedited procedure with the General Commissioner for Refugees and Stateless Persons against those orders. On 18 June 1999 the General Commissioner upheld the decision of the Aliens' Department refusing them asylum and stipulated that the five-day period had started to run again. On 28 October 1999 the applicants' applications to have that decision set aside and for a stay of execution were struck out by the *Conseil d'État* on the ground that the applicants had failed to comply with a request to pay court fees. At the end of September 1999 several families of Slovak gypsies, including the first four applicants, received notice from the Ghent police requiring their attendance on 1 October to fill in a form relating to their application for asylum. Once at the police station the applicants were served with a further order, dated 29 September 1999, to leave the territory, an order for their transfer to the Slovakian border and an order for their detention for that purpose. The two remedies that lay against the order were set out in the document. A few hours later the applicants and other gypsy families were taken to a closed transit lounge, where they were informed that no further appeal lay against the deportation order. On 5 October the applicants and other gypsy families were taken to a military airport. Once there, their seat number on board was marked on their hands with a ballpoint point. The aircraft took off from Belgium on a flight to Slovakia at 5.45 p.m. They had in the meantime lodged an application with the Court on 4 October and sought the application of Rule 39. The following day the Vice-President of the Third Section made an order at 4.20 p.m. applying Rule 39 until midnight on 12 October. That decision was communicated by telephone at 4.30 p.m. (and confirmed by facsimile transmission at 6.30

p.m.) to the Delegate of the Agent of the Belgian Government and the Permanent Representative of the Belgian Republic at the Council of Europe.
Preliminary objection (standing as victim): The *Ligue des droits de l'homme* could not claim to be a victim of measures that had allegedly infringed rights of the members of the Conka family under the Convention: incompatible *ratione personae*.
Inadmissible under Article 3: preliminary objection (non-exhaustion) – an action under Articles 1382 et seq. of the Civil Code would only have been able to secure the payment of damages *ex post facto* and such payment did not satisfy the obligations which Article 3 imposed on Contracting States: Preliminary objection dismissed.
(degrading treatment) – the Government had explained that a number had been marked on the applicants' hands in order to identify the seat allocated to each passenger. However, while that procedure could be considered unfortunate, it had been made necessary as much by the existing infrastructure as by any concern to keep control over the passengers. The authorities had not intended to cause any humiliation. Furthermore, the same procedure had been used for the humanitarian transfer of Kosovo refugees to Belgium. In the light of those explanations, the Court had to consider that the minimum level of severity required for the treatment to come within Article 3 had not been attained: manifestly ill-founded.
Inadmissible under Article 8: there was insufficient evidence to support a finding that the procedure complained of (marking a number on the applicants' hands) had any adverse effects on their physical or mental integrity such as to amount to an interference with their right to respect for their private life: manifestly ill-founded.
Admissible under Article 5(1), (2) and (4): preliminary objection (non-exhaustion) – the preliminary injection had to be joined to the merits: admissible.
Inadmissible under Article 3 (expulsion): The documents and reports furnished to the Court by the applicants contained information about the violence and discrimination to which the gypsy community in Slovakia were subjected. They did not however establish that the applicants were personally under threat. In that connection, substantial weight had to be attached to the lack of any evidence that the applicants had suffered any violence or ill-treatment since their return to Slovakia and to the fact that their son had chosen to rejoin them of his own free will in April 2000: manifestly ill-founded.
Admissible under Article 4 of Protocol No. 4.
Inadmissible under Article 14 taken together with Article 3 and with Article 4 of Protocol No. 4: the authorities' choice regarding who should be expelled could not be considered as not being objectively and reasonably justified since the criterion used for selection was not nationality or ethnic origin, but the fact that they belonged to an immigration network whose impact needed to be curbed. Nor, in view of the Court's declaration that the complaint of a violation of Article 3 was manifestly ill-founded, did it appear that the measures in issue could be considered disproportionate to the intended aim: manifestly ill-founded. A like conclusion applied to the complaint under Article 14, taken together with Article 4 of Protocol No. 4, since that complaint was based on the same facts.
Admissible under Article 13.
Inadmissible under Rule 39 of the Rules of Court and Article 34 of the Convention: as the Government had accepted, they were informed of the decision of the Vice-President of the Third Section of the Court to apply Rule 39 by telephone at 4.30 p.m. on 5 October 1999 through the intermediary of both the Delegate of the Agent and the Permanent Representative of Belgium at the Council of Europe. That decision had been confirmed by facsimile transmission sent at 6.10 p.m. Nevertheless, the Belgian authorities had expelled the applicants at 5.45 p.m. that evening without indicating why they had disregarded the measures imposed under Rule 39. That conduct hardly appeared compatible with "the need to cooperate fairly with the Court when the State in question considered it possible and reasonable [to do so]". However, a power to order interim measures cannot be inferred from either Article 34 *in fine* or any other source, although any refusal to follow a recommendation under Rule 39 had to be regarded as aggravating any breach of the requirements of Article 3 that might later be found. As for the difficulties encountered by the applicants following their expulsion to

Slovakia, it did not appear that they had attained a degree that hindered their right under Article 34: manifestly ill-founded.

EXTRADITION
Threatened extradition to China, with alleged risk of exposure to ill-treatment: *struck out*.

YANG CHUN JIN, *alias YANG XIAOLIN* - Hungary (Nº 58073/00)
Judgment 8.3.2001 [Section II]

The case concerned the threatened extradition of the applicant to China, where he claimed that he risked being ill-treated, tried summarily and sentenced to death.
The Hungarian Minister of Justice has decided to refuse China's request to extradite the applicant, who has left Hungary for Sierra Leone and is not opposed to the application being struck out.

EXTRADITION
Prison conditions in State requesting extradition : *inadmissible*.

ISMAILI - Germany (N° 58128/00)
Decision 15.3.2001 [Section IV]

The applicant was a Moroccan national. He was suspected in Morocco of involvement in the murder of a policeman in 1997. The Moroccan courts issued a warrant for his arrest in January 1998. In 1997 the applicant travelled to Germany where he lodged an application for political asylum. His application was dismissed by the Federal Office for Refugees which ordered him to leave German territory or face expulsion. In October 1997 he was arrested. He remained in detention thereafter awaiting expulsion. He lodged an appeal against the decision of the Federal Office for Refugees. That decision was set aside in so far as it required him to leave German territory, as the Court considered that the Moroccan authorities had not given an assurance that there was no danger of the applicant receiving the death sentence or being executed for the alleged offence. The Federal Office for Refugees then made a new order for his expulsion. The applicant's appeals against that order were dismissed, as the courts considered that the Moroccan authorities had in the meantime furnished assurances that the offence for which the applicant was wanted did not carry the death sentence, that in any event the death sentence would not be carried out and that there was no reason to fear that he would be subjected to inhuman treatment (the assurances were confirmed by recent information from German diplomatic sources and by an examination of the German case-law in similar cases). The applicant produced decisions of German courts in which extradition to Morocco had been refused owing to the conditions in Moroccan prisons. However, he was unable to point to recent authorities showing that that situation persisted. The applicant informed the Court in a letter that a co-accused wanted for the same offences by the Moroccan authorities had been sentenced to twenty years' imprisonment after being extradited by Germany.
Inadmissible under Article 1 of Protocol No. 6: the existence of a serious risk of being subjected to capital punishment in the event of extradition had to be supported by *prima facie* evidence. In the case before the Court, the Moroccan authorities had declared to the German authorities that the offence for which the applicant was wanted did not carry the death sentence and that the death sentence would therefore not be requested or carried out. In authorising the applicant's extradition, the German courts had also taken into consideration other sources which bore out those assurances. Lastly, the applicant himself had informed the Court that a co-accused, who had been tried in Morocco for the same offence, had not been sentenced to death. The extradition order made by the German authorities did not therefore entail a real danger for the applicant's life: manifestly ill-founded.

Inadmissible under Article 3: The existence of a genuine danger of being subjected to treatment contrary to Article 3 in the country that had made the request for extradition had to be supported by *prima facie* evidence. A mere possibility of ill-treatment due to instability in a country did not in itself entail a violation of Article 3. In the case before the Court, the German courts had carefully examined the evidence furnished by the applicant before holding that it was not enough to make extradition impossible. They had also relied on other reliable sources, including judicial decisions, in order to show why extradition was possible. Therefore, no serious grounds had been made out for supposing that the applicant would be exposed to a real danger of inhuman and degrading treatment if extradited: manifestly ill-founded.

EXPULSION
Return of gypsies to Slovakia, where they are allegedly ill-treated and discriminated against : *inadmissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see above).

EXPULSION
Threatened deportation to Tanzania (Zanzibar): *violation*.

HILAL - United Kingdom (Nº 45276/99)
*Judgment 6.3.2001 [Section III]

Facts: The applicant, a Tanzanian national, requested asylum in the United Kingdom. He claimed to have been tortured in Zanzibar as an opponent of the Zanzibar Government, although he did not mention the allegations of torture during the first interview, which he claims was only for the purpose of taking initial details. The asylum request was rejected on the ground that the applicant's account was implausible and inconsistent and his appeal was rejected by a Special Adjudicator. The applicant subsequently made fresh representations on the basis of additional evidence which he had obtained, namely a death certificate in respect of his brother, who he claimed had died as a result of being tortured, and a summons addressed to his parents requesting their attendance to explain his conduct in embarrassing the Government. He also produced a medical report supporting his allegations of torture. However, the Secretary of State refused to reverse the decision not to grant asylum, considering that even if the documents were authentic there was no reason that the applicant could not live safely in mainland Tanzania. The applicant was refused leave to apply for judicial review of the Secretary of State's decision not to refer the new material to the Special Adjudicator. His appeal was dismissed by the Court of Appeal.
Law: Article 3 – The decision of the Special Adjudicator relied partly on a lack of substantiation, but the applicant subsequently produced further documentation, and although this material was examined by the Secretary of State and the courts, they did not reach any findings of fact in that respect, since they took their decisions on a different basis, namely the fact that the applicant could safely live in other parts of Tanzania (the so-called "internal flight" solution"). There is no basis for rejecting the documents as forgeries and the Court therefore accepts that the applicant was detained and tortured as a member of the opposition party. In the light of the medical report, the applicant's explanation that he did not think it necesssary to give all details at the first interview becomes far less incredible. While his brother's death certificate does not indicate that torture was a factor in the death, medical notes show that he had been detained and was taken to hospital, where he died, and this is not inconsistent with the applicant's allegations. The evidence of the applicant's wife that police came looking for the applicant on a number of occasions is consistent with the information available about the

situation in Zanzibar and it the Court therefore concludes that the applicant would be at risk if returned there. Moreover, the situation in mainland Tanzania is far from satisfactory and discloses an endemic situation of human rights problems: there are reports of ill-treatment by the police and inhuman and degrading prison conditions, and since the mainland police may be regarded as institutionally linked to the Zanzibar police they cannot be relied on as a safeguard against arbitrary action. There is also the possibility of extradition from Tanzania to Zanzibar. Consequently, the Court is not persuaded that the internal flight option offers a reliable guarantee against the risk of ill-treatment.
Conclusion: violation (unanimously).
Articles 6 and 8: No separate issue arises under these provisions.
Conclusion: no separate issue (unanimously).
Article 13: The Court was satisfied that the domestic courts give careful scrutiny to claims that an expulsion would expose an applicant to the risk of inhuman and degrading treatment and was not convinced that the fact that this scrutiny takes place against the background of the criteria applied in judicial review of administrative decisions (rationality and perverseness) deprived the procedure of its effectiveness. The substance of the complaint was examined by the Court of Appeal, which had the power to afford him the relief he sought.
Conclusion: no violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage. It made an award in respect of costs and expenses.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Insufficient explanations for the grounds for arrest and the existence of reasonable suspicion : *violation*.

BERKTAY - Turkey (N° 22493/93)
*Judgment 1.03.2001 [Section IV]
(see Article 2, above).

LAWFUL ARREST OR DETENTION
Arrest of applicants with a view to their expulsion after they had been summoned to complete their asylum requests : *admissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

Article 5(1)(e)

PERSON OF UNSOUND MIND
Failure to respect statutory time-limit for review of lawfulness of compulsory confinement in psychiatric hospital: *communicated*.

RAKEVICH - Russia (N° 58973/00)
[Section II]

On 26 September 1999, the applicant was compulsorily placed in a psychiatric hospital where two days later she was diagnosed as suffering from mental disorders warranting keeping her in hospital. The same day, the hospital filed an application for court approval of the applicant's confinement. According to Article 34(1) of the Law on Psychiatric Treatment and Guarantees of Civil Rights, the application for compulsory placement of a person in a psychiatric hospital is to be reviewed within five days after receipt of the application lodged by the hospital authorities. It does not appear from domestic law that the applicant could herself have applied for a review of the lawfulness of her detention. On 4 November 1999, she was released and on 5 November the District Court held that the detention had been necessary as she appeared to be suffering from schizophrenia. The applicant unsuccessfully lodged an appeal against this decision.
Communicated under Article 5(1)(e) and (4).

Article 5(1)(f)

LAWFUL DETENTION
Absence of legal basis for detention pending expulsion: *violation*.

DOUGOZ - Greece (Nº 40907/98)
*Judgment 6.3.2001 [Section III]
(See Article 3, above).

Article 5(2)

INFORMATION ON REASONS FOR ARREST
Arrest of applicants with a view to their expulsion after being summoned to complete in their asylum requests : *admissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Absence of court review of lawfulness of detention pending expulsion: *violation*.

DOUGOZ - Greece (Nº 40907/98)
*Judgment 6.3.2001 [Section III]
(See Article 3, above).

REVIEW OF LAWFULNESS OF DETENTION
Existence of review of lawfulness of detention in a psychiatric hospital initiated by the detainee: *communicated*.

RAKEVICH - Russia (N° 58973/00)
[Section II]
(See Article 5(1)(e), above).

REVIEW OF LAWFULNESS OF DETENTION
Applicants allegedly unable to make use of available remedies : *admissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

REVIEW BY A COURT
Independence of specialist judge participating in review of psychiatric detention after having given an expert opinion: *violation*.

D.N. - Switerland (Nº 27154/95)
Judgment 29.3.2001 [Grand Chamber]

Facts: The applicant applied for release from psychiatric detention and, on the refusal of the chief medical officer, filed an application with the cantonal Administrative Appeals Commission. She requested that the expert appointed to examine her should not subsequently act as specialised judge on the Commission. R.W. was appointed as rapporteur. After interviewing the applicant, he informed her that he would propose that the Commission dismiss her application. In his written opinion, he diagnosed schizophrenia and recommended dismissal of the applicant's application. For the hearing of the applicant's case, the Commission was composed of the president (a professional judge) and five other judges, including R.W., the only expert in psychiatry. The Commission dismissed the application, referring in its decision to R.W.'s opinion. The applicant's public law appeal was rejected by the Federal Court.
Law: Article 5(4) – It undisputed that the Administrative Appeals Commission was in principle a "court" within the meaning of this provision, under which States are granted a certain freedom to choose the most appropriate system for judicial review. Although it is not always necessary that the proceedings under Article 5(4) have the same guarantees as those under Article 6, they must have a judicial character and provide appropriate guarantees. While Article 5(4) does not specifically require that the court be independent and impartial, it would be inconceivable that, relating to such a sensitive issue as the deprivation of liberty of persons of unsound mind, it should not envisage the impartiality of the court as a fundamental requirement. As to the present case, in view of the various activities carried out by R.W., it differs from proceedings in which a judge rapporteur is in a position, after the hearing and during the court's deliberations, to examine and comment upon specialised evidence; indeed, while it is to be expected that a court-appointed expert will transmit his opinion to the court and to the parties, it is unusual for an expert judge to have formed an opinion and disclosed it to the parties before the hearing. While according to the Federal Court's case-law, the position of an expert in the context of psychiatric detention differs substantially from that of an expert in proceedings in which evidence was taken, experts in either proceedings are only called upon to assist a court with relevant expert advice, without having adjudicative functions. It is for the court to assess such advice together with all other relevant information and evidence and an issue will arise as to its objective impartiality if it is called upon to assess evidence which was previously given by one of its judges as an expert. Consequently, as a result of R.W.'s position in the proceedings, he had a preconceived opinion as to the applicant's request for release and was not approaching her case with due impartiality. The applicant's fears would have been reinforced by R.W.'s position in the Commission, where he was the sole psychiatric expert as well as the only person who had interviewed her. In these circumstances, the applicant's apprehension that R.W. lacked the necessary impartiality were justified.
Conclusion: violation (12 votes to 5).
Article 41 – The Court awarded the applicant 3,000 Swiss francs (CHF) in respect of non-pecuniary damage and also made an award in respect of costs.

ARTICLE 6

Article 6(1)

CIVIL RIGHTS AND OBLIGATIONS
Impossibility for third party to obtain conviction in criminal proceedings: *inadmissible*.

ASOCIACIÓN DE VÍCTIMAS DE TERRORISMO - Spain (N° 54102/00)
Decision 29.3.2001 [Section IV]

The applicant is an association of victims and relatives of victims of terrorism. In 1995 and 1996 the political organisation *Herri Batasuna* published various communiqués and propaganda slogans from the armed terrorist organisation, ETA, in particular by assigning to ETA the advertising space which, as a lawful political party, it was entitled to use for its election campaigns. The public prosecutor filed a complaint and criminal proceedings were instituted against the leaders of *Herri Batasuna*. The applicant joined the proceedings as a "people's prosecutor". The Supreme Court sentenced the defendants to seven years' imprisonment and fines for the offence of collaborating with an armed group. However, on an *amparo* appeal, the Constitutional Court held that the sentences were disproportionate and quashed the decision. The applicant asserted that by quashing the sentence without remitting the case to the Supreme Court so that a new sentence could be imposed, the Constitutional Court had left the offence unpunished. It argued that the victims had thus been deprived of their right to see the accused punished.
Inadmissible under Article 6(1): Although concerned by the Constitutional Court's decision in its capacity as the "people's prosecutor", the applicant was not accused of a criminal offence since, on the contrary, it was the prosecuting party. However, the right of access to a court to obtain a decision on civil rights does not extend to the right to bring criminal proceedings to see a third party punished. Furthermore, by joining the proceedings as a "people's prosecutor" to secure a conviction, the applicant had not sought to exercise any civil rights related to the offences of which the defendants were accused. It had taken part in the proceedings solely to secure their criminal conviction. While of special interest to the members of the association, the criminal proceedings therefore did not concern a dispute over the applicant's civil rights and obligations or the merits of any criminal charge against it: incompatible *ratione materiae*.

CIVIL RIGHTS AND OBLIGATIONS
Dispute over payment of a clothing allowance by military unit to former officer : *communicated*.

KRAPYVNYTSKIY - Ukraine (N° 60858/00)
[Section IV]

After retiring from the military unit in which he had served as an officer, the applicant requested payment of his dress allowance. In November 1998, as no payment had been made, the applicant lodged a claim in the Zhytomyr court against his military unit for the recovery of the sum concerned. In November 1998 the Zhytomyr court granted his claim and made an order against the military unit for payment of the sum. In December the court sent an order to the Zhytomyr Department of the Ministry of Justice for execution of the judgment. The applicant lodged complaints with that department seeking execution. In September 1999 and January 2000 the deputy head of the department confirmed that the military unit owed the

sum concerned, but said that it was for the Ministry of Defence to pay the debt since the military unit no longer had any funds of its own. The applicant brought a further action against a department of the Ministry of Justice for compensation for the damage he had sustained as a result of the failure to execute the judgment of November 1998, but it was dismissed. His claim against the Ministry of Defence for reimbursement of the military unit's debt and payment of damages was likewise dismissed in a judgment of May 2000 that was upheld in June 2000. To date, the applicant has yet to receive payment.
Communicated under Article 6 and Article 1 of Protocol No. 1.

ACCESS TO COURT
Absence of decision on civil rights due to prescription of criminal proceedings as a result of the impossibility of finding the accused: *communicated*.

LÓGICA - MÓVEIS DE ORGANIZAÇÃO, LDA - Portugal (N° 54483/00)
[Section IV]

The applicant is a private company. In 1989 it lodged a criminal complaint in respect of a dishonoured cheque that had been issued by the manager of another trading company. Following the public prosecutor's submissions, the applicant company lodged a claim for damages against the accused and the company concerned. In November 1991 the criminal court judge ordered that the accused should be tried in his absence. In September 1999 the judge discontinued both the criminal and civil limbs of the proceedings on the ground that prosecution of the offence had become time-barred. The applicant company explained that it had not sought to have the proceedings expedited since the accused was absent and the proceedings would therefore have been ineffective.
Communicated under Article 6(1) (access to a court and reasonable time) and Article 35(1).

ACCESS TO COURT
Complaint declared inadmissible on the ground that the appellant was not represented by a lawyer despite the fact that the court had not replied to his request for a court-appointed lawyer: *communicated*.

STOIDIS - Greece (N° 53757/00)
[Section II]

The applicant made an application to the authorities for a change of surname. As his application was not granted, he applied to the Legal Council of State for an order setting aside the refusal. He signed and filed his application himself as he said that he had been unable to find a lawyer willing to represent him. He then requested the President of the Legal Council State to assign him a lawyer to represent him at the hearing, but received no reply to his request. The Legal Council State declared the application inadmissible as the applicant had was unrepresented at the hearing.
Communicated under Article 6(1).

Article 6(1) [criminal]

FAIR HEARING
Threatened extradition to China, with alleged risk of summary trial: *struck out*.

YANG CHUN JIN, *alias YANG XIAOLIN* - Hungary (Nº 58073/00)
Judgment 8.3.2001 [Section II]
(See Article 3, above).

Article 6(2)

PRESUMPTION OF INNOCENCE
Absence of direct evidence of who was driving a car: *violation*.

TELFNER - Austria (Nº 33501/96)
*Judgment 20.3.2001 [Section III]

Facts: The victim of a hit-and-run incident involving a car was able to give police the make and registration number but could not identify the driver. The police found the car outside the house of the applicant's mother, who was the registered owner, although the applicant was not there and apparently had not slept there that night. At his trial before the District Court, the applicant denied having been the driver and declined to make any other statement. His mother and sister exercised their right not to give evidence. The court convicted the applicant. Referred to the fact that it was common knowledge that the car was driven mainly by the applicant, it was satisfied that he had been driving the car at the relevant time. It also relied on the fact that he had not slept at his mother's house. The Regional Court upheld the conviction. It also found it established that the car was mainly used by the applicant, even if occasionally it was used by others.
Law: Article 6(2) – The case does not concern legal presumptions, nor was the Court convinced by the Government's argument that the courts could legitimately draw inferences from the applicant's silence. The drawing of inferences may be permissible in a system like the Austrian one, where the courts freely evaluate the evidence before them, provided that the evidence adduced is such that the only common-sense inference to be drawn from the accused's silence is that he has no answer to the case against him. In this case, the courts essentially relied on a police report that the applicant was the main user of the car and had not been home on the night of the accident. These elements, which were not corroborated by evidence taken at the trial in an adversarial manner, cannot be regarded as constituting a case against the applicant which called for an explanation on his part. In requiring the applicant to provide an explanation although they had not been able to establish a convincing *prima facie* case against him, the courts shifted the burden of proof from the prosecution to the defence.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 20,000 schillings (ATS) in respect of non-pecuniary damage.

Article 6(3)(a)

INFORMATION ON NATURE AND CAUSE OF ACCUSATION
Reclassification of offence by appeal court: *no violation*.

DALLOS - Hungary (Nº 29082/95)
Judgment 1.3.2001 [Section II]

Facts: The applicant was convicted of aggravated embezzlement. He appealed to the Regional Court, which upheld the conviction and sentence, but reclassified the offence as aggravated fraud. The court held that the facts outlined in the indictment constituted this offence. The applicant lodged a petition for review with the Supreme Court which, after hearing an address by the applicant's lawyer at a public session, upheld the conviction.
Law: Government's preliminary objection (six months) – Since the question whether the petition for review was an effective remedy did not arise during the proceedings before the European Commission of Human Rights, the Government's objection is of a character which prevented them making it earlier and they are thus not estopped. It is not disputed that the review proceedings were capable of providing redress in respect of the applicant's complaints, and since the Supreme Court in fact entertained his petition and dealt with his arguments in detail, it cannot be said that the review did not offer reasonable prospects of success. It was therefore an effective remedy to be exhausted and the six month period ran from the dismissal of the petititon by the Supreme Court.
Article 6(3)(a) and (b) – The applicant was not aware that the Regional Court might reclassify his offence as fraud and this certainly impaired his chances of defending himself in respect of the charges of which he was eventually convicted. However, the Supreme Court reviewed the case entirely, from both a procedural and substantive point of view, and could have acquitted the applicant. It was satisfied that the elements of the offence of fraud were present and it thus examined itself whether the applicant was guilty of that offence. Consequently, the applicant had an opportunity to put forward his defence to the reformulated charge and, in view of the nature of the examination by the Supreme Court, any defects in the proceedings before the Regional Court were remedied.
Conclusion: no violation (unanimously).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity to cross-examine witnesses serving prison sentences abroad: *admissible*.

SOLAKOV - Former Yugoslav Republic of Macedonia (Nº 47023/99)
Decision 25.1.2001 [Section II]

The applicant was arrested on suspicion of having smuggled drugs into the United States. The investigating judge decided that several witnesses who were serving prison sentences in the United States should be heard. A hearing was scheduled there, and the applicant's lawyer was informed of it. The American authorities, however, did not provide the lawyer with the necessary visa to enter the country. The applicant appointed another lawyer, who was summoned to attend the hearing in the United States. However, according to the investigating judge, the lawyer declared that there was no need for him to be present at the interrogation of the witnesses and that he could not afford to travel to the United States. Consequently, the witnesses were heard by the investigating judge together with the public prosecutor but in the

lawyer's absence. The witnesses unequivocally accused the applicant of having set up the whole drug trafficking operation. As they were unable to attend the subsequent public hearing in the Former Yugoslav Republic of Macedonia, transcriptions of their testimonies were read out in open court. The applicant was eventually found guilty and sentenced to imprisonment. His appeals were rejected.
Admissible under Article 6 (1) and (3)(d).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction of senior GDR officials for participating in the killing of East Germans attempting to escape to West Germany *: no violation*.

STRELETZ, KESSLER and KRENZ - Germany
(N° 34044/96, 44801/98 and 35532/97)
Judgment 22.3.2001 [Grand Chamber]
(see Appendix I).

K.-H.W. - Germany (N° 37201/97)
Judgment 22.3.2001 [Grand Chamber]
(see Appendix I).

ARTICLE 8

PRIVATE LIFE
Refusal of authorities to allow a change of name : *inadmissible*.

HALIMI - France (N° 50614/99)
Decision 20.3.2001 [Section III]

The applicant is a public figure known by the name Gisèle Halimi. In 1951 she married Mr E.P. Halimi. It was her second marriage. She enrolled at the Paris Bar in her married name. According to the judgment pronouncing the divorce in 1959, Mr Halimi did not object to his former wife's continuing to use his surname. In 1961 the applicant married Mr Faux and continued her career as a lawyer, militant, writer and a politician both locally and internationally, using the name "Halimi". In 1962 Mr Halimi objected to his former wife being referred to as "Halimi" in the records of the authorities and the Family-Allowance Department, but not to her continuing to use that name professionally and in her public life. In December 1987 the applicant started proceedings to obtain permission to change her surname from "Taïeb" to "Halimi". On 20 December 1993 the *Conseil d'État* dismissed her application finding, *inter alia*, that such a change could be prejudicial to Mr Halimi's family. The applicant instituted a second set of proceedings for permission to use the surname "Gisèle-Halimi". The Minister of Justice granted her permission by decree but that was quashed in 1999 by the *Conseil d'État*.
Inadmissible under Article 8: as regards the applicability of Article 8, it had to be recognised that a refusal to allow a change of the applicant's legal surname to one under which she had became relatively well-known could have a bearing on her private and professional life. The subject-matter of the complaint therefore came within the scope of Article 8. As to whether there had been an interference, the authorities' refusal to allow the applicant to adopt a particular surname could not necessarily be regarded as an interference. By objecting to the

authorities' using the name "Halimi" when dealing with the applicant Mr Halimi had thereby deprived her of the use of his surname in her private life. Apart from the fact that many personalities use pseudonyms in their public life in order to preserve their privacy, the applicant had not established clearly how her inability to use that name in her private life was damaging to her. Furthermore, the applicant used the name in question freely in her professional and public life. All that had been denied her was legal recognition of her right to use the surname she used in practice and that had no incidence on the professional and public use which she made of it. Consequently, the applicant could not validly complain of inconvenience caused to her career by the refusal and it was unlikely that her right to respect for her private life had been infringed in any material way. However, even if there had been an interference, it had indisputably been in accordance with the law and protected the legitimate aim of protecting the rights of others. As to the necessity for the interference, it had to be observed that although the surname ("Gisèle Halimi") which the applicant sought to use was not identical to the her former husband's surname, it could be a source of confusion between them. In addition, the interference was limited in extent since the only consequence of the refusal to allow her to change her legal name was to prevent her using it in her private life. The applicant had not acquired any right to use her former husband's surname by the fact that she had done so during the marriage and subsequently in her public life and, accordingly, she could not validly complain of infringement of her personal rights: manifestly ill-founded.

FAMILY LIFE

Impossibility for mother living in the Netherlands to have her children of Indonesian nationality join her, despite court decision granting her custody: *communicated*.

CHANDRA, H., W., A. and N. TJONADI - Netherlands (N° 53102/99)
[Section I]

In 1992, the first applicant left Indonesia and settled in the Netherlands. Before leaving Indonesia, she had started divorce proceedings - her husband being the father of her children, the four other applicants. The children stayed with their father in Indonesia. The first applicant continued the divorce proceedings from the Netherlands. In 1993, she obtained custody of her children and, in 1995, was granted guardianship of them. She later obtained Dutch nationality. In March 1997, the children entered the country with a tourist visa and have stayed with the first applicant ever since. Their application for a residence permit was rejected by the State Secretary of Justice who considered that the criteria for family reunification had not been met. The children filed an objection against the refusal; they were told by the State Secretary that they were not allowed to await the outcome of their objection in the Netherlands. In October 1997, their objection was rejected by the State Secretary. The children appealed to Regional Court, requesting a provisional measure allowing them to remain on the territory until their appeal had been decided upon. In March 1999, the Regional Court rejected the appeal and the request for a provisional measure. It took into consideration, *inter alia*, the fact that the first applicant had only started in 1997 to take concrete steps to have her children join her, although she had obtained custody of them in 1993 and guardianship in 1995. It also considered that there were no other grounds, such as international obligations, "essential interests of the Netherlands" or humanitarian grounds, which would have justified the children's residence in the Netherlands.
Communicated under Article 8.

FREEDOM OF EXPRESSION
Leader of a religious group convicted for statements made on television: *admissible*.

GÜNDÜZ - Turkey (N° 35071/97)
Decision 29.3.2001 [section II]

In June 1995 the applicant took part in a television programme broadcast by a private channel in his capacity as the head of a fringe Islamic sect (*Aczmendi*). The programme lasted for several hours and a number of participants expressed views. The applicant spoke on subjects such as religious costumes, secularity, democracy and Islam. In October 1995 the public prosecutor at the Istanbul National Security Court brought criminal proceedings against the applicant alleging that during the programme he had made statements inciting people to hatred and hostility on the basis of a distinction made on religious grounds. In April 1996, after an initial conviction was quashed on appeal, the National Security Court again found the applicant guilty of the offences charged and sentenced him to two years' imprisonment and a fine. The National Security Court held that the applicant's aim in qualifying, in the name of Islam, democracy and secularity as atheist and in saying that children born outside a religious marriage were bastards was to incite people to hatred and hostility on the basis of a distinction made on religious grounds. In September 1996 the Court to Cassation upheld the judgment of the court first instance.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Journalist quoting accusations formulated by fellow journalist: *violation*.

THOMA - Luxembourg (N° 38432/97)
*Judgment 29.03.2001 [Section II]

Facts: The applicant, a journalist, presented a weekly radio programme. He devoted one of the programmes to the problems related to reafforestation after storms in 1990, a subject that was being widely debated in the Luxembourg media. In the course of the programme he quoted an extract from an article in the daily newspaper, *Tageblatt*. He described the article several times as "strongly worded". In the passage that was read out on the air, the author of the article accused officials of the Water and Forestry Commission of taking a percentage on plant purchases made with a view to reafforestation and of carrying out repeated planting for that purpose, when a single planting would have sufficed. The *Tageblatt* journalist also quoted a source, whom he described as "qualified" and "from that background", who asserted that he knew only one forestry warden who was incorruptible. The applicant went on to explain that the journalist's article called into play a provision in the Criminal Code that made it an offence for a civil servant to use his position to derive a benefit before adding that the salary earned by Water and Forestry Commission staff was reasonable and could not justify recourse to such practices. He put questions on the subject to a Water and Forestry Commission engineer, before asking a private owner about his views on the remarks of the *Tageblatt* journalist and what credit to attach to them. Sixty-three civil servants from the Water and Forestry Commission issued proceedings against the applicant for damage to their reputation and he was ordered to pay them one franc each in nominal damages plus costs. The district court held that the applicant had adopted the journalist's conclusions without seeking evidence to support them. It concluded that by giving the impression without proof that all but of the Water And Forestry Commission officials concerned by the reafforestation work were

corrupt, the applicant had overstepped the boundaries of his right to impart *bona fide* information. The applicant appealed against the decisions. The court of appeal upheld the impugned judgments holding, *inter alia*, that a journalist quoting from a published article only escaped liability if he formally distanced himself from the quoted remarks. That the applicant had failed to do. His appeal to the Court of Cassation was dismissed.

Law: Article 10: The interference in issue was prescribed by law since the Civil Code established the principle of liability in tort and under the case-law those provisions were applicable to journalists. The applicant could therefore have foreseen to a reasonable degree, if necessary by seeking advice from those qualified to give it, that the remarks broadcast during his programme did not render him immune from legal action. The grounds relied on by the Luxembourg courts were consistent with the legitimate aim of protecting the reputation and rights of the officials concerned and the presumption of innocence that operated in their favour. In view of the size of the country and the limited number of Water and Forestry Commission officials in Luxembourg, those targeted were easily identifiable to listeners, even though they had not been mentioned by name during the programme. Some of the remarks made by the applicant contained serious allegations and civil servants had to have the confidence of the general public in order to discharge their duties. However, the topic raised in the programme was the subject of widespread debate in the Luxembourg media and concerned a problem of general interest, a sphere in which restrictions on freedom of expression were to be strictly construed so as not to discourage the press from taking part in the discussion of matters of public interest. Having regard to the applicant's comments during the programme, he could be regarded as having adopted – at least in part – the assertions of the *Tageblatt* journalist. In order to assess whether the necessity for the interference had been established convincingly, the Court had essentially to examine the reasoning of the appellate courts. The appellate courts found that the applicant had adopted the conclusions of his fellow journalist, without distancing himself from them, solely on the basis of the passage in issue from which he had quoted. However, a general requirement for journalists formally and systematically to distance themselves from the content of a quotation that might insult or damage the reputation of a third party was not reconcilable with the press's role of providing information on current events, opinions and ideas. In the case before the Court, the applicant had consistently taken the precaution of saying that he was quoting and of citing the name of the author. He had used the term "strongly worded" to describe the article by his fellow journalist. He had also sought the opinion of a woodlands owner as to the truth of the allegations in the article. The applicant's conviction was therefore disproportionate to the aim of protecting the reputation or rights of others.

Conclusion: violation (unanimously).

Article 41: Taking into account the sums which the applicant had had to pay to his opponents pursuant to the judicial decisions, the Court awarded him LUF 741,440 for pecuniary damage and an amount by way of reimbursement of his costs and expenses. It held that the finding of a violation of the Convention constituted sufficient compensation for the non-pecuniary damage he had sustained as a result of the decisions of the Luxembourg courts.

ARTICLE 11

NOT JOIN TRADE UNIONS
Compulsory membership of trade union as prerequisite for obtaining employment: *communicated*.

SØRENSEN - Denmark (N° 52562/99)
[Section II]

The applicant, a student, applied for a summer job. On the job application form, it was specified that if he were to work for the company he would have to join one of the trade unions affiliated to the National Union in Denmark (LO). He was informed by letter that he was being offered a post and that the terms of his employment would be regulated by an agreement between the company and SID, a union affiliated to LO, of which he would have to become a member. When he received his first payslip, he realised that part of his salary had been withheld for the payment of a subscription to SID. He informed his employer that he did not want to pay the subscription and did not wish to become a member of the union. As a consequence, he was dismissed on the ground that he did not satisfy the job requirement of joining a trade union affiliated to LO. He could not obtain redress from either the High Court or the Supreme Court.
Communicated under Article 11.

ARTICLE 14

DISCRIMINATION (Article 8)
Difference in age of consent for homosexual and heterosexual acts: *struck out (matter resolved)*.

SUTHERLAND - United Kingdom (Nº 25186/94)
Judgment 27.3.2001 [Grand Chamber]
(See Appendix II).

DISCRIMINATION (Article 1 Protocol N° 1)
Compensation granted by the Government, precluding any right to compensation later fixed by the courts: *inadmissible*.

ORTIZ ORTIZ and others - Spain (n° 50146/99)
Decision 15.3.2001 [Section I]

In October 1982 the Valencia region was hit by torrential rain that caused a dam to burst and collapse. The ensuing deluge caused serious flooding that damaged many properties including the applicants'. A criminal investigation was started a few days after the catastrophe. In view of the length of the court proceedings, which had still not ended ten years' later, and the economic plight of many of the victims, the Government proposed a settlement for their benefit through two legislative decrees issued in 1993 in 1995. All the applicants accepted that settlement, whereas other victims decided to await the outcome of the judicial proceedings. In April 1997 the Supreme Court sentenced one of the dam engineers to a term of imprisonment and fines and ordered the State to pay compensation to the victims if he proved insolvent. Three of the applicants, who had been civil parties in the criminal

proceedings, applied to the *Audiencia provincial* for execution of the Supreme Court's judgment. The *Audiencia provincial* dismissed their applications holding that the victims who had accepted the settlement under the aforementioned legislative decrees had in accordance with the provisions of those decrees waived the right to claim any other compensation from the authorities. In a separate development, a group of victims chose to issue proceedings in the administrative courts to obtain compensation. Some of those who opted for that course of action discontinued their proceedings after accepting the Government settlement. However, in a judgment delivered in October 1997, the Supreme Court, ruling on the arrangements for compensating the victims, held that victims who had discontinued their administrative appeals after accepting the Government's settlement nevertheless retained the right to the full compensation assessed, after deduction of the amounts which they had received under the settlement with the Government. The compensation paid under the settlement with the Government was 50% to 80% less than that awarded by the courts to the victims who decided not to accept the settlement proposed by the Government or who decided to proceed with their administrative appeals. The applicants lodged an *amparo* appeal with the Constitutional Court arguing that they had been treated less favourably than the victims who had chosen to lodge an administrative appeal. That appeal was dismissed.
Inadmissible under Article 14 of the Convention and Article 1 of Protocol No. 1: the applicants had accepted the settlement proposed by the Government under the legislative decrees of 1993 1995 of their own free will. The legislative decrees expressly laid down that persons claiming under them were required to waive any claim for compensation against the State through the courts. The applicants must have been aware of that waiver. In addition, the applicants had not challenged the validity of the settlement agreements that had been concluded in the domestic courts. The fact that the Supreme Court had subsequently held that the State had to pay higher compensation to the victims could not be construed as creating a new debt payable by the State to the applicants. In any event, if the applicants had had recourse to the administrative courts like some of the other victims, they would have received compensation in full, since in the case before the Court the Constitutional Court had taken that factor into account in dismissing the *amparo* appeal. The applicants simply did not have a new claim that was enforceable against the State: incompatible *ratione materiae*.

DISCRIMINATION (Articles 3 and 4 of Protocol No. 4)
Expulsion measures allegedly based on national origin and belonging to a minority : *inadmissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER

Responsibility of Russia and Moldova for events in a region of Moldova which has seceded (Transnistria) and where Russian troops were stationed and accused of supporting the separatists: *relinquishment*.

ILASCU and others - MOLODOVA and RUSSIA (N° 48787/99)
[Section I]

The applicants, who are Moldovan nationals, are detained in Transdniestria, a region that has seceded from Moldavia. In 1992, after violent clashes between Moldovan forces and Transdniestrian separatists, the Moldovan authorities accused the Russian army of supporting the separatists. The Moldovan Parliament denounced Russia's interference in its domestic affairs; it complained of the Russian army's presence in Transdniestria and of its support for the separatists. To date the dispute between Moldavia and Russia over the withdrawal of Russian troops from Moldavia has not been resolved. In 1992 the applicants were arrested by the authorities of the self-proclaimed Republic of Transdniestria and accused of having fought against "the lawful State of Transdniestria". They were brought before the Supreme Court of the self-styled Republic of Transdniestria, which convicted them following a trial during which, in particular, they were allowed to consult their legal representatives only in the presence of armed police. The first applicant was sentenced to death; the other applicants were given long prison sentences and an order was made for the confiscation of their assets. The Supreme Court of Moldavia dealt with the matter of its own motion and quashed that judgment; it held that the Supreme Court of the self-proclaimed Republic of Moldavia was not constitutional and ordered the applicants' release. In 1995 the Moldovan Parliament enjoined the Moldovan Government to act expeditiously to secure the applicants' release. The applicants also complain of the conditions of their detention, and refer to numerous and repeated instances of ill-treatment, ranging from deprivation of food and light to mock executions. Last, they complain of the inertia of the Moldovan authorities in enforcing the judgment of the Supreme Court of Moldavia ordering their release. Moldavia, which ratified the Convention on 12 September 1997, recorded in its instrument of ratification a reserve to the effect that it was unable to ensure compliance with the provisions of the Convention as regards the acts and omissions of the organs of the self-styled Republic of Transdniestria in the territory actually controlled by those organs until the dispute had been definitively resolved. Russia ratified the Convention on 5 May 1998.

ARTICLE 34

VICTIM
Status of victim of an association : *incompatible ratione personae.*

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Alleged intimidation and harassment : *no violation*.

BERKTAY - Turkey (N° 22493/93)
*Judgment 1.03.2001 [Section IV]
(see Article 2, above).

HINDER THE EXERCISE OF THE RIGNHT OF PETITION
Refusal of Government to follow an indication given under Rule 39 of the Rules of the Court : *inadmissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES (Croatia)
Effectiveness of domestic remedy in respect of length of court proceedings not established by the Government.

CERIN - Croatia (N° 54727/00)
Decision 8.3.2001 [Section IV]

In 1984, the applicant instituted civil proceedings in the Municipal Court for the payment of damages in respect of a flat belonging to him. The proceedings are still pending after more than 17 years and one month. According to section 59(4) of the Constitutional Court Act, "the Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that, if it does not act a party will risk serious and irreparable consequences". However, the applicant has not made use of this constitutional remedy to complain about the length of the proceedings pending before the Municipal Court.
Admissible under Article 6(1): Proceedings under section 59(4) of the Constitutional Court Act could be instituted before the Constitutional Court subject to the preliminary examination and acceptance of the application by the court. The formal institution of such proceedings was

therefore at the discretion of the Constitutional Court. Considering that laws are usually couched in general terms, in order to avoid excessive rigidity and adapt to circumstances, the interpretation and application of their provisions will depend on ensuing practice. By its wording, section 59(4) was open to wide interpretation and the case which the Government cited could not alone suffice to establish the existence of a settled national case-law proving the effectiveness of the remedy. Furthermore, section 59(4) entered into force in September 1999 and therefore could not provide a remedy regarding the length of the proceedings up until that date. Therefore, a complaint under section 59(4) cannot be regarded in this case as an effective domestic remedy.

EXHAUSTION OF DOMESTIC REMEDIES (France)
Effectiveness of cassation appeal in challenging, on the basis of Article 8, the refusal to lift a prohibition on entering France : *inadmissible*.

HAMAÏDI - France (N° 39291/98)
Decision 6.3.2001 [Section III]

The applicant entered France in 1964 at the age of four months. He had lived there almost his entire life and his family is resident there. The applicant was sentenced to several terms of imprisonment and an order was made excluding him from French territory for three years. He was deported in July 1995. In December 1995 the Dijon Court of Appeal dismissed an application for rescission of the exclusion order. In November 1997 the applicant lodged a further application for rescission of that order. That application was also dismissed by the court of appeal. The applicant did not appeal to the Court of Cassation against that decision. The exclusion order expired on 18 July 1998. At the end of 1998 the applicant applied for a visa for a short visit to France. His application was refused. The applicant complained that the exclusion order infringed his right to respect for his private and family life.
Inadmissible under Article 8: the applicant was deported to Tunisia in 1995 and the exclusion order did not expire until 18 July 1998, that is to say eight months after he had lodged his application and four months after the court of appeal had dismissed his application for rescission. It was true that the Court of Cassation often rejected grounds of appeal based on the right to private and family life in reasoning that confirmed the Court's finding in the case of Dalia (*Reports of Judgments and Decisions* 1998-VI) that an appeal to the Court of Cassation was an inadequate and ineffective remedy. However, a review of other judgments of the Court of Cassation on that subject showed that it did at least carry out, to the extent that it had jurisdiction to do so, "the task of checking that the facts found by the tribunals of fact support[ed] the conclusions reached by them on the basis of those findings" (see the Civet judgment, ECHR 1999-VI). Indeed the Court of Cassation had quashed a judgment dismissing an application for rescission of an exclusion order for want of a statutory basis, on the ground that the court of appeal had reached its decision "without examining the grounds relating to the applicant's personal and family life". Consequently, the Court of Cassation was able to determine whether the making or continuation of an exclusion order was consistent with the requirements of Article 8: non exhaustion.

EXHAUSTION OF DOMESTIC REMEDIES (Portugal)
Effectiveness of an application to speed up proceedings in the absence of the accused : *communicated*.

LÓGICA - MÓVEIS DE ORGANIZAÇÃO, LDA - Portugal (N° 54483/00)
[Section IV]
(see Article 6(1), above).

SIX MONTH PERIOD
Length of proceedings – proceedings ending more than six months before introduction of the application: *preliminary objection allowed.*

MALAMA - Greece (N° 43622/98)
*Judgment 1.03.2001 [Section II]
(see Article 1 of Protocol No. 1, below).

SIX MONTH PERIOD
Continuing situation and moment when a decisive element was known.

MALAMA - Greece (N° 43622/98)
*Judgment 1.03.2001 [Section II]
(see Article 1 of Protocol No. 1, below).

SIX MONTH PERIOD
Commencement of six month period – finalisation of judgment: *preliminary objection allowed*.

HARALAMBIDIS and others - Greece (Nº 36706/97)
*Judgment 29.3.2001 [Section II]

The case concerns the length of proceedings before the administrative courts and the alleged failure of the authorities to provide one of the parties with certain evidence.
Law: Government's preliminary objection (six month period) – Where an applicant is entitled to service of a written copy of the final domestic decision, the six month period runs from the date of service (Worm v. Austria judgment, *Reports* 1997-V). However, where, as in the present case, the domestic law does not provide for such service, it is appropriate to take the date on which the decision was finalised and signed as the starting-point, that being when the parties were definitely able to find out its content (Papachelas v. Greece judgment, ECHR 1999-II). The Government produced a certificate issued by the Registry of the Council of State stating that the relevant judgments, delivered on 10 July 1995, were finalised on 25 June 1996, certified on 27 June 1996 and signed on 1 July 1996. The applicants, who had previously maintained that the judgments were finalised on 9 December 1996, did not reply. They could have obtained copies from 1 July 1996 and, since the application was introduced on 5 June 1997, they have failed to comply with the six month time-limit: preliminary objection allowed.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 25):

EDOARDO PALUMBO - Italy (N° 15919/89)
Judgment 30.11.2000 [Section II]

M.B. - Switzerland (N° 28256/95)
Judgments 30.11.2000 [Section II]

MOSTICCHIO - Italy (Nº 41808/98)
Judgment 5.12.2000 [Section I]

MOTIERE - France (N° 39615/98)
Judgment 5.12.2000 [Section III]

GENESTE - France (N° 48994/99)
BALLESTRA - France (N° 28660/95)
Judgments 12.12.2000 [Section III]

MALINOWSKA - Poland (N° 35843/97)
Judgment 14.12.2000 [Section IV]

WETTSTEIN - Switzerland (Nº 33958/96)
RINZIVILLO - Italy (Nº 33958/96)
Judgments 21.12.2000 [Section II]

F.S. - Italy (Nº 44471/98)
MURRU - Italy (no. 2) (Nº 45091/98)
MURRU - Italy (no. 3) (Nº 45095/98)
FRANCHINA - Italy (Nº 46529/99)
BÜYÜKDAĞ - Turkey (N° 28340/95)
HEANEY and McGUINNESS - Ireland (Nº 34720/97)
QUINN - Ireland (Nº 36887/97)
Judgments 21.12.2000 [Section IV]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Destruction of property during clashes between security forces and PKK: *struck out*.

201 applications - Turkey
Decision 22.3.2001 [Section II]

These applications concerned killings and the destruction of property in the Lice area in the course of clashes between the security forces and PKK sympathisers.
The parties have reached settlements and the applicants have withdrawn their application.

PEACEFUL ENJOYMENT OF POSSESSIONS
Obligation of landowner to allow hunting on his property and lack of compensation for damage caused by game: *communicated*.

PASŁAWSKI - Poland (N° 38678/97)
Decision 23.3.2001 [Section IV]

The applicant bought a piece of land where he decided to start a spruce plantation. Most of the trees were damaged by wild animals over the first winter and had to be replaced. On several occasions, the applicant found hunters trespassing on his property. It emerged that his land had been leased by the authorities to the local hunting club and, as a result of the lease, that hunters were free to hunt and bring game on to his land without needing his prior consent. Moreover, the applicant did not have the right to hunt on his property. He complained to various authorities, including the Ombudsman, who indicated to him that, under the legislation in force, the authorities were not liable for damage caused by game to crops other than agricultural.
Communicated under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility for Croatian nationals to withdraw money from savings account in foreign currencies at a Croatian branch of a Slovenian bank: *communicated*.

KOVAČIĆ - Slovenia (N° 44574/98)
MRKONJIĆ - Slovenia (N° 45133/98)
GOLUBOVIĆ - Slovenia (N° 48316/99)
[Section IV]

Before the dissolution of the Yugoslav Federal Socialist Republic in 1991 the applicants, Croatian nationals, opened foreign currency accounts in the Zagreb subsidiary of a Ljubljana based bank. In 1989, as a result of the monetary crisis in the YFSR, the Slovenian bank froze foreign currency accounts. Under the legislation in force at that time, foreign currency deposits with the commercial banks could be redeposited with the Yugoslav National Bank and the Yugoslavia Federation guaranteed any sums deposited. In addition, the banks granted Yugoslav currency loans to their customers on the basis of the foreign currency deposits. After Croatia became independent in 1991 it was open to the applicants to transfer their foreign currency savings accounts to Croatian banks and to withdraw their money, but they kept their accounts with the Slovenian bank subsidiary. The sums were to remain frozen until the issue of the succession of the States of the former Yugoslav Federal Socialist Republic

had been resolved. The deceased wife of the first applicant held a savings account. In 1984 she opened a fixed-term savings account. The contract provided *inter alia* that the Federation guaranteed her savings. On the expiry of the term, the bank offered to pay the amount saved to the first applicant, his wife's heir, in monthly instalments. It did not, however, make the payments. The first applicant issued proceedings in the Zagreb Court of First Instance, which ordered the bank to pay the entire sum saved within fifteen days. The judgment became enforceable as a result of a decision of the Zagreb Court of Second Instance, but the bank informed the first applicant that it did not have the necessary funds available and that the account was consequently frozen. In June 1999 the applicant obtained an order from Ljubljana District Court recognising the Croatian judgment. The second applicant holds a foreign currency savings account with the same Slovenian bank. In 1987 he entered into a three-year fixed-term agreement that was automatically renewable. The second applicant obtained an order from Zagreb Court of First Instance requiring the bank to pay over the amount saved, but he received only a small part of that sum. He was informed that his money had been deposited with the National Bank of Yugoslavia and that following the independence of Slovenia and Croatia access to the Belgrade Depository Bank had been suspended. He was subsequently informed that Croatia and Slovenia had agreed that the problem of the savings accounts of Croatian nationals at the Slovenian bank would be resolved by international arbitration. The situation remains unresolved. The third applicant is the heir to two foreign currency savings accounts with the Slovenian bank. In November 1998 the bank informed him that his accounts were frozen. The first applicant also complains that he has been discriminated against since, according to him, Slovenian investors of the Zagreb subsidiary could withdraw their savings.
Communicated under Article 1 of Protocol No. 1, Article 14 (taken together with Article 1 of Protocol No. 1) and Article 35.

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-enforcement of judgment ordering military unit to pay an allowance to a former officer : *communicated*.

KRAPYVNYTSKIY - Ukraine (N° 60858/00)
[Section IV]
(see Article 6(1), above).

DEPRIVATION OF PROPERTY
Failure to take into account the excessive length of proceedings in assessing compensation for expropriation : *violation*.

MALAMA - Greece (N° 43622/98)
*Judgment 1.03.2001 [Section II]

Facts: The applicant's mother, I.A., was the adopted daughter of L.V., the owner of land that had been expropriated by ministerial decree in December 1923 for use by a legal entity formed to meet the needs of refugees from Asia Minor following the mandatory exchange of populations under the Lausanne Treaty of 1923. The expropriated land was occupied the day after the decree was issued without any compensation being paid to L.V. as a Government ordinance of 14 February 1923 authorised entry into possession before payment. That ordinance was subsequently ratified by a constitutional resolution of 15 September 1924 and incorporated in the Constitution of 1927. In 1928 L.V. applied to the relevant courts for payment of the compensation that was now due by the State. The proceedings lasted more than twenty years without any final judgment being obtained. L.V. died in 1934. In 1963 I.A. and her sister brought an action in the Athens Court of First Instance for an assessment of the amount of compensation based on the 1963 value of the land. In 1993 the Athens Court of

Appeal assessed the amount of compensation due at ten paper drachmas (the old currency units) per square metre. That judgment became final in 1996 when the Court of Cassation dismissed an appeal on points of law by the State. In January 1997 the applicant brought an action in the Athens Court of First Instance for a declaration that she was the person entitled to the compensation and for payment. On 12 September 1997 the court of first instance declared in a final judgment that the applicant was the person entitled to the compensation. In October 1997 the applicant served that judgment on the Greek State and demanded immediate payment of the compensation. She repeated that demand in January and March 1998. In December 1998 the ministry ordered payment to be made. It was only at that date that the conversion into the new currency took place. The applicant stated that she accepted payment but reserved the right subsequently to lodge a complaint with the Commission on the ground that she had not been paid compensation in full. The money was paid in April 1999 into the applicant's account.

Law: Preliminary objections (six-months' time-limit) – as regards the complaint about the length of the proceedings, the proceedings for the assessment of the compensation for expropriation and for a declaration that the applicant was the person entitled to that compensation ended more than six months before the application was lodged on 15 September 1998. Even though the aforementioned judgments were executed after the application had been lodged, that period was not to be taken into account for the purposes of the complaint relating to the length of the proceedings. That objection therefore had to be upheld. The other objections raised by the Government had to be dismissed. In particular, as regards the complaints concerning the authorities' refusal to pay the compensation due and the applicant's right to the quiet enjoyment of her possessions, the applicant had repeatedly requested payment of the compensation after the judgment of 12 September 1997, but in vain. She had then lodged an application with the Commission. Those circumstances showed that a continuing situation existed affecting both complaints such that the objection could not succeed against the applicant. Lastly, although the compensation had been assessed in 1993, the applicant had no means of ascertaining the exact amount of her entitlement until December 1998 when the amount in old drachmas was converted into new drachmas. It was only at that point that she had learned the amount of the award for the first time. The six-months' rule was not, therefore, applicable.

Article 1 of Protocol No. 1 –The undisputed interference in the applicant's right to the quiet enjoyment of her possessions amounted to a "deprivation of property". The expropriation was based on a Government ordinance of 14 February 1923 that was subsequently ratified by a constitutional resolution that was incorporated in the Constitution of 1927. It was, therefore, "provided for by law". As to whether the expropriation was "in the public interest", it was common ground that the expropriation was intended to provide accommodation for refugees following the mandatory exchange populations under the Lausanne Treaty of 1923. At that time, providing care for the refugees was a crucial issue both financially and socially. The measure in issue therefore pursued a legitimate aim. With regard to the proportionality of the interference, it was not for the Court to decide which basis the domestic courts should have used to determine the amount of compensation. However, it had to be observed that when calculating the compensation due, the court of appeal entirely failed to take into account the unreasonable length of the proceedings. The applicant was not awarded anything for the pecuniary or non-pecuniary damage which she and her family had sustained as a result of the deprivation of the property without compensation for seventy years. Nor were they awarded any interest for delay. Furthermore, payment was not made until five years after the amount had been assessment and the applicant did not receive any interest for delay. The fact that the authorities did not take into account a period in excess of seventy-five years after the expropriation for the compensation due to the applicant to be assessed and paid meant that the fair balance that had to be struck between the protection of property and the requirements of the public interest had not been maintained.

Conclusion: violation (unanimously).

Article 6(1) – In the light of the above finding of a violation, unnecessary to examine the allegation of a breach of Article 6(1).

Conclusion: unnecessary to examine complaint (unanimously).
Article 41 – the question was not ready for decision and therefore had to be reserved.

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
Alleged violation of electoral law: *communicated*.

ZHERMAL - Russia (N° 60983/00)
Decision 15.3.2001 [Section II]

A regional law governing the procedures for electing the Governor of Sakhaline provides that the candidate who shall be deemed elected is "the candidate who has obtained the majority of the votes of the electorate who took part in the elections". If none of the candidates satisfies that condition, the law provides that the regional electoral commission shall organise a second round for the two candidates who received the highest number of votes. In such circumstances, the candidate who is deemed to have been elected is the candidate who has obtained "a majority of the votes compared to the other candidate". Although a member of the executive, the governor sits *ex officio* on the federation council which constitutes the upper house of the Russian parliament and therefore also exercises legislative functions. One week before the date set for the election of the governor, the Sakhaline *Duma* decided that there would only be a single round to the election. The incumbent governor came first with 60,149 votes (39.5% of the votes cast) whereas his closest rival obtained 41,452 votes. Having achieved a **relative** majority of the votes cast, he was declared elected by the electoral commission. The applicant lodged a complaint of a violation of the electoral law with the regional court. He submitted that under that law a candidate required an **absolute** majority of the votes cast, namely more than 50%, to be elected. Since none of the candidates had obtained the requisite majority, the applicant requested an order quashing the decision of the electoral commission and for the organisation of a second round. The applicant's complaint was dismissed by the regional court, but the Supreme Court overturned that decision and remitted the case to the court below. In its decision, the Supreme Court noted that on a construction of the provision in question in its entirety a candidate could not be elected on the first round unless he obtained an absolute majority of the votes. The elected governor sought an order from the President of the Supreme Court setting aside that decision and certifying the validity of the electoral commission's decision. Meanwhile, the Sakhaline *Duma* adopted a decree construing the provisions of the electoral law to mean that a candidate with a **relative** majority of the votes cast was deemed elected. The presiding body of the Supreme Court set aside the Supreme Court's decision and certified the validity of the election. The applicant's claim for reimbursement of his costs and expenses was dismissed and he was ordered to pay a fine for insulting the Governor.
Communicated under Article 3 of Protocol No. 1.

ARTICLE 4 OF PROTOCOL No. 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Alleged failure to examine the specific situation of each individual prior to expulsion: *admissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

ARTICLE 1 OF PROTOCOL No. 6

DEATH PENALTY
Threatened extradition to China, with alleged risk of summary trial: *struck out*.

YANG CHUN JIN, *alias YANG XIAOLIN* - Hungary (Nº 58073/00)
Judgment 8.3.2001 [Section II]
(See Article 3, above).

ABOLITION OF DEATH PENALTY
Extradition of an accused risking the death penalty: *inadmissible*

ISMAILI - Germany (N° 58128/00)
Decision 15.3.2001 [Section IV]
(see Article 3, above).

PROCEDURAL MATTERS

ARTICLE 39 OF THE RULES OF COURT

INTERIM MEASURES
Examination of guarantees obtained by State wishing to extradite: *interim measure lifted*.

PEÑAFIEL SALGADO - Spain (N° 65964/01)
[Section IV]

The applicant was formerly a banker in Ecuador. He is married to a Spanish national. In September 1998 he emigrated to Spain when the banks came under scrutiny for their role in the outbreak of the recession affecting Ecuador. At the time of his departure, a warrant had been issued for his detention on remand. As the recession worsened, the Ecuadorian authorities blamed the banking community for the country's problems and decided to request the extradition of those bankers who had fled. The applicant, alarmed by some political leaders' populist calls for revenge against him, decided to seek political asylum in Spain. After the Spanish authorities had been contacted to that end, the applicant was arrested in Lebanon while on a business trip. Ecuador requested his extradition from Lebanon. Although he had filed an application for asylum with the Spanish Embassy in Beirut and the UNHCR had granted him refugee status for a twelve-month period, the Lebanese authorities proceeded to extradite him. During a stopover in Paris, he took the opportunity to reapply for political

asylum in Spain and was transferred to that country to have his application examined. In October 2000 his refugee status was declared invalid by the UNHCR and the Spanish authorities rejected his application for asylum. The Ecuadorian authorities then requested the Spanish Government to continue the extradition proceedings following the interruption caused by the asylum application. On 5 February 2001 the *Audiencia nacional* approved that request. However, the applicant successfully applied to the Spanish authorities for an interim order to stay the proceedings until 12 February 2001. On that date he requested the Court to apply Rule 39. On 15 February the Spanish Government sent the Court a document setting out the guarantees they had obtained from the Ecuadorian authorities, arguing that they eliminated any risk of inhuman treatment or an unfair trial. On the same date the Court decided to continue to apply Rule 39, to invite the applicant to submit observations on the guarantees provided by the Spanish Government and to re-examine the question whether the measure should be lifted at a later date.
In the light of the assurances furnished by the Spanish and Ecuadorian governments, the Court decided to lift the interim measure.

INTERIM MEASURES
Refusal of Government to follow an indication given under Rule 39 (of the Rules of the Court) : *inadmissible*.

CONKA and others - Belgium (N° 51564/99)
Decision 13.3.2001 [Section III]
(see Article 3, above).

APPENDIX I

Streletz and others v. Germany and K.-H.W. v. Germany judgments - extract from press release

In two judgments delivered at Strasbourg on 22 March 2001 in the cases of Streletz, Kessler and Krenz v. Germany and K.-H. W. v. Germany, the European Court of Human Rights held, unanimously and by fourteen votes to three respectively, that there had been no violation of Article 7 § 1 of the European Convention on Human Rights (no punishment without law). The Court also held, unanimously in both cases, that there had been no discrimination contrary to Article 14 of the Convention (prohibition of discrimination) taken together with Article 7 of the Convention.

Principal facts

Three of the applicants, all German nationals, were senior officials of the German Democratic Republic (GDR): Fritz Streletz, who was born in 1926, was a Deputy Minister of Defence; Heinz Kessler, who was born in 1920, was a Minister of Defence; Egon Krenz, who was born in 1937, was President of the Council of State.
The fourth applicant, Mr K.-H. W., likewise a German national, was born in 1952. He was a member of the GDR's National People's Army (NVA) and was stationed as a border guard on the border between the two German States.
All four applicants were convicted by the courts of the Federal Republic of Germany (FRG), after German unification on 3 October 1990, under the relevant provisions of the GDR's Criminal Code, and subsequently those of the FRG's Criminal Code, which were more lenient than those of the GDR.
Mr Streletz, Mr Kessler and Mr Krenz were sentenced to terms of imprisonment of five-and-a-half years, seven-and-a-half years and six-and-a-half years respectively for intentional homicide as indirect principals (*Totschlag in mittelbarer Täterschaft*), on the ground that through their participation in decisions of the GDR's highest authorities, such as the National Defence Council or the Politbüro, concerning the regime for the policing of the GDR's border (*Grenzregime*), they were responsible for the deaths of a number of people who had tried to flee the GDR across the intra-German border between 1971 and 1989.
Mr W. was sentenced to one year and ten months' imprisonment, suspended, for intentional homicide (*Totschlag*), on the ground that by using his firearm he had caused the death of a person who had attempted to escape from the GDR across the border in 1972.
The applicants' convictions were upheld by the Federal Court of Justice and declared by the Federal Constitutional Court to be compatible with the Constitution.

Summary of the judgments

Complaints

The applicants submitted that their actions, at the time when they were committed, did not constitute offences under the law of the GDR or international law and that their conviction by the German courts had therefore breached Article 7 § 1 of the European Convention on Human Rights (no punishment without law). They also relied on Articles 1 (obligation to respect human rights) and 2 § 2 (exceptions to the right to life) of the Convention.

Decisions of the Court

The reasoning of the two judgments is largely identical, except where expressly indicated below.

Article 7 § 1

The Court observed that its task was to consider, from the standpoint of Article 7 § 1 of the Convention, whether, at the time when they were committed, the applicants' acts constituted offences defined with sufficient accessibility and foreseeability by the law of the GDR or international law.

a. National law

i. Legal basis for the convictions

The Court noted that the legal basis for the applicants' convictions was the criminal law of the GDR applicable at the material time, and that their sentences corresponded in principle to those prescribed in the relevant provisions of the GDR's legislation; in the event, the sentences imposed on the applicants had been lower, thanks to the principle of applying the more lenient law, which was that of the FRG.

ii. Grounds of justification under GDR law

The applicants relied in particular on section 17(2) of the GDR's People's Police Act and section 27(2) of the State Borders Act.
In the light of the principles enshrined in the GDR's Constitution and other legal provisions (which expressly included the principles of proportionality and the need to preserve human life when firearms were used), the Court considered that that the applicants' conviction by the German courts, which had interpreted those provisions and applied them to the cases in issue, did not appear at first sight to have been either arbitrary or contrary to Article 7 § 1 of the Convention.

iii. Grounds of justification derived from GDR State practice

The Court pointed out that although the aim of the GDR's State practice had been to protect the border between the two German States "at all costs" in order to preserve the GDR's existence, which was threatened by the massive exodus of its own population, the reason of State thus invoked had to be limited by the principles enunciated in the Constitution and legislation of the GDR itself; above all, it had to respect the need to preserve human life, enshrined in the GDR's Constitution, People's Police Act and State Borders Act, regard being had to the fact that even at the material time the right to life was already, internationally, the supreme value in the hierarchy of human rights.

iv. Foreseeability of the convictions

Streletz, Kessler and Krenz v. Germany – The Court considered that the broad divide between the GDR's legislation and its practice was to a great extent the work of the applicants themselves. Because of the very senior positions they occupied in the State apparatus, they evidently could not have been ignorant of the GDR's Constitution and legislation, or of its international obligations and the criticisms of its border-policing regime that had been made internationally. Moreover, they themselves had implemented or maintained that regime, by superimposing on the statutory provisions, published in the GDR's Official Gazette, secret orders and service instructions on the consolidation and improvement of the border-protection installations and the use of firearms. The applicants had therefore been directly responsible

for the situation which had obtained at the border between the two German States from the beginning of the 1960s until the fall of the Berlin Wall in 1989.
K.-H. W. v. Germany – The Court took the view that even a private soldier could not show total, blind obedience to orders which flagrantly infringed not only the GDR's own legal principles but also internationally recognised human rights, in particular the right to life, the supreme value in the hierarchy of human rights.
Even though the applicant was in a particularly difficult situation on the spot, in view of the political context in the GDR at the material time, such orders could not justify firing on unarmed persons who were merely trying to leave the country.
In addition, the Court noted that the German courts had examined in detail the extenuating circumstances in the applicant's favour and had duly taken account of the differences in responsibility between the former leaders of the GDR and the applicant by sentencing the former to terms of imprisonment and the latter to a suspended sentence subject to probation.
Reasoning common to both judgments – The Court considered that it was legitimate for a State governed by the rule of law to bring criminal proceedings against persons who had committed crimes under a former regime; similarly, the courts of such a State, having taken the place of those which existed previously, could not be criticised for applying and interpreting the legal provisions in force at the material time in the light of the principles governing a State subject to the rule of law.
Moreover, regard being had to the pre-eminence of the right to life in all international instruments on the protection of human rights, including the Convention itself, in which the right to life was guaranteed by Article 2, the Court considered that the German courts' strict interpretation of the GDR's legislation in the present case was compatible with Article 7 § 1 of the Convention.
Lastly, the Court considered that a State practice such as the GDR's border-policing policy, which flagrantly infringed human rights and above all the right to life, the supreme value in the international hierarchy of human rights, could not be covered by the protection of Article 7 § 1 of the Convention. That practice, which emptied of its substance the legislation on which it was supposed to be based, and which was imposed on all organs of the GDR, including its judicial bodies, could not be described as "law" within the meaning of Article 7 of the Convention.
Having regard to all of the above considerations, the Court held that at the time when they were committed the applicants' acts constituted offences defined with sufficient accessibility and foreseeability in GDR law.

b. International law

i. Applicable rules

The Court considered that it was its duty to examine the cases from the standpoint of the principles of international law also, particularly those relating to the international protection of human rights, to which the German courts had referred.

ii. International protection of the right to life

In that connection, the Court noted in the first place that in the course of the development of that protection the relevant conventions and other instruments had constantly affirmed the pre-eminence of the right to life.
It held that, regard being had to the arguments set out above, the applicants' acts were not justified in any way under the exceptions to the right to life contemplated in Article 2 § 2 of the Convention.

iii. International protection of the freedom of movement

Like Article 2 § 2 of Protocol No. 4 to the Convention, Article 12 § 2 of the International Covenant on Civil and Political Rights provided: "Everyone shall be free to leave any country, including his own."

iv. The GDR's State responsibility and the applicants' individual responsibility

If the GDR still existed, it would be responsible from the viewpoint of international law for the acts concerned. It remained to be established that alongside that State responsibility the applicants individually bore criminal responsibility at the material time. Even supposing that such responsibility could not be inferred from the above-mentioned international instruments on the protection of human rights, it could be deduced from those instruments when they were read together with Article 95 of the GDR's Criminal Code, which explicitly provided, and from as long ago as 1968 moreover, that individual criminal responsibility was to be borne by those who violated the GDR's international obligations or human rights and fundamental freedoms.
In the light of all of the above considerations, the Court considered that at the time when they were committed the applicants' acts also constituted offences defined with sufficient accessibility and foreseeability by the rules of international law on the protection of human rights.
In addition, the applicants' conduct could be considered, likewise under Article 7 § 1 of the Convention, from the standpoint of other rules of international law, notably those concerning crimes against humanity. However, the conclusion reached by the Court made consideration of that point unnecessary.

c. Conclusion

Accordingly, the applicants' conviction by the German courts after reunification had not breached Article 7 § 1.
In the light of that finding, the Court was not required to consider whether their convictions were justified under Article 7 § 2 of the Convention.

Article 1

The applicants submitted that as former citizens of the GDR they could not rely on the constitutional principle of the non-retroactiveness of criminal statutes.
The Court held that the applicants' complaint could not be raised under Article 1 of the Convention, which was a framework provision that could not be breached on its own. It could, however, be examined under Article 14 of the Convention taken together with Article 7, as the applicants had complained in substance of discrimination they had allegedly suffered as former citizens of the GDR.
However, the Court considered that the principles applied by the Federal Constitutional Court had general scope and were therefore equally valid in respect of persons who were not former nationals of the GDR.
Accordingly, there had been no discrimination contrary to Article 14 of the Convention taken together with Article 7.
In the Streletz, Kessler and Krenz case Judges Loucaides, Zupančič and Levits expressed concurring opinions, which are annexed to the judgment. In the K.-H. W. case Judges Loucaides and Sir Nicolas Bratza expressed concurring opinions and Judges Cabral Barreto and Pellonpää partly dissenting opinions, which are annexed to the judgment.

APPENDIX II

Sutherland v. the United Kingdom judgment - extract from press release

Euan Sutherland, a British national, born in 1977 and resident in London, complained that fixing the minimum age for lawful sexual activities between men in the United Kingdom at 18, rather than 16 (the age limit between women), violated his right to respect for his private life guaranteed under Article 8 (right to respect for family life) of the European Convention on Human Rights. He also relied on Article 14 (freedom from discrimination).

Mr Sutherland had become aware, at about the age of 12, that he was sexually attracted to boys. When he was 14 he had tried going out with a girl, but the experience had confirmed for him that he could only find a fulfilling relationship with another man. He had had his first homosexual encounter when he was 16, with another person of his age who also was homosexual. They had sexual relations but were both worried about the fact that under the law, as applicable at the time, it was a criminal offence.

In 1990, 455 prosecutions had given rise to 342 convictions and, in 1991, 213 prosecutions gave rise to 169 convictions. The applicant was never prosecuted.

Following the European Commission of Human Right's report of 1 July 1997, concluding that the applicant was the victim of a violation of Article 8 of the Convention, taken in conjunction with Article 14, the United Kingdom Government proposed in June 1998 a Crime and Disorder Bill to Parliament for a reduction of the age of consent for homosexual acts between men from 18 to 16. The Sexual Offences (Amendment) Act 2000, equalising the age of consent for homosexual acts between consenting males to 16, came into force on 8 January 2001.

After the entry into force of this act, the European Court of Human Rights received a request from both parties to strike out the case, together with confirmation that the Government had reimbursed the applicant's legal costs. In the light of this information, and noting that the new provisions removed the risk or threat of prosecution which had prompted the application, the Court has struck out the case. (The judgment is available in English and in French.)

Other judgments delivered in March 2001

Article 5(3)

BOUCHET - France (Nº 33591/96)
*Judgment 20.3.2001 [Section III]

The case concerns the length of detention on remand, and in particular the re-detention of the applicant after being released under judicial supervision – no violation.

Article 5(3) and (4)

I.O. - Switzerland (Nº 21529/93)
Judgment 8.3.2001 [Section II]

The case concerns the alleged lack of independence of the investigating judge who ordered the applicant's detention on remand and refusal of access to the investigation file – friendly settlement.

Article 6(1)

KERVOELEN - France (Nº 35585/97)
*Judgment 27.3.2001 [Section III]

The case concerns alleged lack of access to a court and absence of an effective remedy in connection with expiry of a licence to sell drinks – no violation (Articles 6 and 13 not applicable).

JAKOLA - Sweden (Nº 32531/96)
Judgment 6.3.2001 [Section I]

The case concerns the lack of an oral hearing in proceedings in the administrative courts – friendly settlement.

L.G.S. S.p.a. - Italy (no. 2) (Nº 38878/97)
Pasquale DE SIMONE - Italy (Nº 42520/98)
MARCOLONGO - Italy (Nº 46957/99)
ARDEMAGNI and others - Italy (Nº 46958/99)
CIRCO and others - Italy (Nº 46959/99)
TRIMBOLI - Italy (Nº 46960/99)
MALETTI - Italy (Nº 46961/99)
LUCAS INTERNATIONAL S.r.l. - Italy (Nº 46962/99)
GALIÈ - Italy (Nº 46963/99)
ALPITES S.p.a. - Italy (Nº 46964/99)
FRANCESCHETTI and ODORICO - Italy (Nº 46965/99)
MASSARO - Italy (Nº 46966/99)

PROCACCIANTI - Italy (Nº 46967/99)
FALCONI - Italy (Nº 46968/99)
PROCOPIO - Italy (Nº 46969/99)
F.T. - Italy (Nº 46971/99)
MORELLI and NERATTINI - Italy (Nº 46973/99)
RISOLA - Italy (Nº 46974/99)
DI GABRIELE - Italy (Nº 46975/99)
DI MOTOLI and others - Italy (Nº 46976/99)
VACCARISI - Italy (Nº 46977/99)
F.P. - Italy (Nº 46978/99)
MASTRANTONIO - Italy (Nº 46979/99)
C.L. - Italy (Nº 46980/99)
*Judgments 1.3.2001 [Section II]

BONELLI - Italy (Nº 44457/98)
Roberto SACCHI - Italy (Nº 44461/98)
ZANASI - Italy (Nº 44462/98)
RIGUTTO - Italy (Nº 44465/98)
Valerio SANTORO - Italy (Nº 44466/98)
P.B. - Italy (Nº 44468/98)
SPADA - Italy (Nº 44470/98)
Valeria ROSSI - Italy (Nº 44472/98)
A.C. - Italy (Nº 44481/98)
TEBALDI - Italy (Nº 44486/98)
VECCHI and others - Italy (Nº 44488/98)
MURGIA - Italy (Nº 44490/98)
SONEGO - Italy (Nº 44491/98)
O.P. - Italy (Nº 44494/98)
COVA - Italy (Nº 44500/98)
CITTERIO and ANGIOLILLO - Italy (Nº 44504/98)
SHIPCARE S.r.l. - Italy (Nº 44505/98)
BELLAGAMBA - Italy (Nº 44511/98)
MARI and MANGINI - Italy (Nº 44517/98)
Rossana FERRARI - Italy (Nº 44527/98)
VECCHINI - Italy (Nº 44528/98)
VENTURINI - Italy (Nº 44534/98)
CIUFFETTI - Italy (Nº 47779/99)
SANTORUM - Italy (Nº 47780/99)
FARINOSI and BARATTELLI - Italy (Nº 47781/99)
MARTINETTI - Italy (Nº 47784/99)
ANGEMI - Italy (Nº 47785/99)
G.V. - Italy (Nº 47786/99)
*Judgments 1.3.2001 [Section IV]

PINTO DE OLIVEIRA - Portugal (Nº 39297/98)
MINNEMA - Portugal (Nº 39300/98)
*Judgments 8.3.2001 [Section IV]

JOLY - France (Nº 43713/98)
*Judgment 27.3.2001 [Section I]

KOSMOPOLIS S.A. - Greece (Nº 40434/98)
*Judgment 29.3.2001 [Section II]

These cases concern the length of civil or administrative proceedings – violation.

ZOHIOU - Greece (Nº 40428/98)
Judgment 29.3.2001 [Section II]

The case concerns the length of civil proceedings – friendly settlement.

Ada MACCARI - Italy (Nº 44464/99)
*Judgment 1.3.2001 [Section IV]

The case concerns the length of civil proceedings, part of which had already been found by the European Commission of Human Rights to have exceeded a reasonable time – violation.

FANELLI - Italy (Nº 44361/98)
B.S. - Italy (Nº 44364/98)
Judgments 8.3.2001 [Section II]

ROCCHI - Italy (Nº 44375/98)
Judgment 29.3.2001 [Section II]

The cases concern the length of proceedings in the Audit Court – friendly settlement.

MARCOTRIGIANO- Italy (no. 2) (Nº 47783/99)
*Judgment 1.3.2001 [Section IV]

The case concerns the length of civil proceedings – no violation.

ZANA - Turkey (Nº 29851/96)
*Judgment 8.3.2001 [Section III]

The case concerns the independence and impartiality of the State Security Court which convicted the applicant of making separatist propaganda.

PATANE - Italy (Nº 29898/96)
CIACCI - Italy (Nº 38878/97)
MANGASCIA - Italy (Nº 41206/98)
DEL GIUDICE - Italy (Nº 42351/98)
VISINTIN - Italy (Nº 43199/98)
ORLANDI - Italy (Nº 44943/98)
*Judgments 1.3.2001 [Section II]

These cases concern the length of criminal proceedings – violation.

KADRI - France (Nº 41715/98)
*Judgment 27.3.2001 [Section III]

The case concerns the length of tax proceedings (criminal) – violation.

Article 6(1) and (3)

GOEDHART - Belgium (Nº 34989/97)
STROEK - Belgium (Nº 36449/97 and N 36467/97)
*Judgments 20.3.2001 [Section III]

These cases concern the refusal to allow representation of accused who failed to appear in criminal proceedings, and the dismissal of cassation appeals on the ground that the appellants had failed to surrender into custody – violation.

Article 6(1) and Article 1 of Protocol No. 1

CASTIGLIONI - Italy (Nº 30877/96)
GIMIGLIANO - Italy (Nº 30918/96)
I.Fr. - Italy (Nº 31930/96)
R.M. - Italy (Nº 32403/96)
B. - Italy (Nº 32465/96)
SBORCHIA and TOGNARINI - Italy (Nº 33116/96)
PARIS - Italy (Nº 33602/96)
Judgments 1.3.2001 [Section II]

GUGLIELMI - Italy (Nº 32659/96)
Judgment 8.3.2001 [Section II]

GERMANO - Italy (Nº 31379/95)
Judgment 29.3.2001 [Section II]

The cases concern the prolonged inability for the applicants, to recover possession of their apartments, as a result of the absence of police assistance – friendly settlement.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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