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ARTICLE 1

RESPONSIBILITY OF STATES
Responsibility of Greece in respect of occupation of land by Greek KFOR troops in Kosovo: *communicated*.

KASUMAJ - Greece (Nº 6974/05)
[Section I]

The applicant, who is a Kosovo Albanian, owns two plots of agricultural land in Kosovo which have been occupied since 1999 by the Greek KFOR soldiers, and has become their main national base in Kosovo. The applicant has since then been denied access to and use of his land. In meetings with Greek KFOR officers he was offered a certain amount per hectare per month which he considered insufficient. The applicant wrote to the Greek KFOR office in Kosovo requesting fair compensation for the use of his land. He received no reply to this request or to his subsequent letters to the Greek Ministry of Defence and the KFOR HQ Claims Office.
Communicated under Articles 1, 6, 35 and Article 1 of Protocol No. 1.

ARTICLE 2

USE OF FORCE
Deaths of three persons belonging to an illegal armed organisation during a police operation: *no violation*.

PERK and Others - Turkey (N° 50739/99)
Judgment 28.3.2006 [Section II]

Facts: The applicants are relatives of three persons who died during a police operation against a radical armed movement. According to the Government, an informant had given the police the address of a flat where the three persons in question were preparing to carry out an armed attack. According to the report drawn up at the end of the operation, damage inside the flat revealed numerous bullet impacts. Around a hundred spent cartridges were found together with several weapons close to the bodies of the three dead persons or in their hands. The same day a preliminary post-mortem was carried out and statements were taken from the caretaker of the block of flats and some of its residents. Two days later a full autopsy was conducted which revealed seven, nineteen and thirteen bullet wounds respectively on the three bodies. The ballistics report prepared a week after the shooting indicated that most of the spent cartridges came from weapons belonging to the security forces. Ballistics tests performed a few weeks later on the dead persons' clothing showed that the bullets which had struck the victims had not been fired at close range, but did not make it possible to establish the exact distance from which they had been fired.
The authorities instituted criminal proceedings of their own motion against the fifteen police officers who had taken part in the operation, and the public prosecutor obtained statements from them. All the officers said that they had come under fire from the suspected terrorists and had replied with warning shots. The public prosecutor committed them for trial before the Assize Court on charges including murder. At the hearing the Assize Court allowed the applicants' request to join the proceedings as an intervening civil party and heard evidence from the defendants and several witnesses. However, it rejected the request for a re-enactment of the events made by counsel for the intervening party and also a request for an expert report on whether tear gas should have been used during the operation. Ultimately, in December 1997, it acquitted the defendants, finding that the police officers had acted in self-defence. The applicants appealed on points of law, on the grounds in particular that there had been no re-enactment of the events nor any reliable sketch of the scene of the operation. In June 1998 the Court of Cassation upheld the Assize Court judgment.

Law: The death of the applicants' relatives – According to the Court's case-law the circumstances, set forth in Article 2, in which deprivation of life might be justified had to be strictly construed. The use of lethal force by police officers could be justified in certain circumstances provided that the police operations, in addition to being permitted under domestic law, were sufficiently well defined under that law within a system of adequate and effective safeguards against arbitrary conduct and abuse of force. In particular, the use of force had to be strictly proportionate to the aims set forth in paragraph 2 (a), (b) and (c) of Article 2. Account had to be taken not only of the actions of the agents of the State who actually administered the force but also of all the surrounding circumstances, including such matters as the planning and supervision of the actions in question. In the instant case the evidence before the Court showed that the applicants' relatives had been killed during an anti-terrorist operation conducted by a team of fifteen police officers. There was broad agreement between the parties as to the circumstances surrounding the deaths. There was no evidence to support the applicants' claim that the killings had been premeditated. With regard to the domestic legal framework, Article 17 of the Turkish Constitution permitted the use of lethal force in cases "of absolute necessity or where authorised by the law". As to the background against which the operation had been conducted, the authorities had undoubtedly been dealing with dangerous suspects belonging to an illegal armed organisation who appeared to be planning an attack that day. The situation had therefore been urgent, as the police officers needed to prevent an armed attack by the three suspects and make a lawful arrest. The operation could therefore be considered to have been conducted "in defence of any person from unlawful violence" and in order to "effect a lawful arrest". It remained for the Court to consider whether the force used to achieve those aims had been absolutely necessary and in particular whether it had been strictly proportionate. The Assize Court had found it to have been established that the first shot had been fired from inside; that had not been disputed by the applicants. That being the case, it could be accepted that, given the attitude of the suspects and the information available to the police, namely that the suspects were armed and were planning a terrorist attack, the officers could reasonably have considered that it was necessary to enter the flat, disarm the suspects and arrest them, and have judged it necessary to fire until the armed suspects were no longer physically capable of returning fire. It was pointless to speculate in the abstract as to whether it would have been appropriate in this instance to use neutralising techniques, desirable though it was to make greater use of such techniques. Laying down such a requirement in principle without taking account of the circumstances of the case would place an unrealistic burden on the State and its agents, which could result in the loss of their lives and the lives of others, bearing in mind in particular the unpredictability of human nature. Accordingly, the use of lethal force in this case had not exceeded what had been absolutely necessary to achieve the desired aims.
Conclusion: no violation.

Alleged inadequacy of the investigation: The investigation had been instituted promptly by the authorities and they had worked actively on it, taking a large number of investigative measures. Six months after the events the public prosecutor had instituted criminal proceedings against the police officers involved in the armed confrontation, and the applicants had been able to play an active role in the proceedings. The applicants had subsequently lodged an appeal against the Assize Court acquittal, which had been dismissed by the Court of Cassation. However, in the circumstances of the case, the fact that no reliable sketch of the scene had been made by independent experts and that the Assize Court had not deemed it necessary to order an expert report on the use of neutralising techniques amounted to a violation of the procedural requirements of Article 2 of the Convention.
Conclusion: violation.

In the light of that finding and of the circumstances of the case, the Court did not consider it necessary to examine the case under Article 6.
As the applicants had not submitted any claims for just satisfaction, the Court made no award under that head.

POSITIVE OBLIGATIONS
Effectiveness of the investigation into the deaths, during a police operation, of three members of an illegal armed organisation: *violation.*

PERK and Others - Turkey (N° 50739/99)
Judgment 28.3.2006 [Section II]

(See above).

ARTICLE 3

TORTURE
Ill-treatment by police officers, and effectiveness of the investigation: *violation*.

MENESHEVA - Russia (Nº 59261/00)
Judgment 9.3.2006 [Section I]

Facts: The applicant, a young woman 19 years old, claims that the police tried to search her apartment on the night of 12 February 1999 in relation to an investigation of a murder case in which a suspect was thought to be her boyfriend. She refused to let the police enter as they had no warrant. The following day three policemen again demanded to enter her apartment. As they still had no warrant she again refused. The police insisted and a clash broke out. The applicant claims she was intimidated and physically ill-treated by the police officers and taken to a police station without being informed of the reasons of her arrest. She alleges that at the police station she was questioned about "her husband", and that when she responded she had never been married, she was beaten up and threatened during two hours. The applicant was kept in a detention cell overnight. On 14 February 1999 she was brought before an officer who, without introducing himself, told her "five days" – she subsequently learnt that he had imposed on her a five days' sentence for the administrative offence of forceful resistance to the police. She was held in detention until 18 February 1999. The following day the applicant underwent a forensic examination which established she had multiple bruises, abrasions and a traumatic oedema. The applicant requested an investigation into her allegations of ill-treatment and unlawful detention, and claimed damages with the Town Court. An internal enquiry carried out by the Internal Affairs Department concluded that her allegations were unsubstantiated. The public prosecutor decided not to open criminal investigations in respect of the accused police officers. The Town Court found that the police had acted lawfully; moreover, it dismissed the forensic report as irrelevant and held that the allegations of ill-treatment were unsubstantiated. The applicant also challenged her five day's administrative detention, but the Regional Court found that it had been lawful. In 2003, a criminal investigation into the circumstances of the applicant's arrest and her allegations of ill-treatment was opened. The Regional Court, on a request of the prosecutor, found that the applicant's resistance to the police had not constituted an administrative offence and quashed the decision of 14 February 1999 in which the applicant had been convicted thereof. The investigation, which has not established the circumstances of the events, is still pending according to the Government.

Law: Article 3 (ill-treatment by the police) – Having regard to the applicant's detailed allegations, corroborated by the forensic report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on the applicant upon her release from custody, the Court accepted that she had been ill-treated by the police. The existence of physical pain or suffering was attested by the medical expert and the applicant's statements. Moreover, the sequence of events demonstrated that the pain and suffering had been inflicted on her intentionally, with a view to extracting from her information concerning the murder allegedly committed by the person who was supposedly her boyfriend. At the material time the applicant was only 19 years old and, being a female confronted by several male policemen, was particularly vulnerable. Moreover, the ill-treatment had lasted for several hours, during

which she was twice beaten up and subjected to other forms of violent physical and moral impact. In these circumstances, the Court concluded that as a whole and having regard to its purpose and severity, the ill-treatment had amounted to torture within the meaning of Article 3.
Conclusion: violation (unanimously).

Article 3 (effectiveness of the investigation) – The applicant's requests for an investigation were filed within one month of the incident and contained a detailed account of events. However, no investigation followed. The enquiry by the Internal Department, although it resulted in some disciplinary charges, did not disclose the names of those charged or the grounds for their punishment. Hence, it could not qualify as an effective investigation. The investigation was only opened four years after the events complained of (following the proceedings before the Court), and was not satisfactory: it failed to establish the material circumstances and to address the questions put before it. In 2004, the Prosecutor General gave orders for the investigation to be resumed, but since then there has been no follow-up, and the shortfalls of the investigation have not been remedied.
Conclusion: violation (unanimously).

Article 5(1) – It was not disputed that the applicant's arrest, her overnight detention at the police station and the subsequent five days' administrative detention had amounted to deprivation of liberty. As regards the arrest and overnight detention, no records or documents concerning the date, time, name of the detainee or reasons for the detention could be found. This was a serious failing incompatible with the requirement of lawfulness and with the very purpose of Article 5. Concerning the five days' detention on the charge of forceful resistance to the police, this decision was subsequently declared unlawful and quashed by the domestic courts. The judge who had taken the decision had exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention.
Conclusion: violation (unanimously).

Article 6(1) – The administrative proceedings against the applicant could be considered to have involved the determination of a criminal charge against the applicant given that she had been deprived of her liberty for five days and locked up in the detention centre during the term of her sentence. Moreover, the purpose of the sanction imposed on the applicant was purely punitive. The Government accepted that the proceedings at issue had been defective both under domestic law and the Convention. The ruling quashing the above judgment corroborated that there had been no adversarial proceedings and that even the appearances of a trial had been neglected to the extent that the applicant did not get a chance to find out the purpose of her brief appearance before the judge.
Conclusion: violation (unanimously).

Article 13 – No effective criminal investigation can be considered to have been carried out. Consequently, any other remedy available to the applicant, including the claim for damages, had little chances of success. Indeed, as regards the applicant's action for damages, the court simply endorsed the prosecutor's opinion that the claim was unmeritorious without assessing the facts. Hence, such an action was only a theoretical and illusory remedy, not capable of affording redress to the applicant.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 25 roubles in respect of pecuniary damage and 35,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Prisoner suffering from tuberculosis wrongly diagnosed and kept in inadequate conditions: *violation*.

MELNIK - Ukraine (N° 72286/01)
Judgment 28.3.2006 [Section II]

Facts: In September 2000 the applicant began serving a five-year sentence of imprisonment after being convicted of drugs offences. Medical examinations at the time that he was taken into custody showed that he was in good health. A month later he was transferred to another prison where he did not undergo the mandatory medical examination for possible tuberculosis. In April 2001 he complained to a prison doctor that he was experiencing shortness of breath and was coughing up phlegm. After twice being wrongly diagnosed with lung cancer, he was finally transferred to a tuberculosis hospital for convicts, where, as from June 2001, he was treated for tuberculosis. Since March 2004 he has been diagnosed with clinically-cured tuberculosis.
Before the Court the applicant complained, in particular, that he had not received the necessary medical treatment and assistance for tuberculosis. He maintained that he had been detained in dirty overcrowded conditions which he had to share with prisoners suffering from tuberculosis and AIDS. He claimed that the prisoners had been obliged to take turns to sleep on metal bunk beds, had been deprived of access to daylight and fresh air and had not been given adequate food. Moreover, the special trains used for transporting detainees had been overcrowded, with no access to daylight, and detainees had not been provided with an adequate supply of food and drinking water. The Government contested many of these allegations.

Law: Article 3: The Court noted that the figures submitted by the Government and the applicant on the measurements of the cells in which he had been kept suggested that there had been 1-2.5 m^2 of space per inmate, which the Court found to be severely overcrowded, particularly in view of the guidelines of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") which recommend 7 m^2 per prisoner. Moreover, the applicant's tuberculosis had not been detected until almost two-and-a-half months after he had complained about his health problems. The two incorrect diagnoses confirmed the applicant's claim as to the inadequacy of the medical care provided, the failure to detect his tuberculosis rapidly, or to isolate and provide him with adequate and timely treatment. Furthermore, he had not been given the mandatory check for possible tuberculosis when he had been relocated. His health had started to improve only in October 2001 and his lengthy treatment had made him suffer from sight impairment and dizziness. In conclusion, the applicant had not been provided with adequate or timely medical care, given the seriousness of the disease and its consequences for his health. The Court also noted that the applicant's conditions of hygiene and sanitation had been unsatisfactory and had contributed to the deterioration of his health. Such conditions must have caused him considerable mental and physical suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement. The Court concluded therefore that the applicant's detention in overcrowded cells, with no adequate medical care and no satisfactory conditions of hygiene and sanitation, taken together with their duration, had amounted to degrading treatment.
Conclusion: violation (unanimously).

Article 13: The Government had not shown that it was possible under Ukrainian law for the applicant to complain about the conditions of his detention or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress.
Conclusion: violation (unanimously).

Article 41: The Court awarded the applicant EUR 10,000 euros for non-pecuniary damage and a certain amount for costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Treatment while in police custody and attempts to carry out a gynaecological examination: *no violation/inadmissible.*

DEVRIM TURAN - Turkey (N° 879/02)
Judgment 2.3.2006 (Section III]

Facts: In 1999 the applicant was taken into police custody on suspicion of being a member of an illegal organisation, the *DHKP/C* (Revolutionary People's Liberation Party-Front). Two hours after her arrest she was taken to hospital to be examined. A medical report indicated the presence of an abrasion under one eye but no signs of ill-treatment on her body. Further medical examinations were carried out which also concluded that her body showed no signs of ill-treatment. The applicant refused to undergo a gynaecological examination on the first and the last day of her arrest and no such examination was carried out. Before a public prosecutor she denied the allegations against her and maintained that the statement she had made to the police shortly after her arrest had been taken under duress. She stated that she had been hosed with cold water, subjected to electric shocks and Palestinian hanging. She repeated her allegations before an investigating judge. Criminal proceedings were initiated against her before a state security court. She wrote to the court retracting her statement which she maintained had been made under duress. She also described in more detail her ill-treatment in police custody. She was found guilty as charged and sentenced to 12 years and six months' imprisonment. She appealed to the Court of Cassation, referring in particular to her ill-treatment in custody, but her appeal was rejected.

Law: Article 3 (attempts to subject the applicant to a gynaecological examination): The Court noted that while being taken to the hospital for a gynaecological examination might have caused distress to the applicant, medical examination of detainees by a forensic doctor can prove to be a significant safeguard against false accusations of sexual molestation or ill-treatment. Furthermore, it was undisputed that when the applicant had refused to undergo the examination in question, no force had been used against her and the doctors had refrained from performing the said examination. The sole fact that twice during her arrest she had been taken to hospital for a gynaecological examination did not attain the minimum level of severity amounting to degrading treatment within the meaning of Article 3.
Conclusion: inadmissible as manifestly ill-founded (by majority vote).

Article 3 (treatment while in police custody): The Court found that a number of elements in the case raised doubts as to whether the applicant had suffered ill-treatment while in police custody. In particular, no signs of ill-treatment on her body had been noted in the medical reports. Although some injuries to her face had been noted, those details had been taken on the first day of her arrest whereas her allegations concerning ill-treatment had concerned the time she had spent in police custody. In conclusion, the evidence before the Court did not enable it to find beyond all reasonable doubt that she had been subjected to ill-treatment.
Conclusion: no violation (unanimously).

Article 13: The Court noted that the applicant had repeatedly complained about her ill-treatment to the national authorities. The Court referred in particular to her statements as taken down by the public prosecutor and the investigating judge, her letter to the trial court where she had retracted her statement made to the police and her appeal to the Court of Cassation. The authorities were therefore clearly aware of her allegations but had taken no steps to investigate them. Hence the authorities had failed to fulfil their obligation to provide the applicant with an effective remedy concerning her allegations of ill-treatment.
Conclusion: violation (unanimously).

Article 41: The Court awarded the applicant EUR 1,500 for non-pecuniary damage and a certain amount for costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Detention of an unaccompanied five-year-old child at a transit centre for adult foreigners and conditions in which she was removed to her home country: *admissible.*

MUBILANZILA MAYEKA and Tabitha KANIKI MITUNGA - Belgium (N° 13178/03)
Decision 26.1.2006 [Section I]

The applicants, a mother and daughter, are Congolese nationals. After obtaining refugee status in Canada, the mother asked her brother, a Dutch national living in the Netherlands, to collect her daughter Tabitha, then five years old, from the Democratic Republic of the Congo and to look after her until she was able to join her in Canada. Tabitha did not have the necessary documents to enter Belgium and so, following her arrival at Brussels Airport, directions were made for her removal and she was placed in a transit centre for aliens. Her uncle returned to the Netherlands. On the same day a lawyer was assigned to represent the child and made an unsuccessful application for asylum on her behalf. He stressed that the purpose of the child's journey was to join her mother in Canada; he also made an unsuccessful application for the removal directions to be set aside and for the child to be permitted to stay with foster parents or in a home adapted to her needs. The Aliens Office said that the child's family had been located in Kinshasa. The High Commissioner for Refugees requested permission for the child to remain in Belgium while her application for a Canadian visa was being processed. It advised that its inquiries had revealed that there not appear to be any adults able to look after the child in Kinshasa. A Belgian court granted an application for the child's release that had been made by her lawyer. It found that her detention was incompatible with the Convention on the Rights of the Child signed in New York in 1989. On the same day the representative of the High Commissioner for Refugees informed the Aliens Office that the mother had been granted refugee status in Canada. The following day the child was removed to the Democratic Republic of the Congo. She was accompanied to the airport by a social worker and an air hostess was assigned to look after her on board the aircraft. However, there were no members of her family waiting for her when she arrived in Kinshasa. The following day, the Belgian authorities were informed by the Canadian embassy that the child's mother was entitled as a refugee to have the members of her family join her. A few days later, Tabitha joined her mother in Canada following the intervention of the Belgian and Canadian Prime Ministers, the latter of whom had agreed in principle to authorise the reunion of the family.

Admissible under Articles 3, 5(1)(d), 5(4), 8 and 13. The Government's preliminary objection of a failure to exhaust domestic remedies was dismissed.

INHUMAN OR DEGRADING TREATMENT
Re-incarceration of prisoner following successful treatment for lung cancer: *inadmissible*.

SAYDAM - Turkey (N° 26557/04)
Decision 7.3.2006 [Section II]

Facts: The applicant was born in 1948. On 12 March 1998 he was sentenced to seventeen years and six months' imprisonment for drug trafficking. On 8 December 2002 he was diagnosed as suffering from lung cancer. He was transferred to the Edirne open-farm prison in order to facilitate his medical treatment; on 7 January 2003 he was operated on. The applicant remained in hospital until 24 January 2003 and received radiotherapy the following month. On 8 April 2003 the applicant was prescribed house rest for three months. Between 9 April and 12 June 2003 he was transferred to the prison clinic for a check-up on seven occasions; during this time the 3rd Section of the Forensic Medicine Institute recommended suspending his sentence for one year on the ground that his continued incarceration could be life-threatening.
On 13 June 2003 the Edirne Public Prosecutor suspended the applicant's detention for one year and ordered his release. A report of Edirne State Hospital dated 4 May 2004 states that the applicant's illness and treatment were continuing and that his situation constituted a handicap and a state of ageing. On

23 June 2004 the 3rd Section of the Medical Forensic Institute found that the applicant showed no sign of a recurrence of the disease; consequently, on 7 July 2004 the Edirne Public Prosecutor informed the applicant that he had seven days to report for re-incarceration. On 21 July 2004 the applicant filed a petition requesting the suspension of his prison sentence, challenging the veracity of the report of 23 June 2004. This petition was dismissed by the Edirne Public Prosecutor on 26 July 2004; the applicant was incarcerated in the Edirne open-farm prison on the same day.
On 1 September 2004 the Edirne Public Prosecutor decided that, in view of the discrepancy between the reports of 4 May 2004 and 23 June 2004, the applicant's case should be examined by the General Assembly of the Forensic Medicine Institute; the applicant's sentence was suspended for six months and the applicant was released on the same day. On 23 September 2004, the General Assembly of the Forensic Medicine Institute decided concluded that the applicant's state of health was not such as to prevent his continued imprisonment but decided to keep his case under review.
On 29 November 2004 the Edirne Assize Court reviewed the applicant's sentence in light of the provisions of the new Criminal Code, due to enter into force on 1 June 2005, and suspended the execution of his sentence until then.
On 10 February 2005 the Faculty of Medicine of Thrace University submitted to the Edirne Public Prosecutor a report dated the previous day according to which the applicant presented certain symptoms due to the various treatments he had received but no symptoms of lung cancer; there was, however, a small risk of recurrence and the applicant should be kept under medical surveillance for a further five years.
As of 22 August 2005 the applicant was still under medical surveillance but no further decisions as regards his re-imprisonment had been taken.

Inadmissible under Article 3: The applicant was transferred to Edirne open-farm prison in order to facilitate medical treatment. He did not claim to have been denied adequate health care in prison. In this respect, the case file reveals that, prior to the suspension of the applicant's sentence, the authorities took all necessary steps to ensure that the applicant received adequate treatment for his illness at various hospitals. He was also regularly examined at the prison clinic. As matters stand, the applicant's situation does not attain a sufficient level of severity to fall within the scope of Article 3: *manifestly ill-founded*.

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Lack of records concerning the applicant's arrest, and ensuing five days' detention ordered by a judge neglecting procedural guarantees: *violation*.

MENESHEVA - Russia (Nº 59261/00)
Judgment 9.3.2006 [Section I]

(See Article 3 above).

LAWFUL ARREST OR DETENTION
Automatic extension of pre-trial detention: *violation.*

SVIPSTA - Latvia (N° 66820/01)
Judgment 9.3.2006 [Section III]

Facts: In June 2000 the applicant was placed under investigation on suspicion of murder and was placed in pre-trial detention. The court extended her pre-trial detention six times. All her appeals against the decisions were dismissed. The reasons given by the Latvian courts included the seriousness of the offence and, in some instances, the risk that she might reoffend or seek to evade justice. On 18 May 2001 the last order authorising the applicant's detention expired, but the applicant was kept in prison under the fifth paragraph of Article 77 of the Latvian Code of Criminal Procedure (KPK). In October 2001 the Riga Regional Court committed the applicant for trial and ordered that she remain in prison pending trial. In September 2002 the applicant was found guilty. She was sentenced to 12 years' imprisonment for manslaughter, which was reduced to ten years on appeal. An appeal by the applicant was dismissed by the Senate of the Supreme Court.

Law: Article 5(1) – On 18 May 2001 the order authorising the applicant's detention had expired, but she had not been released. She had remained in prison for four months and twenty-three days without authorisation by any judicial decision. That fact was sufficient in itself to pose a serious problem under Article 5(1). The applicant had been kept in prison on the basis of the fifth paragraph of Article 77 of the KPK, which stipulated that "the time taken for all the defendants to take cognisance of the documents in the investigation file shall not be taken into account in calculating the length of detention pending trial". However, the wording had been so vague as to raise doubts as to its precise implications and to be open to more than one interpretation. It did not clearly state that there was a requirement to keep the defendant in detention, still less that it was possible to do so without a warrant. The provision in question therefore failed to satisfy the requirements of "lawfulness" laid down by Article 5(1). In reality the automatic extension of the applicant's pre-trial detention had been the result of a generalised practice on the part of the Latvian authorities which had no precise basis in legislation and had clearly been designed to compensate for the deficiencies in the KPK.
Conclusion: violation in respect of the above period of detention; no violation in respect of two others (unanimously).

Article 5(3) – The applicant's pre-trial detention had lasted for over two years and three months. The reasons given in all the orders extending her pre-trial detention had been too brief and too abstract, since they went no further than mentioning certain statutory criteria while omitting to specify how those criteria applied to the individual case of the applicant. In addition, the orders had been drafted using a stereotypical pro forma model and, with a single exception, repeated from one order to the next the same grounds in the same form of words. The reasons which actually might have justified the applicant's detention had become less relevant with time. However, the reasons given in the impugned orders had remained virtually identical and were clearly insufficient to satisfy the requirements of Article 5(3).
Conclusion: violation (unanimously).

Article 5(4) – *Reasons given for the orders extending the applicant's detention*: The court orders extending the applicant's detention had consisted of a standard text file, prepared in advance, with a few tiny changes made on each occasion before it was printed and signed in summary fashion at the end of each hearing. Such a practice was in breach of Article 5(4) when, as in the instant case, it reflected a failure effectively to examine the parties' observations. It was a prime example of denial of the fundamental guarantees enshrined in Article 5(4). While the appellate court decisions had been more detailed than those of the court of first instance, all but one had simply made vague references to the seriousness of the offence, the fact that it had been perpetrated by an organised group, the personality of the applicant and the danger of collusion, without substantiating the allegations made. In short, the applicant's pre-trial detention had been decided on the basis of orders which gave no satisfactory reasons.
Conclusion: violation (unanimously).

Access by defence counsel to the investigation file: The applicant's lawyer had not been allowed access to the investigation file during 2001, despite the fact that it contained a number of elements which had been central to the applicant's continued detention. It had therefore been essential for the defence to be able to consult the file in order to challenge effectively the lawfulness of the applicant's pre-trial detention, which at the time had lasted for over six months.
Conclusion: violation (unanimously).

Existence of an adequate remedy at the trial stage: When, on 11 October 2001, the judge took the decision to commit the defendant for trial whilst keeping her in detention, the KPK placed no time-limit on the extension; in principle, it remained in force until delivery of the judgment on the merits. There had been no remedy available in Latvian law enabling the lawfulness of the applicant's detention to be reviewed at intervals during the trial stage, in violation of Article 5(4). While the judge dealing with the case had examined the application for release lodged by the applicant on 12 October 2001, that had been merely a matter of practice which lacked any clear legal basis and could have been altered at any time, with the result that it did not satisfy the requirements of accessibility and effectiveness laid down by Article 5(4). Similarly, the application had been refused by means of a simple letter which, by definition, lacked the status of a judicial decision. Accordingly, from 11 October 2001 onwards, the applicant had had no adequate remedy whereby the lawfulness of her pre-trial detention could be reviewed.
Conclusion: violation (unanimously).

The Court held unanimously that the length of the criminal proceedings, namely three years and eight months, had been in breach of Article 6(1).

Article 41 – The Court awarded the applicant a specified sum for costs and expenses.

Article 5(1)(d)

MINORS
Detention of an unaccompanied five-year-old foreign child at a transit centre for adult foreigners before her removal: *admissible.*

MUBILANZILA MAYEKA and Tabitha KANIKI MITUNGA - Belgium (N° 13178/03)
Decision 26.1.2006 [Section I]

(See Article 3 above).

Article 5(3)

LENGTH OF PRE-TRIAL DETENTION
Excessive length of pre-trial detention: *admissible.*

LELIÈVRE - Belgium (N° 11287/03)
Decision 2.3.2006 [Section I]

On 14 August 1996 the applicant was arrested in connection with proceedings concerning the abduction, illegal confinement and killing of a number of teenage girls. The case received wide media coverage and caused a public outcry in Belgium. Shortly after his arrest, the applicant confessed to having taken part in the abduction of some of the young girls. Several days later the bodies of three girls were found. In December 1996 the applicant was charged with six abductions, five of which concerned minors, with the aggravating circumstance that the offences had resulted in the death of four of the girls and the illegal confinement of three. In the following years the applicant was interviewed over a hundred times by the

investigators and the investigating judge. In judgments of 22 October 2001 and 21 January 2002 the indictment division found that the conduct of the judicial investigation, in view of the complexity of the case, was not vitiated by any abnormal delay, and it took measures to ensure that the length of the applicant's detention did not become unreasonable. Moreover, from March 2001 onwards, the applicant lodged a number of applications for release, relying on Article 5(3) of the Convention. The indictment division and the Court of Cassation dismissed all his applications on the ground that there was still serious evidence of his guilt, that it was in the interest of public safety to keep him in detention and that the length of the proceedings remained reasonable. On 30 March 2003 the indictment division committed him to stand trial in the assize court. The trial began on 1 March 2004. On 22 June 2004 the applicant was sentenced to 25 years' imprisonment as the perpetrator or joint perpetrator of a number of offences, in particular the abduction and illegal confinement of three girls with aggravating circumstances. He did not appeal on points of law.

Admissible under Article 5(3): Under the Court's case-law, the end of the period referred to in Article 5(3) was "the day on which the charge is determined, even if only by a court of first instance". The applicant's detention pending trial had therefore lasted from 14 August 1996, the day of his arrest, until 22 June 2004. The period to be taken into consideration was accordingly seven years, ten months and eight days.
Pre-trial detention was an exceptional measure and could only be used in cases where it proved strictly necessary. It fell in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person did not last for an unreasonable length of time. Moreover, the lawfulness of prolonging such detention had to be assessed *in concreto*, according to the specific features of the case. The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* but after a certain lapse of time it no longer sufficed. In such cases the Court had to establish whether the other grounds given by the domestic authorities to justify the deprivation of liberty were "relevant" and "sufficient" and whether the authorities had displayed "special diligence" in the conduct of the proceedings. The complexity and particular characteristics of the investigation were important factors to be considered in this connection.
In the light of all the parties' submissions, the Court considered that this complaint could not be declared manifestly ill-founded. No other ground for declaring it inadmissible was established.

Article 5(4)

SPEEDINESS OF REVIEW
Applications for immediate release from medical confinement never examined: *violation*.

VAN GLABEKE - France (N° 38287/02)
Judgment 7.3.2006 [Section II]

Facts: The applicant was compulsorily admitted to a psychiatric hospital for nineteen days at the request of a third party. While she was in hospital, first her mother and then an association lodged applications with the relevant authorities for her immediate release. A different authority, namely the public prosecutor's office, responded to the applications, but took no action. The relevant judge, to whom a lawful application had been made, failed to act.

Law: Article 5(4) – No court had ever ruled on the two applications for immediate release lodged with the President of the *tribunal de grande instance* on the applicant's behalf.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant a specified sum for non-pecuniary damage.

REVIEW OF LAWFULNESS OF DETENTION
Orders extending pre-trial detention without adequate grounds – defence unable to access the investigation file – lack of adequate judicial remedy to control the lawfulness of detention after committal for trial: *violation.*

SVIPSTA - Latvia (N° 66820/01)
Judgment 9.3.2006 [Section III]

(See Article 5(1) above).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Refusal to admit a cassation appeal following the entry into force of a new time-limit for the lodging of such appeals: *violation*.

MELNYK - Ukraine (Nº 23436/03)
Judgment 28.3.2006 [Section II]

Facts: The applicant instituted proceedings in the Local Court against her former employer to be reinstated in her position and to receive compensation. The proceedings were discontinued because of the failure of the applicant to appear before the court. On 27 February 2002 the Court of Appeal upheld the above ruling discontinuing the proceedings. On 26 April 2002 the applicant appealed in cassation. The Local Court rejected the applicant's request for a cassation appeal as it had been submitted too late. The court relied on the amended Code of Civil Procedure – which had entered into force on 4 April 2002 – and provided that the time-limit for lodging a cassation application against the decision of an appellate court was one month (under the old provisions the time-limit was three months from the date of the appellate decision). The applicant's subsequent appeals were dismissed. The applicant complained to the Court about the discontinuation of her labour dispute and the refusal to admit her cassation appeal, which had deprived her of access to the court.

Law: Article 6 (access to court) – The right of access to a court is not absolute and may be subject to limitations, provided the latter pursue a legitimate aim and are proportional. Rules on time-limits for appeals are undoubtedly designed to ensure legal certainty, but they should not prevent litigants from making use of an available remedy. The applicant's request to lodge an appeal was declared inadmissible on the ground that it had not been filed within the time-limit provided by the amended Code of Civil Procedure. Firstly, the Court had to examine whether the calculation of the period for the running of the time-limit could be regarded as foreseeable from the point of view of the applicant. In the absence of any transitional or retroactive provision, the applicant could reasonably have expected the new deadline to have been brought forward to 4 May 2002 (that is, one month after the amendment had come into force). The grounds on which the applicant's request for a cassation appeal were rejected suggests that the provisions of the amended Code of Civil Procedure were to be applied retroactively in the applicant's case, requiring her to have lodged the cassation appeal by 27 March 2002, that is, within one month from the date of the appellate decision, and even before the Amendment Law had come into force. Whilst in principle retrospective civil legislation is not expressly prohibited by the Convention, in the event that as a result thereof a person would be deprived of having access to an effective remedy (as in the present case), such retroactive application would undermine the principle of legal certainty. The essence of the procedural changes in the present case was to speed up civil proceedings and accordingly reduce their overall length. Nevertheless, despite such a legitimate aim, the dismissal of the applicant's cassation appeal was not proportionate to the purpose of these procedural changes.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 500 euros in respect of non-pecuniary damage.

ACCESS TO COURT
Action held inadmissible for failure to pay court fee, after legal aid was refused notwithstanding the plaintiff's lack of means: *admissible.*

BAKAN - Turkey (N° 50939/99)
Decision 7.2.2006 [Section II]

The first applicant's husband, the father of the other applicants, was killed accidentally by a shot fired by the security forces. The person who had fired the fatal shot was prosecuted for causing death through negligent conduct. The first applicant, acting on her own behalf and on behalf of her children, lodged a claim for compensation with the ordinary courts. She was granted legal aid on the ground that she had no income or real property. When the court decided that it had no jurisdiction in the matter, the applicant lodged a claim with the administrative court and applied for legal aid. The administrative court rejected the application for legal aid on the ground that the action was unfounded. It added that, since the applicant had been represented by a lawyer, she could not claim to be unable to pay the costs of the proceedings; it referred in that respect to the case-law of the Supreme Administrative Court. The administrative court requested payment from the applicant of the costs and expenses connected with the proceedings, amounting to EUR 170, failing which the claim would be declared inadmissible. She was given two months in which to pay. Her representative requested the administrative court to uphold the award of legal aid granted by the ordinary court in connection with the same case. He pointed out that the applicant had no source of income owing to the death of the head of the family, and had not paid him any fees. The administrative court declared the claim for compensation inadmissible due to non-payment of costs. An appeal was dismissed by the Supreme Administrative Court.
Admissible under Article 2, Article 6(1) (access to a court), Article 13 and Article 1 of Protocol No. 1.

ACCESS TO COURT
Local employee at foreign embassy unable to bring action for unlawful dismissal in the host country: *admissible*.

ČUDAK - Lithuania (N° 15869/02)
Decision 2.3.2006 [Section III]

Facts: In 1997 the applicant, a Lithuanian national, was recruited to the post of receptionist at the Embassy of the Republic of Poland in Vilnius. The contract of employment included a clause stating that any dispute arising out of it was to be resolved in accordance with Lithuanian law. In 1999 she lodged a complaint before the Equal Opportunities Ombudsman, alleging sexual harassment by a member of the diplomatic staff. The Ombudsman concluded that the applicant had indeed been a victim of harassment. Because of the tension at work she allegedly fell ill and was on sick leave in October-November 1999. When she attempted to return to work she was not authorised to enter the embassy building and was eventually notified that she had been dismissed on the ground of her failure to come to work during one particular week in November 1999.
The applicant then brought a civil claim, requesting compensation for unlawful dismissal. The Polish Ministry of Foreign Affairs issued a *note verbale*, claiming immunity from the jurisdiction of the Lithuanian courts. A regional court discontinued the proceedings for lack of jurisdiction and this decision was upheld by a court of appeal. The Supreme Court also found against the applicant. It considered it established *inter alia* that an agreement between Lithuania and Poland on legal assistance of 1993 had not resolved the question of application of the doctrine of State immunity; that Lithuania had no laws on the question; and that domestic case-law was only developing. The Supreme Court therefore considered it appropriate to decide the case in the light of the general principles of international law, including the 1972 European Convention on State Immunity. It observed that, although Article 479 of the Code of Civil

Procedure had established the principle of absolute State immunity, this provision had become inapplicable in practice. It further noted the prevailing international practice to apply the restrictive interpretation of the doctrine of State immunity, according such immunity only for acts performed in the exercise of sovereign power (*acta jure imperii*), as opposed to acts of commercial or private-law nature (*acta jure gestionis*). The Supreme Court went on to state that the Lithuanian law permitted application of limited State immunity. It also specified a number of criteria to be assessed in order to decide the question of jurisdiction in such cases. While the lower courts had not examined the question of applying the doctrine of limited State immunity, that question had now been properly examined at cassation instance. The Supreme Court also noted that its decision did not prevent the applicant from bringing an action before the Polish courts. *Admissible.*

RIGHT TO A COURT
Imposition by administrative authorities of a fine on the applicant company for constructing a building in breach of planning permission: *inadmissible.*

VALICO - Italy (N° 70074/01)
Decision 21.3.2006 [Section IV]

(See Article 1 of Protocol No. 1 below.)

FAIR HEARING
Proceedings before a parliamentary commission of enquiry falling outside scope of Article 6: *inadmissible*.

VAN VONDEL - the Netherlands (N° 38258/03)
Decision [Section III]

In 1994 a parliamentary commission of inquiry on criminal investigation ("PEC") was instituted in the Netherlands with a view, *inter alia*, to examining the justification and lawfulness of methods of criminal investigation. The applicant, who is a former criminal investigation officer, was heard twice as a witness during the public hearings held by the PEC. Under relevant domestic law, persons heard as a witness by such a parliamentary enquiry procedure do not have the right to remain silent, unless they are bound by a professional obligation of secrecy (and in that case, only as regards information conveyed to them in their professional capacity). However, a statement given by a witness before a PEC cannot be used in evidence against the person having given that statement or against any other person. In 1995, a fact-finding inquiry into the operation of the Regional Criminal Intelligence Service and its investigation methods was also started. The applicant was heard in the context of this enquiry with the undertaking that the statements he would give would not be used without his consent in any criminal investigation. Subsequent to these two inquiries, criminal proceedings were taken against the applicant on charges of having committed perjury before the PEC and of having sought to intimidate R., his former informer, when as the applicant knew or had serious reasons to assume that a statement from him would be sought in the context of the PEC inquiry. The applicant was convicted of both charges. He complains to the Court that the procedure before the PEC infringed Article 6 of the Convention by not guaranteeing persons heard as witnesses the privilege against self-incrimination and the right to silence. He also complains under Article 8 of the recording of tape-conversations he held with R.

Inadmissible under Article 6: As to whether the proceedings before the PEC fell within the scope of this Article in the sense of entailing a determination of the applicant's "civil rights and obligations", the Court recalled that certain obligations *vis-à-vis* the State belonged exclusively to the realm of public law, and were not covered by the concept of "civil rights and obligations" as construed under Article 6(1). In the instant case, the obligation to appear and give evidence before a parliamentary commission of inquiry – which was of crucial importance for the adequate functioning of a parliamentary control mechanism in a democratic society – was to be regarded as forming a part of normal civic duties. Consequently, the

proceedings before the PEC in the instant case could not be regarded as falling within the scope of Article 6 under its civil head. As to whether these proceedings entailed a determination of a "criminal charge", there were no reasons to hold that the inquiry conducted by the PEC in any way had amounted to a disguised form of criminal proceedings against the applicant. Hence, they fell outside the scope of Article 6 under its criminal head: *incompatible ratione materiae*.

As regards the applicant's complaint that the obligation to give information to the PEC had led to his subsequent prosecution and conviction in breach of Article 6 guarantees, the Court found that the applicant was convicted of having committed perjury for having given untruthful information to the PEC. This was not an example of self-incrimination before the PEC about an offence which he had previously committed; it was the offence itself. The present case was not therefore one concerned with the use of compulsorily obtained information in subsequent criminal proceedings. Consequently, there had been no infringement of the right to silence or privilege against self-incrimination in the criminal proceedings taken against the applicant: *manifestly ill-founded*.
Communicated under Article 8.

FAIR HEARING
Self-incrimination: obligation to testify in parliamentary enquiry procedure: *inadmissible*.

VAN VONDEL - the Netherlands (Nº 38258/03)
[Section III]

(See above).

FAIR HEARING
Refusal of domestic courts to establish the applicant's parental link with his alleged late father: *communicated*.

ALAVERDYAN - Armenia (Nº 4523/04)
[Section III]

(See Article 8 below).

ADVERSARIAL TRIAL
Leave to appeal refused in the preliminary procedure of admission of cassation appeals: *no violation*.

SALE - France (N° 39765/04)
Judgment 21.3.2006 [Section II]

Facts: In the course of proceedings concerning the applicant's dismissal the Employment and Welfare Division of the Court of Cassation declared his appeal on points of law inadmissible, ruling that the grounds of appeal were not such as to warrant admitting the appeal. Article L. 131-6 of the Code of Judicial Organisation had introduced a preliminary procedure for the admission of appeals on points of law: after the pleadings had been filed, the case was examined by a bench of three judges which, in cases where it was obvious how the appeal should be determined, dismissed at the outset appeals which were inadmissible or not based on serious grounds.

Law: Article 6(1) – The applicant complained that the reporting judge's report had not been communicated to him, and that he had not been informed of the tenor of the advocate-general's submissions to the Court of Cassation. When an appeal was assigned to a bench which dealt with the question of admissibility and resulted in a decision of inadmissibility, the scope for legal debate as to the merits of the appeal was considerably reduced, given that, under Article L. 131-6, the bench of three

judges of the division to which the case had been allocated was required to rule *"in cases where it is obvious how the appeal should be determined"*. The Convention did not aim to protect rights that were purely theoretical. It would have made no difference to the outcome of the case had the reporting judge's report been communicated to the applicant and had he had the opportunity to reply to the advocate-general's oral submissions by a note to the court in deliberations, as the legal solution applied in the preliminary admissibility proceedings, by its very nature, was not open to discussion.
Conclusion: no violation (unanimously).

Article 6(1) criminal

FAIR HEARING
Second conviction after supervisory review: *inadmissible*.

BRATYAKIN - Russia (N° 72776/01)
Decision 9.3.2006 [Section III]

Facts: On 11 December 1998 the Kolomensiy Town Court of the Moscow Region convicted the applicant of tax evasion and sentenced him to five years' imprisonment; he started serving his sentence that same day. This conviction was upheld on appeal by the Moscow Regional Court on 9 April 1999.
On 20 June 1999 the applicant filed a petition for supervisory review to the President of the Moscow Regional Court.
On 15 July 1999 the applicant was discharged from serving the remainder of his sentence under an Amnesty Act. He was released from prison.
On 16 November 1999 the Presidium of the Moscow Regional Court quashed the decision of 9 April 1999 on a technicality and remitted the case to the cassation instance for re-examination.
On 13 March 2000 the Moscow Regional Court remitted the case to the first-instance court for reconsideration.
On 24 January 2001 the first-instance court convicted the applicant of tax evasion and sentenced him to one year and six months' imprisonment, but discharged him from the punishment by virtue of a new Amnesty Act.
The applicant appealed on the ground that he had already been convicted of the same offence in the first set of proceedings; however, on 27 February 2001 the Moscow Regional Court upheld the judgment. The applicant lodged two further requests for supervisory review but these were rejected.

Inadmissible under Article 4 of Protocol No. 7: The supervisory review in this case constituted a reopening of the case owning to a fundamental defect in the previous proceedings, within the meaning of Article 4(2) of Protocol No. 7; hence no issue under Article 4(1). *Manifestly ill-founded*.

Inadmissible under Article 6(1): The mere fact that the supervisory review was compatible with Article 4 of Protocol No. 7 is not sufficient to establish compliance with Article 6. The authorities must respect the binding nature of a final judicial decision and allow the resumption of criminal proceedings only if serious legitimate considerations outweigh the principle of legal certainty; in particular, a review of a final and binding judgment should not be granted merely for the purpose of obtaining a rehearing and a fresh determination of the case, but rather to correct judicial errors and miscarriages of justice.
In this case, it was the applicant himself who had asked for supervisory review of his conviction, and the Presidium of the Moscow Regional Court found a number of serious grounds for quashing the judgment complained of. The resulting decision and retrial were not unfair and in the circumstances were not detrimental to the applicant's interests. *Manifestly ill-founded*.

Article 6(3)

RIGHTS OF THE DEFENCE

Conviction *in absentia* of an applicant not to be found and declared a runaway, without having informed him of the proceedings against him: *violation.*

SEJDOVIC - Italy (N° 56581/00)
Judgment 1.3.2006 [Grand Chamber]

Facts: The applicant was suspected of murder and an order was made for his detention pending trial. However, since he was untraceable, he was declared to be a "fugitive" (*latitante*). The authorities did not manage to contact him to invite him to choose his own defence counsel. Instead, they assigned him a lawyer, who was informed that his client had been committed for trial on a specified date in the Assize Court. The lawyer took part in the trial, but the applicant was absent. He was found guilty. The applicant's lawyer was informed that the Assize Court's judgment had been deposited with the registry. He did not appeal, and the conviction accordingly became final. Two and a half years later, the applicant was arrested in Germany. The German authorities refused a request by Italy for his extradition, on the ground that Italian law did not guarantee with sufficient certainty that the proceedings conducted in his absence could be reopened.

Law: Government's preliminary objection dismissed – The Government were estopped from raising the objection of failure to use the domestic remedy provided for in Article 670 of the Code of Criminal Procedure. The remedy in Article 175 of the CCP had been bound to fail in the applicant's case and there had been objective obstacles to his using it. There had therefore been special circumstances dispensing him from the obligation to avail himself of it.

Article 6: The applicant had been tried *in absentia*. Before his arrest he had not received any official information about the charges or the date of his trial. The issue to determine was whether, in the absence of official notification, the applicant could be regarded as having been sufficiently aware of his prosecution and the trial to be able to decide to waive his right to appear in court, or to evade justice. It had not been shown that the applicant had had sufficient knowledge of his prosecution and of the charges against him in the present case. It could not therefore be concluded that he had sought to evade trial or had unequivocally waived his right to appear in court. It remained to be determined whether the domestic legislation had afforded him with sufficient certainty the opportunity of appearing at a new trial. Use by the applicant of the remedy in Article 670 of the CCP would have had no prospect of success. Furthermore, the remedy provided for in Article 175 of the CCP, likewise referred to by the Government, had not guaranteed with sufficient certainty that the applicant would have the opportunity of appearing at a new trial to present his defence. It had not been argued that he had had any other means of obtaining the reopening of the time allowed for appealing, or a new trial. Accordingly, the applicant, who had been tried *in absentia* and had not been shown to have sought to escape trial or to have unequivocally waived his right to appear in court, had not had the opportunity to obtain a fresh determination of the merits of the charge against him by a court which had heard him in accordance with his defence rights.
Conclusion: violation (unanimously).

Article 46 – The unjustified obstacle to the applicant's right to a fresh determination by a court of the merits of the charge against him appeared to result from the wording of the provisions of the CCP in force at the material time on the conditions for applying for leave to appeal out of time. That might suggest that there had been a defect in the Italian legal system such that anyone convicted *in absentia* who had not been effectively informed of the proceedings against them could be denied a retrial. However, after the applicant's trial had ended, various legislative reforms had been implemented in Italy; in particular, Law no. 60/2005 had amended Article 175 of the CCP. The Court considered that it would be premature, in the absence of any domestic case-law concerning the application of the new law, to examine whether the reforms had achieved the result required by the Convention. It therefore considered it unnecessary to

indicate any general measures at national level that could be called for in the execution of its judgment in the present case. Furthermore, referring to the principles set forth in Recommendation R(2000)2 of the Committee of Ministers of the Council of Europe, the Court considered that where an individual had been convicted following proceedings that had entailed breaches of the requirements of Article 6, a retrial or the reopening of the case, if requested, represented in principle an appropriate way of redressing the violation.

Article 41 – The Court considered that the finding of a violation constituted in itself sufficient just satisfaction. It awarded a specified sum for costs and expenses.

ARTICLE 7

Article 7(1)

NULLUM CRIMEN SINE LEGE
Criminal nature of fine imposed on the applicant company for constructing a building in breach of planning permission: *inadmissible.*

VALICO - Italy (N° 70074/01)
Decision 21.3.2006 [Section IV]

(See Article 1 of Protocol No. 1 below).

ARTICLE 8

PRIVATE LIFE
Personal disqualifications imposed on a bankrupt and attached automatically to the bankruptcy order: *violation*.

ALBANESE - Italy (N° 77924/01)
Judgment 23.3.2006 [Section III]

(See Article 3 of Protocol No. 1 below).

PRIVATE LIFE
Refusal of domestic courts to establish the applicant's parental link with his alleged late father: *communicated*.

ALAVERDYAN - Armenia (N° 4523/04)
[Section III]

The applicant, who was born out of wedlock, grew up with his mother and bore her surname. Following the death of his alleged father (A.A.), the applicant instituted non-contentious proceedings seeking to establish a parental link with A.A. for purposes of inheritance. The District Court granted the application, finding that at the time of the applicant's birth his mother and A.A. had been in an extra-marital relationship. However, A.A.'s widow (not the applicant's mother) lodged an application for a re-opening of the case on grounds of a newly discovered circumstance: that she had been married to A.A. and had had a child with him. The judgment in favour of the applicant was quashed and remitted for a new examination to the Court of Appeal. In the new proceedings the applicant requested the court to order a forensic genetic examination with a view to having his alleged parental link established. The application

was rejected and dismissed as unfounded on the ground that the applicant's alleged father had, at the relevant time, been married to a woman other than the applicant's mother. The applicant lodged a cassation appeal on points of procedure arguing that by refusing his request for a forensic genetic examination he had been placed at a disadvantage *vis-à-vis* his opponent by being deprived of the possibility of submitting evidence. The Court of Cassation confirmed the Court of Appeal's findings and considered the procedural violation unfounded as paternity could only be established in contentious proceedings.
Communicated under Articles 6 and 8.

PRIVATE LIFE
Recording of telephone and other conversations: *communicated*.

VAN VONDEL - the Netherlands (N° 38258/03)
[Section III]

(See Article 6 above).

FAMILY LIFE
Detention in a transit centre in Belgium and removal to the Democratic Republic of Congo of an unaccompanied 5-year-old foreign minor whose mother is a refugee in Canada: *admissible*

MUBILANZILA MAYEKA et/and Tabitha KANIKI MITUNGA - Belgium (N° 13178/03)
Decision 26.1.2006 [Section I]

(See Article 3 above).

FAMILY LIFE
Decision of domestic courts to grant adoption of child without consent of father: *admissible*.

ESKI - Austria (N° 21949/03)
Decision 2.3.2006 [Section I]

The applicant and his former partner, J.W., had a daughter together, M., in 1993. Two years later, the relationship between them broke up, and their daughter stayed with the mother. In 1997, the applicant requested visiting rights with the District Court. In 1998, he and J.W. concluded a visit agreement (under which visits were to take place at the premises of a youth centre in the presence of J.W.). A few months later, the court, with the approval of the Youth Welfare Office, withdrew the applicant's right to visit, noting that already at the first arranged visit, the applicant had insulted J.W. The fact that he could not avoid conflicts with J.W. and the constant threats against her constituted a serious danger for M's psychological development. This decision removing his rights was confirmed by the Regional Court. In 1999, J.W. married her new partner, A.F. The applicant filed new requests to visit M. without success. He also objected to a possible adoption of M. by A.F. In 2001, A.F. instituted proceedings with the District Court seeking adoption of M. The court summoned the applicant to a personal hearing which he was not able to attend. However, it took into account a prior written submission by the applicant whereby he still objected to adoption. The applicant, in further submissions, filed a motion for bias against the competent judge and reiterated his request for a right of visit. The District Court heard A.F., M. and J.W., and, in 2002, with the approval of the Youth Welfare Office, replaced the applicant's consent – as provided for under the relevant domestic law – and granted A.F. permission to adopt M. The court found that A.F. had developed a close relationship with M. who had declared herself in favour of the adoption as she considered A.F. as her father. Moreover, the adoption would secure M.'s position within the family and also be a material safeguard given that A.F. was able to support her financially. The applicant appealed against this decision, complaining of a lack of a public oral hearing in the presence of his daughter, A.F.

and J.W. He also complained that the court had failed to take an expert opinion on child psychology. The Regional Court dismissed the appeal, finding that several attempts had been made to hear the applicant and that he had had sufficient opportunity to comment in written submissions. Moreover, the District Court had given sufficient and extensive reasons why adoption should be granted, namely the applicant's anti-family conduct.

Admissible under Article 8 (concerning the court decision to allow the adoption of the applicant's daughter without his consent).

Inadmissible under Article 8 (concerning the courts' refusal to grant the applicant access to his daughter) and under Article 6 (concerning the alleged unfairness of the proceedings).

PRIVATE AND FAMILY LIFE
Father's consent required for the continued storage and implantation of fertilised eggs: *no violation*.

EVANS - the United Kingdom (N° 6339/05)
Judgment 7.3.2006 [Section IV]

Facts: In 2000 the applicant and her then partner J. started fertility treatment. The applicant was diagnosed with a pre-cancerous condition of her ovaries and was offered one cycle of *in vitro* fertilization (IVF) treatment prior to the surgical removal of her ovaries. Ms Evans and her partner were informed that they would each need to sign a form consenting to the treatment and that, in accordance with the provisions of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act"), it would be possible for either of them to withdraw consent at any time before the embryos were implanted in the applicant's uterus. In 2001 the couple attended the clinic for treatment, resulting in the creation of six embryos which were placed in storage. The applicant then underwent an operation to remove her ovaries, following which she had to wait for two years before the implantation of the embryos in her uterus.
In 2002 the relationship between the applicant and J. ended and the latter withdrew his consent to the continued storage of the embryos or the use of them by the applicant. The applicant brought proceedings before the High Court seeking, among other things, an injunction to require J. to restore his consent. Her claim was refused, J. having been found to have acted in good faith, as he had embarked on the treatment on the basis that his relationship with Ms Evans would continue. The Court of Appeal upheld the High Court's judgment and leave to appeal was refused by the House of Lords.
In January 2005 the clinic informed the applicant that it was under a legal obligation to destroy the embryos, and intended to do so in February 2005. The European Court, to which the applicant had applied, requested, under Rule 39 of the Rules of Court, that the United Kingdom Government take appropriate measures to prevent the embryos being destroyed by the clinic before the Court had been able to examine the case.

Law: Article 2*:* The Court recalled that the issue of when the right to life began came within the margin of appreciation of the State concerned. Under English law an embryo did not have independent rights or interests and could not claim - or have claimed on its behalf - a right to life under Article 2.
Conclusion: No violation (unanimously).

Article 8: The Court accepted that J. had acted in good faith in embarking on IVF treatment with the applicant, and that he had done so only on the basis that their relationship would continue. There was no international consensus with regard to the regulation of IVF treatment or to the use of embryos created by such treatment, and the United Kingdom was not the only Member State of the Council of Europe to give a right to either party freely to withdraw his or her consent at any stage up to the moment of implantation of the embryo. Since the use of IVF treatment gave rise to sensitive moral and ethical issues against a background of fast-moving medical and scientific developments, and since the questions raised by the case touched on areas where there was no clear common ground in Europe, the Court considered that the margin of appreciation to be afforded to the State had to be a wide one which had, in principle, to extend

both to its decision to intervene in the area and, once having intervened, to the detailed rules it laid down in order to achieve a balance between the competing public and private interests.
The Court next observed that the legislation at issue in the applicant's case was the culmination of an exceptionally detailed examination of the social, ethical and legal implications of developments in the field of human fertilisation and embryology. Schedule 3 to the 1990 Act placed a legal obligation on any clinic carrying out IVF treatment to explain to a person embarking on such treatment that either gamete provider had the freedom to terminate the process at any time prior to implantation. To ensure further that that position was known and understood, each donor had by law to sign a form setting out the necessary consent. In the applicant's case, while the pressing nature of her medical condition required that she and J. reach a decision about the fertilisation of her eggs without as much time for reflection and advice as might ordinarily be desired, it was undisputed that it was explained to them both that either was free to withdraw consent at any time before any resulting embryo was implanted in the applicant's uterus.
The Court reiterated that it was not contrary to the requirements of Article 8 for a State to adopt legislation governing important aspects of private life which did not allow for the weighing of competing interests in the circumstances of each individual case. Strong policy considerations underlay the decision of the legislature to favour a clear or "bright-line" rule which would serve both to produce legal certainty and to maintain public confidence in the law in a highly sensitive field. As the Court of Appeal had observed, to have made the withdrawal of the male donor's consent relevant but not conclusive, or to have granted a power to the clinic, to the court or to another independent authority to override the need for a donor's consent, would not only have given rise to acute problems of evaluation of the weight to be attached to the respective rights of the parties concerned, particularly where their personal circumstances had changed in the period since the outset of the IVF treatment, but would have created "new and even more intractable difficulties of arbitrariness and inconsistency".
The Court was not persuaded by the applicant's argument that the situation of the male and female parties to IVF treatment could not be equated and that a fair balance could in general be preserved only by holding the male donor to his consent. While there was clearly a difference of degree between the involvement of the two parties in the process of IVF treatment, the Court did not accept that the Article 8 rights of the male donor would necessarily be less worthy of protection than those of the female; nor did it regard it as self-evident that the balance of interests would always tip decisively in favour of the female party.
The Court, like the national courts, had great sympathy for the plight of the applicant who, if implantation did not take place, would be deprived of the ability to give birth to her own child. However, like the national courts, the Court did not find that the absence of a power to override a genetic parent's withdrawal of consent, even in the exceptional circumstances of the applicant's case, was such as to upset the fair balance required by Article 8. The personal circumstances of the parties had changed and, even in the applicant's case, it would be difficult for a court to judge whether the effect on the applicant of J's withdrawal of consent would be greater than the impact of the invalidation of that withdrawal of consent would have on J.
The Court accepted that a different balance might have been struck by Parliament, by, for instance, making the consent of the male donor irrevocable or by drawing the "bright-line" at the point of creation of the embryo. However, the central question in terms of Article 8 was not whether a different solution might have been found by the legislature which would arguably have struck a fairer balance, but whether, in striking the balance at the point at which it did, Parliament had exceeded the margin of appreciation afforded to it under that article. In determining that question, the Court attached some importance to the fact that the United Kingdom was by no means the only country in Europe to grant both parties to IVF treatment the right to withdraw consent to the use or storage of their genetic material at any stage up to the moment of implantation of the resulting embryo. The Court further noted a similar emphasis on the primacy of consent reflected in the relevant international instruments concerned with medical interventions.
The Court therefore found that, in adopting in the 1990 Act a clear and principled rule, which was explained to the parties to IVF treatment and clearly set out in the forms they both signed, whereby the consent of either party might be withdrawn at any stage up to the point of implantation of an embryo, the United Kingdom had not exceeded the margin of appreciation afforded to it or upset the fair balance required under Article 8.
Conclusion: No violation (five votes to two).

Article 14: The Court was not required to decide in the applicant's case whether she could properly complain of a difference of treatment as compared to another woman in an analogous position, because it considered that the reasons given for finding that there was no violation of Article 8 also afforded a reasonable and objective justification under Article 14.
Conclusion: no violation (unanimously).

Rule 39: The Court decided to maintain its indication that it was desirable in the interests of the proper conduct of the proceedings that the Government take appropriate measures to ensure that the applicant's embryos were preserved until the Court's judgment became final or pending any further order.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for contempt of court of an accused for the terms of his pleadings while defending himself: *violation.*

SADAY - Turkey (N° 32458/96)
Judgment 30.3.2006 [Section I]

Facts: In criminal proceedings against him before a national security court, the applicant argued his own case. After reading out his speech before the court, he was convicted of contempt of court. He was sentenced to six months' imprisonment, including two months in solitary confinement, the maximum penalty laid down in the legislation for that offence. The applicant served his two months in solitary confinement and the national security court decided to stay execution of the remaining four months. The applicant was sentenced to life imprisonment.

Law: Article 10 – The applicant's conviction for contempt of court had pursued the legitimate aim of "maintaining the authority of the judiciary". As to whether it had been necessary in a democratic society, the remarks made by the applicant in his speech had been particularly acerbic, lending the speech a very hostile tone. The applicant could have challenged the composition or operation of the security court without making a personal attack on the judges who made it up. The seriousness and sweeping nature of the allegations and the tone employed were liable to undermine the authority of the judiciary by creating an atmosphere of uncertainty inimical to the proper administration of justice. Given the remarks made by the applicant, which constituted a direct attack on the dignity of the judges, the national security court could therefore reasonably have deemed it necessary to impose a penalty. However, the applicant had received the maximum penalty allowed by law. The length and severity of the sentence he served, namely two months' solitary confinement, appeared disproportionate to the aim pursued.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant specified sums for non-pecuniary damage and costs and expenses.

FREEDOM OF EXPRESSION
Dissolution of two political parties: *communicated*.

HERRI BATASUNA - Spain (N° 25803/04)
BATASUNA - Spain (N° 25817/04)
[Section V]

(See Article 11 below).

ARTICLE 11

FREEDOM OF ASSOCIATION
Requirement to obtain ministerial authorisation for participating in association meetings abroad: *violation.*

İZMİR SAVAŞ KARŞITLARI DERNEĞİ and Others - Turkey (N° 46257/99)
Judgment 2.3.2006 [Section III]

Facts: The application was lodged by the association *İzmir Savaş Karşıtları Derneği* (Izmir Association against War) and by three Turkish nationals. In 1994 the applicants allowed some members of the association to travel overseas on the association's behalf. Some members attended a meeting in Germany organised by Greenpeace and a meeting of a young lawyers' association. The president represented the association at a meeting of international conscientious objectors in Colombia and a meeting of anti-war campaigners in Brazil. In 1996 the applicants received criminal convictions for failing to request permission to leave the country. Their convictions were based on the 1983 Associations Act (Law no. 2908), which required members or representatives of Turkish associations wishing to travel overseas at the invitation of foreign associations or organisations to obtain prior authorisation from the Interior Ministry. The applicants received prison sentences which were commuted into fines.

Law: Article 11 – The applicants' convictions had been based on section 43 of Law no. 2908 and had therefore been "prescribed by law". According to the Government, the interference had pursued legitimate aims, namely "national security" and "public safety". The Court was not convinced by that argument. The impugned measure had amounted to general surveillance of the members of associations wishing to travel overseas. However, the meetings in question had concerned conscientious objectors, whose peaceful intentions were beyond dispute. That was problematic in an interdependent world in which associations' activities were interlinked and had international ramifications. Given the role of associations, measures of the kind taken against them affected freedom of association and hence democracy in the country concerned. Even assuming that the authorisation from the Interior Ministry was designed to protect the safety of Turkish citizens travelling abroad, such protection, surprisingly, applied only to Turkish citizens who were members of an association. Furthermore, the measure in question involved seeking authorisation rather than just giving notification. The applicants were not public servants and were therefore not bound by any duty of discretion. Moreover, the Contracting States could not, in the name of protecting "national security" or "public safety", take just any measure they happened to deem appropriate. No other member State of the Council of Europe possessed legislation similar to that at issue, which had since been repealed. In short, the restriction could not be regarded as pursuing the legitimate aims set forth in paragraph 2 of Article 11, namely the protection of national security and public safety.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants specified sums for non-pecuniary damage and costs and expenses.

FREEDOM OF PEACEFUL ASSEMBLY
FREEDOM OF ASSOCIATION
Dissolution of two political parties: *communicated*.

HERRI BATASUNA - Spain (N° 25803/04)
BATASUNA - Spain (N° 25817/04)

A new Constitutional Law on Political Parties (no. 6/2002) was adopted by the Spanish Parliament on 27 June 2002; it entered into force two days later. On 26 August 2002 an investigating judge of the Audiencia Nacional suspended the activities of the Batasuna party and ordered the offices used by it and the other applicant party, Herri Batasuna, closed for three years.

On 27 September 2002 the autonomous government of the Basque Country brought proceedings in the Constitutional Court to contest the constitutionality of the Constitutional Law. By a judgment of 12 March 2003 the Constitutional Court declared the law to be in conformity with the Constitution.
In the meantime, on 2 September 2002, representatives of the Spanish Government applied to the Supreme Court for the applicant parties to be dissolved and struck out of the register of political parties on the ground that they had infringed the new Constitutional Law. One of the Judges Rapporteur appointed for this case was H., who in his capacity of President of the General Council of the Judiciary had been involved in giving an opinion favourable to the Constitutional Law.
By judgments of 27 March 2003 the Supreme Court declared the applicant parties illegal, finding it established that they had links to the Basque separatist organisation ETA and had failed to dissociate themselves from its terrorist activities, and ordered the liquidation of their assets.
The applicants lodged *amparo* appeals with the Constitutional Court, which dismissed them on 16 January 2004.

ARTICLE 13

EFFECTIVE REMEDY
Lack of effective remedy as regards personal disqualifications imposed on a bankrupt and attached automatically to the bankruptcy order: *violation*.

ALBANESE - Italy (N° 77924/01)
Judgment 23.3.2006 [Section III]

(See Article 3 of Protocol No. 1 below).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Italy)
Application for leave to appeal out of time from the applicant convicted *in absentia* and declared a runaway: *preliminary objection dismissed.*

SEJDOVIC - Italy (N° 56581/00)
Judgment 1.3.2006 [Grand Chamber]

(See Article 6(3) above).

Article 35(3)

COMPETENCE *RATIONE TEMPORIS*
Alleged violation based on facts occurring before ratification of the Convention: *preliminary objection accepted*.

BLEČIĆ - Croatia (N° 59532/00)
Judgment 8.3.2006 [Grand Chamber]

Facts: In 1953 the applicant acquired a specially protected tenancy of a flat in Zadar. In 1991 she went to stay with her daughter in Rome for the summer, locking her flat, with all the furniture and personal belongings in it, and asking a neighbour to pay the bills in her absence and to take care of the flat. Later

that year Zadar was exposed to constant shelling and the supply of electricity and water was disrupted for over 100 days. The applicant's pension payments were stopped and she decided to stay in Rome. In November 1991 someone broke into the applicant's flat and occupied it with his family. In 1992 the municipality brought a civil action against the applicant for termination of her tenancy, on the ground that she had been absent from the flat for more than six months without justification. The applicant claimed that she had been unable to return due to the war in Croatia and because she had no money and was in poor health. In 1994 the Municipal Court terminated the applicant's specially protected tenancy, finding that the reasons she had given did not justify her absence. After it was reversed by the County Court this judgment became final on 15 February 1996, when the Supreme Court in its town reversed the County Court's decision. The Constitutional Court dismissed an appeal lodged by the applicant on 8 November 1999.

Law: In its decision of 30 January 2003 (see Information Note N° 49) a Chamber of the Court examined its temporal jurisdiction *ex officio*. It held that while the proceedings up to and including the Supreme Court had taken place prior to the entry into force of the Convention in respect of Croatia on 5 November 1997, the final decision had been rendered by the Constitutional Court after that date. The outcome of the Constitutional Court proceedings had been directly decisive for the applicant's Convention rights as that court had been called upon to decide whether the lower courts' judgments had violated the applicant's right to respect for her home and/or her property rights, that is to say the same issues that were pending before the European Court. Hence the application fell within the Court's competence *ratione temporis*. In its judgment of 29 July 2004 (see Information Note N° 66) a Chamber of the Court held that there had been no violation of Article 8 of the Convention or Article 1 of Protocol No. 1 thereto.
The Grand Chamber, for its part, held that while the Government had raised their *ratione temporis* objection for the first time in their observations before the Grand Chamber, they were not precluded from raising the issue at that stage. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea of incompatibility cannot extend that jurisdiction. Moreover, it is not open to the Court to set aside the application of another admissibility criterion, namely the six-month rule, solely because a government has not made a preliminary objection to that effect. Furthermore, despite the Government's failure to raise the relevant objection earlier, the Chamber had examined its competence *ratione temporis* of its own motion and the parties had addressed the question in their observations before the Grand Chamber. Accordingly, the issue of temporal jurisdiction was a live issue requiring examination.
The Grand Chamber went on to note that when Croatia had ratified the Convention on 5 November 1997 it had recognised the Convention institutions' competence to examine any individual petitions based on facts occurring after the Convention and its Protocols had entered into force in respect of that State. Accordingly, the Court was not competent to examine applications against Croatia in so far as the alleged violations were based on facts having occurred before the date of ratification. The Court's temporal jurisdiction was to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference could not bring it within the Court's temporal jurisdiction. In cases where the interference pre-dated ratification while the refusal to remedy it post-dated that event, to retain the date of the latter act in determining the Court's temporal jurisdiction would be contrary to the general rule of non-retroactivity of treaties. Moreover, any attempt to remedy, on the basis of the Convention, an interference that had ended before the Convention came into force, would necessarily lead to its retroactive application. In conclusion, while from the ratification date onwards all of the State's acts and omissions must conform to the Convention, the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date. In order to establish the Court's temporal jurisdiction it is therefore essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated.
The present applicant had complained that, by terminating her specially protected tenancy, the State had violated her rights to respect for her home and peaceful enjoyment of her possessions. The Grand Chamber accepted that the termination of her tenancy was the fact constitutive of the alleged interference. For a tenancy to be terminated under Croatian law there had to be a court judgment upholding the claim of the provider of the flat to that end. The tenancy was terminated from the date on which such a judgment became *res judicata*, namely on 15 February 1996 when the Supreme Court, by its own judgment, had

reversed the County Court's judgment. It was at that moment that the applicant lost her tenancy. The subsequent Constitutional Court decision only resulted in allowing the interference allegedly caused by that judgment – a definitive act which was by itself capable of violating the applicant's rights – to subsist. That decision, as it stood, did not constitute the interference.
The Court recalled moreover that the deprivation of an individual's home or property is in principle an instantaneous act and does not produce a continuing situation of "deprivation" of these rights. Therefore, the termination of the applicant's tenancy did not create a continuing situation. Neither could it be argued that the Constitutional Court's refusal to provide redress, that is, to quash the Supreme Court's judgment, amounted to a new or independent interference since such an obligation could not be derived from the Convention. The Constitutional Court was asked to review the constitutionality of the Supreme Court's judgment of 15 February 1996. The law in force at the time when the Supreme Court had rendered judgment did not include the Convention and that court could not therefore have applied it.
In conclusion, since the fact constitutive of the interference giving rise to the application was the Supreme Court's judgment of 15 February 1996, and not the Constitutional Court's decision of 8 November 1999, an examination of the merits of the case could not be undertaken without extending the Court's jurisdiction to a fact which, by reason of its date, was not subject thereto. To do so would be contrary to the general rules of international law.
Conclusion: The Government's preliminary objection accepted (eleven votes to six).

ARTICLE 46

EXECUTION OF A JUDGMENT
Retrial or reopening of the proceedings in order to redress violation found in respect of a person convicted *in absentia*.

SEJDOVIC - Italy (N° 56581/00)
Judgment 1.3.2006 [Grand Chamber]

(See Article 6(3) above).

EXECUTION OF A JUDGMENT
Applicants still imprisoned in Transdniestria despite the Court's finding in 2004 that their detention violated Article 5 and that any continuation thereof would entail a breach of the respondent States' obligation under Article 46(1) to abide by the Court's judgment: *communicated*.

IVANŢOC, POPA and Others - Moldova and Russia (N° 23687/05)
[Section IV]

The application mainly concerns the conditions of detention of applicants Ivanţoc and Popa in Transdniestria and the alleged non-execution of the Court's judgment of 8 July 2004 in the case *of Ilaşcu, Ivanţoc, Leşco and Petrov-Popa v. Moldova and Russia* ([GC] no. 48787/99, ECHR 2004-VII; see CLR N° 66). Applicants Ivanţoc and Popa (formerly Petrov-Popa) were among the applicants in the Ilaşcu case in which the Court found that the applicants' ongoing detention was contrary to Article 5(1)(a) of the Convention. The Court further considered that the persecution, ill-treatment and restrictions to which Mr Ivanţoc had been subjected while in detention constituted torture and that the harsh conditions of detention experienced by Mr Popa could be qualified as inhuman and degrading treatment, within the meaning of Article 3. The Court held Russia and Moldova responsible for the alleged violations: Russia for having made no attempt to put an end to the applicants' situation brought about by its agents and for not having acted to prevent violations committed after 5 May 1998, and Moldova on account of its failure to discharge its positive obligations with regard to the acts complained of. The Court held that the two respondent states were to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release. The Court further stated, *inter alia*, that

"any continuation of the unlawful and arbitrary detention of the ... applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent states' obligation under Article 46(1) of the Convention to abide by the Court's judgment".
In its Interim Resolution Res DH (2005) 84 (adopted on 13 July 2005) the Committee of Ministers deplored *inter alia* that the Russian authorities had on several occasions called into question the validity of the Court's judgment and had insisted that, by paying the just satisfaction awarded, they had executed it in full. The Committee of Ministers recalled that the obligation to abide by the judgments of the Court is unconditional and that more than one year after the judgment had been delivered, applicants Ivanţoc and Petrov-Popa were still imprisoned and their state of health had considerably worsened. The Committee of Ministers stressed that it was evident that such an excessive prolongation of their unlawful and arbitrary detention failed entirely to satisfy the requirements of the Court's judgment. The Committee of Ministers encouraged the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants and securing their immediate release and insisted that the Russian authorities take all the necessary steps to put an end to the arbitrary detention of the applicants and secure their immediate release.
In its Interim Resolution Res DH (2006) 11 (adopted on 1 March 2006) the Committee of Ministers stressed anew that the obligation to abide by the judgments of the Court was unconditional. It deeply deplored the fact that, more than one and a half years after the Court's judgment was delivered, two of the applicants were still imprisoned, and stressed that the excessive prolongation of their unlawful and arbitrary detention failed entirely to satisfy the requirements of the Court's judgment and the obligation under Article 46, paragraph 1, of the Convention. The Committee of Ministers noted however that the Moldovan authorities had regularly informed the Committee of the steps they had taken to secure the applicants' release and that the Russian authorities had recently declared themselves in favour of the search for a solution in the case. The Committee of Ministers encouraged the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants and securing their immediate release and strongly urged the Russian authorities to pursue actively all effective avenues capable of putting an end to the arbitrary detention of the applicants and of securing their immediate release. Finally, the Committee of Ministers insisted that the results required by the Court's judgment be attained without any further delay.
In the case now before the Court applicants Ivanţoc and Popa complain that they are still being detained in violation of Article 5. The applicants further complain that, having regard to the conditions of detention and the poor health of applicants Ivanţoc and Popa, their continuing detention amount to treatment contrary to Articles 3 and 8 of the Convention. Moreover, under Articles 13 and 46 that they have no effective remedy before a national authority for these violations and that the respondent Governments have not taken the necessary measures to put an end to these violations. The applicants consider that both Moldovan and Russian authorities are responsible for the foregoing violations since they have not taken adequate measures to put a stop to them and since the Transdniestrian territory is under Russia's *de facto* control.
Communicated in whole to both respondent States.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal by tax authorities to pay the applicant company interest for late payment in respect of reimbursement of monies unduly paid by the latter in tax: *violation.*

EKO-ELDA AVEE - Greece (N° 10162/02)
Judgment 9.3.2006 [Section I]

Facts: In 1987 the applicant, a joint stock company, made a payment on account to the tax authorities in respect of income tax due for the 1987 financial year. In return, the authorities paid the applicant a tax credit equivalent to 10% of the amount in question for having paid the full amount as a lump sum. The applicant company subsequently declared a substantial fall in income for the 1987 tax year, meaning that

the tax authorities were obliged to repay the excess amount paid on account. In December 1991, as the authorities had not repaid the money, the applicant brought proceedings against the State before the administrative courts. On 12 November 1993, before the scheduled hearing in the case, the authorities repaid the excess amount. However, the administrative courts, taking the view that the applicable domestic law did not require the State to pay interest in cases where tax had been wrongly paid, rejected the applicant's claim for statutory interest to compensate for the delay in repayment.

Law: Article 1 of Protocol No. 1 – Under domestic law, the State was required to repay any tax recognised by means of a final judicial decision to have been wrongly paid. In the instant case the authorities had repaid the amount wrongly paid five years after the request for repayment, thereby acknowledging that they owed the sum in question to the applicant company. The latter had therefore undeniably had a proprietary interest amounting to a "possession" for the purposes of Article 1 of Protocol No. 1. Accordingly, it remained to be determined whether the State's refusal to pay interest to the applicant to compensate for the delay in payment was compatible with that provision. In that connection the Court's case-law consistently linked the payment of default interest to delays in the repayment of credits by the authorities. With particular reference to the payment of taxes, the financial obligations arising out of the levying of tax or contributions could infringe the rights guaranteed in Article 1 of Protocol No. 1 if the conditions of repayment placed an excessive burden on the person concerned or fundamentally threatened his or her financial security. In the present case the tax wrongly paid had been repaid five years and five months after the claim for repayment had been lodged by the applicant. Accordingly, the refusal of the tax authorities to pay interest in respect of such a long period had upset the fair balance to be maintained between the general interest and the interests of the applicant company.
Conclusion: violation.

The Court awarded the applicant company specified sums for pecuniary damage and costs and expenses. It considered that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage.

POSSESSIONS
Imposition of a fine on the applicant company for constructing a building in breach of planning permission: *inadmissible.*

VALICO - Italy (N° 70074/01)
Decision 21.3.2006 [Section IV]

In June 1993 the applicant company bought a piece of land from a municipality for the building of a hotel complex, the detailed plans for which had been approved by the municipal council in 1986. On the same day the applicant company and the municipality signed an agreement stating that, in accordance with a ministerial decree on conservation of the landscape and the environment, the building of the complex had been authorised by a resolution of the regional council. Shortly afterwards the municipality issued the applicant with planning permission which referred to the detailed plans drawn up in 1986, as amended in 1991 and 1993. The building work commenced in July 1993. The applicant company submitted that it had been obliged to move the site a few metres to the north in order to comply with the alterations made to the detailed plans in 1993. In 1996 a municipal *ad hoc* committee ordered that work be suspended on the ground that the moving of the site had been in breach of the 1993 planning permission. The municipality also ordered the applicant company, under section 16(5) of Regional Law no. 20 of 3 April 1989, to pay a fine equivalent to 100% of the value of the works. The applicant company instituted proceedings before the regional administrative court. In July 1997 the court found that the 1993 amendment to the plans had been lawful and rejected the applicant's appeal against the amount of the fine. The decision of the regional administrative court was upheld by the *Consiglio di Stato*, which considered that the moving of the site had fundamentally altered the original project and that, accordingly, a fresh assessment should have been made by the regional authorities as to whether the building complied with the provisions on conservation of the landscape. It pointed out that, while the lack of impact on the landscape acted as a bar to the

demolition of the building, it did not prevent a fine from being imposed for failure to submit the altered construction project to the relevant regional authorities.

Inadmissible under Article 1 of Protocol No. 1: In principle, the imposition of a fine constituted interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1, since it deprived the person concerned of a possession in the form of the sum which he or she had to pay. That provision therefore applied. The impugned interference had been in accordance with the law and had pursued the legitimate aim of preserving the landscape and ensuring rational and environmentally sound planning. It remained to be determined whether a fair balance had been maintained between the demands of the general interest and the requirement to protect the applicant company's fundamental rights. In that connection, the moving of the site had been in breach of the planning rules and the decision whether to punish that breach by means of a financial sanction with a deterrent effect, such as a fine, fell within the Contracting States' margin of appreciation. Whilst the sanction imposed on the applicant might at first sight seem excessive, the move to a new site had altered the original project substantially. Moreover, the construction project had been on a large scale, and the severity of a deterrent had to be proportionate to the interests at stake. Lastly, no order had been made for the building to be demolished. Consequently, the Italian authorities had struck a fair balance between the general interest and respect for the applicant company's property rights: *manifestly ill-founded*.

Inadmissible under Article 7 of the Convention: The Court had to determine whether the financial sanction imposed on the applicant company amounted to a "penalty" within the autonomous meaning of that term under Article 7(1) of the Convention. The sanction provided for by Article 16(5) of Regional Law no. 20 of 3 April 1989 was not intended to provide financial compensation for damage, but was aimed essentially at punishing offenders in order to prevent further breaches of the building regulations laid down by the regional council. It therefore had both a preventive and a punitive function, the latter normally being a distinguishing feature of criminal penalties. In addition, the severity of the sanction incurred and actually imposed was of relevance; in the present case, the fine imposed on the applicant had been a very heavy one. Admittedly, it could not be converted into a prison sentence in the event of non-payment and had been imposed on the applicant company on objective grounds without the need to establish any criminal intent or negligence on its part, but these factors were not decisive with regard to the "criminal" nature of the offence. In short, the aspects of the case which had a criminal connotation predominated and, taken in combination, meant that the fine in question was to be characterised as a "penalty" within the meaning of Article 7, which was therefore applicable. With regard to the merits of the complaint, it was beyond dispute that the fine had been prescribed by an accessible "law". As to its foreseeability, the applicant company submitted that it had not been clearly established whether the penalty in question could be imposed even if there had been no adverse affect on the landscape. However, the Court took the view that the interpretation of the applicable provision by the domestic courts had been reasonably foreseeable. While the *Consiglio di Stato* had not until 2000 stated that a fine might be payable even if there had been no proven impact on the landscape, the applicant, as a construction company, should have known that in omitting to submit the new plans for prior authorisation it ran the risk of incurring the statutory penalty. In addition, the provision in question stated clearly that the amount of the fine payable was equivalent to 100% of the value of the works carried out. Accordingly, there was no appearance of a violation of Article 7: *manifestly ill-founded*.

Inadmissible under Article 6 of the Convention: As the fine amounted to a "penalty" within the meaning of Article 7 of the Convention, the legal provision breached by the applicant company dealt with a criminal offence within the meaning of Article 6. A penalty of that kind could, as in the present case, be imposed by an administrative authority which did not satisfy the requirements of Article 6, provided that its decision was subsequently reviewed by a body which had full jurisdiction. In the instant case the applicant company had been able to challenge the administrative sanction before the regional administrative court and subsequently before the *Consiglio di Stato.* Far from confining themselves to simply reviewing the lawfulness of the penalty, those courts had examined the full set of allegations in

fact and in law made by the applicant company and had ascertained whether the authorities, in the particular circumstances of the case, had made appropriate use of their powers. Accordingly, there was no appearance of a violation of Article 6: *manifestly ill-founded*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Occupation of land by Greek KFOR troops in Kosovo without compensation to owner: *communicated*.

KASUMAJ - Greece (Nº 6974/05)
[Section I]

(See Article 1 above).

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Suspension of a bankrupt's electoral rights, attached automatically to the bankruptcy order: *violation.*

ALBANESE - Italy (Nº 77924/01)
Judgment 23.3.2006 [Section III]

Facts: In a judgment deposited with the registry on 26 June 1998, the applicant and the three companies in which he had been a partner were declared bankrupt; as a result, the applicant's name was entered in the bankruptcy register. The complex bankruptcy proceedings which followed lasted until 25 October 2004, when the judge terminated the proceedings for final distribution of the assets.
Under the Italian legislation as it stood at the material time a declaration of personal bankruptcy entailed certain consequences for the person concerned, in particular the handing-over of all the person's correspondence to the trustee in bankruptcy, a prohibition on leaving his or her place of residence without authorisation from the insolvency judge and suspension of the exercise of his or her electoral rights for the duration of the bankruptcy proceedings, subject to a limit of five years from the date of the bankruptcy order. The applicant could obtain discharge under certain conditions, in particular by providing proof of effective and consistent good conduct for at least five years following termination of the bankruptcy proceedings.

Law: Article 8 of the Convention (respect for correspondence), Article 1 of Protocol No. 1 (protection of property) and Article 2 of Protocol No. 4 (freedom of movement): Possible violations of these provisions were linked to the length of the proceedings, of which they were an indirect consequence. According to the Court's settled case-law, actions based on the Pinto Act constituted a remedy of which applicants should avail themselves under Article 35(1) of the Convention. The applicant would therefore have had an effective remedy if he had applied to the relevant appellate court under the Pinto Act in order to complain of the disqualifications arising out of his bankruptcy, on account of the length of the bankruptcy proceedings in particular: *Inadmissible* for failure to exhaust domestic remedies.

Article 3 of Protocol No. 1: This complaint was not manifestly ill-founded and was not inadmissible on any other grounds. It therefore had to be declared admissible.
With regard to the merits, the suspension of the bankrupt person's electoral rights for the duration of the bankruptcy proceedings constituted clear interference with the exercise of his or her rights under Article 3 of Protocol No. 1. Such interference was prescribed by law. As to its aim, the Court pointed out that bankruptcy proceedings came within the ambit of civil rather than criminal law and therefore did not imply any deceit or fraud on the part of the bankrupt person. The aim of the restrictions on the person's electoral rights was therefore essentially punitive. Hence, the measure served no purpose other than to belittle persons who had been declared bankrupt, reprimanding them simply for having been declared

insolvent irrespective of whether they had committed an offence. It did not therefore pursue a legitimate aim for the purposes of Article 3 of Protocol No. 1.
Conclusion: violation (unanimously).

Article 8 (private life): This complaint was not manifestly ill-founded and was not inadmissible on any other grounds. It therefore had to be declared admissible.
As to the applicability of Article 8, the concept of "private life" encompassed the right of the individual to establish and develop relationships with other human beings, including in the professional and commercial sphere. In the instant case the entry of the applicant's name in the bankruptcy register entailed a series of personal disqualifications prescribed by law which undeniably fell within the scope of his "private life", given that they affected his ability to develop relationships with the outside world.
As to compatibility of the measures with Article 8, the disqualifications arising out of the applicant's bankruptcy quite clearly constituted interference with his right to respect for his private life; that interference was in accordance with the law and pursued the legitimate aim of protecting the rights of others. As to whether it had been necessary, the Court observed that the disqualifications were not the result of a judicial decision but were the automatic consequence of entry in the bankruptcy register, and did not cease until such time as the person's name was removed from the register. Removal from the register resulted from discharge, for which the bankrupt person could apply if he or she had shown proof of "effective and consistent good conduct" for at least five years after termination of the proceedings. The removal of restrictions on the bankrupt person therefore depended on an essentially moral judgment as to his or her worthiness. In view of the fact that entry in the bankruptcy register was automatic and that implementation of the resulting disqualifications was not examined or reviewed by the courts, and given the length of time before discharge could be obtained, the interference with the applicant's right to respect for his private life had not been "necessary in a democratic society" within the meaning of Article 8(2).
Conclusion: violation (unanimously).

Article 13: This provision required an effective domestic remedy to be available whereby the relevant national authority could hear an arguable complaint under the Convention and provide appropriate relief. In the instant case the part of the complaint relating to the personal disqualifications imposed on the applicant was not manifestly ill-founded and was not inadmissible on any other grounds. It therefore had to be declared admissible.
The applicant was therefore entitled to an effective domestic remedy within the meaning of Article 13. In the Court's view, none of the remedies provided for by the bankruptcy legislation was such as to enable the applicant to complain of the existence or extension of the disqualifications arising out of his bankruptcy.
Conclusion: violation (unanimously).

The Court rejected the applicant's claim in respect of pecuniary damage and considered that the finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage. It made an award on an equitable basis for costs and expenses.

STAND FOR ELECTION
Former leading member of Soviet-era Communist party disqualified as a parliamentary candidate: *no violation*.

ŽDANOKA - Latvia (N° 58278/00)
Judgment 16.03.2006 [Grand Chamber]

Facts: The applicant, born in 1950 and currently a member of the European Parliament, joined the Communist Party of Latvia (CPL) – the Latvian branch of the now-defunct Communist Party of the Soviet Union – in 1971. She remained a member of the CPL even after the emergence in April 1990 of a breakaway faction favouring Latvian independence and a multi-party political system. The Latvian Parliament, of which at that time the applicant was a member, voted in May 1990 to seek Latvia's

independence from the USSR; the parliamentary group to which the applicant belonged did not take part in the vote.
On 13 January 1991 an unsuccessful *coup d'état* took place; the CPL was involved. On 3 March 1991 a plebiscite, the nature and importance of which are disputed between the parties, resulted in a vote in favour of independence. Latvia declared full independence on 21 August 1991; the CPL was declared unlawful two days later and officially dissolved the following month. The applicant, however, continued to sit in parliament until elections were held in June 1993.
In March 1997 the applicant was elected to the Riga City Council for the "Movement for Social Justice and Equal Rights in Latvia". In July1998 she presented herself as a candidate for election to Parliament, but withdrew after the Central Electoral Commission decided that her candidacy did not meet the legal requirements.
In January 1999 the Office of the Prosecutor General applied to the Riga Regional Court for a finding that the applicant had participated in the CPL after the 1991 *coup* attempt. On 15 February 1999, following adversarial proceedings, the Riga Regional Court so found. An appeal brought by the applicant against this judgment was dismissed by the Civil Division of the Supreme Court by a judgment of 15 December 1999. From that date onwards, the applicant was disqualified from elective office; she lost her seat as a member of Riga City Council. She applied unsuccessfully to the Senate of the Supreme Court for the Civil Division's judgment to be quashed.
The applicant made an attempt to stand as an independent candidate in the 2002 parliamentary elections but was refused registration.
Latvia became a member State of the European Union on 1 May 2004. The applicant was allowed to stand as a candidate in the elections to the European Parliament, which were held on 12 June 2004, and was elected.

Law: Loss of victim status – In so far as the Government refer to the fact that the applicant was entitled to take part in the European Parliament elections, the Court recognises that Article 3 of Protocol No. 1 is applicable in this respect. However, the fact that the applicant is entitled to stand for election to the European Parliament cannot suffice to release the State from its obligation to respect the rights guaranteed in Article 3 of Protocol No. 1 with regard to the national Parliament: *preliminary objection dismissed*.

Merits: Article 3 of Protocol No. 1 – The applicable principles are the following:
(a) Article 3 of Protocol No. 1 is akin to other Convention provisions protecting various forms of civic and political rights such as, for example, Article 10 or Article 11. There is undoubtedly a link between all of these provisions, namely the need to guarantee respect for pluralism of opinion in a democratic society through the exercise of civic and political freedoms. In addition, the Convention and the Protocols must be seen as a whole. However, where an interference with Article 3 of Protocol No. 1 is at issue the Court should not automatically adhere to the same criteria as those applied with regard to the interference permitted by the second paragraphs of Articles 8 to 11 of the Convention, and it should not necessarily base its conclusions under Article 3 of Protocol No. 1 on the principles derived from the application of Articles 8 to 11 of the Convention. Because of the relevance of Article 3 of Protocol No. 1 to the institutional order of the State, this provision is cast in very different terms from Articles 8 to 11. Article 3 of Protocol No. 1 is phrased in collective and general terms, although it has been interpreted by the Court as also implying specific individual rights. The standards to be applied for establishing compliance with Article 3 of Protocol No. 1 must therefore be considered to be less stringent than those applied under Articles 8 to 11 of the Convention.
(b) The concept of "implied limitations" under Article 3 of Protocol No. 1 is of major importance for the determination of the relevance of the aims pursued by the restrictions on the rights guaranteed by this provision. Given that Article 3 is not limited by a specific list of "legitimate aims" such as those enumerated in Articles 8 to 11, the Contracting States are therefore free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case.
(c) The "implied limitations" concept under Article 3 of Protocol No. 1 also means that the Court does not apply the traditional tests of "necessity" or "pressing social need" which are used in the context of Articles 8 to 11. In examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the

restriction has interfered with the free expression of the opinion of the people. In this connection, the wide margin of appreciation enjoyed by the Contracting States has always been underlined. In addition, the Court has stressed the need to assess any electoral legislation in the light of the political evolution of the country concerned, with the result that features unacceptable in the context of one system may be justified in the context of another.

(d) The need for individualisation of a legislative measure alleged by an individual to be in breach of the Convention, and the degree of that individualisation where it is required by the Convention, depend on the circumstances of each particular case, namely the nature, type, duration and consequences of the impugned statutory restriction. For a restrictive measure to comply with Article 3 of Protocol No. 1, a lesser degree of individualisation may be sufficient, in contrast to situations concerning an alleged breach of Articles 8 to 11 of the Convention.

(e) As regards the right to stand as a candidate for election, i.e. the so-called "passive" aspect of the rights guaranteed by Article 3 of Protocol No. 1, the Court has been even more cautious in its assessment of restrictions in that context than when it has been called upon to examine restrictions on the right to vote, i.e. the so-called "active" element of the rights under Article 3 of Protocol No. 1. Thus, stricter requirements may be imposed on eligibility to stand for election to Parliament than is the case for eligibility to vote. In fact, while the test relating to the "active" aspect of Article 3 of Protocol No. 1 has usually included a wider assessment of the proportionality of the statutory provisions disqualifying a person or a certain group of persons from the right to vote, the Court's test in relation to the "passive" aspect of the above provision has been limited largely to a check on the absence of arbitrariness in the domestic procedures leading to disqualification of an individual from standing as a candidate.

Applying these principles, the Court points out in the first place that the criterion of political loyalty which may be applied to public servants is of little, if any, relevance to the circumstances of the instant case, which deals with the very different matter of the eligibility of individuals to stand for Parliament. The criterion of "political neutrality" cannot be applied to members of Parliament in the same way as it pertains to other State officials, given that the former cannot be "politically neutral" by definition. It further finds that the impugned restriction pursued aims compatible with the principle of the rule of law and the general objectives of the Convention, namely the protection of the State's independence, democratic order and national security.

As regards proportionality, the applicant submits that the CPL's political programme shows that the CPL has chosen the path to democratisation since 1990; however, the intentions of a party must be judged, above all, by the actions of its leaders and members rather than by its official slogans. The applicant has never distanced herself from the attempted *coup d'état* of 13 January 1991.

Criminal proceedings were never brought against the applicant. If this had been the case, she would have benefited from safeguards such as the presumption of innocence and the resolution of doubts in her favour in respect of such proceedings. The disqualification imposed on her constitutes a special public-law measure regulating access to the political process at the highest level. In the context of such a procedure, doubts could be interpreted against a person wishing to be a candidate, the burden of proof could be shifted against him or her, and appearances could be considered of importance. The Latvian authorities were entitled, within their margin of appreciation, to presume that a person in the applicant's position had held opinions incompatible with the need to ensure the integrity of the democratic process, and to declare that person ineligible to stand for election. The applicant has not disproved the validity of those appearances before the domestic courts; nor has she done so in the context of the instant proceedings. The Convention does not exclude a situation where the scope and conditions of a restrictive measure may be determined in detail by the legislature, leaving the courts of ordinary jurisdiction only with the task of verifying whether a particular individual belongs to the category or group covered by the statutory measure at issue. This is particularly so in matters relating to Article 3 of Protocol No. 1. The Court's task is essentially to evaluate whether the measure defined by Parliament is proportionate from the standpoint of this provision, and not to find fault with the measure simply on the ground that the domestic courts were not empowered to "fully individualise" the application of the measure in the light of an individual's specific situation and circumstances.

Individuals in the applicant's position had effective access to a court to have determined the issue of whether they belonged to the category defined by the legislature; the procedures could not be considered arbitrary. The legislation was clear and precise as to the definition of the category of persons affected by

it, and it was also sufficiently flexible to allow the domestic courts to examine whether or not a particular person belonged to that category.
It is not of central importance that the applicant was never prosecuted and was not stripped of her seat in parliament after the events of January 1991. The question whether the CPL could be regarded as legal or illegal during the period after 13 January 1991 is irrelevant, given that the subversive nature of its activities was obvious at least from that date and that the applicant plainly chose to support its anti-democratic stance.
Finally, it does not appear crucial in this case that the impugned measure was introduced only in 1995; it is not surprising that a newly-established democratic legislature should need time for reflection in a period of political turmoil to enable it to consider what measures are required to sustain its achievements. This is all the more so in the case of Latvia, where troops of a foreign country, Russia, remained until 1994.
The Latvian authorities' view that the applicant's exclusion from standing as a candidate to the national Parliament is warranted even today can be considered to be in line with the requirements of Article 3 of Protocol No. 1. The impugned statutory restriction as applied to the applicant has not been found to be arbitrary or disproportionate. The applicant's current or recent conduct is not a material consideration, given that the statutory restriction in question relates only to her political stance during the crucial period of Latvia's struggle for "democracy through independence" in 1991. While such a measure may scarcely be considered acceptable in the context of one political system, for example in a country which has an established framework of democratic institutions going back many decades or centuries, it may nonetheless be considered acceptable in Latvia in view of the historico-political context which led to its adoption and given the threat to the new democratic order posed by the resurgence of ideas which, if allowed to gain ground, might appear capable of restoring the former regime.
The Court also attaches weight to the fact that the Latvian Parliament has periodically reviewed the legislation in question, most recently in 2004. Even more importantly, the Constitutional Court has carefully examined, in a decision of 30 August 2000, the historical and political circumstances which gave rise to the enactment of the law in Latvia, finding the restriction to be neither arbitrary nor disproportionate at that point in time, i.e. nine years after the events in question, but requiring it to be kept under review by the Latvian Parliament with a view to bringing it to an early end.
*Conclusio*n: no violation of Article 3 of Protocol No. 1.

Articles 10 and 11: No separate issues.

STAND FOR ELECTION
Refusal to register candidate for parliamentary elections as he had failed to pay an electoral deposit: *no violation*.

SUKHOVETSKYY - Ukraine (N° 13716/02)
Judgment 28.03.2006 [Section II]

Facts: In January 2002 a local electoral commission refused to register the applicant as a candidate for the parliamentary elections due to his failure to pay an electoral deposit equivalent to some 160 euros at the time. The applicant claimed he was unable to meet that requirement, his annual income amounting to the equivalent of some 140 euros. The Central Electoral Commission upheld the refusal and his complaint to the Supreme Court was likewise refused.

Law: The Court noted that the electoral laws of a number of European States provided for measures to discourage frivolous candidates from standing. The State's participation in the campaign costs of the registered candidates, aimed at promoting equality among the contestants, was also a factor which could not be overlooked. Accordingly, the Court concluded that the law in question pursued the legitimate aim of guaranteeing the right to effective, streamlined representation by enhancing the responsibility of those standing for election and confining elections to serious candidates, whilst avoiding the unreasonable outlay of public funds. Moreover, among European jurisdictions, the amount of the deposit in Ukrainian law was one of the lowest. The fee required of the applicant could not therefore be considered to have been excessive or such as to constitute an insurmountable administrative or financial barrier for a

determined candidate wishing to take part in elections, and even less so an obstacle to the emergence of sufficiently representative political currents or an interference with the principle of pluralism.
Conclusion: No violation (unanimously).

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Second conviction after supervisory review: *inadmissible*.

BRATYAKIN - Russia (N° 72776/01)
Decision 9.3.2006 [Section III]

(See Article 6 above).

Other judgments delivered in March

Murat Demir - Turkey (Nº 42579/98), 2 March 2006 [Section III]
Adem Bulut and others - Turkey (Nº 50282/99), 2 March 2006 [Section III]
Erikan Bulut - Turkey (Nº 51480/99), 2 March 2006 [Section III]
Nakhmanovich - Russia (Nº 55669/00), 2 March 2006 [Section I]
Satka - Greece (Nº 55828/00), 2 March 2006 [Section I (former composition)](just satisfaction)
Yalçin Küçük - Turkey (no. 2) (Nº 56004/00), 2 March 2006 [Section III] (friendly settlement)
Pilla - Italy (Nº 64088/00), 2 March 2006 [Section III]
Devrim Turan - Turkey (Nº 879/02), 2 March 2006 [Section III]
Nikolayev - Russia (Nº 37927/02), 2 March 2006 [Section III]
Pastellis - Cyprus (Nº 19106/03), 2 March 2006 [Section I]
Izzo - Italy (Nº 20935/03), 2 March 2006 [Section III]
Aggeli - Greece (Nº 25559/03), 2 March 2006 [Section I]
Dolgova - Russia (Nº 11886/05), 2 March 2006 [Section I]

Kajas - Finland (Nº 64436/01), 7 March 2006 [Section IV]
Besseau - France (Nº 73893/01), 7 March 2006 [Section IV]
Berdji - France (Nº 74184/01), 7 March 2006 [Section II] (striking out)
Donadze - Georgia (Nº 74644/01), 7 March 2006 [Section II]
Hocaoğullari - Turkey (Nº 77109/01), 7 March 2006 [Section II]
Bačák - Czech Republic (Nº 3331/02), 7 March 2006 [Section II]
Vesque - France (Nº 3774/02), 7 March 2006 [Section II]
Leszczak - Poland (Nº 36576/03), 7 March 2006 [Section IV]
Hussain - the United Kingdom (Nº 8866/04), 7 March 2006 [Section IV]

Novak - Slovenia (Nº 49016/99), 9 March 2006 [Section III]
Eucone D.O.O. - Slovenia (Nº 49019/99), 9 March 2006 [Section III]
Kveder - Slovenia (Nº 55062/00), 9 March 2006 [Section III]
Klinar - Slovenia (Nº 66458/01), 9 March 2006 [Section III]
Cenbauer - Croatia (Nº 73786/01), 9 March 2006 [Section I]
Bauer - Slovenia (Nº 75402/01), 9 March 2006 [Section III]
Žagar - Slovenia (Nº 75684/01), 9 March 2006 [Section III]
Kramer - Slovenia (Nº 75705/01), 9 March 2006 [Section III]
Meh - Slovenia (Nº 75815/01), 9 March 2006 [Section III]
Dreu - Slovenia (Nº 76212/01), 9 March 2006 [Section III]
Cmok - Slovenia (Nº 76430/01), 9 March 2006 [Section III]
Žnidar - Slovenia (Nº 76434/01), 9 March 2006 [Section III]
Baltić - Slovenia (Nº 76512/01), 9 March 2006 [Section III]
Podkrižnik - Slovenia (Nº 76515/01), 9 March 2006 [Section III]
Kukavica - Slovenia (Nº 76524/01), 9 March 2006 [Section III]
Vidovič - Slovenia (Nº 77512/01), 9 March 2006 [Section III]
Krašovec - Slovenia (Nº 77541/01), 9 March 2006 [Section III]
Kumer - Slovenia (Nº 77542/01), 9 March 2006 [Section III]
Mulej-Zupanec and others - Slovenia (Nº 77545/01), 9 March 2006 [Section III]
Poje - Croatia (Nº 29159/03), 9 March 2006 [Section I]

Korkmaz and others - Turkey (Nº 35979/97), 21 March 2006 [Section IV]
Ademyilmaz and others - Turkey (Nº 41496/98, Nº 41499/98, Nº 41501/98, Nº 41502/98, Nº 41959/98, Nº 42602/98 and Nº 43606/98), 21 March 2006 [Section II]
Koç and Tambaş - Turkey (Nº 50934/99), 21 March 2006 [Section IV]
Lupacescu and others - Moldova (Nº 3417/02, Nº 5994/02, Nº 28365/02, Nº 5742/03, Nº 8693/03, Nº 13681/03, Nº 31976/03 and Nº 32759/03), 21 March 2006 [Section IV]

Josan - Moldova (Nº 37431/02), 21 March 2006 [Section IV]
Zámečniková and Zámenčník - Czech Republic (Nº 16226/04), 21 March 2006 [Section II]

Kur - Turkey (Nº 43389/98), 23 March 2006 [Section III]
Krisper -. Slovenia (Nº 47825/99), 23 March 2006 [Section III]
Tokay and Ulus - Turkey (Nº 48060/99), 23 March 2006 [Section III]
Anyig and others - Turkey (Nº 51176/99), 23 March 2006 [Section III]
Siebert - Germany (Nº 59008/00), 23 March 2006 [Section III] (friendly settlement)
Konovalov - Russia (Nº 63501/00), 23 March 2006 [Section I]
Ulker and others - Turkey (Nº 64438/01), 23 March 2006 [Section III]
Lerios - Cyprus (Nº 68448/01), 23 March 2006 [Section I]
Campagnano - Italy (Nº 77955/01), 23 March 2006 [Section III]
Vitiello - Italy (Nº 77962/01), 23 March 2006 [Section III]
Krivokuća - Croatia (Nº 38770/02), 23 March 2006 [Section I]

Gaultier - France (Nº 41522/98), 28 March 2006 [Section II]
Öçkan and others - Turkey (Nº 46771/99), 28 March 2006 [Section II]
Koss - Poland (Nº 52495/99), 28 March 2006 [Section IV]
Tomczyk Prokopyszyn - Poland (Nº 64283/01), 28 March 2006 [Section IV]
Bendžius - Lithuania (Nº 67506/01), 28 March 2006 [Section II] (striking out)
Raffi - France (Nº 11760/02), 28 March 2006 [Section II]
Kubicz - Poland (Nº 16535/02), 28 March 2006 [Section IV]
Jaworskir - Poland (Nº 25715/02), 28 March 2006 [Section IV]
Le Bechennec - France (Nº 28738/02), 28 March 2006 [Section II]
Shcherbaky - Ukraine (Nº 31095/02), 28 March 2006 [Section II]
Varga - Hungary (Nº 14338/03), 28 March 2006 [Section II]
Rázlová - Czech Republic (Nº 20252/03), 28 March 2006 [Section II]
Melnyk - Ukraine (Nº 23436/03), 28 March 2006 [Section II]
Csáky - Hungary (Nº 32768/03), 28 March 2006 [Section II]

Scordino - Italy (no. 1), (Nº 36813/97), 29 March 2006 [Grand Chamber]
Riccardi Pizzati - Italy (Nº 62361/00), 29 March 2006 [Grand Chamber]
Musci - Italy (Nº 64699/01), 29 March 2006 [Grand Chamber]
Giuseppe Mostacciuolo (no. 1) - Italy (Nº 64705/01), 29 March 2006 [Grand Chamber]
Cocchiarella - Italy (Nº 64886/01), 29 March 2006 [Grand Chamber]
Apicella - Italy (Nº 64890/01), 29 March 2006 [Grand Chamber]
Ernestina Zullo - Italy (Nº 64897/01), 29 March 2006 [Grand Chamber]
Giuseppina and Orestina Procaccini - Italy (Nº 65075/01), 29 March 2006 [Grand Chamber]
Giuseppe Mostacciuolo (no. 2) - Italy (Nº 65102/01), 29 March 2006 [Grand Chamber]
Achour - France (Nº 67335/01), 29 March 2006 [Grand Chamber]

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Cundrič - Slovenia (Nº 57566/00), 30 March 2006 [Section III]
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Novak - Slovenia (Nº 75618/01), 30 March 2006 [Section III]
Hrustelj - Slovenia (Nº 75628/01), 30 March 2006 [Section III]
Cvetrežnik - Slovenia (Nº 75653/01), 30 March 2006 [Section III]
Rojc - Slovenia (Nº 75687/01), 30 March 2006 [Section III]
Zolger - Slovenia (Nº 75688/01), 30 March 2006 [Section III]
Hafner - Slovenia (Nº 75695/01), 30 March 2006 [Section III]
Rojnik - Slovenia (Nº 75697/01), 30 March 2006 [Section III]
Videmšek - Slovenia (Nº 75701/01), 30 March 2006 [Section III]

Kovačič - Slovenia (Nº 75742/01), 30 March 2006 [Section III]
Mamič - Slovenia (Nº 75745/01), 30 March 2006 [Section III]
Majhen - Slovenia (Nº 75773/01), 30 March 2006 [Section III]
Slemensek - Slovenia (Nº 75810/01), 30 March 2006 [Section III]
Goršek - Slovenia (Nº 75813/01), 30 March 2006 [Section III]
Puž - Slovenia (Nº 76199/01), 30 March 2006 [Section III]
Golenja - Slovenia (Nº 76378/01), 30 March 2006 [Section III]
Pečnik - Slovenia (Nº 76439/01), 30 March 2006 [Section III]
Kos - Slovenia (Nº 77769/01), 30 March 2006 [Section III]
Sluga - Slovenia (Nº 77779/01), 30 March 2006 [Section III]
Gorenjak - Slovenia (Nº 77819/01), 30 March 2006 [Section III]
Planko - Slovenia (Nº 77821/01), 30 March 2006 [Section III]
Panier - Belgium (Nº 2527/02), 30 March 2006 [Section I] (friendly settlement)
Nastos - Greece (Nº 35828/02), 30 March 2006 [Section I]
Simaskou - Greece (Nº 37270/02), 30 March 2006 [Section I]
Kollokas - Greece (Nº 10304/03), 30 March 2006 [Section I]
Damilakos - Greece (Nº 13320/03), 30 March 2006 [Section I]
Gianni and others - Italy (Nº 35941/03), 30 March 2006 [Section I]

Relinquishment in favour of the Grand Chamber

Article 30

ESKELINEN and Others - Finland (N° 63235/00)
[Section IV]

The applicants are or were police officers or, in one case, an office assistant, all assigned to a local police district. They complain under Article 6(1) of the Convention about the excessive length of the proceedings concerning the terms of their employment as civil servants as well as about the lack of an oral hearing before any of the domestic instances. They further complain, under Article 1 of Protocol No. 1, that they were illegally deprived of their possessions as they lost their entitlement to personal wage supplements (in the form of a remote-area allowance) when the police district in question was incorporated into another one. They also complain, under Article 14 of the Convention, that they were discriminated against as they were treated differently from the personnel of other police districts in a similar situation. Finally, they complain under Article 13, that they had no effective remedy at their disposal.

On 29 November 2005 the application was declared admissible as a whole, including the question of the applicability of Article 6.

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Note No. 81):

La Rosa and Alba - Italy (no. 3) (N° 58386/00)
Gravina - Italy (N° 60124/00)
Dominici - Italy (N° 64111/00)
Judgments 15.11.2005 [Section IV]

Kaya and Others - Turkey (N° 33420/96 and N° 36206/97)
Judgment 22.11.2005 [Section IV]

Popov - Bulgaria (N° 48137/99)
Skachedubova - Russia (N° 55885/00)
Smarygin - Russia (N° 73203/01)
Skorobogatova - Russia (N° 33914/02)
Tsantiris - Greece (N° 42320/02)
Subašić - Croatia (N° 18322/03)
Judgments 1.12.2005 [Section I]

Tuquabo-Tekle and Others - Netherlands (N° 60665/00)
Ilişescu and Chiforec- Romania (N° 77364/01)
SC Maşinexportimport Industrial Group SA - Romania (N° 22687/03)
Păduraru - Romania (N° 63252/00)
Judgments 1.12.2005 [Section III]

Döleneken - Turkey (N° 31132/96)
Fikret Şahin - Turkey (N° 42605/98)
Kárpáti - Hungary (N° 13318/02)
Maillard - France (N° 35009/02)
Mehmet Kaya - Turkey (N° 36150/02)
Kosarevskaya and Others - Ukraine (N° 29459/03, N° 4935/04 and N° 26996/04)
Tóth, Magyar and Tóthné - Hungary (N° 35701/04)
İletmis - Turkey (N° 29871/96)
Judgments 6.12.2005 [Section II]

Ağaoğlu - Turkey (N° 27310/95)
Salvatore - Italy (N° 42285/98)
Mikulová - Slovakia (N° 64001/00)
Hornáček - Slovakia (N° 65575/01)
Serrilli - Italy (N° 77822/01)
Capone - Italy (N° 20236/02)
Drozdowski - Poland (N° 20841/02)
Popov - Moldova (no. 2) (N° 19960/04)
Judgments 6.12.2005 [Section IV]

Renieri and Others - Greece (N° 14165/03)
Gili and Others - Greece (N° 14173/03)
Giakoumeli and Others - Greece (N° 15689/03)

Iliopoulou - Greece (Nº 19010/03)
Dimitrakopoulou - Greece (Nº 23025/03)
Georgopoulos - Greece (Nº 25324/03)
Mikryukov - Russia (Nº 7363/04)
Judgments 8.12.2005 [Section I]

Kanlibaş - Turkey (Nº 32444/96)
Giuso-Gallisay - Italy (Nº 58858/00)
Federici - Italy (nº 2) (Nº 66327/01 and Nº 66556/01)
Frateschi - Italy (Nº 68008/01)
Cuccaro Granatelli - Italy (Nº 19830/03)
Judgments 8.12.2005 [Section III]

Gartukayev - Russia (Nº 71933/01)
Piskunov - Ukraine (Nº 5497/02)
Ryzhenkov and Zaytsev- Ukraine (Nº 1805/03 and Nº 6717/03)
Garkusha - Ukraine (Nº 4629/03)
Zemanová - Czech Republic (Nº 6019/03)
Anatskiy - Ukraine (Nº 10558/03)
Antonovskiy - Ukraine (Nº 22597/02)
Verkeyenko - Ukraine (Nº 22766/02)
Zolotukhin - Ukraine (Nº 11421/03)
Kosareva - Ukraine (Nº 17304/03)
Semenov - Ukraine (Nº 25463/03)
Miroshnichenko and Grabovskaya - Ukraine (Nº 32551/03 and Nº 33687/03)
Solovyeva - Ukraine (Nº 32547/03)
Kotlyarov - Ukraine (Nº 43593/02)
Thon - Czech Republic (Nº 14044/04)
Timishev - Russia (Nº 55762/00 and 55974/00)
Judgments 13.12.2005 [Section II]

T. and Others - Finland (Nº 27744/95)
Wirtschafts-Trend Zeitschriftenverlagsgeselschaft M.B.H. (nº 3) - Austria (Nº 66298/01 and Nº 15653/02)
Ruoho - Finland (Nº 66899/01)
Kozłowski - Poland (Nº 31575/03)
Gábriška - Slovakia (Nº 3661/04)
Bekos and Koutropoulos - Greece (Nº 15250/02)
Judgments 13.12.2005 [Section IV]

Vanyan - Russia (Nº 53203/99)
Tusashvili - Russia (Nº 20496/04)
Karadžić - Croatia (Nº 35030/04)
Judgments 15.12.2005 [Section I]

Di Cola - Italy (Nº 44897/98)
Hurter - Switzerland (Nº 53146/99)
Scozzari and Others - Italy (Nº 67790/01)
Epple - Germany (Nº 77909/01)
Trijonis - Lithuania (Nº 2333/02)
Giacobbe and Others - Italy (Nº 16041/02)
Kucherenko - Ukraine (Nº 27347/02)
Barry - Ireland (Nº 18273/04)
Judgments 15.12.2005 [Section III]

Dindar - Turkey (Nº 32456/96)
Korkmaz - Turkey (nº 1) (Nº 40987/98)
Korkmaz - Turkey (nº 2) (Nº 42589/98)
Korkmaz - Turkey (nº 3) (Nº 42590/98)
Özer and Others - Turkey (Nº 42708/98)
Çetin - Turkey (Nº 42779/98)
Mahsun Tekin - Turkey (Nº 52899/99)
Wisse - France (Nº 71611/01)
Relais du Min sarl - France (Nº 77655/01)
Nagy - Hongrie (Nº 6437/02)
Magalhães Pereira - Portugal (nº 2) (Nº 15996/02)
Marion - France (Nº 30408/02)
Vigovskiyy - Ukraine (Nº 42318/02)
Oleynik and Baybarza - Ukraine (Nº 5384/03)
Bezugly - Ukraine (Nº 19603/03)
Judgments 20.12.2005 [Section II]

Paturel - France (Nº 54968/00)
Iera Moni Profitou Iliou Thiras - Greece (Nº 32259/02)
Rybakov - Russia (Nº 14983/04)
Judgments 22.12.2005 [Section I]

A.D. - Turkey (Nº 29986/96)
İ.B. - Turkey (Nº 30497/96)
H.E. - Turkey (Nº 30498/96)
Pütün - Turkey (Nº 31734/96)
Mehmet Hanefi Işik - Turkey (Nº 35064/97)
Aydoğan- Turkey (Nº 40530/98)
Ali Riza Doğan - Turkey (Nº 50165/99)
Yilmaz and Durç - Turkey (Nº 57172/00)
Aslan - Turkey (Nº 63183/00)
Çamlibel - Turkey (Nº 64609/01)
Bulduş - Turkey (Nº 64741/01)
Şimşek - Turkey (Nº 72520/01)
Tendik and Others - Turkey (Nº 23188/02)
Ayçoban and Others - Turkey (Nº 42208/02, Nº 43491/02 and Nº 43495/02),
Judgments 22.12.2005 [Section III]

Çiçekler - Turkey (Nº 14899/03)
Balyemez - Turkey (Nº 32495/03)
Judgments 22.12.2005 [Section III (former)]

Statistical information[1]

Judgments delivered	**March**	**2006**
Grand Chamber	13	14(15)
Section I	21(25)	51(56)
Section II	22(28)	100(114)
Section III	59	89(91)
Section IV	13(20)	52(59)
former Sections	1	4
Total	**129(146)**	**310(339)**

Judgments delivered in March 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	13	0	0	0	0
Section I	20(24)	1	0	0	21(25)
Section II	20(26)	0	2	0	22(28)
Section III	57	2	0	0	59
Section IV	13(20)	0	0	0	13(20)
former Section I	1	0	0	0	1
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**124(141)**	**3**	**2**	**0**	**129(146)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	14(15)	0	0	0	14(15)
Section I	50(55)	1	0	0	51(56)
Section II	95(109)	3	2	0	100(114)
Section III	84(86)	5	0	0	89(91)
Section IV	50(57)	1	0	1	52(59)
former Section I	1	0	0	0	1
former Section II	3	0	0	0	3
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**297(326)**	**10**	**2**	**1**	**310(339)**

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

Decisions adopted		March	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		42	66
Section II		7(8)	19(20)
Section III		4	7
Section IV		8	23(24)
Total		**61(62)**	**115(117)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	5	17
	- Committee	911	1877
Section II	- Chamber	7	19
	- Committee	604	1534
Section III	- Chamber	600	622(624)
	- Committee	1461	2012
Section IV	- Chamber	15	41(42)
	- Committee	847	1865
Total		**4450**	**7987(7990)**
III. Applications struck off			
Section I	- Chamber	15	28
	- Committee	10	20
Section II	- Chamber	11	55
	- Committee	18	41
Section III	- Chamber	10	18
	- Committee	11	20
Section IV	- Chamber	11	21
	- Committee	17	32
Total		**103**	**235**
Total number of decisions[1]		**4614(4615)**	**8337(8341)**

[1] Not including partial decisions

Applications communicated	March	2006
Section I	88	204
Section II	82	181(1831)
Section III	56	227
Section IV	60	175
Total number of applications communicated	**286**	**787(789)**

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