CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 40
on the case-law of the Court
March 2002

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

Statistical information[1]

Judgments delivered	March	2002
Grand Chamber	0	1
Section I	17(18)	176(177)
Section II	21(22)	52(53)
Section III	54(56)	74(79)
Section IV	4	77
Sections in former compositions	3	15
Total	**99(103)**	**395(402)**

Judgments delivered in March 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	2	0	0	0	2
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	1	0	0	0	1
Section I	14(15)	3	0	0	17(18)
Section II	18(19)	2	1	0	21(22)
Section III	47(49)	7	0	0	54(56)
Section IV	1	2	1	0	4
Total	**83(87)**	**14**	**2**	**0**	**99(103)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
former Section I	2	0	0	0	2
former Section II	0	0	0	0	0
former Section III	8	0	0	0	8
former Section IV	4	0	1	0	5
Section I	160(161)	16	0	0	176(177)
Section II	47(48)	4	1	0	52(53)
Section III	62(64)	11	1(4)	0	74(79)
Section IV	70	6	1	0	77
Total	**354(358)**	**37**	**4(7)**	**0**	**395(402)**

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

[* = judgment not final]

Decisions adopted		March	2002
I. Applications declared admissible			
Grand Chamber		0	1
Section I		29(31)	62(66)
Section II		18	24
Section III		17(19)	32(34)
Section IV		13	25
Total		**77(81)**	**144(150)**
II. Applications declared inadmissible			
Section I	- Chamber	192	206(240)
	- Committee	221	930
Section II	- Chamber	6	30
	- Committee	519	1028
Section III	- Chamber	6	22
	- Committee	234	696
Section IV	- Chamber	18(19)	50(52)
	- Committee	568	944
Total		**1764(1765)**	**3906(3924)**
III. Applications struck off			
Section I	- Chamber	49	52
	- Committee	5	15
Section II	- Chamber	2(3)	4(5)
	- Committee	9	14
Section III	- Chamber	18	32
	- Committee	0	5
Section IV	- Chamber	3	9
	- Committee	5	8
Total		**91(92)**	**139(140)**
Total number of decisions[1]		**1932(1938)**	**4189(4214)**

[1] Not including partial decisions.

Applications communicated	March	2002
Section I	76	126(127)
Section II	31	69(70)
Section III	43	81(82)
Section IV	24(28)	46(63)
Total number of applications communicated	**172(178)**	**322(342)**

ARTICLE 2

LIFE
Killing of detainee by mentally ill cell-mate and effective of subsequent investigation : *violation*.

PAUL and AUDREY EDWARDS - United Kingdom (Nº 46477/99)
Judgment 14.3.2002 [Section II]

Facts: The applicant's son, C., was arrested in November 1994 after making inappropriate suggestions to young women in the street. His behaviour led the police to suspect that he might be mentally ill. He was assessed at the police station by an approved social worker, who spoke to a psychiatrist by telephone. They agreed that C. was fit to be detained. The following day, C. was brought before the Magistrates' Court, where he had to be restrained after confronting a female prison officer. He was placed in a cell, where he continually banged on the door and shouted obscenities about women. The court, which considered that it did not have power to order C.'s remand to hospital, remanded him in custody. At the prison, he was screened by a member of the health care staff, who knew nothing of the concerns about his mental health and saw no reason to admit him to the Health Care Centre. No medical officer was present in the prison at the time. C. was initially placed in a cell on his own but subsequently another detainee, R.L., was placed in the same cell. R.L., who had a history of mental illness, had been arrested for assault. A police surgeon had certified that he was not fit to be detained. However, he had then been assessed by a psychiatric registrar, who had spoken to a consultant by telephone. The latter had decided that R.L. was fit to be detained and the police surgeon at the police station to which he was transferred had been of the same view. They had attributed his bizarre behaviour to alcohol and drug abuse. Although the police had considered that R.L. was mentally ill, the relevant form had not been completed. On his arrival at the prison, R.L. had been screened by the same person who had screened C. That person had not been aware of R.L.'s previous convictions or admittance to hospital and had seen no reason to admit him to the Health Care Centre. R.L. was put in C.'s cell due to shortage of space. During the night, a prison officer, on going to investigate continuous banging on a cell door, saw that the green emergency light outside the cell, operated by a call button in the cell, was on, although the accompanying buzzer was not sounding. Prison officers entered the cell and found that C. had been stamped and kicked to death. R.L., who was suffering from paranoid schizophrenia, pleaded guilty to manslaughter by reason of diminished responsibility and was detained in a special hospital. An inquest which had been opened and adjourned pending the criminal proceedings was closed as there was no obligation to continue in those circumstances. A private, non-statutory inquiry was commissioned by the three agencies with statutory responsibilities towards C. (the prison, local government and health authorities). The inquiry, which sat in private, heard evidence on 56 days over a period of 10 months from May 1996. It had no power to compel witnesses and two prison officers declined to give evidence. The inquiry report, issued in June 1998, concluded that ideally C. and R.L. should not have been in prison and in practice should not have been sharing the cell and found that there had been "a systemic collapse of the protective mechanisms". It identified a series of shortcomings, including poor record-keeping, inadequate communication and limited inter-agency co-operation. The applicants were advised by their lawyers that no civil remedies were available to them and the Crown Prosecution Service maintained its earlier decision that there was insufficient evidence to proceed with criminal charges.
Law: Article 2 – (a) As a prisoner, C. fell under the responsibility of the authorities who had an obligation, under both domestic law and the Convention, to protect his life. The first

question was whether the authorities knew or ought to have known of the existence of a real and immediate risk to his life, and in that respect the essential issue was whether the prison authorities knew or ought to have known of R.L.'s extreme dangerousness when the decision to place him in the same cell as C. was taken. R.L.'s doctors knew he was mentally ill and he had a history of violence, and the initial assessment by a police surgeon was that he was not fit to be detained. This was, however, overruled by a registrar who did not consult R.L.'s notes. The health worker at the prison knew that R.L. had been difficult but was not made aware of his prison record or his previous committal to hospital and the police, prosecution and court did not pass on any detailed information relating to his conduct and his known history of mental disturbance. Information was, therefore, available which identified R.L. as suffering from a mental illness and with a record of violence and this, in combination with his bizarre and violent behaviour, demonstrated that he was a real and serious risk to others. As regards the measures which the authorities might reasonably have been expected to take to avoid that risk, the information concerning R.L.'s medical history and perceived dangerousness was not brought to the attention of the prison authorities, and in particular those responsible for deciding whether to place him in the Health Care Centre. There was a series of shortcomings in the transmission of information (the failure of the registrar to consult R.L.'s notes, the failure of the police to fill in the relevant form, the failure of the police, prosecution and court to inform the prison authorities of R.L.'s suspected dangerousness and instability). These defects were combined with the brief and cursory nature of the examination carried out by the screening health worker, acting in the absence of a doctor to whom recourse could be made in the case of difficulty or doubt. There were in addition numerous failings in the way in which C. was treated from his arrest to allocation to a shared cell. However, although it would obviously have been desirable for him to be detained in a hospital or the Health Care Centre of the prison, his life was placed at risk by the placement of a dangerously unstable prisoner in his cell and it was the shortcomings in that regard which were most relevant to the issues in the case. In conclusion, the failure of the agencies involved to pass on information about R.L. to the prison authorities and the inadequate nature of the screening process on R.L.'s arrival in prison disclosed a breach of the State's obligation to protect C.'s life.

Conclusion: violation (unanimously).

(b) A procedural obligation arose to investigate the circumstances of C.'s death. He was a prisoner under the care and responsibility of the authorities when he died from acts of violence of another prisoner and in that situation it was irrelevant whether State agents were involved by acts or omissions in the events leading to his death. Civil proceedings, assuming they were available, lay at the initiative of the victim's relatives and would not satisfy the State's obligation in this regard. Since no inquest was held and the criminal proceedings did not involve a trial, the question was whether the inquiry provided an effective investigative procedure. The inquiry heard a large number of witnesses and reviewed the circumstances of C.'s death in detail and its report was a meticulous document which could be relied on to assess the facts. Moreover, there was no lack of independence and in the circumstances the authorities could be regarded as having acted with sufficient promptness and proceeded with reasonable expedition. However, the inquiry's lack of power to compel witnesses meant that potentially significant evidence was not available and this had to be regarded as diminishing the effectiveness of the inquiry. Furthermore, the public interest attaching to the issues thrown up by the case was such as to call for the widest exposure possible and no reason had been put forward for holding the inquiry in private. In addition, the applicants were only able to attend the inquiry when giving evidence, they were not represented and were unable to put any questions to witnesses, and they had to wait until the publication of the report to discover the substance of the evidence. Given their close and personal concern with the subject-matter of the inquiry, they were not involved in the procedure to the extent necessary to safeguard their interests. There had consequently been a violation of the procedural obligation under Article 2.

Conclusion: violation (unanimously).

Articles 6 and 8 – The Court concluded unanimously that no separate issue arose under these provisions.
Article 13 – While a civil action might have furnished a fact-finding forum with the power to attribute responsibility for C.'s death, it was not apparent that non-pecuniary damages would have been recoverable or that legal aid would have been available to pursue civil claims. Consequently, this avenue of redress was not, in the circumstances of the case, of practical use. Similarly, while it was not inconceivable that a case might be brought under the Human Rights Act 1998, this would relate only to any continuing breach of the procedural obligation under Article 2 of the Convention after 2 October 2000 and would not provide damages related to C.'s death, which preceded the entry into force of the Act. The Government had not referred to any other procedure whereby the liability of the authorities could be established in an independent, public and effective manner, and the Court had already found that the inquiry failed for reasons of procedural defects to comply with the procedural obligation imposed by Article 2 and did not provide any possibility of obtaining damages. Notwithstanding the aggregate of remedies referred to by the Government, the applicants did not have available to them an appropriate means of obtaining a determination of their allegations that the authorities had failed to protect their son's right to life and the possibility of obtaining an enforceable award of compensation for the damage suffered. This is an essential element of a remedy under Article 13 for a bereaved parent.
Conclusion: violation (unanimously).
Article 41: The Court made awards in respect of non-pecuniary damage and in respect of costs and expenses.

LIFE
Murder allegedly carried out by State agents or with their connivance, and effectiveness of the investigation: *no violation*.

SABUKTERIN - Turkey (Nº 27243/95)
Judgment 19.3.2002 [Section IV]

Facts: The applicant is a Turkish citizen. In September 1994 her husband, Salih Sabuktekin, a member of the HADEP (the pro-Kurdish People's Democracy Political Party) and delegate of the local branch of Yüregir/Adana, was killed in front of his house. According to the applicant, her brother-in-law tried to run after the killers, but was held back by plain-clothes police officers who then arrested him and took him into police custody, from which he was released shortly afterwards. The police carried out an investigation at the scene of the murder and took statements from a number of witnesses. The Adana public prosecutor began a preliminary investigation. In July 1995 the Adana anti-terrorist branch arrested and detained a suspect belonging to the illegal organisation, the Hizbullah. An investigation was begun in connection with his and his co-accuseds' suspected involvement in, among other things, the murder of the applicant's husband. They were acquitted by the National Security Court for lack of sufficient evidence. The public prosecutor then requested the head of the anti-terrorist branch to pursue its investigations into, *inter alia*, the murder of Salih Sabuktekin.
Law: Government's preliminary objections (non-exhaustion): in order to lodge a civil claim for damages, which was a remedy referred to by the Government, the presumed perpetrator had to be identified, whereas in the instant case the perpetrators remained unknown; accordingly, the applicant was not required to use it. With regard to an application in administrative law, also referred to by the Government, it was reiterated that the duty on the Contracting States under Articles 2 and 3 of the Convention to carry out investigations in order to identify and punish those guilty of fatal assault could be rendered illusory if, for complaints based on those provisions, an applicant was required to use a remedy, such as that one, resulting merely in an award of damages: both grounds of the objection dismissed. Lastly, with regard to the criminal remedies referred to by the Government, a criminal investigation in connection with the murder of the applicant's husband was underway and that

part of the objection required the same examination as the one in respect of the nature of the investigations undertaken. Having regard to its conclusion as to the merits of the complaint under Article 2 above, it was not necessary to examine separately the criminal-proceedings aspect of the objection.
Article 2 - With regard to the allegation that Salih Sabuktekin had been killed by the security forces or at their instigation, the statement of the applicant's brother-in-law was not corroborated by any other witness and conflicted with the statements made by other eyewitnesses. The applicant's allegations were based on hypothesis and speculation rather than reliable evidence. The evidence before the Court did not provide it with any material in support of those allegations. It could not therefore be concluded that the applicant's husband had been killed by the security forces or with their connivance.
Conclusion: non-violation (unanimously).
With regard to the allegation that the investigation had been inadequate, although it had not resulted in the identification of the perpetrator or perpetrators of the murder, it had not been entirely ineffective. It could not be maintained that the relevant authorities had remained passive in respect of the circumstances in which the applicant's husband had been killed. In the present case the investigations carried out into the circumstances of his death could be considered to have satisfied the requirements of Article 2 of the Convention.
Conclusion: non-violation (six votes to one).
Article 6(1) - This complaint was inextricably linked to the applicant's more general complaint concerning the manner in which the investigating authorities had treated her husband's death. It was therefore appropriate to examine it in relation to the more general obligation prescribed by Article 13.
Conclusion: separate examination of the complaint unnecessary (unanimously).
Article 13 - The Court's conclusion under Article 2 did not necessarily prevent the complaint based on Article 13 from being an arguable one. That conclusion did not dispense with the requirement to carry out an effective investigation into the substance of the complaint. In the present case, in the light of the various measures taken, it could not be maintained that the relevant authorities had remained passive in respect of the circumstances in which the applicant's husband was killed. The respondent State could be deemed to have conducted an effective criminal investigation as required by Article 13.
Conclusion: non-violation (six votes to one).

Article 2(2)

USE OF FORCE
Shooting by police of person mistaken for an armed burglar in his home: *communicated*.

BUBBINS - United Kingdom (N° 50196/99)
[Section III]

The applicant brought the application on behalf of her brother, M.F., who was shot dead by the police at his home after being mistaken for an armed burglar. On the evening of the incident M.F. was drunk when he returned home. His girlfriend, M.J., arrived later and from a distance saw somebody entering their flat through the kitchen window. She thought that a burglar was breaking into the flat. The police officers who arrived shortly after saw a man holding a handgun inside the premises. Three armed officers took position around the premises. The police negotiator failed to attend the scene of the incident. Superintendent H.B. who had been informed of the incident arrived at the scene and took control of the operation. An officer told him that there was a possibility that the man in the flat might be the occupier, M.F., who owned imitation firearms. Superintendent H.B. spoke on the phone to the man inside the premises who appeared to him to be intoxicated and who told him that his name

was “Mick”. He failed to inquire from M.J. whether she knew who “Mick” was. According to the applicant, had he done so M.J. would have told him that it was the name by which M.F. was commonly known. M.F. came back to a window and, according to the police, pointed a gun in the direction of one of the armed police officers, who shot him. The police found him dead inside the premises and realised that the gun which he had been waving at them was a replica. A post mortem confirmed that he was heavily intoxicated. It was concluded after the police investigation that there was no wrongdoing on the part of the police officers involved in the incident. An inquest into M.F.’s death was opened. The Coroner granted police officers anonymity during the inquest proceedings and imposed reporting restrictions on the media to prevent the disclosure of their identities. He refused to allow in evidence the police radio logs detailing the communications between the officers on the night of the incident or computer print-outs. Superintendent H.B. conceded at the inquest that he should not have identified himself to M.F. as a police officer when he spoke on the telephone, as negotiators should give the appearance of being neutral in order to allow trust to build up between the person under siege and the negotiator. The jury, following the Coroner’s directions, returned a verdict that M.F. had been lawfully killed. The applicant was refused legal aid to seek judicial review of the Coroner’s decision.
Communicated under Articles 2 and 13.

ARTICLE 3

INHUMAN TREATMENT
Continued detention of a person with cancer requiring intensive treatment involving transfer to hospital under escort: *admissible*.

MOUISEL - France (N° 67263/01)
Decision 21.3.2002 [Section I]

The applicant, aged 52, has been in prison since 1996. He was diagnosed in November 1998 as suffering from chronic lymphatic leukaemia. In February 2000 a prison doctor certified that the illness had developed in such a way as to require prolonged anti-cancerous chemotherapy. Chemotherapy greatly reduces the body’s immune defences, making the patient correspondingly more susceptible to illness. As the applicant could not be treated at the prison, he had to be taken to a civil hospital once a week for treatment. He lodged an application for a pardon on medical grounds, which was dismissed. In June 2000 he informed the prison governor that the conditions in which he was taken from the prison (chained) were making his imprisonment intolerable; that the chemotherapy sessions were unendurable; that his physical condition no longer allowed him to attend the sessions; that his morale was deteriorating daily; and that he was therefore obliged to give up the sessions. He complained of additional suffering inflicted on him by the prison staff. Following a further application for a pardon on medical grounds, the Ministry of Justice instructed a medical expert to prepare a report on him. That report noted a deterioration in the applicant’s health and concluded that he should be looked after in a specialised institution. The applicant was transferred to a prison nearer the hospital and given a single cell. In November 2000 a further application for pardon was dismissed. On 22 March 2001 the judge responsible for the execution of sentences released the applicant on parole with the obligation to undergo medical treatment or care until March 2005, the date on which he would have finished serving his sentence, on the ground that his health now prevented him from remaining in prison.
Admissible under Article 3: victim status – the decision of the judge responsible for the execution of sentences granting the applicant’s release on parole could not be deemed to be an explicit acknowledgement of an alleged violation of Article 3 during the period complained of

by the applicant in connection with his continued imprisonment and the conditions thereof prior to 22 March 2001 and that decision did not provide adequate compensation.

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Placement for a year and a half in Aliens Registration Centre pending asylum proceedings: *communicated*.

KAMBANGU - Lithuania (N° 59619/00)
[Section III]
(see below).

LAWFUL ARREST AND DETENTION
Allegedly unlawful police custody and subsequent placement in Aliens Registration Centre: *communicated*.

KAMBANGU - Lithuania (N° 59619/00)
[Section III]

On 10 March 1998 the applicant, a national of Angola, was arrested while trying to cross the border between Lithuania and Belarus. He alleged that his passport had been stolen and that he intended to go to the Embassy of Angola in Moscow to obtain a new one. He was arrested for not having a valid passport to travel abroad, contrary to the Lithuanian immigration rules. He was kept in police custody from 10 to 12 March 1998 before being transferred to the Aliens Registration Centre (ARC) on the ground that his presence in Lithuania was illegal. In June 1998 he applied for asylum. A temporary permit pending the determination of his application was delivered but he was ordered to remain at the ARC. In October 1998 his application for asylum was rejected and an expulsion order was issued. He appealed against both decisions. In November 1998 the Regional Court found in his favour in respect of the refusal to grant him asylum and the expulsion order was subsequently revoked. However, in June 1999 the authorities rejected his application for asylum. The applicant appealed against this decision and challenged his continued stay at the ARC. In October 1999 his complaint concerning his stay at the ARC was rejected, the Higher Administrative Court finding that it did not constitute detention and that it was compatible with the domestic immigration legislation. The Court of Appeal rejected his appeal against the refusal to grant him asylum. Upon the applicant's further appeal the Higher Administrative Court found in December 1999 that the application for asylum had not been properly examined and quashed the decision refusing him asylum. In January 2000 he was allowed to leave the ARC after obtaining a new passport from the Embassy of Angola in Moscow. He did not bring any further proceedings regarding the legality of his stay in Lithuania and left the country at an unspecified date in 2000.
Communicated under Article 5(1) and (4), Articles 13 and Article 2 of Protocol N° 4.

Article 5(1)(c)

REASONABLE SUSPICION
Allegedly arbitrary and politically motivated detention on remand: *communicated*

GUSINSKIY - Russia (N° 70276/01)
Decision 7.3.2002 [Section I]

The applicant was at the head of a large media holding company, Media Most. In March 2000, a criminal investigation was opened against him in respect of allegations of fraud concerning the transfer of a broadcasting licence from a State-owned company to a private company connected to Media Most. In the meantime, in May 2000, a disagreement arose between Media Most and Gazprom, another State-owned company, to which it owed money; the General Prosecutor's Office later started a criminal prosecution against the applicant. On 11 June 2000 he was summoned to be questioned as a witness in connection with another criminal case. On 13 June 2000, when he came to the General Prosecutor's Office, he was arrested and subsequently placed in detention in a prison in relation to the fraudulent transfer of the broadcasting licence, pursuant to an order issued on the same day. According to the arrest order, the fraud of which the applicant was suspected constituted a serious public threat which justified his detention in prison and there were risks of collusion. On 15 June 2000 the applicant's lawyers lodged a petition against his arrest. They also filed a complaint with the Intermunicipal Court in respect of his unlawful imprisonment, requesting his immediate release. On 16 June 2000 the applicant was charged with fraud. On the same day, his release from prison was ordered, the arrest order being replaced by an order not to leave the country. While the applicant was in detention, the Acting Minister for Press and Mass Communications, L., offered to drop the charges against him if he sold Media Most to Gazprom at a price that the latter would fix. The applicant signed an agreement with Gazprom, endorsed by L., in July 2000. Accordingly the criminal prosecution against him was discontinued pursuant to a prosecution abatement and restraint cancellation order. In the order, the investigator of the General Prosecutor's Office stated that it was impossible to attribute the applicant's actions to "separate legal spheres", i.e. to determine whether the matter was a simple business dispute or a criminal offence. Reference was also made to the fact that the applicant had "made up for the harm caused to the interests of the State by voluntarily transferring Media Most shares to a legal entity controlled by the State". The order made on the applicant not to leave the country having also been lifted, he left Russia the same day. After his release from prison on 16 June 2000, the applicant unsuccessfully maintained his complaint before the Intermunicipal Court. His subsequent appeal was to no avail.
Communicated under Article 5 and 13.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning refusal to grant allowance to army bomb defusal personnel: *communicated*.

AMAXOPOULOS and others - Greece (N° 68141/01)
Decision 7.3.2002 [Section I]

The applicants are army bomb-disposal officers or non-commissioned officers. In May 1994 they applied to the Army Headquarters for a dangerous work allowance provided for by section 23 of Law no. 1848/1989 and granted to certain categories of army staff, including the battalion responsible for clearing minefields, and the police. In July 1994 their application was rejected. The Army Headquarters declared that it lacked jurisdiction, indicating that a decision of the Ministry of National Defence was required and a legal framework specifically adapted to their case. In August 1994 the applicants lodged an application with the Administrative Court of Appeal for judicial review of that decision. Their application was dismissed. The Headquarters' refusal to grant the allowance was held to have been legally founded and the constitutional principle of equality, on which the applicants had relied, was held not to apply to their case since their situation was different from the staff referred to in the statute. In June 1996 the applicants lodged an appeal against that judgment with the Supreme Administrative Court, which dismissed it in a judgment of May 2000. The Supreme Court re-stated the grounds of the Administrative Appeal Court's reasoning in its judgment dismissing their claims.
Inadmissible under Article 14 and Article 1 of Protocol No. 1: The applicants did not have a due and payable debt because their application for a special allowance was refused by the authorities and that refusal was upheld by the administrative courts. Nor could they claim to have a legitimate expectation of a debt becoming payable which would constitute a possession within the meaning of Article 1 of Protocol No. 1. Moreover, the national courts which examined the applicants' complaint that the refusal to grant them the allowance in question was discriminatory referred to the differences between their situation and that of the category of bomb-disposal officers into which they claimed to fall. They concluded unanimously that the risks to which the other bomb-disposal officers were exposed in the course of their duties were far greater than those to which the applicants were exposed, which, accordingly, justified different treatment under the law. The distinction complained of did not lack objective or reasonable justification for the purposes of Article 14: manifestly ill-founded.
Communicated under Article 6(1) (applicability, length of proceedings).

ACCESS TO COURT
Legislation staying all civil proceedings relating to claims for damage in respect of terrorist acts: *violation*.

KUTIĆ - Croatia (Nº 48778/99)
Judgment 1.3.2002 [Section I]

Facts: The applicants' house was destroyed in 1991 following an explosion. In November 1994 they brought an action for damages against the Republic of Croatia. In January 1996, while the proceedings were pending, an amendment to the Civil Obligations Act was introduced, providing that all proceedings concerning actions for damage resulting from terrorist acts were to be stayed pending the enactment of new legislation and that in the meantime damages could not be sought in respect of such acts. The proceedings brought by the applicants were duly stayed in April 1998. Further proceedings which they had brought in connection with the destruction of their garage and other buildings in an explosion were similarly stayed in July 2000.
Law: Article 6(1) – The right of access to a court is not limited to the right to institute proceedings but includes the right to obtain a determination of the dispute by a court. The legislative provision at issue had hindered the applicants' right to have their civil claims for damages decided by a court and they were thus prevented from pursuing their claims. While the decisions to stay the proceedings were taken in April 1998 and July 2000 respectively, the proceedings had been stayed *de facto* since enactment of the amendment in January 1996, since the court was unable to continue its examination of the cases thereafter. Having regard to the time which had elapsed since then, the impossibility of having the claims decided was not only temporary. A situation where a significant number of legal actions claiming large sums of money are lodged against a State may call for further regulation by the State, which enjoys a certain margin of appreciation in that respect, but such measures must be compatible with the requirements of Article 6. Given that the proceedings had been pending for over six years and no new legislation had been passed which would have enabled the applicants to have their claims determined, the degree of access afforded under national legislation was not sufficient to secure the applicants' right to a court.
Conclusion: violation (unanimously).
The Court concluded unanimously that it was unnecessary to examine separately the issue of the length of the proceedings, which was absorbed in the issue of access to a court.
Article 41: The Court made an award in respect of non-pecuniary damage.

ACCESS TO COURT
Scope of judicial review of planning decisions: *inadmissible*.

HOLDING AND BARNES PLC - United Kingdom (Nº 2352/02)
Decision 12.3.2002 [Section IV]

The applicant company applied for planning permission to relocate part of its business. The local authority resolved that it was minded to grant permission but the Secretary of State for the Environment subsequently "called in" the application to be determined by him because of the nature of the proposed use, the potential impact on the future economic prosperity of the region and the proximity of hazardous gas storage installations. The applicant challenged the Secretary of State's power to call in the application as a breach of Article 6 of the Convention and the Divisional Court found in its favour. However, on appeal the House of Lords reversed that judgment, holding that, although the Secretary of State was not an independent and impartial tribunal, judicial review of the legality of his decision and the procedures followed constituted sufficient judicial control to ensure determination by such a tribunal.

Inadmissible under Article 6(1) – As the Government Minister responsible for developing national planning policy, the Secretary of State was not an independent and impartial tribunal and the issue was therefore whether the possibility of seeking judicial review of his decision was sufficient to satisfy Article 6. In the Bryan judgment (Series A no. 335-A), the Court had found that the availability of judicial review was enough to ensure compliance with Article 6, despite the fact that it could not embrace all aspects of the decision, and in particular the merits. In the present case, the call-in procedure had a number of procedural guarantees of fairness. Thus, at the request of either party the Secretary of State had to appoint an inspector to hear oral submissions and evidence from both parties and, if the Secretary of State was inclined to reach a different conclusion from that reached by the inspector, the parties were entitled to be informed before the Secretary of State took a decision and had to be given an opportunity to make written representations or ask for the inquiry to be reopened to assess the new evidence. Moreover, it was open to an aggrieved party to appeal against the Secretary of State's decision and the reviewing court had jurisdiction to quash the decision if it found that he had acted *ultra vires*, taken irrelevant matters into account or failed to take relevant matters into account, reached a perverse decision or a decision based on a misunderstanding or ignorance of an established and relevant fact or failed to follow the required procedural steps. The fact that it was the Secretary of State himself who was to take the decision, rather than the inspector, did not afford a sufficient basis for distinguishing the present case from the Bryan case: manifestly ill-founded.

ACCESS TO COURT

Refusal to grant visa to Turkish national wishing to enter the United Kingdom in order to start a court action against the British authorities: *inadmissible*.

İBAR - United Kingdom (N° 71928/01)
Decision 12.3.2002 [Section II]

The applicant, a Turkish national, was married to a British national. His wife left Turkey where they lived and started divorce proceedings in the United Kingdom. In August 1995, after the divorce proceedings had ended, he went to England to visit his children, who were staying with his ex-wife. He entered her house in her absence and allegedly left tubes of chemical corrosives behind. In October 1996 he went to England again to see his children and was arrested at the airport. He was transferred to a police station where he was questioned about his wife's allegation that he had got into her house with intent of inflicting grievous bodily harm by leaving tubes of chemical corrosives behind. He was subsequently charged and remanded in custody but was eventually acquitted and released. He then left for Turkey. At a later stage, he applied for a visa in order to go to the United Kingdom to start proceedings for compensation against the British authorities in respect of his detention. His application was rejected on the ground that the initial enquiries as to the feasibility of an action to sue the authorities could be made from Turkey. It was also stated that in the light of the previous charges brought against him in the United Kingdom, his exclusion from the country was conducive to the public good.
Inadmissible under Article 6: The applicant did not invoke any of his complaints based on the Convention during his trial in the United Kingdom; he failed to bring court proceedings in respect of these complaints whilst he was there. As regards his presence at an oral hearing in the United Kingdom if compensation proceedings took place, the applicant could have renewed his application for a visa to enter the United Kingdom to attend it. He failed to substantiate convincingly his claim that it was impossible for him to take proceedings against the British authorities from Turkey. The refusal to grant a visa to the applicant could not be considered to amount to denial of access to court: manifestly ill-founded.

ADVERSARIAL PROCEDURE
Judgment of *Conseil d'Etat* quashing appeal decision and dealing with merits without reopening debate: *no violation*.

APBP - France (N° 38436/97)
Judgment 21.3.2002 [Section I]

Facts: This case concerns supplementary corporation-tax assessments and penalties imposed on the applicant company. The applicant unsuccessfully appealed to the Administrative Court. On appeal, the Administrative Court of Appeal granted it a partial exemption from the deductions at source sought by the tax authorities and the penalties imposed. The Minister for the Budget appealed against the Administrative Court of Appeal's judgment. The *Conseil d'Etat* quashed the judgment and, in a decision on the merits of the case taken pursuant to the 31 December 1987 Act, declared the applicant liable for the tax deducted at source (from which it had obtained relief on appeal) and the relevant penalties. The applicant complained to this Court that the Government Commissioner had made submissions proposing a different solution to the dispute to which the applicant had not been able to reply and that the *Conseil d'Etat* had quashed the Court of Appeal's judgment and then examined the case on the merits without re-opening the proceedings in order to hear the applicant's observations. It criticised the fact that the Government Commissioner was present at the deliberations and thus able to reply to questions put by the bench. It called into question the effectiveness of the system of addressing a note to the court in deliberations.
Law: Article 6(1) - Regarding the failure to communicate the Government Commissioner's submissions prior to the hearing and the inability of the applicant to make submissions in reply at the hearing, in *Conseil d'Etat* proceedings the Government Commissioner makes submissions for the first time, orally, at a public hearing of the case, which is when the parties to the proceedings and the judges and the public first learn of the contents and nature of those submissions. The applicant could not infer from the right to equality of arms a right to receive, prior to the hearing, submissions which had not been communicated to the other party to the proceedings, the rapporteur, or the judges sitting on the bench designated to hear the case. With regard to the parties' inability to reply to the Government Commissioner's submissions at the end of the hearing, counsel could, if they wished, ascertain from the Government Commissioner prior to the hearing the general thrust of his submissions and the parties could reply by sending a note to the court while it was deliberating. If, in his oral submissions at the hearing, the Government Commissioner referred to a ground which had not been raised by the parties, the case was adjourned in order to allow the parties to submit their arguments. In the present case the applicant had not made use of the possibility of sending a note to the court during its deliberations. Its failure to do so could not be justified merely by its doubts as to the effectiveness of that practice.
Conclusion: non-violation (unanimously).
With regard to the Government Commissioner's presence at the deliberations, the Court referred to its judgment in the case of Kress v. France of 7 June 2001. In the Court's opinion, the benefit for the trial bench of this purely technical assistance was to be weighed against the higher interest of the litigant, who had to have a guarantee that the Government Commissioner would not be able, through his presence at the deliberations, to influence their outcome. That guarantee was not afforded by the current French system.
Conclusion: violation (unanimously).
With regard to the *Conseil d'Etat's* decision to try the merits of the case without remitting it to the lower court, the right to an adversarial criminal trial encompassed, both for the prosecution and for the defence, the possibility not only to submit evidence which was necessary to the success of their claims, but also to study and challenge any document or observation submitted to the judge with a view to influencing his or her decision. Furthermore, the fairness of proceedings had to be assessed in the light of the entirety of those proceedings. In the present case the question submitted to the *Conseil d'Etat* had been argued before the Administrative Court and in the defence pleadings submitted by the applicant to

the *Conseil d'Etat*. Moreover, the *Conseil d'Etat*'s judgment was based on documents on the case file which had been submitted to the trial court and court of appeal and was limited to correcting the error in law made by the Administrative Court of Appeal and, accordingly, to re-establishing the legal and factual position which had been established in *inter partes* proceedings before the Administrative Court. No breach of the principle of adversarial proceedings had therefore been established.
Conclusion: non-violation (unanimously)
Article 41 - The Court awarded 3,000 euros for costs and expenses.

Article 6(1) [criminal]

FAIR HEARING
Undercover agent who did not incite the commission of the offence, although it would not have taken place without his intervention: *inadmissible*.

CALABRO - Italy (N° 59895/00)
Decision 21.3.2002 [Section I]

The applicant was arrested by the police while purchasing a large quantity of cocaine. The Italian and German police had co-operated to bring the cocaine into Italy, using an under-cover agent called Jürgen. Jürgen had telephoned X, a drug trafficker wishing to buy the cocaine, who had said that he had spoken about the matter to the applicant. He got in touch with Jürgen and asked him if he had the cocaine. When Jürgen replied that he did, the applicant came to his room. Jürgen then showed him a suitcase containing twenty kilograms of cocaine. The applicant made a gesture of approval and was immediately arrested. The scene had been recorded by audio-visual cameras. In July 1994 the applicant was committed for trial in the Milan District Court on a charge of international drug trafficking. Numerous witnesses, including Italian and German police officers, gave evidence. They described the nature and procedure of the police operation leading to the applicant's arrest. As the court considered it "absolutely necessary" to hear Jürgen's version, it sent letters rogatory to the German authorities to examine the witness in Germany. The German authorities replied to the effect that he could not be found. At the applicant's request, the court decided to include in the case file certain statements which Jürgen had made in related criminal proceedings which were underway in Germany. In a judgment of January 1996 the Milan District Court sentenced the applicant to fifteen years' imprisonment and a fine. That decision was based on the circumstances of the applicant's arrest, which had been confirmed by the audio-visual recording, transcripts of telephone conversations and the statements of the Italian and German police officers. Jürgen's statements corroborated that evidence. In letters rogatory of November 1996 the Milan Court of Appeal, which considered that it was "absolutely necessary" to examine Jürgen, requested the German authorities to summon him and to ensure that he be assisted by a lawyer. They replied that he still could not be found. In a judgment of June 1997 the Milan Court of Appeal increased the penalty imposed on the applicant. His appeal against that judgment was dismissed.
Inadmissible under Article 6(1) and (3)(d): the Italian authorities had made considerable efforts to secure the presence at trial of the prosecution witness, Jürgen, and they did not have a duty to undertake a search for a person residing in a foreign State. The Italian courts had used the means available to them under domestic law to secure the presence of that witness at the hearing and had to trust the information provided by qualified foreign sources indicating that he could not be found. Accordingly, the Italian authorities could not be deemed to have lacked diligence resulting in their responsibility being established before the Convention institutions. Furthermore, the statements of that witness had not been the only evidence on which the trial and appeal courts had based their decision to convict the applicant. The

inability to cross-examine Jürgen at the hearing had not therefore infringed the rights of the defence: manifestly ill-founded.
Inadmissible under Article 6(1): unlike the earlier case of *Teixeira de Castro*, in this case the undercover agent had confined himself to offering to import and sell the drugs. It was the applicant who had spontaneously contacted him, paid him and organised the meeting to hand over the drugs, whereby he had shown himself to be part of an international drug-trafficking network. The applicant's conviction had not been based to any decisive extent on the statements of the undercover agent, and the applicant had been able to cross-examine the other police officers who had taken part in the investigation and clarify the nature and procedure of the police operation leading to his arrest. In the light of the facts of the case, it had to be concluded that the undercover agent, in exerting pressure of a kind to encourage the commission of an offence, had provoked an offence which, without his intervention, would not have been perpetrated. His intervention had been limited to that of an undercover agent and had not deprived the applicant of a fair trial (see, *a contrario*, the Teixeira de Castro judgment): manifestly ill-founded.

REASONABLE TIME
Starting point of period to be taken into account in assessing the reasonableness of the length of criminal proceedings.

ETCHEVESTE and BIDART - France (N° 44797/98 and N° 44798/98)
Judgment 21.3.2002 [Section I]

Facts: The two applicants were involved in a shoot-out for which responsibility was claimed by the Basque separatist group, Iparretarrak, of which they were members. On 1 September 1983 a warrant was issued for the first applicant's arrest. As he had fled, the arrest warrant was never executed. On 26 October 1984 a warrant was issued for the second applicant's arrest. That warrant was never executed either because the second applicant could not be found. In a judgment of 19 August 1987 the Indictments Division of the Court of Appeal charged the applicants and committed them for trial at the Assize Court. On 20 February 1988 the two applicants were arrested and imprisoned in separate proceedings. The Court of Appeal's judgment of 19 August 1987 was served on them on 19 May 1988. In a judgment of 31 March 2000 the first applicant was sentenced to four years' imprisonment and the second applicant to twenty years' imprisonment. They did not appeal.
Law: Article 6(1) - With regard to the period to be considered in examining the reasonableness of the length of the proceedings, the applicants submitted that they had been severely affected by the proceedings since the warrants for their arrest had been issued by the investigating judge on 1 September 1983 and 26 October 1984 respectively. As the applicants had fled, they had not been directly affected by the proceedings. They had been arrested and imprisoned in separate proceedings on 20 February 1988. As their arrest had had no direct link with the present case, the date of that arrest could not be considered to be the point of departure for calculating the length of the proceedings. It was as of 19 May 1988, the date of service of the judgment of 19 August 1987 by which they were charged and committed for trial at the Assize Court, that the applicants officially learnt of the investigation and felt the effects. Accordingly, the period to be taken into consideration began on 19 May 1988 and ended with the applicants' final conviction by a judgment of the Assize Court of 31 March 2000. It had therefore lasted eleven years, ten months and twelve days. On the basis of all the above factors, and having regard to the overall period of the proceedings, which was nearly twelve years for one level of jurisdiction, the proceedings had not complied with the requirements of a reasonable time.
Conclusion: violation (unanimously).
Article 41: The Court awarded 10,700 euros for non-pecuniary damage and 1,838.54 euros for costs and expenses.

REASONABLE TIME
Allegedly excessive length of proceedings concerning fraud, due to the joinder of the cases against several defendants: *inadmissible*.

WEJRUP - Denmark (N° 49126/99)
Decision 7.3.2002 [Section I]

The applicant was managing director of finance of a holding company, NFHA, the ultimate holding company of a holding group composed of over fifty companies throughout the world. In 1991 NFHA went bankrupt. The applicant, three other top executives of NFHA and three accountants were prosecuted. Investigations were carried out in eleven countries and accountants were requested to draw up the statements of account of NFHA from 1985 to 1990. The trial began in November 1994 and lasted more than 14 months. In August 1996 the City Court gave a two-hundred-page judgment convicting the applicant and sentencing him to two years' imprisonment. He was also ordered to pay costs of 400,000 kroner (DKK). He appealed. The trial in the High Court started in November 1997 and lasted almost 10 months, ending with a judgment in which the sentence was confirmed, although the costs were reduced. The applicant complained that Article 6(1) of the Convention had been violated due to the length of the proceedings but tThe High Court found that 7 years and 7 months for a case of such complexity and size did not amount to a violation of Article 6(1). Furthermore, it approved the prosecution's decision to join the cases against the defendants, the aim being to reduce court costs. The court acknowledged that joining the cases might have unduly prolonged the proceedings for some of the defendants; it found that this was the case for the three accountants but not for the applicant and the three others. As to the applicant's sentence, the court agreed with the findings of the City Court, emphasising that the fraud was a serious one. The Leave to Appeal Board rejected the applicant's request for leave to appeal against the High Court's judgment.
Inadmissible under Article 6(1): (i) victim status – The fact that the High Court expressly rejected the applicant's claim that the proceedings had exceeded a "reasonable time" could hardly comply with the requirement that the national authorities should acknowledge either expressly or in substance a violation of the Convention. Although the High Court abstained from increasing the applicant's sentence, despite finding that the fraud was serious and that there were few mitigating circumstances, it expressly stated that it agreed entirely with the City Court's reasoning. Moreover, it remained unclear how much of the reduction of the costs decided by the High Court was attributable to the length of the proceedings alone. Therefore, it could not be considered that the High Court had acknowledged in a sufficiently clear manner a failure to comply with the reasonable time requirement. It was not convincingly established that the national authorities had afforded redress by reducing the sentence in an express and measurable manner or by exempting the applicant from paying an amount of costs which could have constituted redress. Accordingly, the applicant could claim to be a victim.
(ii) As to the length of the proceedings, they had lasted almost 7 years and 10 months. The case was undoubtedly of a complex nature. However, the facts of the case did not disclose that the investigating authorities or the prosecution had acted inappropriately or otherwise failed to undertake their duties with due diligence. As to the prosecution's decision to join the investigations and the trials in respect of the applicant and the other defendants in order to reduce court costs, the charges against the applicant related to his role as managing director of finance of a large holding company and the defendants were top executives and accountants of this company; their roles were therefore interconnected. The High Court took this aspect into account when assessing the "reasonable time" requirement. Furthermore, evidence concerning the general structure of the company and its accounting practices were relevant to all defendants. For these reasons, the decision to join these cases appeared appropriate. Although the proceedings before the City Court, the High Court and the Board of leave to

appeal lasted five years and more than two months, there were no periods of inactivity such as to make them unduly lengthy. In conclusion, the overall length of the proceedings did not go beyond what could be considered reasonable in the particular circumstances of the case: manifestly ill-founded.

REASONABLE TIME
Authorities not responsible for delays in criminal proceedings having taken place in other countries in respect of the same facts: *inadmissible*.

HENDRIKS - Netherlands (N° 44829/98)
Decision 5.3.2002 [Section II]

In March 1993 the applicant's partner was found dead in Belgium. A criminal investigation was launched by the Belgian authorities. In April 1993 the applicant was arrested in Luxembourg and extradited to Belgium, where he was placed in detention. In the course of the investigation, it was established that the victim had been killed in Luxembourg. As a consequence, the Belgian courts considered that they were not competent to deal with the case and the criminal proceedings against the applicant were discontinued. In December 1994 the Belgian courts ruled that he could not be extradited to Luxembourg. In May 1994 his release from detention was ordered. In 1996 the Belgian authorities transmitted the case-file on the criminal investigation to the Netherlands Minister of Justice. In August 1996 a criminal investigation was launched in the Netherlands. In October 1996 the applicant was arrested there, placed in pre-trial detention and charged with homicide. In February 1997 a Regional Court, which considered itself competent to deal with the case, convicted him of homicide and sentenced him to seven years' imprisonment. His appeal of the decision was rejected in July 1997. His subsequent appeal in cassation was dismissed by the Supreme Court in June 1998.
Inadmissible under Article 6(1): In criminal matters, the "reasonable time" referred to in Article 6(1) begins to run as soon as a person is "charged". "Charge", for the purposes of the present Article, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test of whether "the situation of the [suspect] has been substantially affected". In the instant case, the applicant became "substantially affected" when he was arrested in the Netherlands in October 1996. As to the applicant's argument that he had already become substantially affected by his arrest in Luxembourg in April 1993, the Netherlands authorities could not be held responsible for any delays that might have occurred in separate discontinued criminal proceedings taken previously against the applicant on the basis of the same facts in Belgium or Luxembourg in which the Netherlands authorities were not involved. The criminal proceedings against the applicant lasted in total slightly more than 19 months before three instances. The length of these proceedings could not be considered as having exceeded a reasonable time within the meaning of Article 6(1): manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Statements made by the Chairman of Parliament and the Prosecutor General in connection with criminal proceedings against a Government Minister: *violation*.

BUTKEVIČIUS - Lithuania (Nº 48297/99)
Judgment 26.3.2002 [Section II]

Facts: In August 1997 the Parliament (Seimas) authorised criminal proceedings against the applicant, who was Minister for Defence. He was charged with obtaining property by deception. On the same day, it was reported in a newspaper article that the Prosecutor General had confirmed that he had "enough sound evidence of the guilt" of the applicant. Over the next few days, the same newspaper published articles in which it was reported that the Chairman of the Parliament had stated, firstly, that he had "no doubt" that the applicant had accepted a bribe and, secondly, that the applicant "[had taken] the money while promising criminal services". Some time later, the Chairman of the Parliament was quoted in the newspaper as having referred to the applicant as a "bribetaker". The applicant was subsequently convicted.
Law: Article 6(2) – The impugned statements were made in a context independent of the criminal proceedings. However, while the fact that the applicant was an important political figure required the highest State officials to keep the public informed, this did not mean that any choice of words by the officials was justified. The statements, except for one, were made just a few days after the applicant's arrest and it was particularly important at that initial stage not to make any public allegation which could be interpreted as confirming his guilt in the opinion of important public officials. While the statement of the Prosecutor General gave some cause for concern, it could be interpreted as a mere assertion that there was sufficient evidence to support a finding of guilt by a court and, thus, to justify the application to Parliament for permission to bring criminal proceedings. Of more concern were the statements made by the Chairman of the Parliament, having particular regard to the fact that Parliament had lifted the applicant's parliamentary immunity to enable criminal proceedings to be brought. The references to "bribery" were not irrelevant, as the Government maintained, since the media and the general public had frequently interpreted the facts as bribery and it had not been contended that the Chairman was not referring to the proceedings in question. The remarks could therefore be interpreted as confirming the Chairman's view that the applicant had committed the offences. While the remarks were brief and made on separate occasions, they amounted to declarations by a public official of the applicant's guilt, which served to encourage the public to believe him guilty and prejudged the assessment of the facts by the competent judicial authority.
Conclusion: violation (unanimously).
The Court also found violations of Article 5(1) and (4) in connection with the applicant's detention on remand.
Article 41 – The Court awarded the applicant € 5,700 in respect of non-pecuniary damage. It also made an award in respect of costs and expense.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity to examine prosecution witness, untraceable abroad: *inadmissible*.

CALABRO - Italy (N° 59895/00)
Decision 21.3.2002 [Section I]
(see Article 6(1) [criminal], above).

ARTICLE 8

PRIVATE LIFE
Telephone tapping in the context of a preliminary investigation: *inadmissible*.

GREUTER - Netherlands (N° 40045/98)
Decision 19.3.2002 [Section II]

The applicant's partner was killed during a fight between supporters of two rival football teams. Shortly after the incident, the police opened an investigation into whether and to what extent a group of supporters, with whom the applicant's partner had been in close contact, formed part of a criminal organisation involved in premeditated acts of violence. The public prosecutor launched a preliminary investigation against a person or persons unknown. As part of the preliminary investigation and at the request of the public prosecutor, the investigating judge authorised the tapping of the applicant's telephone line. She was never suspected of being involved in any related criminal activities. Her lawyer learnt about the telephone tapping by finding it mentioned in the case-file of another client of his. In reply to a letter of the applicant's lawyer, the public prosecutor confirmed that her telephone line had been tapped without her being informed of it, which was authorised by law as it was done in the context of a preliminary investigation against a person or persons unknown and not of criminal proceedings against the applicant. Considering that her partner had been closely connected with a group of supporters presumed responsible for acts of violence, it appeared quite plausible that members of this group as yet unidentified might call the applicant's number. With the investigation judge's approval, access to the intercepted conversations was given to the applicant's lawyer.
Inadmissible under Article 8 : The tapping of the applicant's telephone line constituted an interference with her right to respect for her private life and correspondence. This interference was in accordance with the law and pursued the legitimate aim of prevention of disorder or crime. Under domestic law, there is no obligation for the criminal investigating authorities to inform a person who is not himself a suspect in a criminal investigation that his telephone line is being tapped. In order for systems of secret surveillance to be compatible with Article 8, they must contain supervisory safeguards established by law in order to prevent arbitrariness. Supervisory procedures must follow the values of a democratic society as faithfully as possible, in particular the rule of law. This implies, *inter alia*, that the interference by the executive authorities with an individual's rights be subject to effective supervision, which should normally be carried out by the judiciary, at least in the last resort, since judicial control affords the best guarantees of independence, impartiality and a proper procedure. The fact that information about an individual is being gathered by way of secret surveillance, and that its storage and possible release is not disclosed to the person concerned, does not of itself warrant the conclusion that such an interference is not necessary in a democratic society. The applicant's partner, who apparently belonged to a group of violent supporters, was killed in a

clash between supporters of rival football teams. This particular fight was the core issue of the criminal investigation. Consequently, the possibility of potential suspects contacting the applicant by telephone could not be considered implausible or unfounded. Furthermore, the tapping took place with the authorisation and under the supervision of an investigating judge, as required by domestic law. Finally, when the applicant asked the public prosecutor whether her telephone had been tapped, she received an affirmative answer and was granted access to the records of the intercepted telephone conversations. In conclusion, the interference with the applicant's rights could not be considered unreasonable, arbitrary or disproportionate to the legitimate aim pursued: manifestly ill-founded.

FAMILY LIFE

Alleged lack of diligence by the courts in ensuring the enforcement of decisions awarding the applicant custody of her son, in particular after her ex-husband went abroad with the child: *admissible*.

IGLESIAS GIL and URCERO IGLESIAS - Spain (N° 56673/00)
Decision 5.3.2002 [Section IV]

After their divorce the first applicant was awarded custody of her son and the second applicant, the father, was given a right to contact. In February 1997, while exercising his contact right, the father flew to the United States with the child. The applicant lodged a criminal complaint, together with an application to join the proceedings as a civil party, for abduction of her child. She lodged the complaint against her ex-husband and certain members of his family who, she alleged, had aided and abetted the abduction. In an order of February 1997 the investigating judge issued a search warrant for the father and ordered the immediate return of the child to his mother. The investigating judge dismissed the applicant's requests for the father's mobile telephone to be tapped; for evidence to be taken from a number of members of his family who had, she alleged, assisted in the abduction; and for a search of the head office of her ex-husband's company and his vehicle. The investigating judge subsequently dismissed the applicant's request for an international search and arrest warrant against her ex-husband. In June 1997 the investigating judge dismissed further applications for investigative measures submitted by the applicant for the offence of contempt of court (*desobediencia*) and failure to comply with the judgment of the Family Affairs Court. In May 1998 the investigating judge stated that, in accordance with established domestic law, a person having joint parental responsibility for a minor could not be prosecuted for the offence of abducting the child. In July 1988 he reiterated his opinion that it was not possible to issue an international search and arrest warrant for alleged contempt of court. The applicant unsuccessfully appealed against those two orders. An application challenging the investigating judge was dismissed in November 1997 and a request for the proceedings to be set aside was dismissed in February 1999. At the end of the investigation, in a decision of July 1998, the investigating judge provisionally discontinued the proceedings against the applicant's husband, while maintaining the order for the search and seizure of his assets, and definitively discontinued the proceedings against the members of his family whom the applicant had accused of aiding and abetting the abduction. After unsuccessfully appealing against that decision, the applicant lodged an *amparo* appeal on the ground that the investigating judge's systematic refusal to grant her request for an international search for her child amounted to a breach of the investigating judge's positive obligation to protect the child and his family. She submitted, among other things, that by refusing to grant any investigative measure, the investigating judge had directly infringed her and her child's right to private and family life. In June 1999 the Constitutional Court dismissed her appeal on the ground that it was manifestly ill-founded. In February 1999 the Family Affairs Court revoked the father's parental responsibility for the child and awarded full parental responsibility to the applicant. In June 2000 the applicant lodged a complaint against her ex-husband for threats and duress. In September 2000 the investigating judge provisionally discontinued the proceedings. That

decision was set aside in May 2001 on appeal by the applicant. In the meantime, in April 2000, the applicant had seen her son again for the first time since he had been abducted in February 1997. She was finally able to take him back in June 2000, with the assistance of the police, and has since then been hiding with him in a women's shelter.
Admissible under Article 8.

FAMILY LIFE
Mother obliged to return daughter to the father in the United States after taking her to Germany following their divorce: *communicated*.

WILLIAMS - Germany (N° 10763/02)
[Section III]

The first applicant, who is a German national, is the mother of the second applicant, aged eleven, who is of German and American nationality, and was born of her mother's marriage to an American citizen. In breach of the provisions of a divorce decree made by an American court, which dealt with custody arrangements and the right to determine where the child should live, the applicants left the United States in June 2001, without informing the father, and settled in Germany. The father lodged an application with a German court for the return of his daughter. His application was dismissed at first instance but upheld on appeal. The Court of Appeal ordered the mother to return her daughter to the father by mid-February 2002 at the latest and declared the decision immediately enforceable. The court based its decision on, among other things, the Hague Convention on the Civil Aspects of International Child Abduction. The applicant appealed unsuccessfully to the Constitutional Court. In mid-February 2002 the Court of Appeal dismissed the applicant's request for a stay of execution of the decision returning her child to the father and ordered execution by force of the decision without, however, authorising the use of force against the child.
Communicated under Article 8.
The Court decided to treat the application as a matter of priority (Rule 41 of the Rules of Court) but refused to apply Rule 39 of the Rules of Court.

HOME
Search of lawyer's office and seizure of a letter: *admissible*.

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
Decision 12.3.2002 [Section IV]
(see Article 10, below).

CORRESPONDENCE
Control of correspondence of person detained with a view of extradition: *inadmissible*.

PRIEBKE - Italy (N° 48799/99)
Decision 7.3.2002 [Section I]

From 1943 the applicant, who was a Nazi officer, was the head of the German police in Rome under the orders of his colonel. Following an attack by Italian resistance fighters which resulted in the death of thirty-two German soldiers, he directed the execution of three hundred and thirty-five civilians, ordered in retaliation by his colonel and Hitler, at a place known as the "Ardeatine Caves". The applicant fled at the end of the war and emigrated to Argentina. In 1994 the Rome public prosecutor's office sought his arrest for his part in the murder of three hundred and thirty-five civilians. He was extradited in 1995 and placed in detention on remand on his arrival in Italy. In April 1996 he was committed for trial before a military

court. The court discontinued the proceedings on the ground that the offence was time-barred, and ordered his immediate release. Immediately after the verdict was pronounced, there were demonstrations by protesters, whereupon the Minister for Justice informed them that since Germany had requested the applicant's extradition, the decision to release him would not be enforced. On 3 August 1996 the Court of Appeal validated the applicant's arrest, noting that an arrest warrant had indeed been issued against him by a German court, and placed him in detention with a view to extradition. On 7 August 1996 the President of the same Court of Appeal ordered his correspondence to be censored in order to avoid any risk of his communicating information which might hinder the extradition proceedings. In October 1996 the Court of Cassation, ruling on an appeal by the military prosecution office, set aside the military court's judgment. Following that judgment the applicant was remanded in custody and made the subject of a compulsory residence order from March 1997. After being tried a second time by the military court, he was sentenced to fifteen years' imprisonment in July 1997, with ten years' remission. On 6 November 1997 the Court of Appeal dismissed an application for extradition lodged by the German authorities in August 1996 on the ground that the applicant was the subject of criminal proceedings in Italy. In the meantime the applicant and the military prosecution office had appealed against the judgment of the military court of July 1997. The Military Court of Appeal did not find any mitigating circumstances in favour of the applicant and sentenced him to life imprisonment. The applicant's appeal on points of law against that judgment was dismissed.
Inadmissible under Article 8: The order of 7 August 1996 for censorship of the applicant's correspondence had never been explicitly discharged. However, the order of 7 August 1996 explicitly referred to the extradition request submitted by the German authorities and had been sent to the governor of the prison where the applicant was detained. In March 1997 the applicant was made the subject of a compulsory residence order and, accordingly, left Rome Prison, finding accommodation first in a convent, then in a military hospital and lastly at the private home of a person willing to accommodate him. Given that the above-mentioned order had given responsibility for the censorship of his correspondence to the governor of the prison where the applicant had first been detained, it should have been clear to the applicant that the decision to make him the subject of a compulsory residence order marked the end of the censorship. Furthermore, his detention with a view to his extradition ended in March 1997 and the extradition proceedings themselves ended on 6 November 1997, when the Rome Court of Appeal declared the German authorities' request inadmissible. The applicant, who had been assisted by at least one lawyer during the domestic proceedings, could and should have known that any measure ordered in connection with his detention with a view to extradition should be construed as being of no further effect from the time when that detention ended, which was - at the latest - when the extradition request was finally rejected. With regard to the six-month period, the measure of which the applicant complained had to be considered as having ended on 6 November 1997 at the latest. As the present application had been lodged on 10 May 1999, that complaint was therefore out of time.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal to register titles of periodicals: *violation*.

GAWĘDA - Poland (Nº 26229/95)
Judgment 14.3.2002 [Section IV (former composition)]

Facts: The Regional Court refused the applicant's request for registration of the title of a periodical, "The Social and Politicial Monthly – A European Moral Tribunal", to be published in Kęty. The court considered that the title suggested that a European institution had been

established in Kęty, which was untrue and misleading for prospective buyers. The Court of Appeal rejected the applicant's appeal. The Regional Court subsequently refused the applicant's request for registration of the title "Germany – A Thousand Year-old Enemy of Poland", considering that registration of a periodical with such a title would be harmful to Polish-German relations. The Court of Appeal upheld the decision, considering that the title would be in conflict with reality. At the material time, an Ordinance of the Minister of Justice on the register of periodicals, issued pursuant to the Press Act, provided that registration was not permissible if it would be in conflict with the regulations in force and with reality. The Press Act itself provides for refusal of registration if the request does not contain the required data or if the proposed title would prejudice a right to protection of the title of an existing periodical.

Law: Article 10 – Under Polish law, the refusal to register the title of a periodical is tantamount to a refusal to allow its publication and the refusal of the applicant's requests thus amounted to an interference with his Article 10 rights. Although Article 10 does not in terms prohibit the imposition of prior restraints on publications, the relevant law must provide a clear indication of the circumstances in which such restraints are permissible, especially when the consequences of the restraint are to block publication completely. In the present case, the courts relied essentially on the Ordinance of the Minister of Justice in so far as it required that registration be refused if "in conflict with reality". They thus inferred from that notion a power to refuse registration where they considered that a title conveyed an essentially false picture. While the terms used were ambiguous and lacked the clarity to be expected in a legal provision of this nature, they suggested at most that registration could be refused where the request for registration did not comply with the technical requirements specified in the Press Act. To go further and require that the title of a magazine embody truthful information was inappropriate from the standpoint of freedom of the press: a title of a periodical is not a statement as such, since its function is essentially to identify the periodical on the press market for its actual and prospective readers. Moreover, such interpretation would require a legislative provision which clearly authorised the courts to do so. In short, the interpretation given by the courts introduced new criteria, which could not be foreseen on the basis of the text specifying situations in which the registration of a title could be refused. Previous interpretations of the provisions had not provided a basis for the approach adopted by the courts in the present case and the fact that the case-law of the Polish courts did not show that the provisions were particularly difficult to interpret only highlighted the lack of foreseeability of the interpretation given by the courts in the present case. While the judicial character of the system of registration was a valuable safeguard of freedom of the press, the decisions given by the national courts in this area must also conform to the principles of Article 10. In the present case, this in itself did not prevent the courts from imposing a prior restraint on a printed media in a manner which entailed a ban on publication of entire periodicals on the basis of their titles. The law applicable was not formulated with sufficient precision to enable the applicant to regulate his conduct. Therefore, the manner in which restrictions were imposed on the applicant's exercise of his freedom of expression was not "prescribed by law".

Conclusion: violation (unanimously).

Article 41: The Court made awards in respect of non-pecuniary damage and costs and expenses.

FREEDOM OF EXPRESSION
Defamation proceedings brought by prosecutor against defence counsel: *violation*.

NIKULA - Finland (Nº 31611/96)
Judgment 21.3.2002 [Section IV (former composition)]

Facts: The applicant acted as defence counsel in criminal proceedings against her client, I.S., and two other accused. The prosecutor decided not to bring charges against I.S.'s brother but summoned him to testify. The applicant objected and read out a memorial in which she accused the prosecutor of "blatant abuse" and "role manipulation", stating in particular that he was seeking, "by means of procedural tactics, to make a witness out of a co-accused" and that he had "brought trumped-up charges against a person who would qualify as a witness." The prosecutor reported these statements to the Prosecuting Counsel of the Court of Appeal. The Acting Prosecuting Counsel considered that the applicant had been guilty of defamation but decided not to indict her in view of the minor character of the offence. The prosecutor then brought a private prosecution against the applicant, who was convicted of negligent defamation and sentenced to pay a fine, damages and costs. The Supreme Court, by a majority, upheld the reasons but waived the fine in view of the minor character of the offence.
Law: Article 10 – The interference was based on a reasonable interpretation of the Penal Code and therefore prescribed by law. It was unnecessary to decide whether the proceedings pursued the legitimate aim of protecting the authority of the judiciary, since the interference in any case pursued the legitimate aim of protecting the reputation and rights of the prosecutor. As to the necessity of the interference, while lawyers are entitled to comment in public on the administration of justice, their criticism must not overstep certain bounds. In that connection, account must be taken of the need to strike the right balance between the various interests involved. The national authorities have a certain margin of appreciation, but there are no particular circumstances which would justify a wide margin of appreciation in this field. While the limits of acceptable criticism may in some circumstances be wider with regard to civil servants, civil servants do not knowingly lay themselves open to close scrutiny to the same extent as politicians; moreover, they must enjoy public confidence in conditions free of undue perturbation and it may therefore be necessary to protect them from offensive and abusive verbal attacks while on duty. In the present case, such protection did not have to weighed against the interests of freedom of the press or open discussion of matters of public concern. While it could not be excluded that an interference with counsel's freedom of expression in the course of a trial might raise an issue under Article 6 and considerations of fairness militated in favour of a free and even forceful exchange of argument between the parties, defence counsel's freedom should not be unlimited. Generally speaking, the distinction in various Contracting States between the role of the prosecutor as the opponent of the accused and that of the judge should provide increased protection for statements whereby an accused criticises a prosecutor as opposed to verbally attacking the judge or the court as a whole. Although the applicant accused the prosecutor of unlawful conduct, the criticism was directed at the prosecution strategy and, while some of the terms were inappropriate, the criticism was strictly limited to the prosecutor's performance in the case, as distinct from being focused on his general professional or other qualities. In that procedural context, the prosecutor had to tolerate very considerable criticism by the applicant in her capacity as defence counsel. The applicant's submissions were confined to the court room and did not amount to personal insult. She was subject to the supervision of the court, yet the prosecutor did not raise the matter with the judge and the judge did not take any action. Although the applicant was convicted only of negligent defamation and the fine was waived, the threat of an *ex post facto* review of counsel's criticism of another party is difficult to reconcile with defence counsel's duty to defend the client's interests. It should be for defence counsel, subject to supervision by the court, to assess the relevance and usefulness of a defence argument, without being influenced by the potential "chilling effect" of even a relatively light criminal sanction or an obligation to pay damages or costs. Only in exceptional cases can

restriction of defence counsel's freedom of expression be accepted and in the present case the restriction failed to answer any "pressing social need".
Conclusion: violation (5 votes to 2).
Articles 17 and 18 – no separate issue (unanimously).
Article 41 – The Court awarded the sums which she had been ordered to pay, as well as compensation in respect of non-pecuniary damage and costs and expenses.

FREEDOM OF EXPRESSION
Criminal investigation aimed at identifying a journalist's sources: *admissible.*

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
Decision 12.3.2002 [Section IV]

The first applicant is a journalist and the second applicant is the lawyer who represented him in the case brought before the Court. In July 1998 the journalist published an article in a daily newspaper alleging that a Luxembourg minister had been committing VAT fraud and had consequently been ordered to pay a tax penalty. The applicants produced documents in support of those allegations and, in particular, a decision of the director of the registration and domains authority ordering the minister to pay the fine in question. Two sets of proceedings were instituted following publication of the article by the first applicant. The first, which was an action for damages brought by the minister, is currently pending on appeal after the minister lost in the court of first instance. In the second set of proceedings, instituted by a criminal complaint lodged by the minister, an investigating judge began an investigation concerning a charge against the first applicant of concealing a breach of professional secrecy and against a person or persons unknown of breaching professional secrecy. The public prosecutor stated, in his application to commence proceedings, that it needed to be established which civil servants of the authority in question had had access to the relevant documents. The first two searches ordered by the investigating judge, one at the first applicant's house and the other at his place of work, proved fruitless, but the applicant failed in his applications to have the investigating judge's orders set aside. On searching the second applicant's chambers the investigators seized an internal and confidential letter which post-dated the article and had been sent by the director of the registration and domains authority. The applicants explained that the letter had been sent anonymously to the editorial board of the newspaper of the first applicant, who had immediately handed it to his lawyer. As that search was nullified, the seized document was returned, but on the same day the investigating judge made a fresh order, which was confirmed valid, allowing it to be seized again. The criminal proceedings are still pending.
Admissible under Article 10 with regard to the first applicant's right, in his capacity as a journalist, not to reveal his sources.
Admissible under Article 8 with regard to the seizure carried out in the second applicant's chambers.

ARTICLE 11

FREEDOM OF ASSOCIATION
Activities of local branch of party suspended for 6 months: *communicated*.

VATAN (PEOPLE'S DEMOCRATIC PARTY) - Russia (N° 47978/99)
Decision 21.3.2002 [Section III]

The applicant is the People's Democratic Party, also known as the Vatan. It was created to support the rebirth of the Tartar nation and to protect Tartars' political, socio-economic and cultural rights. In October 1997 a regional branch of the Vatan launched an appeal to the indigenous population of the Volga region, calling them to celebrate their ancestors, deploring the discrimination which they had endured from the authorities, promoting indigenous languages and calling for a return to Islam. In May 1998 this branch of the party obtained from the Mayor of Ulyanovsk the authorisation to hold a ceremony; it took place a few days later. In June 1998 the Regional Prosecutor applied to the Regional Court for the activities of this branch of the Vatan to be suspended on the ground that the party's activities were against the Constitution. In July 1998 the Regional Court granted the Prosecutor's request and suspended the activities of the regional branch of the Vatan for six months. In order to reach its decision, the court took into account, in particular, the appeal of October 1997 which called for "de-colonisation of nations captured by Moscow", to "start the national liberation fight" and to "return to Islam". The court also referred to the fact that this regional branch of the Vatan had held a religious ceremony in the centre of Ulyanovsk in breach of the terms of the Mayor's authorisation whereby it should have been circumscribed to worship places and cemeteries. The regional branch contested this assertion, arguing that the ceremony had taken place in the allowed areas. The Supreme Court upheld the Regional Court's decision.
Communicated under Articles 11 and 34 (victim).
Inadmissible under Article 6(1): The proceedings before the Regional Court and the Supreme Court dealt exclusively with the question of whether the association could pursue its political activities. Proceedings which determine political rights do not fall within the ambit of Article 6(1). Besides, the question of the financial consequences of the suspension of the activities of the regional branch of the Vatan was not raised during the proceedings. Therefore, these proceedings did not determine the applicant's civil rights and did not fall within the ambit of Article 6: incompatible *ratione materiae*.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF GRAND CHAMBER
Insufficient compensation for property situated on territories lost by Poland after the Second World War and which repatriated owner had to surrender: *relinquishment of jurisdiction*.

J.B. - Poland (N° 31443/96)
[Section IV]

Following the Second World War, the river Bug was set as the new border between Poland and the USSR. The territories situated beyond this river and which belonged to Poland were ceded to the USSR. The Polish State undertook to compensate in kind those who had to leave these territories and had to surrender their estates. The applicant's grandmother was in such a situation. In 1981 the applicant's mother, who had inherited the rights pertaining to the

property in issue, received a plot in compensation. According to the applicant, it was only worth 4% of the value of the property abandoned by his grandmother. In 1990 the State authorities' property was transferred to the local authorities with the consequence that the former, while still under obligation to satisfy claims of repatriated persons and their heirs, were left with insufficient land to meet the demand. In 1992 the applicant, who had inherited the plot from his mother, sold it. The sum which he received for it being significantly inferior to the value of his grandmother's property, he asked the authorities to grant him the difference between the two sums as the remainder of the compensation owed. The competent authorities informed him that there was no land for the purposes of compensation for property which had been abandoned in the territories beyond the river Bug. The applicant unsuccessfully filed a complaint with the Supreme Administrative Court. Some 90,000 other persons have not received full compensation for the property abandoned by their ancestors in the territories beyond the river Bug.

ARTICLE 34

VICTIM
Court allegedly refraining from increasing applicant's sentence after having taking into account length of proceedings.

WEJRUP - Denmark (N° 49126/99)
Decision 7.3.2002 [Section I]
(see Article 6(1) [criminal], above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Detention in the Netherlands of former President of the Federal Republic of Yugoslavia, indicted by the ICTY, and proceedings before that court: *inadmissible.*

MILOŠEVIĆ - Netherlands (N° 77631/01)
Decision 19.3.2002 [Section II]

The applicant is the former president of the Federal Republic of Yugoslavia. He was indicted by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY). He was arrested in the Federal Republic of Yugoslavia and transferred to the ICTY. He brought summary civil proceedings against the Netherlands State before the President of the Regional Court of The Hague requesting his release, arguing notably that his transfer to the ICTY was illegal, that the ICTY had no legal basis in international law, that it was not impartial and independent, that it was discriminatory and, finally, that he was entitled to immunity as a former head of State. He concluded that, in view of these elements, the Netherlands State had acted unlawfully by allowing him to be detained and remain in detention on its territory. In a judgment of 31 August 2001, the President of the Regional Court held, first, that the ICTY had sufficient legal basis, secondly, that it offered sufficient procedural guarantees and, finally, that the courts of the Netherlands were not competent to consider the applicant's request for release as the Netherlands had lawfully transferred its jurisdiction over the ICTY's indictees to the ICTY. The applicant lodged an appeal against

this judgment but later withdrew it. He made several complaints before the Court concerning his detention in the Netherlands, the proceedings before the ICTY, his restricted contacts with the press and media, the absence of an available and effective remedy other than that of the ICTY, and, finally, of discrimination.
Inadmissible under Article 5(1), (2) and (4), Article 6(1), (2) and (3)(c), as well as Articles 10, 13 and 14: It was not clear whether all complaints were made at the domestic level. To the extent that they were not, there was a failure to exhaust the available domestic remedies. To the extent that they were, the applicant had withdrawn his appeal against the judgment of the Regional Court. The applicant alleged that it was clear from this judgment that no adequate and effective domestic remedies were available, the President of the Regional Court having held that the domestic courts had no jurisdiction to entertain his claims. However, the applicant did not make use of the opportunities offered by domestic law to challenge this finding, as he withdrew his appeal to the Court of Appeal, thus depriving himself of the possibility of lodging a subsequent appeal on points of law with the Supreme Court. The existence of mere doubts as to the prospects of success of a particular remedy which does not clearly appear to be futile is not a valid reason for failing to exhaust domestic remedies: non-exhaustion.

EFFECTIVE DOMESTIC REMEDY (France)
Length of criminal proceedings: lack of effectiveness of the appeal provided for by Article 175(1) of the Code of Criminal Procedure.

LOUERAT - France (N° 44964/98)
Decision 7.3.2002 [Section III]

The applicants were the managers of three companies whose object was the construction and sale of private houses. The tax authorities lodged a complaint for tax evasion against the applicants in their capacity as managers of these companies. The applicants were charged in 1991 and committed for trial in June 1992 for fraudulent evasion of corporation tax and value-added tax. They were sentenced in November 1994 to thirty months' imprisonment, eighteen months of which were suspended, and a suspended term of six months' imprisonment respectively, and ordered to pay the evaded tax and related penalties. In a judgment delivered *in absentia* in November 1995, the Orléans Court of Appeal upheld that judgment. In January 1997 the applicants applied to that court to set the judgment aside and rehear the case. The Orléans Court of Appeal upheld the judgment, but reduced the first applicant's sentence to two years, eighteen months of which were suspended. In May 1998 the Court of Cassation quashed the judgment in part. Two of the applicants' companies had brought concurrent proceedings in the Administrative Court challenging their obligation to pay various taxes and related penalties. In May 1999 one of the companies won and the other, whose application had been dismissed, lodged an appeal. That appeal is currently pending. In 1992 the applicants brought administrative proceedings seeking an exemption from the contributions payable in addition to income tax and proceedings seeking remission from a tax penalty imposed on one of the companies. Those applications were dismissed in various decisions of May 1999. In April 1992 the applicant lodged five applications with the Administrative Court concerning the payment of various taxes and related penalties in respect of one of the companies. Those proceedings are apparently still pending on appeal.
Admissible under Article 6(1) (reasonable time): the remedy provided for in domestic law by Article 175-1 of the Code of Criminal Procedure did not in theory relate to the issue of the exhaustion of domestic remedies for the purposes of Article 35(1), but rather to the examination of the applicant's conduct in the light of the complaint of the excessive length of the proceedings and, accordingly, was a matter for examination of the merits of the complaint. The application was lodged before the remedy provided for in Article L. 781-1 of the Code of Judicial Organisation and referred to by the Government became an effective domestic remedy to be used for the purposes of Article 35(1).

EFFECTIVE DOMESTIC REMEDY (France)
Effectiveness of the appeal provided for in Article L. 781(1) of the Code of Organisation of the Judiciary, introduced after the lodging of the application.

LOUERAT - France (N° 44964/98)
Decision 7.3.2002 [Section III]
(see above).

ARTICLE 43

Article 43(2)

The Panel has accepted requests for referral to the Grand Chamber of the following judgments:

HATTON and others – the United Kingdom (Nº 36022/97)
Judgment 2.10.2001 [Section III]

The case concerns airport noise (see Information Note No. 35).

SAHIN – Germany (Nº 30943/96)
SOMMERFELD – Germany (Nº 31871/96)
Judgments 11.10.2001 [Section IV]

The cases concern the refusal to grant natural fathers a right of access to their children born out of wedlock (see Information Note No. 35).

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. 37):

TSIRONIS - Greece (N° 44584/98)
Judgment 6.12.2001 [Section I]

MARTINS SERRA and ANDRADE CÂNCIO - Portugal (Nº 43999/98)
Judgment 6.12.2001 [Section III]

LUKSCH - Austria (Nº 37075/97)
SCHREDER - Austria (Nº 38536/97)
Judgments 13.12.2001 [Section I]

SAPL - France (Nº 37565/97)
Judgment 18.12.2001 [Section II]

R.D. - Poland (Nº 29692/96 and Nº 34612/97)
Judgment 18.12.2001 [Section IV]

PARCIŃSKI - Poland (Nº 36250/97)
GAJDÚŠEK - Slovakia (Nº 40058/98)
Judgments 18.12.2001 [Section IV]

F.L. - Italy (Nº 25639/94)
BAISCHER - Austria (Nº 32381/96)
LUDESCHER - Austria (Nº 35019/97)
LSI INFORMATION TECHNOLOGIES - Greece (Nº 46380/99)
FÜTTERER - Croatia (Nº 52634/99)
Judgments 20.12.2001 [Section I]

BUCHBERGER - Austria (Nº 32899/96)
WEIXELBRAUN - Austria (Nº 33730/96)
LERAY and others - France (Nº 44617/98)
Judgments 20.12.2001 [Section III]

BAYRAK - Germany (Nº 27937/95)
Judgment 20.12.2001 [Section IV (former composition)]

Gattuso - Italy (Nº 44342/98)
Caracciolo - Italy (Nº 44382/98)
Murru - Italy (no. 4) (Nº 44386/98)
Besati - Italy (Nº 44388/98)
Mauti - Italy (Nº 44391/98)
Fiorenza - Italy (Nº 44393/98)
Cartoleria Poddighe s.n.c. - Italy (Nº 44399/98)
Silvestri - Italy (Nº 44400/98)
Ferraresi - Italy (Nº 44405/98)
Delmonte and Badano - Italy (Nº 44408/98 and Nº 48525/99)
Centi - Italy (no. 1) (Nº 44429/98)
Grassi - Italy (Nº 44430/98)
Centi - Italy (no. 2) (Nº 44432/98)
Bagnetti eand Bellini - Italy (Nº 44433/98)
C.A.I.F. - Italy (Nº 49302/99)
Grisi - Italy (Nº 49303/99)
Gatto - Italy (Nº 49304/99)
M.I. and E.I. - Italy (Nº 49305/99)
Servillo and D'Ambrosio - Italy (Nº 49306/99)
D'Amore - Italy (Nº 49307/99)
Grimaldi - Italy (Nº 49308/99)
Crotti - Italy (Nº 49309/98)
Stefania Palumbo - Italy (Nº 49310/99)
Mezzena - Italy (Nº 49311/99)
Provide s.r.l. - Italy (Nº 49312/99)
Bonacci and others - Italy (Nº 49313/99)
Steiner and Hassid Steiner - Italy (Nº 49314/99)
Bazzoni - Italy (Nº 49315/99)
Albertosi - Italy (Nº 49316/99)
Filosa - Italy (Nº 49317/99)
D'Arrigo - Italy (Nº 49318/99)
Capri - Italy (Nº 49319/99)

Onori - Italy (Nº 49320/99)
Guarnieri - Italy (Nº 49321/99)
Mazzacchera - Italy (Nº 49322/99)
Pedà - Italy (Nº 49396/99)
Judgments 6.12.2001 [Section III]

Laganà - Italy (Nº 44520/98)
Romano - Italy (Nº 48407/99)
Grasso - Italy (Nº 48411/99)
Gaspari - Italy (Nº 51648/99)
Camici - Italy (Nº 51649/99)
Molinaris - Italy (Nº 51650/99)
Allegri - Italy (Nº 51651/99)
Molek - Italy (Nº 51652/99)
F.C. - Italy (Nº 51653/99)
Mezzetta - Italy (Nº 51654/99)
Mazzoleni and others - Italy (Nº 51655/99)
Targi - Italy (Nº 51656/99)
Pastrello - Italy (Nº 51657/99)
Roccatagliata - Italy (Nº 51659/99)
Brivio - Italy (Nº 51660/99)
Beluzzi - Italy (Nº 51661/99)
D'Apice - Italy (Nº 51662/99)
Villanova - Italy (Nº 51663/99)
Plebani - Italy (Nº 51665/99)
G.L. - Italy (Nº 51666/99)
Bertot - Italy (Nº 51667/99)
Lopriore - Italy (Nº 51668/99)
Sordelli Angelo E C. S.N.C. - Italy (Nº 51670/99)
Arrigoni - Italy (Nº 51671/99)
Selva - Italy (Nº 51672/99)
Tiozzo Peschiero - Italy (Nº 51673/99)
Ferfolja - Italy (Nº 51675/99)
Meneghini - Italy (Nº 51677/99)
Baioni - Italy (Nº 51678/99)
Cassin - Italy (Nº 51679/99)
Canapicchi - Italy (Nº 51680/99)
Butta - Italy (Nº 51682/99)
De Guz - Italy (Nº 51683/99)
P.O. - Italy (Nº 51692/99)
Bettella - Italy (Nº 51695/99)
Cappalletti - Italy (Nº 51696/99)
Piccinin - Italy (Nº 51697/99)
O.M. - Italy (Nº 51698/99)
Perico - Italy (Nº 51699/99)
Pelagagge - Italy (Nº 51700/99)
Carbone - Italy (Nº 51702/99)
Rota - Italy (Nº 51704/99)
Rota - Italy (Nº 51705/99)
Mannari - Italy (Nº 51706/99)
Vanzetti - Italy (Nº 51707/99)
I.M. - Italy (Nº 51708/99)
Rossi - Italy (Nº 51710/99)
Spanu - Italy (Nº 51711/99)
Judgments 11.12.2001 [Section II]

Pupillo - Italy (Nº 41803/98)
Judgment (revision) 18.12.2001
[Section I (former composition)]

Article 44(2)(c)

On 27 March 2002 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

TRIČKOVIĆ - Slovenia (Nº 39914/98)
Judgment 12.6.2001 [Section I]

AVŞAR – Turkey (Nº 25657/94)
Judgment 10.7.2001 [Section I]
(see Informatiaon Note Nº 32)

COOPERATIVE LA LAURENTINA – Italy (Nº 23529/94)
Judgment 2.8.2001 [Section II]
(see Information Note Nº 33)

POTOCKA – Poland (Nº 33776/96)
Judgment 4.10.2001 [Section IV]
(see Information Note Nº 32)

SCIORTINO – Italy (Nº 30127/96)
Judgment 18.10.2001 [Section II]
(see Information Note Nº 35)

SARI - Denmark and Turkey (Nº 21889/93)
Judgment 8.11.2001 [Section IV]

METROPOLITAN CHURCH OF BESSARABIA and others - Moldova (N° 45701/99)
Judgment 13.12.2001 [Section I]
(see Information Note Nº 37)

MIANOWICZ - Germany (Nº 42505/98)
Judgment 18.12.2001 [Section IV]

ZAWADZKI - Poland (Nº 34158/96)
Judgment 20.12.2001 [Section IV (former composition)]

G.C. and C.C. - Italy (Nº 44510/98)
Judgment 23.12.2001 [Section III]

E.H. - Greece (Nº 42079/98)
Judgment 25.12.2001 [Section II]

SALVI - Italy (Nº 49360/99)
Judgment 25.12.2001 [Section IV]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Allegedly insufficient compensation by the German authorities for expropriations having taken place in the GDR: *communicated*.

VON ZITZEWITZ and others - Germany (N° 71917/01)
The ALFRED TÖPFER Foundation and the DEUTSCHE INDUSTRIE-ANLAGEN Company - Germany (N° 10260/02)
[Section III]

The first two applicants are the heirs of landowners who were expropriated either because they left the GDR (as in the case of the first applicant) or pursuant to a decision of the GDR authorities (as in the case of the second applicant). The two above-mentioned applicants lodged an application for restitution of their property, which was refused them on the ground that the third parties who had acquired the land in the meantime had done so in good faith. The other applicants lodging the first application are the heirs of owners of land or real estate which was expropriated as part of the land reform carried out between 1945 and 1949 in the former Soviet Occupied Zone. The Alfred Töpfer Foundation and the Deutsche Industrie-Anlagen company had land situated in the former Soviet Occupied Zone expropriated. The applicant Foundation lodged an application directly with the Federal Constitutional Court, whereas the applicant company applied - unsuccessfully - to the domestic courts for restitution of its land and compensation. In June 1995 most of the applicants sought a ruling from the Federal Constitutional Court on the issue of the difference in value between reparations in the form of restitution and reparations in the form of indemnities or compensation. In December 1995 the applicant Foundation lodged an application with the Supreme Court in which it complained, *inter alia,* that the Indemnification and Compensation Act excluded legal entities from any right to restitution or compensation. In November 2000, after hearing evidence in March of that year from the applicants, the Federal Government and the Governments of the *Länder* situated in the former GDR, the Federal Constitutional Court delivered a leading judgment. It pointed out at the outset that its task was not to examine the constitutionality of the reparations for injustices committed by another State from the standpoint of the protection of the right of property guaranteed by the Basic Law. It decided to examine the constitutionality of the Indemnification and Compensation Act solely in the light of the principle of a state based on social justice, the rule of law and the general principle forbidding arbitrary decisions. It held that the legislature had a wide margin of appreciation in determining the nature and scope of reparations. Accordingly, the court adjudged that the legislature could determine the amount of reparations on the basis of the financial means at its disposal. The court concluded that the Indemnification and Compensation Act was not unconstitutional.
Communicated under Article 1 of Protocol No. 1 alone and taken in conjunction with Article 14 and Article 6(1) (length of proceedings).

PEACEFUL ENJOYMENT OF POSSESSIONS
Unemployment benefit suspended for six weeks due to failure to contact a potential employer: *communicated*.

T.T. - Finland (N° 44594/98)
[Section III]

The applicant's unemployment benefit was suspended for a period of six weeks for not having contacted a potential employer in order to arrange a job interview. The applicant claimed that he did not receive the offer which the local employment office allegedly sent him. His subsequent appeals were rejected on the ground that he could not show that he did not receive the letter.
Communicated under Article 1 of Protocol No. 1.

Other judgments delivered in mars 2002

Article 2

HARAN - Turkey (Nº 25754/94)
Judgment 26.3.2002 [Section IV]

killing of the applicant's son, allegedly by the security forces – striking out (*ex gratia* payment and unilateral declaration by the Government).

ORAL and others - Turkey (Nº 27735/95)
Judgment 28.3.2002 [Section I]

killing of applicants' relative during police operation – friendly settlement.

Article 3

ERAT and SAĞLAM - Turkey (Nº 30492/96)
Judgment 26.3.2002 [Section IV]

alleged ill-treatment in custody – friendly settlement.

Article 5

STAŠAITIS - Lithuania (Nº 47679/99)
Judgment 21.3.2002 [Section III]

absence of legal basis for prolongation of detention on remand, length of detention on remand and absence of proper review of lawfulness of detention – violation.

ÜLGER - Turkey (Nº 28505/95)
Judgment 28.3.2002 [Section III]

alleged failure to bring detainee promptly before a judge, absence of possibility to challenge lawfulness of detention and absence of right to compensation –friendly settlement.

Article 5(3) and Article 6(1)

KLAMECKI - Poland (Nº 25415/94)
Judgment (final) 28.3.2002 [Section III]

length of detention on remand and length of criminal proceedings – no violation.

Article 6(1)

DEVENNEY - United Kingdom (Nº 24265/94)
Judgment 19.3.2002 [Section II]

access to court – issuing of national security certificate precluding operation of legislation on non-discrimination in employment – violation.

ADAMOGIANNIS - Greece (Nº 47734/99)
Judgment 14.3.2002 [Section I]

failure of authorities to comply with court judgment – violation.

SAJTOS - Greece (Nº 53478/99)
Judgment 21.3.2002 [Section I]

refusal of compensation for detention on remand without hearing the person concerned – violation.

IMMEUBLES GROUPE KOSSER - France (Nº 38748/97)
Judgment 21.3.2002 [Section I]

alleged absence of opportunity to respond to the submissions of the Government Commissioner in proceedings before the *Conseil d'Etat* and participation of the Government Commissioner in the deliberations of the *Conseil d'Etat* – no violation/violation.

A.T. - Austria (Nº 32636/96)
Judgment 21.3.2002 [Section III]

lack of oral hearing in proceedings under the Media Act – violation.

MALVEIRO - Portugal (Nº 45725/99)
Judgment 14.3.2002 [Section III]

GRANATA - France (Nº 39626/98)
VALLAR - France (Nº 42406/98)
VAN DER KAR and LISSAUR VAN WE ST - France (Nº 44952/98 and Nº 44953/98)

BENZI - France (Nº 46280/99)
ARNAL - France (Nº 47007/99)
GOUBERT and LABBE - France (Nº 49622/99)
SOLANA - France (Nº 51179/99)
CHAUFOUR - France (Nº 54757/00)
BEAUME MARTY - France (Nº 55672/00)
SIES - France (Nº 56198/00)
C.K. - France (Nº 57753/00)
Judgments 19.3.2002 [Section II]

ENTREPRISES METON and ETEP - Greece (Nº 47730/99)
Judgment 21.3.2002 [Section I]

REGO CHAVES FERNANDES - Portugal (Nº 46462/99)
VAZ DA SILVA GIRÃO - Portugal (Nº 46464/99)
Judgments 21.3.2002 [Section III]

SCIARROTTA - Italy (Nº 40151/98)
DIEBOLD - Italy (Nº 41740/98)
LATTANZI and CASCIA - Italy (Nº 44334/98)
CONTARDI - Italy (Nº 46970/99)
MASTROMAURO s.r.l. - Italy (Nº 47479/99)
Judgments 28.3.2002 [Section I]

ALBERGAMO - Italy (Nº 44392/98)
NARDONE - Italy (Nº 44428/98)
Judgments 28.3.2002 [Section III]

length of civil proceedings – violation.

MOULLET - France (Nº 44485/98)
LUTZ - France (Nº 48215/99)
GRAND - France (Nº 50996/99)
BAILLARD - France (Nº 51575/99)
Société COMABAT - France (Nº 51818/99)
Judgments 26.3.2002 [Section II]

XENOPOULOS - Greece (Nº 55611/00)
Judgment 28.3.2002 [Section I]

length of administrative proceedings – violation.

Leonardi - Italy (Nº 54278/00)
Prete - Italy (Nº 54279/00)
Giordano - Italy (Nº 54280/00)
Amici - Italy (Nº 54282/00)
Radicchi - Italy (Nº 54284/00)
Tatangelo - Italy (Nº 54285/00)
Andreozzi - Italy (Nº 54288/00)
D'Agostino - Italy (Nº 54290/00 and Nº 54310/00)
Caproni - Italy (Nº 54291/00)
Cerasomma - Italy (Nº 54292/00)
Fiore - Italy (Nº 54294/00)

Trovato - Italy (Nº 54295/00)
Manera - Italy (Nº 54296/00)
Aniceto - Italy (Nº 54297/00)
Sabetta - Italy (Nº 54298/00)
Jaculli - Italy (Nº 54301/00)
Incollingo - Italy (Nº 54302/00)
Spatrisano - Italy (Nº 54303/00)
Tamburrini - Italy (Nº 54305/00)
Masia - Italy (Nº 54306/00)
Mignanelli - Italy (Nº 54308/00)
Carretta - Italy (Nº 54309/00)
Soave - Italy (Nº 54311/00)
Manna - Italy (Nº 54312/00)
Castiello - Italy (Nº 54313/00)
Quacquarelli - Italy (Nº 54314/00)
Tortolani - Italy (Nº 54315/00)
Zullo - Italy (Nº 54317/00)
Picano - Italy (Nº 54318/00)
Sportola - Italy (Nº 54319/00)
Judgments 28.3.2002 [Section III]

length of proceedings in the Audit Court – violation.

MARRAMA - Italy (Nº 44359/98)
SERGIO FERRARI - Italy (Nº 54287/00)
CHIAPPETTA - Italy (Nº 54293/00)
LIBERTINI and DI GIROLAMO - Italy (Nº 54299/00)
BETTI - Italy (Nº 54316/00)
Judgments 28.3.2002 [Section I]

length of proceedings in the Audit Court – friendly settlement.

LEBOEUF - France (Nº 47194/99)
Judgment 26.3.2002 [Section II]

length of labour court proceedings – friendly settlement.

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

DEMETRIU - Romania (Nº 32935/96)
Judgment 19.3.2002 [Section II]

access to court – exclusion of courts' jurisdiction to review nationalisation of property – striking out.

VASILOPOULOU - Greece (Nº 47541/99)
Judgment 21.3..2002 [Section I]

refusal of authorities to implement final and binding court judgment and non-payment by State of sums due to applicant – violation.

Article 6(3)(d)

BIRUTIS and others - Lithuania (Nº 47698/99 and Nº 48115/99)
Judgment 28.3.2002 [Section III]

use at trial of statements made by anonymous witnesses – violation.

Article 8

PUZINAS - Lithuania (Nº 44800/98)
Judgment 14.3.2002 [Section III]

opening of a prisoner's correspondence – violation.

Article 10

DE DIEGO NAFRIA - Spain (Nº 46833/99)
Judgment 14.3.2002 [Section I (former composition)]

dismissal of employee by the Bank of Spain for making offensive remarks about senior officials in a letter – no violation.

Article 14

SAWDEN - United Kingdom (Nº 38550/97)
Judgment 12.3.2002 [Section II]

LOFFELMAN - United Kingdom (Nº 44585/98)
Judgment 26.3.2002 [Section IV]

unavailability of widows' allowances to widowers – friendly settlement.

Article 1 of Protocol No. 1

QUARTUCCI - Italy (Nº 41232/98)
Judgments 28.3.2002 [Section I]

impossibility of recovering possession of property due to staggering of granting of police assistance to enforce eviction orders – friendly settlement.

DUDU ÇALKAN - Turkey (Nº 19660/92)
MEHMET ÇELEBI - Turkey (Nº 20140/92)
ADILE KARTAL - Turkey (Nº 20144/92)
AHMET ÖZTÜRK - Turkey (Nº 20151/92)
MEHMET ÖZEN - Turkey (Nº 20152/92)
AZIZ SEN - Turkey (no. 2) (Nº 20155/92)
Judgments 28.3.2002 [Section III]

delay in payment of compensation for expropriation – violation.

A.S. - Turkey (Nº 27694/95)
İ.S. - Turkey (Nº 38931/97)
Judgments 28.3.2002 [Section III]

delay in payment of compensation for expropriation – friendly settlement.

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

Convention

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

Protocol No. 1

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

Protocol No. 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