CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 51
on the case-law of the Court
March 2003

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

Statistical information[1]

Judgments delivered	March	2003
Grand Chamber	0	2(5)
Section I	5	41(43)
Section II	9(10)	36(38)
Section III	2	21
Section IV	6	23
Sections in former compositions	1	9
Total	**23(24)**	**132(139)**

Judgments delivered in March 2003					
	Merits	Friendly settlement	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	1	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	4	1	0	0	5
Section II	7(8)	2	0	0	9(10)
Section III	2	0	0	0	2
Section IV	6	0	0	0	6
Total	**20(21)**	**3**	**0**	**0**	**23(24)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(5)	0	0	0	2(5)
Former Section I	4	0	0	0	4
Former Section II	0	0	0	0	0
Former Section III	4	0	0	0	4
former Section IV	0	0	0	1[2]	1
Section I	28(30)	11	0	2[3]	41(43)
Section II	31(33)	4	1	0	36(38)
Section III	20	1	0	0	21
Section IV	22	1	0	0	23
Total	**111(118)**	**17**	**1**	**3**	**132(139)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Revision.
3. One revision judgment and one just satisfaction judgment.

Decisions adopted		March	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		21	31(32)
Section II		9	22
Section III		15	29
Section IV		7	21
former Sections		0	1
Total		**52**	**104(105)**
II. Applications declared inadmissible			
Section I	- Chamber	6	17
	- Committee	467	1150
Section II	- Chamber	9	18
	- Committee	496	1113
Section III	- Chamber	10	29(30)
	- Committee	249	719
Section IV	- Chamber	9	31
	- Committee	384	839
Total		**1630**	**3916(3917)**
III. Applications struck off			
Section I	- Chamber	3	4
	- Committee	3	5
Section II	- Chamber	6	12
	- Committee	5	11
Section III	- Chamber	1	17
	- Committee	0	2
Section IV	- Chamber	2(18)	61(79)
	- Committee	9	15
Total		**29(45)**	**129(145)**
Total number of decisions[1]		**1711(1727)**	**4149(4167)**

1. Not including partial decisions.

Applications communicated	March	2003
Section I	36(38)	70(74)
Section II	41	81
Section III	64(71)	153(160)
Section IV	30(31)	115(116)
Total number of applications communicated	**171(181)**	**417(431)**

ARTICLE 2

DEATH PENALTY
Death sentence imposed but not carried out, and subsequent removal of risk: *no violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Article 3, below).

USE OF FORCE
Fatal shooting by police: *communicated*.

JUOZAITIENĖ et BIKULČIUS - Lithuania (Nº 70659/01 and Nº 74371/01)
[Section III]

The applicants' two sons were shot and killed by police in July 1998 when the car they were travelling in failed to stop for a routine road traffic check. The driver of the car was prosecuted for manslaughter and resisting police orders. The applicants were recognised as complainants in those proceedings. In March 1999, the driver of the car was found guilty on the second count. However, his acquittal on the charge of manslaughter meant that the applicants' claims were not examined. The Regional Court upheld the judgment on appeal. It also instituted criminal proceedings for manslaughter against the police officer who fired on the car. These proceedings were discontinued by the prosecutor in December 1999. The District Court quashed the prosecutor's decision, but he again decided not to proceed. The District Court subsequently rejected the applicants' appeals and ruled that as the police officer had used his weapon lawfully, firing at the car rather than its occupants, he had not committed manslaughter.
Communicated under Article 2.

ARTICLE 3

INHUMAN TREATMENT
Imposition of death sentence following proceedings considered to be unfair: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]

Facts: In October 1998 the applicant, a Turkish national and the former leader of the Workers' Party of Kurdistan ("the PKK"), was expelled from Syria. After staying in various countries, he was put up at the Greek Ambassador's residence in Nairobi, Kenya. Following a meeting with the Kenyan Minister of Foreign Affairs, the Greek Ambassador informed the applicant that he was free to leave and that the Netherlands was prepared to accept him. Finally, the applicant was taken to the airport in a car driven by a Kenyan official on 15 February 1999. The car took him to an aircraft in the international transit area of Nairobi Airport in which Turkish officials were waiting. The applicant was arrested after boarding the aircraft. The Turkish courts had issued seven warrants for his arrest and a wanted notice had been circulated by Interpol. The applicant was transferred by aircraft to Turkey and taken into custody in a prison on the island of İmralı on 16 February 1999. From that date onwards he

was interrogated by members of the security forces. On 22 February 1999 the Public Prosecutor at the Ankara State Security Court questioned him. On 23 February 1999 the applicant appeared before a judge of the State Security Court, who ordered his detention pending trial. In an indictment submitted on 24 April 1999 the Public Prosecutor at the Ankara State Security Court accused the applicant of carrying on activities with a view to bringing about the secession of part of the national territory and of having formed and led an armed organisation for that purpose. He sought the death penalty pursuant to Article 125 of the Criminal Code. During the course of the trial the Constitution was amended so as to exclude military members from the composition of the state security courts. A civilian judge was therefore appointed to replace the military judge as aa member of the State Security Court hearing the case. On 29 June 1999 the Ankara State Security Court found the applicant guilty of the offences as charged and sentenced him to death, pursuant to Article 125 of the Criminal Code. In a judgment delivered on 25 November 1999 the Court of Cassation upheld that decision in its entirety.

On 13 November 1999 the European Court of Human Rights decided to apply Rule 39 of the Rules of Court and requested the Turkish government to take all necessary steps to ensure that the death penalty was not carried out, so as to enable the Court to proceed effectively with the examination of the admissibility of the applicant's application. In September 2001 Delegates of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the prison where the applicant was being held.

The death penalty was abolished in peacetime in Turkey by legislation introduced in August 2002. Consequential amendments were made to the Criminal Code. An action that had been brought in the Constitutional Court to challenge the constitutionality of the legislation abolishing the death penalty was dismissed. In a letter of 19 September 2002 to the Court, the Turkish Government declared that the applicant's sentence could no longer be executed. By a judgment of 3 October 2002 the Ankara State Security Court commuted the applicant's sentence to one of life imprisonment. Appeals were lodged against that judgment by two trade unions which had intervened in the criminal proceedings on behalf of their deceased members. The appeals were still pending when the Court delivered its judgment.

Law: The Court unanimously dismissed the Government's preliminary objection to the applicant's complaints under Articles 5(1), 5(3) and (4) of a failure to exhaust domestic remedies and held that there had been a violation of Articles 5(3) and 5(4).

Article 5(1): The applicant had been arrested by members of the Turkish security forces inside an aircraft in the international zone at Nairobi Airport. Directly after being handed over by the Kenyan officials to the Turkish officials he had come under effective Turkish authority and had therefore been brought within the "jurisdiction" of that State for the purposes of Article 1 of the Convention, even though in the case before the Court, Turkey had exercised its authority outside its territory. The applicant's arrest and detention had been carried out in accordance with arrest warrants issued by the Turkish criminal courts with a view to bringing him before "the competent legal authority on reasonable suspicion" of having committed an offence. The arrest and detention had therefore been in accordance with Turkish domestic law. Moreover, it had not been established beyond all reasonable doubt that the operation carried out partly by Turkish officials and partly by Kenyan officials amounted to a violation by Turkey of Kenyan sovereignty and, consequently, of international law. Lastly, the fact that the arrest warrants had not been shown to the applicant until he was detained by members of the Turkish security forces in an aircraft at Nairobi Airport did not deprive his subsequent arrest of a legal basis under Turkish law.

Consequently, the applicant's arrest in February 1999 and his detention had to be regarded as having been in accordance with "a procedure prescribed by law" for the purposes of Article 5(1)(c) of the Convention.

Conclusion: no violation (unanimously).

Article 6(1) (independent and impartial tribunal): It was true that the State Security Court was composed of three civilian judges when the applicant was convicted, as, following a constitutional amendment, the military judge who had initially been a member of the court had been replaced by a civilian judge before the applicant's lawyers had made their

submissions on the merits of the case. The civilian judge had sat as a substitute judge and had followed the trial proceedings from the beginning. However the last-minute replacement of the military judge was not capable of curing the defect in the composition of the state security court that had led the Court to find a violation on that point in its *İncal* and *Çiraklar* judgments, as most of the trial had already taken place before the military judge ceased to be a member of the trial court. It was the presence of the military judge for most of the trial that had given rise to the problem and not the change in the court's composition. A further factor was the exceptional nature of the trial itself, which concerned a high-profile accused who had been engaged in a lengthy armed conflict with the Turkish military authorities and sentenced to death. The presence of the military judge could only have served to raise doubts in the accused's mind as to the independence and impartiality of the trial court.
Conclusion: violation (six votes to three).
The Court held unanimously that there had been a violation of Article 6(1), taken together with Article 6(3)(b) and (c) as the applicant had not had a fair trial.
The Court unanimously dismissed the Government's preliminary objections to the applicant's complaints concerning the death penalty.
Article 2, Article 14 taken together with Article 2, and Article 3 concerning the application of the death penalty: All threat of implementation of the death sentence had disappeared in the case before the Court. While it was true that a legal action against the commutation of the sentence was pending in the Turkish courts, in view of the Turkish Government's declaration to the Court in their letter of 19 September 2002, there were no longer substantial grounds for fearing that the applicant would be executed, notwithstanding the appeal.
Conclusion: no violation (unanimously).
Article 3 read against the background of Article 2 – imposition of the death penalty: Imposing a death sentence on a person after an unfair trial was to subject that person wrongfully to the fear that he would be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there existed a real possibility that the sentence would be enforced, had to give rise to a significant degree of human anguish. Such anguish could not be dissociated from the unfairness of the proceedings underlining the sentence which, given that human life was at stake, became unlawful under the Convention. Regard being had to the rejection by the Contracting Parties of capital punishment, which was no longer seen as having any place in a democratic society, the imposition of a capital sentence in such circumstances had to be considered, in itself, to amount to a form of inhuman treatment. In the case before the Court, the risk that the death sentence imposed on the applicant would be executed was a real one and had continued for more than three years, even though there had been a moratorium on the implementation of the death penalty in Turkey since 1984, the Turkish Government had complied with the Court's interim measure pursuant to Rule 39 to stay the applicant's execution and the applicant's file had not been sent to Parliament for approval of the death sentence as was then required by the Turkish Constitution.
The Court found that the applicant had not been tried by an independent and impartial tribunal and that there had been a breach of the rights of the defence under Article 6(1), taken together with Article 6(3)(b) and (c), since the applicant had had no access to a lawyer during his period in police custody and had been unable to communicate with his lawyers out of the hearing of officials, restrictions had been imposed on the number and length of his lawyers' visits, he had been unable to consult the case-file until a late stage in the procedure and his lawyers had not had sufficient time to consult the file properly. The death penalty had thus been imposed on the applicant following an unfair procedure which could not be considered compatible with the strict standards of fairness required in cases involving a capital sentence. Moreover, he had had to suffer the consequences for more than three years. The imposition of the death sentence following an unfair trial amounted to inhuman treatment.
Conclusion: violation (six votes to one).
Article 3 – conditions of detention: (a) Transfer by aircraft from Kenya to Turkey: the applicant had been handcuffed, blindfolded, filmed by a video camera and presented to the press wearing a blindfold. It had not been established "beyond all reasonable doubt" that the

applicant's arrest and the conditions in which he was transferred from Kenya to Turkey had exceeded the usual degree of humiliation that was inherent in every arrest and detention or attained the minimum level of severity required for Article 3 to apply. (b) Conditions of detention on the island of İmralı: The Court shared the CPT's concerns about the long-term effects of the applicant's social isolation, but found that the general conditions in which he was being held had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3.
Conclusion: no violation (unanimously).
The Court held unanimously that there had been no violation of Article 34 (effective exercise of the right to individual application).
Article 41: The Court considered that the findings of a violation of Articles 3, 5 and 6 constituted sufficient just satisfaction for any damage that had been sustained by the applicant. It awarded 100,000 euros to cover part of the costs he had incurred in the proceedings before the Court.

INHUMAN TREATMENT
Conditions of transfer by plane following arrest, and detention in solitary confinement: *no violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see above).

DEGRADING TREATMENT
Alleged ill-treatment during police intervention in dispute between restauranteurs: *admissible*.

R. L. and M.-J. D. - France (N° 44568/98)
Decision 20.3.2003 [Section III]
(see Article 5(1)(e), below).

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Arrest by Turkish agents on a plane in the international zone of an airport in Kenya: *no violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Article 3, above).

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Confinement in psychiatric clinic of a restaurateur arrested in connection with a dispute with another restaurateur: *admissible*.

R. L. and M.-J. D. - France (N° 44568/98)
Decision 20.3.2003 [Section III]

The applicants, who are Parisian restaurateurs, were ordered to report to the police station for causing disturbances following a series of incidents involving neighbouring restaurateurs. The applicants, who were exasperated, failed to attend. Subsequently three police officers in plain clothes went to the applicants' restaurant and used force in disputed circumstances. Eventually, the first applicant was taken to the police station. He was admitted to the psychiatric unit of a hospital during the night. The following morning he was taken back to the police station and released. The applicants had medical certificates drawn up showing that they were suffering from physical contusions. They lodged a complaint together with an application for civil damages for unlawful or unjustified arrest and imprisonment, assault and violence rendering them wholly unfit for work for more than one week, with the additional factor that the assault had been committed by police officers. The prosecution opened an investigation for interference with freedoms, unlawful arrest, unjustified imprisonment, unlawful assault and misuse of authority. The medical inquiries established the existence of multiple physical injuries rendering the victims wholly unfit for work, for ten days in the case of the first (male) applicant and for six days in the case of the second (female) applicant. The prosecution requested the investigating judge to discharge the accused: investigations had revealed that the police officers had been obliged to use force in reaction to aggression and resistance displayed by the applicants; accordingly, the violence used by the police was not unlawful and did not constitute a criminal offence; it likewise followed from the psychiatric examination carried out before the applicant was taken from the police station to the psychiatric hospital that his state of excitement lawfully justified his being taken there. The investigating judge's order discharging the accused was upheld on appeal. The applicants unsuccessfully appealed on a point of law.
Admissible under Articles 3, 5(1)(c) and (e), and 5(5).

Article 5(3)

RELEASE PENDING TRIAL
Prolongation of pre-trial detention after expiry of statutory time-limit, on the basis of prosecution's substitution of new charge: *inadmissible*.

WARDLE - United Kingdom (Nº 72219/01)
Decision 27.3.2003 [Section III]

In July 1998 an elderly man collapsed and died during a violent burglary in his home. According to the pathologist's report, drawn up in October 1998, the victim had been suffering from heart disease and the combination of minor injuries and the fear engendered by the burglary had caused his death. The applicant was arrested and questioned in August 1998. After his release, the police conducted extensive covert surveillance and recorded incriminating remarks. They re-arrested the applicant in January 1999 and charged him with

murder. During police interviews, he was shown the videos secretly recorded by the police. His lawyer stated that the image quality was poor. The applicant was remanded in custody on the murder charge on 8 January. The defence requested full disclosure from the prosecution on 14 January. The police submitted the file to the prosecution on 26 February. Further statements, requested by the defence, were submitted on 5 March. At the same time, a second pathologist's report was drawn up that, in essence, came to the same conclusion as the first one. The prosecution finally served the full file on the defence between 9 and 11 March, indicating they were ready for committal of the applicant on a charge of manslaughter. The applicant and his lawyer were not able to view the video evidence until 18 March and considered that both the image and sound quality were inadequate. The defence therefore indicated on that date that it was not ready for a committal hearing on account of lack of time to consider the evidence. The applicant appeared before the Magistrates' Court on 19 March, on which date the statutory time-limit of 70 days' pre-trial detention in homicide cases expired. The prosecution formally preferred a new manslaughter charge and indicated that it was ready for committal. The court extended the original custody time-limit, accorded a new custody time-limit in light of the new charge and adjourned proceedings for three weeks to allow the defence to prepare. The applicant appealed to the Crown Court, arguing that the prosecution was manipulating the statutory custody time-limit and that the new charge should not entail either a new time-limit or the extension of the first one. On the former point, the court considered that the new charge entailed a new time-limit. However, it ruled that the first time-limit should not have been extended, since the prosecution had not acted with due expedition. The applicant was therefore entitled to apply for bail, which he did. Bail was refused, however, in the light of previous conduct. The applicant sought judicial review of the ruling on the new time-limit. His application was rejected by the High Court, which found that, whereas the time-limit could be extended only if the prosecution could justify its request, the substitution of the charge automatically triggered a new time-limit, unless the defence could show bad faith on the part of prosecution. The applicant was convicted of manslaughter in September 1999. The House of Lords subsequently confirmed the lower courts' finding that separate, distinct offences entailed separate time-limits.

Inadmissible under Article 5(1)(c) and (3): While the applicant would have been entitled to release on bail on 19 March 1999 if the original time-limit had expired (as the County Court found it had) and no other time-limit had been applied, the new time-limit did not deprive his pre-trial detention of adequate judicial safeguards. Not only was he entitled to make bail applications to the Magistrates' Court, which he did not do, but, while the second time-limit may have effectively deprived him of a right to release on 19 March 1999, it did not amount to an order that he was to be detained until the expiry of that second period. It was open to him to apply for bail, which he did during his appeal to the Crown Court, and although his application was refused, he did not challenge the refusal, which was open to judicial review. There was, accordingly, sufficient judicial control over the applicant's pre-trial detention, and this was not excluded by the substitution of the manslaughter charge: manifestly ill-founded.

Inadmissible under Article 5(3): The applicant further contended that on account of the late substitution of the manslaughter charge, his pre-trial detention was too long. However, the reasons given for refusing bail were relevant and sufficient and the applicant did not challenge the merits of the decision. The period of pre-trial detention lasted from 5 January to 24 September 1999. The case was complex and the evidence voluminous and although the Crown Court found that the prosecution had not acted with "due expedition", this assessment was without reference to Article 5 of the Convention and was in the context of the imminent committal hearing. In the eight weeks following the applicant's re-arrest, the police had to consider the mass of evidence carefully before submitting it to the prosecution. Moreover, although the prosecution made the decision to await the completion of the file before communicating it to the defence, this did not fall foul of the requirement of special diligence, particularly since the question of the charge remained open until the file was complete. It was reasonable for the prosecution to seek committal only on the lesser charge that it considered the evidence supported. Although the applicant argued that the prosecution should have sought his committal on 19 March 1999 on the manslaughter charge, the defence needed more

time to prepare. The proceedings were adjourned for three weeks only and the applicant made no complaint about any delay thereafter. Having regard to all of the circumstances, the domestic authorities did not fail to act with the necessary dispatch: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings relating to the right to stand as a candidate in elections: *Article 6 not applicable*.

ZDANOKA - Latvia (N° 58278/00)
Decision 6.3.2003 [Section I]
(see Article 3 of Protocol No. 1, below).

CIVIL RIGHTS AND OBLIGATIONS
Proceedings relating to annulment of a decree amending a bilateral treaty: *Article 6 not applicable*.

S.A.R.L. DU PARC D'ACTIVITES DE BLOTZHEIM ET LA S.C.I. HASELAECKER - France (N° 48897/99)
Decision 18.3.2003 [Section II]

The applicants are companies involved in a proposed industrial estate within the territory of the municipality of Blotzheim (forming part of an industrial development area *Zone d'Activité Concertée* – "ZAC")), near Basle-Mulhouse international airport. The first applicant, the promoter of the proposed industrial estate, purchased land within the industrial development area in order to carry out development work connected with the project. The second applicant was the main contractor responsible for building industrial units on the industrial estate. At the same time, the management board of Basle-Mulhouse airport adopted a confidential development plan entailing the use of the same land. The decrees of the Prefect recognising the general interest of the aforementioned development plan and formally directing Blotzheim district council to take account of the plan (which had the effect of preventing the applicants' proposed industrial estate from being implemented) were annulled by the Strasbourg Administrative Court, on the ground that the proposed extension decided upon by the airport management board exceeded the limits laid down in the France-Swiss Convention of 1949 governing the operation of the airport. Subsequently, by an exchange of notes in 1996, the Swiss and French Governments amended that convention in such a way as to allow the proposed extension (construction of a new runway) to be carried out. In May 1996, a decree publishing that agreement was adopted. The applicants lodged an application with the Council of State for annulment of that decree, maintaining that the amendment of the 1949 Convention could only be approved by a law. The Council of State dismissed the application by a judgment of December 1998.
Inadmissible under Article 6(1) (applicability): the proceedings before the Council of State gave rise to a "real and serious" "dispute": first, the Council of State examined the merits of one of the pleas put forward by the applicants; second, the remaining pleas did not appear to be manifestly ill-founded, even though the Council of State did not find it necessary to adjudicate on the merits of those pleas. As regards the outcome of the proceedings, it was capable of affecting the applicants' financial position and their economic activities. However, the subject-matter of the legal action was not economic in nature and was not based on an

alleged interference with pecuniary rights. The agreement and the contested decree neither referred to the applicants' economic activities nor governed their rights and had "no direct legal effect" on their situation, so that the outcome of the action brought by the applicants was not "directly determinant" for the rights in question. Furthermore, the legal action was aimed exclusively at annulment of the decree and argument was confined to the legality of the decree *in abstracto*. As there was no dispute over a "civil right" enjoyed by the applicants, Article 6(1) did not apply: incompatible *ratione materiae*.
Inadmissible under Article 1 of Protocol No. 1 and of that article in conjunction with Article 14.

RIGHT TO A COURT
Non-enforcement of court decision: *violation*.

JASIŪNIENĖ - Lithuania (Nº 41510/98)
Judgment 6.3.2003 [Section III]

Facts: Following the Soviet occupation of Lithuania in 1940, land belonging to the applicant's mother was nationalised. In 1992 the City Council decided to "restore the property rights" of the applicant and her sister. As this decision was not implemented, the applicant brought a court action, which was dismissed on the ground that she was not entitled to restoration of the property but should have been offered an alternative plot. This decision was quashed in April 1996 by the Regional Court, which considered that the Council had not complied with the law, since it had not decided whether compensation should be in the form of land or money or which land or amount of money should have been offered. The court required the Council to adopt a decision on the applicant's request. The applicant subsequently refused several proposals of alternative plots. In 1999 the authorities informed her that they could not take a decision until she produced papers proving that her mother had owned the property.
Law: Article 6(1) – It was clear from the Regional Court's judgment that the merits of the applicant's claim were not denied and that the authorities were only required to take appropriate measures to choose the form of compensation. Non-execution could initially have been attributed to the applicant in view of her refusals of compensation but as from June 1999, when the law was amended to the effect that the authorities could decide on compensation without the individual's approval, there was no longer any justification for non-execution. Furthermore, the non-execution was aggravated by the authorities' challenge to the very merits of the applicant's claims and their wish to place obligations on her with reference to regulations which post-dated the Regional Court's judgment. This situation was unacceptable from the point of view of Article 6. By failing to take the necessary measures to comply with the judgment, the authorities had deprived Article 6 of all useful effect.
Conclusion: violation (unanimously).
Article 1 of Protocol No. 1 – (a) As to the actual nationalisation, it pre-dated the entry into force of the Convention in respect of Lithuania and the Court had no competence *ratione temporis*.
(b) As to the inability of the applicant to recover the original plot, she had no legitimate expectation in that respect, the authorities being required only to take appropriate measures to afford compensation in land or money. Consequently, she did not have "possessions" and the complaint was incompatible *ratione materiae*. Moreover, Article 14 could not apply in relation to the complaint.
Conclusion: no violation (unanimously).
(c) As to the non-execution, the Regional Court's judgment created an obligation on the authorities, providing the applicant with a claim which constituted a "possession". The impossibility of having the judgment executed constituted an interference with her right to peaceful enjoyment of possessions. By failing to comply with the judgment, the authorities

prevented her from obtaining the compensation she could reasonably have expected to receive and no plausible justification for the interference had been put forward.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 9,000 € in respect of pecuniary and non-pecuniary damage. It also made an award in respect of costs and expenses.

FAIR HEARING
Obligatory representation before the *Conseil d'Etat* by a lawyer authorised to appear before the supreme courts: *inadmissible*.

G.L. and S.L. - France (N° 58811/00)
Decision 6.3.2003 [Section I]

In the context of a scheme for the consolidation of plots of land, water pipes were laid at the request of a farmer. The cost of this work was charged, in the form of land taxes, to the owners of the plots affected by the consolidation scheme, including the applicants. The applicants disputed their liability to pay the taxes, essentially because the work in question had not been carried out on their properties. It was held that they were not liable to pay the disputed taxes. A new proposal to allocate the costs of the water service work established that each of the landowners affected by the consolidation scheme had the same interest in the work being carried out and was therefore required to finance it. The basis for payment of the work in laying the pipes was definitively adopted after the persons concerned had been given the opportunity to submit observations. The applicants again sought to be declared not liable to pay the taxes and were unsuccessful in part. The Administrative Court of Appeal held, in particular, that the laying of the pipes, which formed part of the work involved in the consolidation scheme, formed part of a general land improvement programme carried out homogeneously on the entire area covered by the consolidation scheme; the work therefore concerned all the landowners affected by the consolidation scheme, in proportion to the area of the individual plots concerned. The applicants appealed on a point of law to the Council of State, without success.
Article 6(1) (equality of arms/*inter partes* proceedings before the Council of State): the applicants were represented by a lawyer practising before the Councils and have not shown that they sent the Council of State a note for consideration while it was deliberating following the hearing. Quite apart from the fact that in most cases the submissions of the Government law officer are not recorded in a written document, in proceedings before the Council of State the Government law officer makes his submissions for the first time orally at the public hearing and the parties to the proceedings and also the judges and the public discover the sense and content of those submissions at the hearing. Accordingly, no problem arises from the aspect of equality of arms (cf. the principles set out in the *Kress v. France* judgment, ECHR 2001-VI.
The lodging of a note for consideration by the court while it is deliberating helps to ensure respect for the *inter partes* principle, on certain conditions. In particular, the parties must be able to lodge such a note irrespective of any decision by the President to adjourn the case, and must be allowed sufficient time to draft it.
Furthermore, in order to avoid any dispute as to whether the note was taken into account by the Council of State, the Court considers that the judgment should make express reference to the existence of a note for its consideration while it is deliberating, just as judgments of the Council of State already make reference to the application or the action registered at its secretariat, to the other documents in the case-file and to the submissions made at the public hearing (by the rapporteur, counsel for the parties and the Government law officer). In the present case, the Court observes that the applicants have not shown that they availed themselves of the possibility to lodge a note for consideration by the Council of State while it was deliberating. In those circumstances, the proceedings before the Council of State offered the applicants sufficient guarantees and no problem arises from the aspect of the right to a fair

hearing as regards respect for the *inter partes* principle (cf. the principles set out in the *APBP v. France* judgment of 21 March 2002): manifestly ill-founded.
Inadmissible under Article 6(1) (structural impartiality of the Council of State): the applicants claim that, regard being had to the functioning of the various sections of the Council of State, there might be confusion on the part of the judges of the Council of State between advisory and judicial functions. However, the applicants have not indicated any factor on which it might be concluded that, in the exercise of previous or contemporaneous functions, the members of the trial beach may have had to adopt a position on the provisions to which the applicants' action related, have dealt with them in any way at all or have had links with the applicants' opponents of such a kind as to give rise to fear a lack of impartiality (cf., *a contrario*, the *Procola v. Luxembourg* judgment, Series A no. 326). The applicants' fears cannot therefore be regarded as objectively justified: manifestly ill-founded.
Inadmissible under Article 6(1) (fair hearing): as regards the obligation to be represented before the Council of State by a lawyer practising before the Councils, in the light of the specific nature of the proceedings before the Council of State and regard being had to the proceedings considered in their entirety, the fact that the applicants were not given the opportunity to plead their case orally, in person or through a lawyer belonging to the general Bar, but were able to chose their counsel from among the members of the Bar of lawyers practising before the Councils, did not infringe their right to a fair hearing (transposition of the principles laid down by the Court for proceedings before the French Court of Cassation in the *Meftah and Others* judgment, ECHR 2002-VII): manifestly ill-founded.
Inadmissible under Article 1 of Protocol No. 1: the applicants complain that the interference with their assets by the pipe-laying work, for which they had to pay in the form of a tax imposed on all property owners, was not justified in the general interest. The Court considers that the work in question formed part of a general programme to improve the land affected by the consolidation scheme and meets the aim of the consolidation scheme, which is to improve operating conditions and to help to develop the land of the district as a whole. The interference by the State in the applicants' property right therefore satisfies the condition of legality. The purpose of the pipe-laying work, namely the general improvement of the land affected by the consolidation scheme, is "in the public interest" for the purposes of Article 1 of Protocol No. 1 and the work in question did not cause the applicants harm of such a kind as render it disproportionate to the aim pursued by the consolidation scheme or arbitrary: manifestly ill-founded.

ADVERSARIAL PROCEEDINGS
Non-disclosure of submissions of the *commissaire du Gouverement* and lack of opportunity to respond to them at a *Conseil d'Etat* hearing – failure to submit a note in deliberations: *inadmissible*.

G.L. and S.L. - France (N° 58811/00)
Decision 6.3.2003 [Section I]
(see above).

IMPARTIAL TRIBUNAL
Consultative and judicial functions of the *Conseil d'Etat*: *inadmissible*.

G.L. and S.L. - France (N° 58811/00)
Decision 6.3.2003 [Section I]
(see above).

Article 6(1) [criminal]

IMPARTIAL TRIBUNAL
Independence and impartiality of a State Security Court – presence of a military judge throughout most of the trial: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Article 3, above).

TRIBUNAL ESTABLISHED BY LAW
Non-compliance with rules on participation of lay judges in criminal trials: *violation*.

POSOKHOV - Russia (Nº 63486/00)
Judgment 4.3.2003 [Section II]

Facts: The applicant was convicted by a District Court in May 2000 of being an accessory to the avoidance of customs duties and of abuse of office. He lodged an appeal, in which he claimed that the two lay judges had sat in other trials, although the law allowed lay judges to be called only once a year for a maximum period of fourteen days or for the duration of a particular case. The appeal was dismissed in August 2000 and an application for supervisory review, in which the applicant further claimed that the lay judges had not been chosen lot, as required by the law, was refused. Following communication of the application to the Government, the applicant's conviction was partly quashed on an application for supervisory review by the President of the Regional Court. In July 2001 the District Court again found the applicant guilty but dispensed him from serving his sentence, as the case was time-barred. His appeal was dismissed. However, on a further application for supervisory review, the Regional Court quashed these decisions on the ground that the case was time-barred. The District Authority subsequently informed the applicant that the list of lay judges had been adopted by the District Legislature in February 2000 and confirmed by the Regional Legislature in June 2000.
Law: The applicant's victim status – While the applicant's criminal record had been erased following the quashing of his conviction, no decision of the domestic courts since the dismissal of the applicant's first appeal in August 2000 had dealt with the issue of the lay judges or contained any acknowledgment of a violation. The applicant could therefore claim to be a victim.
Article 6(1) – Apart from the apparent failure to observe the requirements regarding the drawing of lots and two weeks' service a year, the District Authority had confirmed that it had no list of lay judges appointed before February 2000 and it had thus failed to present any legal grounds for the participation of the lay judges in the applicant's trial, bearing in mind that the list adopted in February 2000 had only taken effect the following June. These circumstances, cumulatively, did not permit the conclusion that the District Court was a "tribunal established by law" when it heard the applicant's case.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 500 € in respect of non-pecuniary damage.

Article 6(2)

PRESUMPTION OF INNOCENCE
Provisional seizure of a book with a view to later criminal proceedings: *no violation*.

YASAR KEMAL GÖKÇELI - Turkey (Nº 27215/95 and Nº 36194/97)
Judgment 4.3.2003 [Section II]

Facts: The applicant published two articles in a book criticising and commenting on the Turkish authorities' policy on the "Kurdish problem" since the foundation of the Republic. The public prosecutor at the Istanbul National Security Court applied for an order for seizure of the book. Relying on the two articles by the applicant, the public prosecutor claimed, in particular, that the articles ""incited the people to hostility and to hatred based on a distinction according to race and origin", such incitement constituting an offence against the Criminal Code (Article 312). On the same day, the judge of the Security Court made an interim order for seizure of the book. He considered that the application for seizure was in accordance with the law, since the offence complained of had been committed by the two articles in question. The application lodged an objection, which was dismissed. Following publication in a Turkish newspaper of extracts from one of the two articles by the applicant, the state prosecutor initiated criminal proceedings on the basis of Article 312. The National Security Court acquitted the applicant. The prosecutor again brought criminal proceedings against the applicant and the publisher of the articles in question. The National Security Court found the applicant guilty of an offence contrary to Article 312 of the Criminal Code and sentenced him to a term of imprisonment and a fine, which were suspended. The Court of Cassation upheld that decision by a majority of one.
Law: Article 10 – The criminal conviction is to be analysed as an interference, which was "prescribed by law" and which may have pursued the "legitimate aims" on which the Government relied, regard being had to the sensitive nature of the situation prevailing in south-east Turkey in matters of security and the need for the authorities to exercise be vigilant against acts capable of increasing violence. When examining the proportionality of that interference, it is necessary to take into account, in particular, the difficulties associated with the fight against terrorism. The impugned article was in the form of a political discourse, both by its content and by the words used. The applicant, a writer well known in Turkey and abroad, criticised and blamed the authorities' military actions in south-east Turkey and condemned the policy which they followed there. The terms of the article had a factual content, an emotional tone marked by distinct aggression and virulence and with a hostile connotation. However, the Court considers that this reflects the intransigent attitude adopted by one of the parties to the dispute rather than constituting an incitement to violence. In the Court's view, the essential matter to be taken into consideration is that, overall, the tenor of the article cannot be taken as an incitement to the use of violence, to armed resistance or to insurrection. The Court also points to the severity of the penalty imposed on the applicant. The conviction is therefore disproportionate to the aims pursued and is not "necessary in a democratic society".
Conclusion: violation (unanimous).
Article 6(2) – It had to be considered whether the fact that the order for seizure of the book was based on the hypothesis that the impugned articles constituted an offence amounted to an infringement of the principle of the presumption of innocence. The interim measures provided for in the Turkish legislation do not in themselves imply a decision as to guilt but seek to prevent the commission of crime. Accordingly, the procedure relating to the seizure of the suspect book did not concern the "merits" of a "criminal charge". None the less, the problem that arises does not just concern the procedure for the seizure of the book but also relates to the subsequent proceedings initiated against the applicant. Under the applicable domestic law,

the publications may be seized when the court so decides following the opening of an investigation or of proceedings for offences defined by law. In the present case the seizure of the book therefore constituted an interim measure from the perspective of subsequent proceedings. In the Court's opinion, in spite of certain terms used in the order for seizure of the book, that decision, made as an interim measure, described a "state of suspicion" and did not contain a finding of guilt. Nor do the subsequent criminal proceedings brought against the applicant reveal any prejudice. Although decisions which reflect the feeling that the person concerned is guilty infringe the principle of the presumption of interest, that cannot be said of decisions which merely describe a state of suspicion.
Conclusion : no violation (unanimous).
Article 41 – The Court considers that the finding of a violation provides in itself sufficient just satisfaction for the non-pecuniary harm sustained by the applicant.

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Restrictions on detainee's access to criminal file, and late disclosure to lawyers, obliging them to respond hurriedly to a very extensive file: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Article 3, above).

Article 6(3)(c)

DEFENCE WITH LEGAL ASSISTANCE
Denial of access to a lawyer for almost 7 days during custody, followed by restrictions on the number and length of consultations; lack of possibility for detainee to speak with lawyers outwith hearing of guards: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.3.2003 [Section I]
(see Article 3, above).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction for offences against newly-independent Lithuanian State: *communicated*.

KUOLELIS - Lithuania (Nº 74357/01)
[Section III]

The applicant is a Lithuanian national currently serving a prison sentence in Riga. He was an executive member of the Lithuanian branch of the Communist Party of the Soviet Union (CPSU) when Lithuania declared independence in March 1990. Suspected of activities contrary to the sovereignty of the new State, he was remanded on bail in August 1991. He

was detained and questioned over three days in June 1994. In August 1999, he was convicted of offences against the State. In particular, he was found guilty of advocating the overthrow of the new Lithuanian government in the period between its establishment and the failed coup in Moscow in August 1991. He received a six-year sentence. On appeal, the conviction was amended in as much as it concerned the period 11 March to 10 November 1990, at which time membership of the CPSU in Lithuania was not unlawful. His sentence remained unchanged.
Communicated under Articles 6(1), 7, 10 and 14.

ARTICLE 8

PRIVATE LIFE
Administration of morphine to critically ill child against family's wishes: *admissible*.

GLASS - United Kingdom (Nº 61827/00)
Decision 18.3.2003 [Section IV]

The first applicant, David Glass, was born in 1986 and is severely mentally and physically disabled and requires twenty-four hour attention. The second applicant is his mother. In July 1998, David became critically ill following an operation. He gradually improved to the point of being able to return home several weeks later. However, his health remained poor and by October he was again critically ill. During this time, the family had indicated their concern at the possibility of David being treated with morphine, which they considered would hasten his death. By 20 October, the medical team were of the view that David was dying of respiratory failure and proposed diamorphine. His mother maintained her opposition, fearing that it would be tantamount to euthanasia. A police officer who was present informed her that if she tried to remove David from the hospital she would be arrested. Similarly, if family members tried to obstruct the doctors, they too would be removed. A diamorphine infusion was commenced that evening. The instruction "Do not resuscitate" was added to David's file without his mother's knowledge. The following morning, David's condition was extremely critical. The situation in the ward degenerated into a physical confrontation between the doctors and family members. The police were called in and the other sick children were moved elsewhere. David's condition improved to the point where he was able to be taken home that same day. The applicants maintain that no arrangements were made for David's continuing care, despite his very weak condition. The hospital subsequently advised the family that, in the circumstances, it could no longer treat David and that it had arranged for another hospital to admit him if necessary. A number of relatives were subsequently convicted of assault. The second applicant lodged a complaint against the doctors with the General Medical Council, which decided that the test for bringing disciplinary proceedings was not satisfied on the evidence. She also complained to the police, who referred the matter to the Crown Prosecution Service. The latter decided not to bring charges. The applicant applied for judicial review of the medical decisions made by the hospital but the High Court refused the application on the basis that the situation had passed and that judicial review was too blunt an instrument for the sensitive and ongoing problems that might arise in future. The Court of Appeal, refusing leave to appeal, nonetheless stated that in case of conflict between the family and doctors, the matter must be brought before the courts in order to decide what is in the best interests of the child.
Inadmissible under Article 2: The applicants criticise the doctors' clinical judgment in administering diamorphine. It is not the function of the Court to gainsay the doctors' assessment of the first applicant's condition on 20-21 October 1998. Where a State has made adequate provision for securing high professional standards among health professionals and the protection of lives of patients, an error of medical judgment (even if established) is not

sufficient to engage State responsibility under Article 2. The regulatory framework does not disclose any shortcomings and the doctors' actions were subject to thorough inquiry by the General Medical Council and the police. Although the applicants were critical of the outcome, the Court cannot find fault with the manner in which these investigations were conducted. The issues of the treatment administered and the "Do not resuscitate" notice fall to be examined under Article 8: manifestly ill-founded.
Admissible under Article 8.
Inadmissible under Article 6(1): The applicant's argument that the hospital should have sought a High Court ruling before administering diamorphine against the family's wishes falls to be considered under Article 8. As for the High Court's refusal to rule on the legality of the treatment administered, this was understandable in view of the factual dispute over David's precise condition at the relevant time. With regard to his ongoing treatment, domestic courts must have some degree of flexibility in framing their response to the issues put to them, provided that they do not abdicate the essence of their adjudicative function. The Court of Appeal made a clear statement on the right of the applicants to seek the intervention of the High Court in future: manifestly ill-founded.
Inadmissible under Article 13: The applicants' arguments under Articles 2 and 6(1) were manifestly ill-founded, while with regard to Article 8 the applicants' right to apply to the High Court had been established: manifestly ill-founded.
Inadmissible under Article 14: The applicants claimed that the hospital had discriminated against David on the basis of his severe disability. Although David's condition was undoubtedly a relevant factor in deciding how to treat him, it could not be maintained that the doctors were influenced by considerations of his quality of life compared with that of an able-bodied person. Similarly, there was no indication that such considerations played a part in the hospital's failure to seek a High Court ruling or, subsequently, the domestic courts' reluctance to address the issues raised by the applicants: manifestly ill-founded.

PRIVATE LIFE
Video surveillance of applicant's home following complaints of anti-social behaviour: *admissible*.

MARTIN - United Kingdom (Nº 63608/00)
Decision 27.3.2003 [Section III]

The applicant lives in a house rented from the local authority. The terms of her lease prohibit harassment or nuisance of neighbours. In 1998, the Council received a complaint about the behaviour of the applicant and her children from the owners of the house next door. In July 1999, the Council sought to evict the applicant following a complaint of violent assault against her neighbour. The applicant gave an undertaking not to harass or cause nuisance to anybody in her road. Between November 1999 and April 2000, the neighbours complained on several occasions of acts of harassment and nuisance, prompting a warning to the applicant from the local authority. On 18 April, the local authority installed a hidden video camera on the wall of the neighbours' house, opposite the applicant's front door. As the entrance to her house was on the side, the area within the camera's range was not the same as that which could be observed from the street. The applicant became aware of the camera the following month and was shown video recordings. The local authority sought to repossess the house on the basis that she had broken an obligation of her tenancy and/or was causing a nuisance. In support of its claim, the local authority relied on events that had occurred since the camera was installed. The applicant generally denied the allegations. She gave an undertaking in court not to assault or cause a nuisance to her neighbours or to allow her children or visitors to do so. She has remained in her home since. In September 2000, the local authority informed the applicant that no further surveillance would be carried out and that the existing recordings had been destroyed. The applicant indicates that the experience of surveillance was very distressing and greatly affected her normal private and family life.

Admissible under Article 8.
Inadmissible under Article 14: The applicant has not established that her neighbours (freeholders) were in an analogous position to her (leaseholder) in relation to the local authority: manifestly ill-founded.

PRIVATE LIFE
Restrictions on political rights on account of activities essentially falling with the public sphere: *inadmissible*.

ZDANOKA - Latvia (N° 58278/00)
Decision 6.3.2003 [Section I]
(see Article 3 of Protocol No. 1, below).

FAMILY LIFE
Effect on relationship between parents and adult children of latters' decision to join monastic order: *inadmissible*.

ŠIJAKOVA and others - Former Yugoslav Republic of Macedonia (Nº 67914/01)
Decision 6.3.2003 [Section III]

The applicants' children, all of whom were over the age of 18, joined the monastic order of the Macedonian Orthodox Church, of which the applicants themselves are practising members. In 1998, the applicants lodged a complaint with the Constitutional Court, claiming that they had been deprived of their right as parents to receive care from their children in the event of illness or in old age, since monks were forbidden to maintain contacts with their families. They further contended that the internal regulations of the Church were incompatible with a number of constitutional rights. The court rejected the complaint on the ground that it did not have jurisdiction to review the constitutionality of the Church's internal rules. It also reiterated the right of every individual to express his religious beliefs freely and to decide on the manner in which to practise his faith.
Inadmissible under Article 8: There had been no interference by a public authority. As to whether the State had a positive obligation, the applicants' children had entered monastic life after reaching the age of majority and the issue of maintaining contacts and communication between children who are not minors and their parents is a private matter which depends on the individual adults concerned. Consequently, the lack of any relationship and the reasons therefor do not give rise to a positive obligation for the State. Moreover, even assuming Article 8 may be understood to guarantee a right to receive support and care from one's children, the applicants' in that respect was premature.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for insulting prosecutor: *no violation*.

LEŠNÍK - Slovakia (Nº 35640/97)
Judgment 11.3.2003 [Section IV]

Facts: The applicant unsuccessfully attempted to have criminal proceedings brought against H. The applicant subsequently wrote a letter to the District Prosecutor, P., in which he alleged that the latter had been responsible for the discontinuation of the criminal proceedings against H. and had unlawfully ordered the tapping of the applicant's telephone. The Regional

Prosecutor informed the applicant that it had not been established that P. had ordered telephone tapping or otherwise acted unlawfully. The applicant then wrote to the General Prosecutor, complaining that P. had abused his authority and alleging that H. had paid money to have the proceedings against him discontinued. On P.'s petition, criminal proceedings were brought against the applicant for insulting a public prosecutor. The District Court issued a penal order convicting the applicant and imposing a suspended sentence of four months' imprisonment. The applicant challenged the order. The District Court again convicted him and imposed the same sentence. It considered that the applicant's letters were defamatory and grossly offensive. The applicant's appeal was dismissed by the Regional Court, which found that the applicant had not substantiated his allegations of bribery and unlawful behaviour.
Law: Article 10 – The interference was prescribed by law and pursued the legitimate aims of protecting the reputation and rights of P., with a view to permitting him to carry out his duties as a public prosecutor without undue disturbance. As to the necessity of the interference, public prosecutors are civil servants who form part of the judicial machinery in the broad sense and it is in the general interest that they, like judicial officers, should enjoy public confidence. While in a democratic society individuals are entitled to criticise the administration of justice and the officials involved in it, such criticism must be kept certain limits. In the present case, while certain statements made in the applicant's letters as regards P.'s pofessional and personal qualities could be considered value judgments, the letters also made accusations of unlawful and abusive conduct and these were statements of fact which the domestic courts found to be unsubstantiated. The reasons given by the courts in that respect were therefore relevant and sufficient. The accusations were of a serious nature and were capable of insulting P., of affecting him in the performance of his duties and, in the case of the letter to the General Prosecutor, of damaging his reputation. The applicant was not prevented from using appropriate means to seek redress in respect of conduct which he considered unlawful. Although the sanction imposed on the applicant was not insignificant, it was at the lower end of the applicable scale. Taking into account the State's margin of appreciation, the interference complained of was not disproportionate.
Conclusion: no violation (5 votes to 2).

FREEDOM OF EXPRESSION
Conviction for incitement to hatred and hostility: *violation*.

YASAR KEMAL GÖKÇELI - Turkey (Nº 27215/95 and Nº 36194/97)
Judgment 4.3.2003 [Section II]
(see Article 6(2), above).

ARTICLE 11

FREEDOM OF ASSOCIATION
Ineligibility for election on account of membership of unconstitutional party: *admissible*.

ZDANOKA - Latvia (N° 58278/00)
Decision 6.3.2003 [Section I]
(see Article 3 of Protocol No. 1, below).

NOT JOIN TRADE UNIONS
Closed shop: *admissible*.

SØRENSEN - Denmark
JENSEN and RASMUSSEN - Denmark
HOFFMAN KARLSKOV - Denmark
Decisions 20.3.2003 [Section I]

The four applicants complain that closed shops are lawful in certain circumstances in Denmark. The Danish Act on Protection Against Dismissal due to Association Membership of 9 June 1982 was passed as a direct result of the Court's judgment in the case of *Young, James and Webster* v. *the United Kingdom.* Although the Act prohibits dismissal on grounds of union membership or non-membership, it provides for two exceptions to the latter. An employee may be dismissed because of non-membership of a trade union if, prior to his recruitment, he knew that union membership was a condition of employment. The second exception allows the dismissal of an employee who is already a member of a union and, subsequent to his recruitment, is informed that membership is a condition for continued employment, and who nonetheless resigns from their union.
Mr Sørensen was recruited on a temporary basis. He was given advance notice of the requirement of membership of a certain trade union. He did not join, and was quickly dismissed. The Danish courts found that his dismissal was lawful.
Mr Jensen gave up trade union membership in 1984. In 1989 he found new employment. The following year, his employer entered a closed shop agreement with the same union. The applicant subsequently rejoined the union, but eventually let his membership lapse through non-payment of dues. This led to his dismissal. He sued his employer for unlawful dismissal. The courts found that the case was not covered by the exceptions to the 1982 Act and awarded him substantial compensation.
Mr Rasmussen was a member of a trade union in the 1980s, but resigned because he disagreed with its political stance. He subsequently found employment in a company that had a closed shop agreement with his former union, which he rejoined in order to start his new job. His complaint is that although he has no wish, for political reasons, to associate with the trade union, he is obliged to do, the alternative being dismissal.
Ms Hoffman Karlskov was dismissed after seven months' employment for failure to join a specific trade union. She had not been made aware, prior to her recruitment, that union membership was a condition of employment. She sued for unlawful dismissal and was awarded substantial compensation.
Inadmissible regarding Mr Jensen and Ms Hoffman Karlskov, neither of whom could claim to be a victim in view of the success of their claims for unlawful dismissal.
Admissible regarding Mr Sørensen and Mr Rasmussen: Although the latter has not suffered the loss of his employment, the state of Danish law is such that, were he to resign from the union, he would have no remedy against the ensuing dismissal. The applicant's complaint is therefore directly connected to his personal situation to such an extent that his complaint cannot be considered abstract or an *actio popularis*.

ARTICLE 34

HINDER EXERCISE OF THE RIGHT OF PETITION
Alleged difficulties in receiving correspondence from the Court: *communicated*.

MOGOS - Romania (N° 20420/02)
[Section III]
(see Article 2 of Protocol No. 4, below).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDIES (Germany)
Expulsion of stateless persons of Romanian origin: *inadmissible*.

MOGOS and KRIFKA - Germany (N° 78084/01)
Decision 27.3.2003 [Section III]

For the facts, see Mogos v. Romania (below, Article 2 of Protocol No. 4).
Inadmissible under Articles 3, 6 and 8 : the applicants did not refer to the Federal Constitutional Court the complaints which they raised before the Court, on the ground that a constitutional action would have been bound to fail owing to Germany's attitude. However, the mere fact of having doubts as to the prospects of success of a given action which is not clearly bound to fail does not constitute a valid reason for not using domestic remedies. Furthermore, the fact that, in the opinion of the applicants' legal representative, a constitutional action had no prospect of success cannot suffice to justify a derogation from the requirement to exhaust all domestic remedies. In the present case, it is not established that an action before the Federal Constitutional Court would have had no prospect of success: non-exhaustion of domestic remedies.

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. 48):

NOWICKA - Poland (Nº 30218/96)
DEBBASCH - France (Nº 49392/99)
Judgments 3.12.2002 [Section II]

CRAXI - Italy (N° 34896/97)
Judgment 5.12.2002 [Section I]

DALKILIÇ - Turkey (Nº 25756/94)
KÜÇÜK - Turkey (Nº 28493/95)
Judgments 5.12.2002 [Section III]

STEPHEN JORDAN - United Kingdom (no. 2) (Nº 49771/99)
WAITE - United Kingdom (Nº 53236/99)
Judgments 10.12.2002 [Section IV]

TRAORE - France (Nº 48954/99)
HEIDECKER-CARPENTIER - France (Nº 50368/99)
COSTE - France (Nº 50528/99)
VENEMA - Netherlands (Nº 35731/97)
BOC - Romania (Nº 33353/96)
SEGAL - Romania (Nº 32927/96)
SAVULESCU - Romania (Nº 33631/96)
A. - United Kingdom (Nº 35373/97)
Judgments 17.12.2002 [Section II]

RAGAS - Italy (Nº 44524/98)
Judgment 17.12.2002 [Section III (former composition)]

SAŁAPA - Poland (Nº 35489/97)
Judgment 19.12.2002 [Section III]

ČULJAK and others - Croatia (Nº 58115/00)
PAULA ESPOSITO - Italy (Nº 30883/96)
SAVIO - Italy (Nº 31012/96)
GIAGNONI and FINOTELLO - Italy (Nº 31663/96)
M.P. - Italy (Nº 31923/96)
GUIDI - Italy (Nº 32374/96)
M.C. - Italy (Nº 32391/96)
SANELLA - Italy (Nº 32644/96)
GENI s.r.l. - Italy (Nº 32662/96)
IMMOBILIARE SOLE s.r.l. - Italy (Nº 32766/96)
SCURCI CHIMENTI - Italy (Nº 33227/96)
FOLLIERO - Italy (Nº 33376/96)
FLERES - Italy (Nº 34454/97)
ZAZZERI - Italy (Nº 35006/97)
AUDITORE - Italy (Nº 35550/97)
L. and P. - Italy (Nº 33696/96)
FIORANI - Italy (Nº 33909/96)
Judgments 19.12.2002 [Section I]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Refusal of restitution property, on ground that claimant not permanently resident: *no violation*.

JANTNER - Slovakia (Nº 39050/97)
Judgment 4.3.2003 [Section IV]

Facts: The applicant, who left Czechoslovakia in 1986, began living partly there and partly in Germany from 1990 and in 1992 registered his permanent residence at a friend's address in Krompachy (Slovakia). In 1996 the Land Office rejected his claim for restitution of his father's and uncle's property, on the ground that at the relevant time he had not been permanently resident in the Czech and Slovak Republic. The Regional Court upheld this decision. It noted that under domestic law it was not possible to have a permanent residence at more than one address and that the applicant had failed to terminate registration of his main residence in Germany. It further considered that his registration in Krompachy was of a purely formal nature.
Law: Article 1 of Protocol No. 1 – The applicant's action did not concern "existing possessions" and he did not have the status of an owner but was merely a claimant. The Court could not substitute its view for that of the Regional Court as to his compliance with the permanent residence requirement. The applicant thus had neither a right to nor a claim amounting to a legitimate expectation of restitution of the property and had therefore no "possession" within the meaning of Article 1 of Protocol No. 1. Moreover, that provision does not guarantee the right to acquire property and cannot be interpreted as imposing restrictions on the Contracting States' freedom to choose the conditions attaching to the restitution of property transferred to them before they ratified the Convention. Consequently, there was no interference with the applicant's right to peaceful enjoyment of his possessions.
Conclusion: no violation (unanimously).
The Court also concluded unanimously that there had been no violation of Article 14 of the Convention.

DEPRIVATION OF PROPERTY
Claim for restitution of property confiscated in Czechoslovakia in 1945: *inadmissible*.

DES FOURS WALDERODE - Czech Republic (Nº 40057/98)
Decision 4 March 2003 [Section II]

The applicant's stepfamily were German nationals who owned real estate in former Czechoslovakia. The property was confiscated in 1945 under Presidential Decree No. 12/1945, which provided for the confiscation of agricultural land from persons of German or Hungarian origin. The applicant's two stepbrothers had died in 1944 and 1945 respectively; his stepmother died in 1955, leaving her real estate to him and conferring the succession rights of her deceased sons on him. The applicant had in the meantime left Czechoslovakia, thereby forfeiting his Czechoslovak citizenship. He returned in 1991 and was granted Czech citizenship in 1992. He lodged a claim for restitution of the confiscated property but the Land Office dismissed his claim on the ground that he was not the owner of the property, since his stepmother and stepbrothers had not satisfied the requirements for restitution. It found that they had not been loyal to Czechoslovakia during the German occupation and that they had not acquired Czechoslovak citizenship after the war. The applicant appealed, arguing that

since his stepbrothers were both dead by the time the Presidential Decree entered into force, it should not have applied to their estates. He submitted that German law had been in force in Czechoslovakia at the time of their death and that in accordance with its provisions he had acquired the whole estate. The Municipal Court held, however, that the applicant's stepbrothers were subject to Czech law at the time of their deaths. In accordance with the relevant provisions of the Czech Civil Code of 1811, the testator's property was not automatically acquired by the heir; instead, the deceased remained the notional owner of the estate until its distribution. As distribution had not taken place, the applicant's stepbrothers were the owners of the property at the time of confiscation, which had therefore been valid. The applicant's constitutional appeal was dismissed by the Constitutional Court, which held that, in view of the unlawfulness of the annexation of the Sudetenland, all legal relations in that region had been governed by the Czechoslovak legal order. Consequently, the applicant had never acquired his stepbrothers' property. Moreover, as his stepmother had never acquired Czechoslovak citizenship, he could not claim restitution as her heir.
Inadmissible under Article 1 of Protocol No. 1: Following the confiscation in 1945, the property had been assigned to and used by different legal persons and the applicant's family had had no practical possibility of exercising any rights in respect of it. The deprivation had occurred long before the Convention and its Protocols entered into force in respect of the Czech Republic and there was no question of a continuing violation that could be imputable to the Czech Republic. The claim regarding the deprivation was therefore incompatible *ratione temporis*. As regards the proceedings which the applicant instituted in 1992, the reasons given by the domestic authorities for refusing restitution were sufficient and relevant, the decisions reached were not arbitrary and the proceedings were not unfair. In these circumstances, the applicant's claim did not relate to "existing possessions" and he did not have a "legitimate expectation" of having it upheld. He could not, therefore, argue that he had a "possession" and neither the judgments of the national courts nor the application of the applicable law amounted to an interference with the peaceful enjoyment of his possessions: incompatible *ratione materiae*.

PUBLIC INTEREST
Operations linked to land consolidation aimed at general cleaning up of land: *inadmissible*.

G.L. and S.L. - France (N° 58811/00)
Decision 6.3.2003 [Section I]
(see Article 6(1) [civil], above).

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Ineligibility to stand for Parliament as an automatic consequence of a court finding of membership of an unconstitutional party: *admissible*.

ZDANOKA - Latvia (N° 58278/00)
Decision 6.3.2003 [Section I]

During the Soviet era, the applicant was a member of the Communist Party of the Soviet Union (CPUS), the sole and governing party of the USSR, and of its regional branch, the Communist Party of Latvia (CPL). IN January and August 1991, following the independence of the Republic of Latvia, the SPL actively supported two attempted *coups d'État*, which failed. Consequently, in September 1991, the Latvian legislature declared the CPL anticonstitutional and ordered its dissolution. In 1994 and 1995, the Latvian Parliament

enacted two laws on the local and legislative elections, respectively, and declared that anyone who had participated in the activities of the CPL after 13 January 1991, the date on which the directors of that party had formally demanded the resignation of the Latvian Government and the assumption of full power by a Public Protection Committee, was ineligible. In 1997, the applicant was elected to Riga City Council and no measure was taken against her. However, in 1999, following an *inter partes* procedure brought by the State Prosecutor's Department, the Riga Regional Court and then the Civil Affairs Division of the Supreme Court found that the applicant had in fact been an active member of the SPL after the critical date of 13 January 1991. The applicant's appeal on a point of law to the Senate of the Supreme Court was declared inadmissible by a definitive order of February 2000. The applicant automatically became ineligible and lost her seat on Riga City Council. The applicant's name was removed from the electoral list presented in the subsequent legislative elections.

Admissible under Article 3 of Protocol No. 1 as regards the applicant's ineligibility for the national Parliament: (a) As long as the applicant continues to be ineligible for the national Parliament, she may claim to be a "victim" within the meaning of Article 34 of the Convention and therefore the objection alleging that she lacks the capacity of victim is rejected; (b) It is not apparent that the action indicated by the Government would be effective. In particular, the situation of which the applicant complains results essentially from the electoral law as such and not from its interpretation by the domestic courts. The Latvian Constitutional Court expressly found that that law is compatible with Article 3 of Protocol No. 1.

Admissible under Articles 10 and 11.

Inadmissible under Article 3 of Protocol No. 1 as regards the loss of the applicant's seat on Riga City Council: the Latvian local councils do not participate in the exercise of legislative power and therefore do not form part of the "legislature" for the purposes of Article 3 of Protocol No. 1 to the Convention. That article does not therefore apply: incompatible *ratione materiae*.

Inadmissible under Article 8 (private life): the question is whether the restriction of the applicant's right to stand for election owing to her political past interferes with her right to respect for her private life. The details of the applicant's political past which served as the basis for her ineligibility were neither secret nor even confidential but were freely available in the public archives. The national authorities did not carry out any special investigation in order to obtain them and had not archived them or otherwise memorised them in order to make use of them in the future (cf., *a contrario*, *Rotaru v. Romania*, ECHR 2000-V). Furthermore, the activities held against the applicant formed part, more generally, of the recent historical context of the breaking up of the former Soviet Union and were widely reported in the media. Last, the applicant is a known public person who actively participated in the political events of the era in question and who was elected to the Supreme Council of Latvia in her specific capacity as a member of the SPL. Accordingly, her activities within that party were essentially a part of her public life and not of her "private life" and there has therefore been no interference for the purposes of Article 8.

Inadmissible under Article 6(1) (fairness of the proceedings relating to the applicant's eligibility) as incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(2) of Protocol No. 4

FREEDOM TO LEAVE A COUNTRY
Expulsion to country of origin of persons having given up the nationality of that country: *communicated*.

MOGOS - Romania (N° 20420/02)
[Section III]

The applicants, a couple and their five children, are stateless persons of Romanian origin. They left Romania for Germany in 1990. In 1993, they renounced Romanian nationality. They attempted on several occasions to obtain residence permits in Germany: all their applications were rejected. On 7 March 2002, the applicants (with the exception of the first two children, who were married to German nationals) were expelled by the German State to Romania, notably pursuant to an agreement concluded between the two States in 1998, whereby Romania declared that was prepared to accept its former national who had become stateless persons. Since 7 March 2002 the deported applicants have remained in the transit centre of Bucharest Airport, refusing to enter Romania but wishing to return to Germany.
Communicated under Articles 3, 5(1), 2 of Protocol No. 4, Article 14 in conjunction with Articles 3 and 2 of Protocol No. 4 and Article 34.

Other judgments delivered in March 2003

Articles 3, Article 5(3) and (4) and Article 14

ÖZKUR and GÖKSUNGUR - Turkey (Nº 37088/97)
Judgment 4.3.2003 [Section II]

alleged ill-treatment in custody, failure to bring detainee promptly before a judge and absence of review of lawfulness of detention – friendly settlement (*ex gratia* payments, statement of regret as to circumstances of applicants' custody and lack of investigation into allegations of ill-treatment).

Article 6(1)

A.B. - Slovakia (Nº 41784/98)
Judgment 4.3.2003 [Section IV]

refusal to appoint lawyer to represent disabled person and holding of hearing in her absence – violation.

MOLNÁROVÁ and KOCHANOVÁ - Slovakia (Nº 44965/98)
Judgment 4.3.2003 [Section IV]

GREGORIOU - Cyprus (Nº 62242/00)
Judgment 25.3.2003 [Section II]

ORZEŁ - Poland (Nº 74816/01)
R.O. - Poland (Nº 77597/01)
Judgments 25.3.2003 [Section IV]

DIAS DA SILVA and GOMES RIBEIRO MARTINS - Portugal (Nº 53997/00)
Judgment 27.3.2003 [Section III]

length of civil proceedings – violation.

HEGEDŰS - Hungary (Nº 43649/98)
Judgment 25.3.2003 [Section II]

length of civil proceedings – friendly settlement.

KOUMOUTSEA and others - Greece (Nº 56625/00)
Judgment 6.3.2003 [Section I]

length of administrative proceedings – violation.

IPSILANTI - Greece (Nº 56599/00)
Judgment 6.3.2003 [Section I]

length of criminal proceedings – violation.

Article 6(1) and Article 13

DACTYLIDI - Greece (Nº 52903/99)
Judgment 27.3.2003 [Section I]

length of administrative proceedings and lack of effective remedy to enforce demolition of illegal building – violation.

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

POPOVICI and DUMITRESCU - Romania (Nº 31549/96)
Judgment 4.3.2003 [Section II]

exclusion of courts' jurisdiction to review nationalisation of property – violation; alleged deprivation of property – no violation.

STOICESCU - Romania (Nº 31551/96)
Judgment 4.3.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation, deprivation of property – violation; alleged lack of independence and impartiality of courts on account of statements by Head of State – no violation.

CHIRIACESCU - Romania (Nº 31804/96)
Judgment 4.3.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation, deprivation of property – violation.

FERRETTI - Italy (Nº 60660/00)
Judgment 6.3.2003 [Section I]

staggering of granting of police assistance to enforce eviction orders, prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions staggering granting of police assistance – friendly settlement.

SATKA and others - Greece (Nº 55828/00)
Judgment 27.3.2003 [Section I]

prolonged restrictions on use of property as a result of successive decrees classifying the property for public use and thus depriving court decisions of effect – violation.

Article 10

C.S.Y. - Turkey (Nº 27214/95)
Judgment 4.3.2003 [Section II]

seizure of book on ground that it contained passages inciting to racial hatred – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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