CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No 42
on the case-law of the Court
May 2002

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

Statistical information[1]

Judgments delivered	**May**	**2002**
Grand Chamber	3	4
Section I	12	196(197)
Section II	10(13)	75(79)
Section III	18	97(102)
Section IV	5	86(89)
Sections in former compositions	1	18
Total	**49(52)**	**476(489)**

Judgments delivered in May 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	1[2]	3
former Section I	0	1	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
Section I	6	6	0	0	12
Section II	10(13)	0	0	0	10(13)
Section III	10	8	0	0	18
Section IV	4	1	0	0	5
Total	**32(35)**	**16**	**0**	**1**	**49(52)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	1[2]	4
former Section I	2	1	0	0	3
former Section II	0	0	0	2[2]	2
former Section III	8	0	0	0	8
former Section IV	4	0	1	0	5
Section I	172(173)	24	0	0	196(197)
Section II	65(69)	7	3	0	75(79)
Section III	75(77)	21	1(4)	0	97(102)
Section IV	78(81)	7	1	0	86(89)
Total	**407(417)**	**60**	**6(9)**	**3**	**476(489)**

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

[* = Judgment not final}

Decisions adopted		May	2002
I. Applications declared admissible			
Grand Chamber		0	2
Section I		26	103(107)
Section II		14	44
Section III		11	41
Section IV		13	56(58)
Total		**64**	**246(252)**
II. Applications declared inadmissible			
Section I	- Chamber	5(6)	223(258)
	- Committee	357	1591
Section II	- Chamber	6	46(47)
	- Committee	322	1771
Section III	- Chamber	5(6)	33(34)
	- Committee	288	1148
Section IV	- Chamber	13	67(69)
	- Committee	380	1639
Total		**1376(1378)**	**6518(6557)**
III. Applications struck off			
Section I	- Chamber	4(27)	57(80)
	- Committee	3	28
Section II	- Chamber	2	7(8)
	- Committee	8	27
Section III	- Chamber	48	85
	- Committee	4	10
Section IV	- Chamber	2	11
	- Committee	8	18
Total		**79(102)**	**243(267)**
Total number of decisions[1]		**1449(1544)**	**7007(7076)**

1. Not including partial decisions.

Applications communicated	May	2002
Section I	36(39)	188(192)
Section II	17	131(135)
Section III	44	153(154)
Section IV	59	135(155)
Total number of applications communicated	**156(159)**	**607(636)**

ARTICLE 2

LIFE
Effectiveness of investigation into death resulting from actions of security forces during a riot: *violation*.

McSHANE - United Kingdom (Nº 43290/98)
Judgment 28.5.2002 [Section IV]

Facts: The applicant's husband was killed when an armoured personnel carrier crushed him beneath a hoarding behind which he was sheltering during a riot in Northern Ireland in 1996. The precise circumstances are in dispute. The scene was secured after some delay and an investigation was begun by the Royal Ulster Constabulary (RUC); an appeal for witnesses was made and four civilian witnesses as well as over 100 witnesses from the security forces were interviewed. The RUC sent the file to the Director of Public Prosecutions (DPP), who concluded that there was insufficient evidence to proceed with a prosecution. A number of anonymous witness statements were subsequently obtained but the DPP maintained his previous decision. An inquest due to take place at the end of 1999 was adjourned to allow the applicant to seek disclosure of certain material. In 1999 the applicant also instituted civil proceedings, which are still pending. In 2001 the RUC complained to the Law Society that material disclosed to the applicant's solicitor on a confidential basis for the purposes of the inquest had been used by her representative in the proceedings before the Court. However, the Law Society found that there was insufficient evidence of unprofessional conduct.
Law: Article 2 – This provision covers death resulting as an unintended outcome of the use of force, a notion which is not limited to the use of weapons or physical violence but extends to the use of an army vehicle to break down a barricade. Where a soldier is ordered during a riot to use a vehicle in this way, it must be regarded as part of an operation for which State responsibility may arise. As the facts were disputed and civil proceedings were pending, it would not be appropriate for the Court to attempt to establish the facts or to rely on the statements of the anonymous witnesses. The situation could not be equated to a death in custody where the burden may be regarded as resting on the State to provide a satisfactory and plausible explanation. Consequently, the Court made no findings as to the alleged responsibility of the State for the death of the applicant's husband. As to the effectiveness of the investigation: (i) The Court accepted that the securing of the scene was as prompt as could be expected in the situation and considered that there was insufficient evidence to conclude that the RUC investigation was not able to identify the participants or the course of the events. However, a serious issues arose as to the independence of the RUC investigation since, although the driver was a soldier, the operation had involved both the army and the RUC: the investigation was thus conducted by police officers connected, albeit indirectly, with the operation under investigation, which cast doubt on its independence. Moreover, taking into account various delays, the investigation was not conducted with reasonable expedition. (ii) The independence of the DPP was not in doubt and he gave reasons for the decision not to prosecute, although not obliged to by law. The Court was not persuaded that Article 2 automatically required the provision of reasons by the DPP: it might in appropriate cases be compatible with the requirements of Article 2 that reasons could be requested by the victim's family, as occurred in this case. Furthermore, the applicant had not sought to challenge the alleged inadequacy of the reasons in judicial review proceedings, nor had she complained about any lack of expedition on the part of the DPP. (iii) With regard to the inquest, the Court had already found in other cases relating to Northern Ireland that the effectiveness of the inquests was undermined by the lack of compellability of security force witnesses and that the lack of a verdict or other means by which the inquest could form an effective part of a process of

identification and prosecution of a perpetrator of an unlawful act was not compatible with the requirements of Article 2. The same applied in the present case. On the other hand, the fact that the Coroner's investigation is confined to the matters directly causative of the death and does not extend to the broader circumstances does not necessarily contradict the requirements of Article 2. Whether an inquest fails to address the necessary factual issues will depend on the particular circumstances of the case and the Court was not persuaded that the surrounding events in the present case were necessarily relevant to a determination of the cause of death. However, there were significant delays in providing the applicant with documents for the inquest, linked to the overall lapse of time in the inquest proceedings, which had not been commenced with the required promptness. (iv) Finally, civil proceedings, which are undertaken on the initiative of the applicant, do not involve the identification and punishment of any alleged perpetrator. In conclusion, there had been a number of shortcomings in the procedures of investigation.

Conclusion: violation (unanimously).

Article 6(1) – The lawfulness of the death was the subject of pending civil proceedings instituted by the applicant and in these circumstances and in the light of the scope of the application, there was no basis for reaching any findings as to the alleged improper motivation behind the incident.

Conclusion: no violation (unanimously).

Article 14 – Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory, notwithstanding that it is not specifically aimed or directed at that group. However, even though statistically it appeared that the majority of people shot by the security forces were from the Catholic or nationalist community, the Court did not consider that statistics could in themselves disclose a practice which could be classified as discriminatory within the meaning of Article 14. There was no evidence before the Court which would entitle it to conclude that any of those killings, save those which resulted in convictions, involved the unlawful or excessive use of force by members of the security forces.

Conclusion: no violation (unanimously).

Article 13 – An applicant who claims the unlawful use of force by soldiers or police officers in the United Kingdom must as a general rule exhaust domestic remedies by taking civil proceedings by which the courts will examine the facts, determine liability and if appropriate award compensation. These civil proceedings are wholly independent of any criminal investigation and their efficacy has not been shown to rely on the proper conduct of criminal investigations or prosecutions. In the present case, the applicant had lodged civil proceedings, which were pending, and the Court found no elements which would prevent those proceedings providing redress in respect of the alleged excessive use of force. The complaints concerning the investigation into the death had been examined under the procedural aspect of Article 2 and no separate issue arose in that respect.

Conclusion: no violation (unanimously).

Article 34 – The threat of disciplinary proceedings against an applicant's lawyer may infringe the guarantee of free and unhindered access to the Convention system. Although the RUC's complaint was not directed against the applicant's representatives before the Court, it related to materials which those representatives had submitted and was thus connected with the conduct of the application. A sanction was invoked by a public authority against a solicitor in respect of her purported disclosure of information to an applicant for use in proceedings before the Court, which could have a chilling effect on the exercise of the right of individual petition.

Conclusion: failure to comply with obligations (unanimously).

Article 41 – The Court awarded the applicant £8,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

LIFE
Allegedly insufficient medical monitoring of prisoner suffering from withdrawal symptoms, resulting in death: *admissible*.

McGLINCHEY and others - United Kingdom (N° 50390/99)
Decision 28.5.2002 [Section II]

The applicants are the children and the mother of Judith McGlinchey ("J.M."), who was a heroin addict. She was convicted of theft and sentenced to four months' imprisonment. On 7 December 1998, at the first reception health screening at the prison to which she was transferred, J.M. was noted as not seeming excessively depressive or nervous. Her weight was recorded as 50 kg. She complained that she was suffering from withdrawal symptoms and the prison medical records noted thereafter that she continued to complaining and that she was vomiting repeatedly. The prison senior medical officer prescribed intra-muscular injections to appease the symptoms. On 9 December 1998 J.M. declined every meal and her weight was recorded as 43 kg. She was noted as vomiting during the evening and complaining of vomiting during the night. She complained to her mother on the phone that apart from the injections she was being given no other medical support to assist her in coming off drugs. During the following days she continued to vomit in spite of being given injections. On 12 December 1998 her weight was recorded as 40 kg. On the morning of 14 December 1998 she was transferred to hospital after having vomited coffee ground (altered blood in the stomach) and collapsed. A lot of coffee ground vomit was found on her bed. She had a cardiac arrest but was resuscitated. The applicants were told that she was in hospital. They learned from a nurse that her hair was matted with vomit when she was admitted to hospital. They were also informed by the hospital that she was in a critical condition and might suffer brain damage due to the cardiac arrest. Her liver and kidneys were failing and they could not stabilise her. J.M. died on 3 January 1999. The autopsy report indicated that severe vomiting could lead to haemorrhaging in the stomach, and hence coffee ground vomit, and that if J.M. had lost a substantial amount of blood, it could have triggered the cardiac arrest, with the consequence of multi-organ failure and death. An inquest was held; the jury returned an open verdict. Legal aid was granted to the applicants to pursue domestic remedies for compensation. Counsel advised them that in the light of the medical report which they had asked for, there was insufficient evidence to establish the necessary causal link between J.M.'s death and the negligent care afforded to her in custody. They are no longer pursuing their claims in negligence.
Admissible under Articles 2, 3 and 13.

LIFE
Death of minor following placement in police custody and transfer to military hospital: *communicated*.

H.Y. et/and Hü.Y. - Turkey (N° 40262/98)
[Section I]

On 21 November 1997, the minor son of the applicants was arrested by the police and detained in police custody on the premises of the Siirt security directorate. The next day, he was handed over to the gendarmes, who moved him to their premises. He died on 5 December 1997, following transfer to the military hospital at Diyarbakir. The inquest concluded that death was caused by a traumatic blow to the head. In 1999, the Siirt public prosecutor's office ordered the proceedings against the gendarmes to be terminated. After this decision had been set aside, the Siirt public prosecutor's office, in April 2000, issued an indictment against the seven gendarmes responsible for keeping the applicants' late son in custody. This accused them of violence causing death unintentionally and of torture accompanied by murder. The assize court accepted the request made by the applicants (the

deceased's parents) to be an "intervening party" and gave hearings to the deceased's mother and brother, to one defendant and to one eyewitness. In January 2002, Siirt assize court acquitted the gendarmes on the grounds that the evidence was inadequate. The applicants appealed on a point of law, and their case is pending.
Communicated under Articles 34 (status of victim), 35(1) (exhaustion of domestic remedies), 2, 5(3), 5(4) and 8.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Detention of minor in penal institution: *no violation*.

D.G. - Ireland (Nº 39474/98)
Judgment 16.5.2002 [Section III]
(See Article 5(1)(d), below).

INHUMAN TREATMENT
Allegedly insufficient medical monitoring of prisoner suffering from withdrawal symptoms: *admissible*.

McGLINCHEY and others - United Kingdom (N° 50390/99)
Decision 28.5.2002 [Section II]
(See Article 2, above).

INHUMAN TREATMENT
Conditions of detention in prison: *admissible*.

BENZAN - Croatia (N° 62912/00)
Decision 16.5.2002 [Section I]

In 1994 the applicant was found guilty of murder and sentenced to ten years' imprisonment. He was transferred to the Lepoglava State Prison in March 2000 and has been serving his sentence there since. He complains of the allegedly appalling conditions of his detention in that prison. He also claims that the prison authorities prevented him from contacting his lawyer and that there were no effective remedies in respect of his complaint concerning prison conditions.
Admissible under Articles 3, 8 (correspondence) and 13.
It was decided that a delegation of the Court would conduct a fact finding investigation.

INHUMAN TREATMENT
Alleged administration of medicines and psychotropic injections to a detainee and physical ill-treatment : *admissible*.

NAUMENKO - Ukraine (N° 42023/98)
Decision 7.5.2002 [Section II]

By a final decision of 1996, the applicant was sentenced to death for the murders of two persons, one attempted murder and one rape. Confined to "death row", he was placed under the supervision of a psychiatrist, who diagnosed a psychopathic state, reactive psychosis and

suicidal tendencies. The applicant was then subjected to regular medical treatment, namely the administration of medicines and injections of psychotropic drugs. During 1997 and 1998, the applicant was kept handcuffed in his cell for an hour and 25 minutes and, on another occasion, for 25 minutes, in order, in the words of the prison administration, to stop his efforts to resist his guards and to prevent him from committing suicide. On two subsequent occasions, the applicant was beaten by his guards. The applicant also claims that he was kept handcuffed in his cell without food or drink for four days. The applicant lodged numerous complaints about ill-treatment and torture, particularly with the public prosecutor's office. The public prosecutor's office informed him that, following the investigations carried out, no evidence to confirm the alleged ill-treatment and torture had been found. In June 2000, his sentence was commuted to life imprisonment. The board of psychiatric experts which examined the applicant in December 2000 established that he had not been mentally ill when sent to prison, and that his behaviour was due to accusations and not to his detention conditions. Transferred to another establishment, the applicant was again examined by a board of experts, which found that the psychotropic drugs were necessary because of the applicant's temporary psychiatric imbalance, and could not give rise to either reactive psychosis or psychopathy.
Admissible under Articles 3 (the objection of failure to exhaust domestic remedies was considered jointly with the merits of the complaint) and 13.
Inadmissible under Article 6(1) (fairness): the proceedings about which the applicant complains terminated with the July 1996 decision, a final domestic decision within the meaning of Article 35(1), issued before the Convention came into force in respect of Ukraine. In practice, the June 2000 decision to commute the applicant's death penalty into life imprisonment was merely a formal procedural act resulting from the legislative amendments which followed the abolition of the death penalty in Ukraine, and cannot therefore be taken into account by the Court when determining its jurisdiction *ratione temporis* over this application: incompatibility *ratione temporis*.
The Court decided to make an on-the-spot visit.

EXTRADITION
Threatened extradition to Egypt with risk of imprisonment for political activities: *communicated*.

BILASHI-ASHRI - Austria (N° 3314/02)
[Section II]

The applicant, an Egyptian national, was involved in a number of Islamic groups in Egypt between 1985 and 1993. He was arrested on several occasions by reason of his political activities. In March 1994 mass arrests were carried out in Islamic circles. The applicant fled to Albania. In April 1995 he arrived in Austria, where he filed a request for asylum upon arrival. The Federal Asylum Office rejected it, on the ground that he had insufficiently substantiated that he had been subjected to serious persecution after 1991. The applicant's appeal was dismissed. In May 1995 and March 1996 he filed requests for the reopening of the asylum proceedings, submitting, *inter alia*, a newspaper in which he was accused by the Egyptian authorities of involvement in terrorist activities; he emphasised that he rejected all forms of violence. In August 1996 both requests were rejected. In January 1998 he filed a new asylum request, submitting two further articles in which he was described as a member of an armed Islamic group. The asylum proceedings are still pending. Meanwhile, in December 1995, he was convicted *in abstentia* by the Egyptian State Security Emergency Court of, *inter alia*, belonging to an illegal association threatening national order and security through violence and terror. He was sentenced to fifteen years' imprisonment and hard labour. On the basis of this conviction, the Egyptian authorities requested his extradition on 22 July 1998. In December 1999 the Court of Appeal competent to decide on the extradition declared it inadmissible insofar as it relied on political offences but granted it with regard to the

offences of forgery, robbery and theft committed within a criminal organisation; the court found that the criminal aspect of these offences was more relevant than their political motivation. The decision was subject to the condition that the judgment of the State Security Emergency Court be declared null and void, and that the applicant would not be re-tried before a court with exclusive jurisdiction to deal with political criminal cases but before an ordinary court. In August 2000, this decision was quashed by the Supreme Court insofar as it declared the extradition admissible and the case was referred to the Court of Appeal for further investigation concerning the offences of which the applicant had been convicted. In October 2001 the applicant was placed in detention pending extradition. In November 2001 the Court of Appeal again granted the extradition request, on the same conditions as before. It rejected the applicant's request for an expert opinion on the authenticity of the extradition documents presented by the Egyptian authorities. In November 2001 the Federal Minister of Justice approved the extradition on the conditions set out by the Court of Appeal. In March 2002 the United Nations High Commissioner for Refugees informed the Austrian Minister of Justice that by virtue of its autonomous mandate to grant refugee status and in the light of the documents submitted by the applicant and an interview, it granted him refugee status on the basis that there was a well-founded risk of persecution due to his political opinions if extradited to Egypt.
Communicated under Article 3.

EXPULSION
Expulsion of Roma gypsies and their minor children to Bosnia-Herzegovina, where they claim they will be exposed to a risk of persecution : *admissible*.

SULEJMANOVIC and SULTANOVIC - Italy (N° 57574/00)
Decision 14.3.2002 [Section I]

The applicants are four nationals of former Yugoslavia, of gypsy origin, born in Bosnia and Herzegovina. The first two applicants are a married couple who have minor children, one of whom is trisomic, suffers from a heart condition and is in a poor state of health. The third applicant is their son, who is the fourth applicant's spouse. Having fled the war in former Yugoslavia, the applicants found shelter at a travellers' camp known as Camp Casilino 700, located in the municipality of Rome. Their presence there was registered by the Italian authorities. Having been granted a residence permit for humanitarian reasons, a permit valid until May 1995, the applicant was the object of an expulsion order in 1997, under which he was told to leave Italian territory within a fortnight. The appeals he lodged have not reached final decision. In 1999, the fourth applicant was the object of an expulsion order, under which she was also told to leave Italian territory within a fortnight. Her appeal against this measure was dismissed. On 3 March 2000 the applicants were sent back to Bosnia and Herzegovina. An expulsion order coupled with an order for their immediate escorting to the border had been served on each of them on the same day, on the grounds that they were present in Italy unlawfully, had declared themselves to be of no fixed abode and held no valid identity document, and that there were objective reasons to fear that they might evade the order to leave Italian territory. The expulsion orders mentioned that it would be possible for the applicants to lodge an appeal to a court within 30 days, and specified that such an appeal could also be lodged from their destination state, through the intermediary of the diplomatic and consular authorities. The applicants were taken to the airport with their minor children to catch a flight for Sarajevo. The removal of the gypsies concerned 20 travellers from Camp Casilino 700 and another 36 from Camp Tor de' Cenci. The applicants claim to have been attacked by other Roma after they had been sent back to Bosnia and Herzegovina.
Admissible under Articles 3 and 13 and Article 4 of Protocol No 4 in combination with Article 14.
Inadmissible under Article 8 and Article 1 of Protocol No 7.

SEJDOVIC and SULEJMANOVIC - Italy (N° 57575/00)
Decision 1.3.2002 [Section I]

The applicants are nationals of former Yugoslavia, of gypsy origin. They are married and have two minor children. They were registered by the Italian authorities as travellers living at Camp Casilino 700, which is located in the municipality of Rome. In November 1996, an expulsion order was served on Mr Sulejmanovic instructing him to leave Italian territory within a fortnight on the grounds that he was present unlawfully. The same happened to Ms Sejdovic in August 1999. Her appeal was dismissed. On 3 March 2000, the applicants were sent back to Bosnia and Herzegovina. An expulsion order coupled with an order for his immediate escorting to the border had been served on Mr Sulejmanovic on the same day, on the grounds that he was unlawfully present in Italy, had declared himself to be of no fixed abode and held no valid identity document, and that there were objective reasons to fear that he might evade the order to leave Italian territory. The expulsion order mentioned that it would be possible for the applicant to lodge an appeal to a court within 30 days, and specified that such an appeal could also be lodged from the destination state through the intermediary of the diplomatic and consular authorities. Ms Sejdovic was removed in implementation of the expulsion order served on her in August 1999. The applicants were taken to the airport with their minor children to catch a flight to Sarajevo. The removal of the gypsies concerned 20 travellers from Camp Casilino 700 and another 36 from Camp Tor de' Cenci. The applicants claim that, since their return to Bosnia and Herzegovina, they have been living in poverty and have been attacked by Roma.
Admissible under Articles 3 and 13 and Article 4 of Protocol No 4 in combination with Article 14.
Inadmissible under Article 8 and Article 1 of Protocol No 7.

ARTICLE 5

Article 5(1)(a)

DETENTION AFTER CONVICTION
Continued detention, after expiry of a fixed sentence, on the basis of a mandatory life sentence: *violation*.

STAFFORD - United Kingdom (Nº 46295/99)
Judgment 28.5.2002 [Grand Chamber]

Facts: The applicant, convicted of murder in 1967, was released on licence in 1979. He left the United Kingdom in breach of his licence, which was consequently revoked. The applicant was arrested in the United Kingdom in 1989 and again released on life licence in 1991. In 1994 he was sentenced to six years' imprisonment for conspiracy to forge travellers' cheques and passports. The Secretary of State accepted the recommendation of the Parole Board to revoke his life licence. In 1996 the Secretary of State rejected the Parole Board's recommendation that the applicant be released on life licence, as a result of which the applicant remained in prison after the expiry of his sentence for forgery. The applicant was granted leave to apply for judicial review of the decision of the Secretary of State, who acknowledged that there was not a significant risk of him committing further violent offences. The Secretary of State's decision was quashed but the Court of Appeal allowed his appeal. The House of Lords dismissed the applicant's appeal. The applicant was released on licence in 1998.

Law: Article 5(1) – It was not contested that the applicant's detention after the expiry of his sentence for forgery was in accordance with a procedure prescribed by English law and otherwise lawful under English law, but this was not conclusive under the Convention. There was no material distinction on the facts between the present case and the Wynne case (Series A no. 294), in which the Court had found no violation of Article 5(4) in relation to continued detention after recall to prison of a mandatory life prisoner convicted of an intervening offence of manslaughter, the tariff (i.e. the retribution and deterrence) element of which had expired. However, having regard to the significant developments in the domestic sphere, it was appropriate to re-assess, in the light of present-day conditions, what was the appropriate interpretation and application of the Convention. A steady erosion of the scope of the Secretary of State's decision-making powers in relation to the fixing of the tariff in respect of different types of life sentence could be identified in the case-law of both the Court and the domestic courts. The developments in domestic law demonstrated an evolving analysis of the role of the Secretary of State concerning life sentences and the continuing role of the Secretary of State in fixing the tariff and in deciding on a prisoner's release following its expiry had become increasingly difficult to reconcile with the notion of separation of powers. It could now be regarded as established in domestic law that there was no distinction between mandatory life prisoners, discretionary life prisoners and juvenile murderers as regards the nature of tariff-fixing, which was a sentencing exercise. The mandatory life sentence did not impose imprisonment for life as a punishment; rather, the tariff represented the element of punishment. In the present case, the applicant had to be regarded as having exhausted the punishment element for his offence of murder and his continued detention after expiry of the sentence for forgery could not be regarded as justified by his punishment for murder. Nor, in contrast to the position in the Weeks case, was the detention justified on the ground of danger to the public. Consequently, there was no sufficient causal connection between the possible commission of further non-violent offences and the original sentence for murder in 1967. A decision-making power by the executive to detain on the basis of perceived fears of future non-violent criminal conduct unrelated to the original murder conviction did not accord with the spirit of the Convention.

Conclusion: violation (unanimously).

Article 5(4) – The Secretary of State's role in fixing the tariff is a sentencing exercise and not the administrative implementation of the sentence of the court. After the expiry of the tariff, continued detention depends on elements of dangerousness and risk associated with the objectives of the original sentence for murder, elements which may change with the course of time, raising new issues of lawfulness. It could no longer be maintained that the original trial and appeal proceedings satisfied, once and for all, issues of the compatibility of subsequent detention of mandatory life prisoners with the provisions of Article 5(1). From the expiry of his sentence for forgery until his release, the lawfulness of the applicant's continued detention was not reviewed by a body with power to release or with a procedure containing the necessary judicial safeguards.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant € 16,500 in respect of pecuniary and non-pecuniary damage. It also made an award in respect of costs and expenses.

Article 5(1)(d)

EDUCATIONAL SUPERVISION
Detention of minor in penal institution in absence of appropriate facilities: *violation*.

D.G. - Ireland (Nº 39474/98)
Judgment 16.5.2002 [Section III]

Facts: The applicant was in the care of the local authority from the age of two. Successive placements failed due to his behaviour and in 1996 he was sentenced in the United Kingdom to nine months' imprisonment. He served the latter part of his sentence in St. Patrick's Institution in Ireland. After his release, he stayed in a hostel for homeless boys. The local authority considered that his needs would be met by a high support therapeutic unit for 16-18 year olds but no such unit existed in Ireland. The High Court appointed a guardian *ad litem* and gave the applicant leave to apply for judicial review for a declaration that the local authority had deprived him of his constitutional rights by failing to provide suitable care and accommodation and for an injunction directing the authority to provide such care and accommodation. On 27 June 1997 the court, noting that there was no secure unit in Ireland where the applicant could be detained and looked after, with "considerable reluctance" ordered his detention in St. Patrick's for three weeks, subject to certain conditions. The applicant's appeal was rejected by the Supreme Court, which held that the High Court had jurisdiction to order his detention in a penal institution and that it had properly exercised that jurisdiction. The High Court subsequently continued the applicant's detention, initially until 23 July and then until 28 July, when new accommodation identified by the local authority was to be ready. The applicant was duly released and placed in the new accommodation, from which he later absconded. He was arrested and brought before the High Court, which ordered his detention in St. Patrick's until 28 August, when he was released into the custody of the local authority on the same terms as previously. In February 1998 he was placed in new temporary accommodation.
Law: Article 5(1)(d) – As the orders placing the applicant in St. Patrick's were made by the High Court, which did not have custodial rights over him, Article 5 applied. Moreover, the applicant was "deprived of his liberty" from 27 June to 28 July 1997. Although he turned 17 during that period and could no longer have been required to attend school, he remained a "minor"under Irish law and the question was whether his detention was lawful and "for the purpose of educational supervision" within the meaning of Article 5(1)(d). The domestic lawfulness of the orders was not in doubt, given the well-established inherent jurisdiction of the High Court to protect a minor's constitutional rights. As to lawfulness under the Convention, the Court's case-law (see Bouamar v. Belgium judgment, Series A no. 129) provided that if Ireland chose a constitutional system of educational supervision implemented through court orders to deal with juvenile delinquency, it was obliged to put in place appropriate institutional facilities which met the security and educational demands of that system. While "educational supervision" must not be equated rigidly with notions of classroom teaching, St. Patrick's did not constitute "educational supervision", being a penal institution which provided optional educational facilities of which the applicant did not avail himself. Moreover, the applicant's detention there could not be regarded as an "interim custody measure" followed speedily by an educational supervisory regime, as the first two detention orders were not based on any specific proposal for his secure and supervised education, while the third order was based on a proposal for temporary accommodation which turned out to be neither secure nor appropriate. Even if it could be assumed that the applicant's detention from February 1998 was secure and appropriate, it was put in place more than six months after his release from St. Patrick's. Accordingly, the detention between 27 June and 28 July 1997 was not compatible with Article 5(1)(d) and as no other basis for the detention had been advanced there had been a violation of Article 5(1).
Conclusion: violation (unanimously).
Article 5(5) – As the detention orders were lawful under domestic law and the Convention has not been incorporated into Irish law, the applicant had no enforceable right to compensation.

Conclusion: violation (unanimously).
Article 3 – The High Court's intent was protective and it could not be concluded that the applicant's detention constituted "punishment". Nor did the evidence submitted support the conclusion that the detention of the applicant, as a minor not charged or convicted of any offence, in a penal institution could in itself constitute inhuman or degrading treatment, taking into account that it had a regime adapted to juvenile detainees and that the regime was tempered by the specific conditions imposed by the High Court. Furthermore, the fact that the applicant was subject to prison discipline did not in itself give rise to any issue under Article 3, in the light of his history of criminal activity, self-harm and violence to others. There was no psychological, medical or other expert evidence substantiating the mental and physical impact of the regime alleged by the applicant and no evidence that he had been ill-treated by fellow-inmates on account of his unique status. Finally, as to his complaint that he was handcuffed for court appearances, the fact that he was a minor was not sufficient to bring this within the scope of Article 3, the intent being reasonable restraint.
Conclusion: no violation (unanimously).
Article 8 – The unlawfulness of the applicant's detention did not give rise to any separate issue under Article 8, given the reasoning under Article 5. Moreover, even assuming the restrictions and limitations of detention in St. Patrick's constituted an interference with the applicant's private and family life, they would be proportionate to the legitimate aims. Finally, the handcuffing of the applicant did not disclose any interference with the rights guaranteed under Article 8.
Conclusion: no separate issue/no violation (unanimously).
Article 14 – Any difference in treatment between minors and adults requiring containment and education would not be discriminatory, stemming as it does from the protective regime applied to minors in the applicant's position. There was accordingly an objective and reasonable justification. As to the applicant's situation in comparison to that of other minors, no separate issue arose, given that the issue was the same as that lying at the heart of the complaint under Article 5.
Conclusion: no violation/no separate issue (unanimously).
Article 41 – The Court awarded the applicant € 5,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Absence of review of lawfulness of continuing detention on the basis of a mandatory life sentence, following expiry of a fixed sentence: *violation*.

STAFFORD - United Kingdom (Nº 46295/99)
Judgment 28.5.2002 [Grand Chamber]
(See Article 5(1), above).

ARTICLE 6

Article 6(1) (civil)

RIGHT TO A COURT
Prolonged non-enforcement of court decisions by the authorities: *violation*.

BURDOV - Russia (Nº 59498/00)
Judgment 7.5.2002 [Section I]

Facts: In 1991 the applicant was awarded compensation on the basis of an expert report linking his poor health to exposure to radiation during his participation in emergency operations at the Chernobyl nuclear plant. As the compensation had not been paid, the applicant brought proceedings against the local social security service. In March 1997 the City Court awarded him the outstanding compensation and a further sum in the form of a penalty. In 1999 the applicant brought an action against the social security service to challenge a reduction in the amount of the monthly payment and to recover the unpaid compensation. The City Court upheld his claim. However, the Bailiff's Service, which instituted enforcement proceedings in respect of both judgments, informed the applicant that the payments could not be made because the social security service was underfunded. This was confirmed by the Regional Department of Justice, which subsequently informed the applicant that funds had been allocated from the federal budget. In March 2000 the City Court ordered the indexation of the amount of the penalty awarded in March 1997, which had still not been paid. In March 2001 the social security service paid the outstanding sum to the applicant.
Law: Victim status – While the applicant has been paid the outstanding debt in accordance with the domestic court's judgments, the payment, which was made only after communication of the application to the Government, did not involve any acknowledgement of the violations alleged or afford adequate redress. The applicant could therefore still claim to be a victim.
Article 6(1) – It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment and, while a delay in the execution of a judgment may be justified in particular circumstances, it may not be such as to render Article 6(1) devoid of its purpose. The applicant's interest should not have been prejudiced by the alleged financial difficulties experienced by the State. By refraining for years from taking the necessary measures to comply with the final judgments, the authorities deprived Article 6(1) of all useful effect.
Conclusion: violation (unanimously).
Article 1 of Protocol No. 1 – The City Court's judgments provided the applicant with enforceable claims. As the judgments had become final and enforcement proceedings had been instituted, the impossibility of obtaining their execution constituted an interference with the applicant's right to peaceful enjoyment of his possessions. By failing to comply with the judgments, the national authorities had prevented the applicant from receiving the money he could reasonably expect to receive. The Government had not advanced any justification for this interference and lack of funds could not justify such an omission.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant € 3,000 in respect of non-pecuniary damage.

ACCESS TO COURT
Petition to Finnish court written entirely in Russian: *inadmissible*.

IVANOVA - Finland (N° 53054/99)
Decision 28.5.2002 [Section IV]

In June 1995 the applicant, a Russian national, put her car in a bonded warehouse at Helsinki harbour before leaving the country. On her return in December 1995 she was told that someone had already collected her car. She unsuccessfully lodged petitions with the District Customs and the harbour authorities. In August 1998, by a letter written entirely in Russian, she filed an action with the District Court. The District Court forwarded the letter to the District Customs which informed the applicant that they were not responsible for bonded warehouses and that she should contact the City of Helsinki. The applicant complains that she was denied access to a court and discriminated against as a foreigner and contends that the District Court must have understood her complaint, since the matter was referred to the District Customs. She also claims that she could not instruct a lawyer in Finland, as those she contacted asked for large fees to be paid in advance, which she could not afford.
Inadmissible under Article 6(1) and 14: The rules of the language to be used for appeals are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. However, these rules, or their application, should not prevent litigants from making use of an available remedy. Furthermore, although Article 6(1) does not guarantee a right to free legal aid in all civil cases, the unavailability of legal aid may under certain circumstances give rise to a violation of the right of access to court and to a fair hearing. In the present case, the applicant did not receive any formal decision from the District Court declaring her intended action inadmissible. There was no indication that the District Court arbitrarily failed to provide the applicant with the possibility of having her civil claim examined. She was free to apply for a summons against the intended other party as long as her submissions were in either of the official languages of Finland. Although she had no absolute right to cost-free proceedings, she was nevertheless free to seek a grant to that effect as well as the appointment of a lawyer speaking either or both official languages. She could also appeal against any refusal to grant her legal aid. In conclusion, she was not denied access to court: manifestly ill-founded.

ACCESS TO COURT
Rejection of a cassation appeal by the Supreme Court as out of time although it had been lodged with the Madrid duty court : *admissible*.

STONE COURT SHIPPING COMPANY, S. A. - Spain (N° 55524/00)
Decision 7.5.2002 [Section IV]

In December 1996, the Audiencia Nacional dismissed an appeal lodged by the applicant company against a decision rejecting an application for compensation made by the company against the State. In a decision notified on 6 March 1997, the Audiencia Nacional took formal note of the applicant company's wish to appeal on a point of law and summoned the parties to appear before the Supreme Court to submit the appeal within the statutory period of 30 working days. On Friday 11 April 1997, the day before the expiry of the set deadline, the applicant company submitted its appeal to the duty court. The appeal was registered by the registry of the Supreme Court on Monday 14 April 1997. The applicant company's appeal was declared inadmissible by the Supreme Court, which declared that the appeal had been submitted after the deadline had expired. The court pointed out that, in accordance with the applicable law, the only appeals which could be lodged with the duty courts were those for which the submission deadline expired on the same day as they were submitted to these courts, and outside the hours during which the court with which they were to be lodged held

its hearings. The Supreme Court did not accept the applicant's *de súplica* appeal, and its constitutional appeal was dismissed.
Admissible under Article 6(1).

FAIR HEARING
Unavailability of legal aid for defendant in defamation action: *no violation*.

McVICAR - United Kingdom (Nº 46311/99)
Judgment 7.5.2002 [Section I]

Facts: The applicant, a journalist and broadcaster, published a magazine article in which he suggested that a well-known athlete used banned performance-enhancing drugs. The athlete brought an action for defamation in the High Court against the applicant, the magazine's editor and the publishing company. While the editor and the publishing company were represented by a lawyer specialising in defamation and media litigation, the applicant represented himself during the greater part of the proceedings because he could not afford to pay legal fees and legal aid was not available for defamation actions. An order was made that the parties should exchange statements of witnesses of fact within a specified time-limit and could each call a number of expert witnesses, provided the substance of the experts' evidence was disclosed by a specified date. The applicant served one document purporting to be a statement of the nature of evidence to be adduced by another athlete and another document which he mistakenly believed to be acceptable in place of an expert's report. By the time of the trial, the applicant was the sole defendant, the editor having died and the publishing company being insolvent. The applicant instructed the lawyer who had acted for the other defendants. The lawyer then endeavoured to obtain full statements from the two witnesses. A statement obtained from the expert witness was served one hour before the commencement of the trial. However, the judge refused to admit either that evidence or the evidence of the other athlete and the applicant's appeal against those rulings was dismissed by the Court of Appeal. The applicant was not represented at the main trial in the High Court, due to lack of funds. The jury found that the article bore the meaning that the athlete in question was "a cheat who ... used banned performace-enhancing drugs" and that the applicant had not proved that this was substantially true. Although the plaintiff had not sought damages, the applicant was ordered to pay the costs of the action and an injunction was issued, prohibiting him from repeating his allegations.
Law: Article 6(1) – The question whether or not this provision requires the provision of legal representation will depend on the specific circumstances of the case and, in particular, on whether the individual would be able to present his case properly and satisfactorily without the assistance of a lawyer. In the present case, the fact that the proceedings were held in the High Court before a judge and jury was not conclusive. Similarly, the fact that the burden was on the applicant to prove the truth of his allegations could not automatically require the provision of legal aid: the applicant was a well-educated and experienced journalist capable of formulating cogent argument. Moreover, the rules pursuant to which evidence was excluded were clear and unambiguous, as was the order setting out the timetable for the exchange of statements and expert reports. Thus, the applicant should have understood what was expected of him in that connection. As far as the law of defamation was concerned, it was not sufficiently complex to require a person in the applicant's position to have legal assistance, the outcome of the action turning on whether he could show on the balance of probabilities that the allegations were substantially true. Furthermore, the applicant was represented in the period prior to commencement of the trial by the lawyer who had acted for the co-defendants. As to the exclusion of evidence, it was apparent that the applicant's failure to comply with the procedural requirements was not the only factor which weighed in the judges' minds when deciding to exercise their discretion to exclude the evidence. Finally, while the trial must have taken a greater toll on the applicant than it would have on an experienced lawyer, his emotional involvement was not incompatible with the degree of

objectivity required by advocacy in court, having regard to his background and experience. In all the circumstances, the applicant was not prevented, by reason of his ineligibility for legal aid, from presenting his defence effectively or denied a fair trial.
Conclusion: no violation (unanimously).
Article 10 – (a) In the light of the conclusion reached under Article 6, the ineligibility of the applicant for legal aid did not interfere with his right to freedom of expression. As to the exclusion of evidence, this was not based on the simple ground that the rules and order had not been complied with but was ordered in the exercise of judicial discretion following detailed analysis of the competing public interests at stake and there were no grounds for criticising the way in which the judges balanced those interests. Therefore, to the extent that the exclusion of evidence interfered with the applicant's right to freedom of expression, the interference was necessary for the protection of the plaintiff's rights. (b) As to the costs order and injunction, these were not disproportionate, in the light of the applicant's failure to prove that the allegations were substantially true. To the extent that the order and injuction were capable of discouraging the participation of the applicant and other journalists in debates over matters of public concern in the future, this was necessary for the protection of the reputation and rights of the plaintiff. (c) As to the burden of proof, the potential consequences of the allegations for the plaintiff were very grave. There were a number of factors which indicated that the applicant was concerned with verifying the truth or reliability of the allegations to a high standard only after the event, once defamation proceedings had been commenced. In all the circumstances, the requirement that the applicant prove that the allegations were substantially true constituted a justified restriction on his freedom of expression.
Conclusion: no violation (unanimously).

FAIR HEARING
Amendment of law defining right to restitution of confiscated property while proceedings pending, resulting in a less favourable right: *communicated*.

SIRC - Slovenia (N° 44580/98)
Decision 16.5.2002 [Section III]

The applicant's father owned a textile factory before the Second World War. In 1941 the movable assets of the business and the premises were confiscated by the German occupying forces. The premises were burnt down by the occupying forces in 1945. Following the end of the occupation, a law was enacted in Yugoslavia whereby, *inter alia*, owners whose property had been confiscated by the occupying forces were entitled to immediate restitution of their property and were offered the possibility to claim compensation. The land on which the factory had been as well as a small part of movable assets were returned to the applicant's father. However, in 1947 the Supreme Court convicted the applicant and his father of collaborating with Western powers. The applicant was sentenced to death, later commuted to 20 years' imprisonment, and his father to 10 years' imprisonment. Their sentences also provided for the transfer of their property to the State. The applicant's father died soon after having been released in 1950 and the applicant, released in 1954, inherited his estate. In 1991 the Supreme Court ordered the retrial of persons convicted in 1947 for collaboration with Western powers. Following the withdrawal of the charges by the Public Defender, the first instance court quashed the applicant's conviction. Accordingly, he became entitled to the restitution of, and compensation for, all assets confiscated following the 1947 sentence. He lodged a formal request with the Minister of Justice to obtain enforcement of his right to restitution and compensation. Having received no answer, he started proceedings in the Basic Court in May 1992. His claims having been rejected, he lodged an appeal with the Higher Court, which dismissed it. The applicant reiterated his request to the Ministry of Justice several times. In April 1994 he initiated new proceedings in respect of the confiscated assets that had not been listed in 1947. While the proceedings were pending, the Act which defined the applicant's right to restitution and compensation was amended in a way which, according

to the applicant, made this right substantially less favourable. In September 2001 the Regional Court dismissed his claims. He lodged an appeal against this decision. These proceedings are still pending. As regards the claims regarding the assets listed in 1947, proceedings started in April 1993 and are still pending. The applicant started several other proceedings in respect of related matters.
Communicated under Article 6(1) (length and fairness of proceedings), 13 and 14 of the Convention, and Article 1 of Protocol N° 1.

IMPARTIAL TRIBUNAL
Impartiality of Gaming Board and scope of judicial review: *violation*.

KINGSLEY - United Kingdom (Nº 35605/97)
Judgment 28.5.2002 [Grand Chamber]

Facts: The applicant was managing director of a company which owned several licensed casinos. Following raids by the police and the seizure of a large quantity of documents, the Gaming Board, a statutory body which monitors the gaming industry, lodged objections to the annual renewal of the company's licences and applied for the cancellation of its existing licences. The applicant and other executive directors of the company subsequently resigned. New licenses were granted by the Licensing Magistrates after a hearing at which the Gaming Board expressed its support for the application, referring to the fact that the executive directors primarily responsible for the matters about which the Board had been concerned had left the company. The applicant was later informed by the Gaming Board that it was minded to revoke his certificate of approval as a fit and proper person to hold a management position in the gaming industry. After a hearing before a panel of three members of the Gaming Board, the applicant was informed that he was not considered to be a fit and proper person and that his certificate of approval was to be revoked. The effect of this was that the applicant was unable to obtain employment in any sector of the gaming industry. He sought leave to apply for judicial review, on the ground that the panel had been biased, since the Gaming Board had already expressed the view that he was not a fit and proper person at the hearing before the Licensing Magistrates. Moreover, an internal decision of the Gaming Board disclosed in the course of the proceedings recorded that, prior to the examination of his case, the Board, including the members of the panel, had concluded that the applicant was not a fit and proper person. The High Court accepted that there was an appearance of bias but found that there was no real danger of injustice. It added that, in accordance with the "doctrine of necessity", the decision of the panel had to stand: since the matter could not be delegated to an independent tribunal, the decision would have to be taken by the Gaming Board itself. The Court of Appeal, agreeing with this analysis, refused leave to appeal.
Law: Article 6(1) – In its judgment of 7 November 2000, the Chamber had found that the proceedings had determined the applicant's civil rights and obligations, so that Article 6(1) was applicable. It had considered that the panel had not presented the necessary appearance of impartiality and had had concluded that, since the domestic courts were unable to remit the case for a first decision by the Gaming Board or by another independent tribunal, they did not, in the particular circumstances of the case, have "full jurisdiction" when they reviewed the panel's decision. It had therefore found a breach of Article 6(1). The applicant, in his request that the case be referred to the Grand Chamber, had referred only to issues under Article 41 and had not raised any question relating to the Chamber's findings on the merits of the case under Article 6(1). Moreover, the Government had confirmed that they accepted the Chamber's ruling in that respect. While cases referred to the Grand Chamber embrace all aspects of the application examined by the Chamber in its judgment, and not just the issues disputed by the parties, there was no reason to depart from the Chamber's findings in connection with Article 6(1). There had therefore been a violation of that provision.
Conclusion: violation (unanimously).

Article 41 – The Court concluded, by ten votes to seven, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It made awards in respect of costs and expenses.

Article 6(1) (criminal)

CRIMINAL CHARGE
Temporary withdrawal of driving licence pending investigation into accident: *admissible*.

D.K. - Slovakia (N° 41263/98)
Decision 14.5.2002 [Section IV]

The applicant's driving licence was withdrawn pending the investigation into an accident which he caused whilst intoxicated. His request for judicial review of the administrative decision ordering the withdrawal of his driving licence was rejected on the ground that no review of such procedural decisions was possible. The applicant was subsequently indicted and the District Court issued a penal order convicting him and imposing a suspended prison sentence. He was also disqualified from driving for two and half years. He challenged the order but the court issued a judgment in the same terms as the order. On the applicant's appeal, the Regional Court quashed the judgment. The District Court then convicted the applicant after having heard several witnesses, including the applicant, and taken into account an expert opinion. The applicant's further appeal was dismissed.
Admissible under Article 6(1).

FAIR HEARING
Annulment of a final acquittal following an appeal by the Procurator General : *communicated*.

STANCA - Romania (N° 59028/00)
[Section II]

In a judgment of 1991, the applicant, who was at that time a member of the police force, was sentenced to four years' immediate imprisonment for corruption and to two years' imprisonment for being an accomplice to theft. After trial and appeal, the judgment was confirmed and became final. In a judgment of 1995, the Bucharest court martial, to which the applicant applied for a review of his conviction, quashed the final conviction decision after having heard further witnesses, and acquitted the applicant. This judgment became final. The public prosecutor's office requested annulment of the final decision of 1995, arguing that the Bucharest court martial lacked jurisdiction. The Supreme Court of Justice accepted the appeal and sent the case for trial by another court. In a judgment of 1998, that court decided on the merits of the case and dismissed the applicant's application for review. The applicant's appeal and his application to the Supreme Court of Justice were dismissed. Thus the 1991 conviction by the Bucharest court martial was confirmed.
Communicated under Article 6(1).

FAIR HEARING
Failure of trial courts to hear accused : *communicated*.

ILIŞESCU and CHIFOREC - Romania (N° 77364/01)
[Section II]

A criminal complaint was lodged against the applicants on grounds of violence, threats and insults. The applicants, properly summoned to the hearing and present, were nevertheless not heard in person by the judge, in violation of the provisions of the applicable domestic law. The applicants were sentenced by the court of first instance to three months' imprisonment for violence, and were fined one million lei for making threats. The judge took the view that the medical certificates of the party claiming damages and the statements made by the witnesses for the prosecution were sufficient evidence of their guilt. In the court of second instance, the appeal judge took the view that all the witnesses and all the necessary evidence had been used in deciding the case and were sufficient for that purpose. The application for the judgment to be set aside lodged by the applicants was dismissed.
Communicated under Article 6(1).

IMPARTIAL TRIBUNAL
Conviction for contempt of court by the court against which contempt perpetrated: *communicated*.

KYPRIANOU - Cyprus (N° 73797/01)
Decision 7.5.2002 [Section II]
(see Article 10, below).

ARTICLE 7

NULLA POENA SINE LEGE
Conviction for public defamation of recognised members of the Resistance : *communicated*.

CHAUVY and others - France (N° 64915/01)
Decision 7.5.2002 [Section II]
(see Article 10, below).

ARTICLE 8

PRIVATE LIFE
Conviction for engaging in extremely violent sadomasochistic acts between consenting adults in private : *communicated*.

K.A. and A.D. - Belgium (N° 42758/98 and N° 45558/99)
Decision 23.5.2002 [Section I]

The first applicant, a judge, and the second, a doctor, made frequent visits to a sadomasochist club, the owners of which were the subject of a judicial investigation, which was extended to the applicants. The applicants were sent for trial by the Antwerp Court of Appeal, which found them, together with another three persons, guilty of deliberate assault, and found the first applicant guilty of incitement to immorality or to prostitution. A suspended sentence of

one year's imprisonment and a fine of 2 478 EUR were imposed on the first applicant, who was banned for five years from holding any public office, employment or appointment. A suspended sentence of one month's imprisonment and a fine of 185 EUR were imposed on the second applicant. The Court of Appeal found inter alia in their case that they had, as shown by video recordings seized during the investigation, engaged in extremely violent and repeated sadomasochistic practices on premises specially rented or prepared for this purpose. Although these practices had had no lasting consequences, other than a few scars, they were, in the opinion of the Court of Appeal, particularly serious and likely to give rise to serious injuries and lesions, on account of the violence used on this occasion, as well as to the pain, distress and humiliation inflicted on the victim. The Court of Appeal expressed doubts, but without providing responses to these, about whether practices committed outside the conjugal home could be regarded as relating to "private life" within the meaning of Article 8 of the Convention. It in any case took the view that these facts were punishable because they were against public morality and conflicted with respect of human dignity, on account of their very serious, shocking, violent and cruel nature. The claim that the facts concerned were merely a form of sexual experience in the context of ritual sadomasochistic play among consenting adults in an enclosed place made no difference. The Court of Cassation confirmed the criminal classification of the facts. It took the view that sadomasochistic practices came within the domain of "private life", and regarded it as justified under Article 8(2) to treat as an offence any acts comprising a deliberate assault on a person, even in the context of sadomasochistic practices. The first applicant was subsequently removed from office as a judge.
Communicated under Articles 6(1) and 8.

FAMILY LIFE
Deportation of married illegal immigrants with their children, while adult relatives remained in the deporting country: *inadmissible*.

SULEJMANOVIC and SULTANOVIC - Italy (N° 57574/00)
Decision 14.3.2002 [Section I]
(see Article 3, above).

SEJDOVIC and SULEJMANOVIC - Italy (N° 57575/00)
Decision 1.3.2002 [Section I]
(see Article 3, above).

HOME
Search of applicant's business premises and home in relation to criminal proceedings against his son: *admissible*.

BUCK - Germany (N° 41604/98)
Decision 7.5.2002 [Section III]

The applicant's son was fined for having exceeded the speed limit in a car belonging to the applicant's company. The son contested the administrative decision imposing the fine, and pleaded not guilty before the District Court. The applicant, who had been summoned as a witness, refused to give evidence, as he was entitled to do as a family member. The court subsequently issued a search warrant concerning the premises of the applicant's company and his home. The search was carried out and the seizure of several documents was ordered by the District Court. The appeals lodged by the applicant against the search warrant and the seizure order were unsuccessful. The Federal Constitutional Court refused to entertain the applicant's subsequent constitutional complaint.
Admissible under Articles 6(1) and 8.

ARTICLE 10

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

ALTAN - Turkey (Nº 32985/96)
Judgment 14.5.2002 [Section I (former composition)

The applicant, a journalist, was convicted of incitement to hatred and hostility. The parties reached a friendly settlement providing for an *ex gratia* payment to the applicant and including the following statements by the Government:

- The Court's rulings against Turkey in cases involving prosecutions under Article 312 of the Penal Code or under the provisions of the Prevention of Terrorism Act clearly show that Turkish law and practice urgently need to be brought into line with the Convention's requirements under Article 10 of the Convention. This is also reflected in the interference underlying the facts of the present case.
- The Government undertake to this end to implement all necessary reform of domestic law and practice in this area, as already outlined in the National Programme of 24 March 2001.
- The Government refer also to the individual measures set out in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106), which they will apply to the circumstances of cases such as the instant one.

FREEDOM OF EXPRESSION
Unavailability of legal aid for defendant in defamation action, exclusion of evidence and burden of proof: *no violation*.

McVICAR - United Kingdom (Nº 46311/99)
Judgment 7.5.2002 [Section I]
(see Article 6(1), above).

FREEDOM OF EXPRESSION
Conviction of lawyer for contempt of court: *communicated*.

KYPRIANOU - Cyprus (N° 73797/01)
Decision 7.5.2002 [Section II]

The applicant, a lawyer, was representing an accused in a murder trial before an Assize Court. After he had asked what he considered an important question while conducting the cross-examination of a prosecution witness, the court interrupted him and found that his question went beyond what could be asked at that stage of the trial. The applicant sought permission to withdraw from the case on the ground that the court had prevented him from continuing the cross-examination on points which he felt were crucial for the defence. He added that while he was cross-examining the witness, the members of the court had been talking to each others and exchanging notes, which had destabilised him and given him the impression that the cross-examination was under the secret scrutiny of the court. At that point the court held that what the applicant had said and particularly the tone which he had used constituted contempt

of court. After a short adjournment, the Assize Court sentenced the applicant to five days' imprisonment, which he duly served. His appeal was dismissed by the Supreme Court.
Communicated under Articles 6(1) (impartial tribunal), 6(2), 6(3) (information on nature and cause of accusation, adequate time and facilities to prepare defence) and 10.

FREEDOM OF EXPRESSION
Conviction for public defamation of recognised members of the Resistance: *communicated*.

CHAUVY and others - France (N° 64915/01)
Decision 7.5.2002 [Section II]

The first applicant wrote a book entitled "Aubrac : Lyon 1943", which was published in 1997 by Editions Albin Michel, the third applicant. The second applicant is the chairman of the publishing house. The book looks at historical events dating from World War II, relating to the French Resistance. It focuses particularly on one of the period's main areas of uncertainty, the meeting held at Caluire, one of special importance to the history of the French Resistance. It was in fact on 21 June 1943 that Klaus Barbie, regional head of the Gestapo, arrested the main leaders of the Resistance, who had gathered in Caluire, a suburb of Lyon. Among those arrested that day was Raymond Aubrac, who managed to escape in the autumn of 1943. The book's author tends to challenge what he describes as the official truth about this major episode of the Second World War, as related inter alia by Mr and Mrs Aubrac in the media. Thus the book has an appendix containing a memoir written by Klaus Barbie, known in French as the "testament Barbie", and the author bases numerous questions on a comparison between this document and Mr and Mrs Aubrac's account of the historical events. The Aubracs, in their capacity of former members of the Resistance movement, took proceedings against the three applicants in their capacities of person responsible, accomplice and party civilly liable for the offence of libel. The Paris Criminal Court took the view in its judgment that the book as a whole, and the passages challenged in particular, cast doubt on the honour and reputation of the Aubracs and constituted libel through the reproduction of libellous claims or allegations. The author's comments constituted libel through insinuation, as attempts were made to persuade readers that the most serious questions overrode the certainties previously believed. The judgment also stated that the libellous claims were deemed to have been made in bad faith, and that the book's author could not be credited with having written his account in good faith. On the basis of the Press Act of 29 July 1881, the court found the first two applicants - as person responsible and accomplice respectively - guilty of libelling the Aubracs, viewed in their capacity of members of a recognised Resistance movement. The court imposed fines on the second applicant, as the bearer of principal responsibility, and the first, as an accomplice. It also ordered them jointly to pay damages. The applicants appealed. The Court of Appeal confirmed the judgment in its entirety, expressing the view, inter alia, that the whole of the first applicant's argument tended to give readers the idea that the Aubracs had been traitors. The court dismissed the applicants' arguments challenging the status of the law applied, stating that this law had been passed some forty years ago and had been the object of stable and unambiguous case-law of the Supreme Court for around twenty years. The Court of Cassation dismissed the applicants' appeal.
Communicated under Articles 7 and 10.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Prohibition order preventing Gypsy-Romany Fair from taking place: *inadmissible*.

THE GYPSY COUNCIL and others - United Kingdom (N° 66336/01)
Decision 14.5.2002 [Section IV]

The first and second applicants are organisations representing the interests of the Gypsy-Romany community, of which the third and fourth applicants are members. The Horsmonden Horse Fair, a significant cultural and social event in the life of the Gypsy-Romany community in the United Kingdom, has been held every year at the Horsmonden Village Green for the last 50 years. In August 2000 the Borough Council decided to issue a prohibition order on the ground that the fair could result in serious disruption to the life of the community in the vicinity of the area where the fair was to take place. On 4 September 2000, having obtained the Secretary of State's approval, the Borough Council issued the prohibition order. Notwithstanding the prohibition order, the police gave consent to the conduct of a limited parade on 10 September 2000 in Horsmonden. On 5 September 2000 the first applicant initiated proceedings in the High Court against the prohibition order. Leave to apply for judicial review was granted but the application was dismissed om 7 September 2000, on the ground that sufficient relevant information was before the Borough Council and the Secretary of State to enable them properly to exercise their discretion in deciding whether to issue the order. The judge stated that the Borough Council was entitled to think that the need to avoid disruption to the local settled community should take priority. He considered that the fact that the Gypsy-Romany community could go to an alternative site 20 miles away, which was approved by the local authority and the police, limited the impact of the order. He refused leave to appeal. On 10 September 2000 a parade took place at Horsmonden. The police limited it to only 60 persons, while measures taken to control entry to the village severely restricted the numbers of persons from the Gypsy-Romany community wishing to watch the parade. A fair took place peacefully the same day on the alternative site.
Inadmissible under Article 11: The prohibition order interfered with the applicants' right of freedom of assembly. However, this restriction was prescribed by law and pursued the legitimate aim of preventing disorder and protecting the rights of others. As to the necessity of the measure was necessary, the exercise of the right to freedom of assembly is not absolute and where large gatherings are concerned the impact on the community as a whole may legitimately be taken into consideration. In the present case, the fair had been growing in size through the years and in 2000 the police had identified concerns about the disruption to the local community caused, *inter alia*, by the "sheer volume" of visitors, indiscriminate parking, littering, a background level of increased crime and road closures. Besides, the authorities made available a site some 20 miles from Horsmonden, where large numbers of persons could assemble without causing disruption. Moreover, the police permitted a limited procession to take place in Horsmonden. While the applicants argued that it would have been possible to allow the fair to take place as usual subject to reasonable conditions regulating car parking, ensuring sufficient stewards, policing and litter collection, it would not have necessarily prevented the disorder and disruption which was anticipated. In these circumstances, the response of the authorities was proportionate, striking a fair balance between the rights of the applicants and those of the community in general: manifestly ill-founded.

ARTICLE 13

EFFECTIVE REMEDY
Absence of effective domestic remedy in respect of the length of criminal proceedings : *violation*.

NUVOLI - Italy (N° 41424/98)
Judgment 16.5.2002 [Section I]

Facts: In February 1994, a cheque which the applicant intended to cash at a bank was seized by the fraud squad. In December 1994, on suspicion of having, with another 27 persons, set up a criminal association, the applicant was arrested by the police. The public prosecutor's office requested his committal for trial in November 1995. In May 1996, the preliminary investigating judge allowed the applicant's request for his proceedings to be separated from those of his 27 co-defendants. The hearing was automatically postponed on numerous occasions. In December 1996, an order was made for an expert report on the disputed banking instrument. Eleven hearings took place between October 1998 and October 1999, after which the applicant was acquitted by a judgment, the text of which was deposited with the registry in January 2000.
Law: Article 6(1) – The beginning of the proceedings to be examined is the date from which the applicant suffered significant effects on his situation, namely the date of the seizure of the cheque which he wished to cash at the bank in February 1994. The proceedings concluded when the judgment was deposited with the registry, in January 2000. They thus lasted for five years and over ten months before a single instance. And a delay of approximately three years and four months in total is imputable to the government.
Conclusion: violation (unanimously).
Article 13 – In pursuance of Article 32 of the Convention, the Court decides on any dispute relating to its jurisdiction. Bearing sole responsibility for the application of the law to the facts of the case, the Court is not bound by the application called for by applicants or by governments. Within the limits of the framework laid down by the decision on the admissibility of an application, the Court may deal with any question of fact or of law arising during the proceedings before it. In the instant case, when the application was communicated, the government had been invited to submit observations about the complaints based on Articles 6(1) and 13; in its observations in reply, the government put forward legal arguments relating to these two articles, and then the Court declared the application admissible in its entirety, not dismissing any of the complaints. Thus, although the text of the decision mentioned only the application based on Article 6(1), the decision on admissibility also covered the complaint based on Article 13, so there was cause to examine this. In this respect, the applicant did have a defensible complaint based on Article 6(1). In Italian law, the faculty of requesting the president of the court, who has a large measure of discretion and is under no obligation to give reasons for any decision to turn such a request down (a decision against which no appeal lies), to bring forward the date of the hearing, does not constitute an effective remedy. Furthermore, before the Pinto Law came into force, there was no effective remedy making it possible to complain about length of proceedings. But the Pinto Law is not applicable here, for the decision on the admissibility of the application predates the entry into force of the law. Thus the applicant had no remedy in Italian law enabling him to avail himself of his right to have his case heard "within a reasonable time".
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant € 9 000 for non-pecuniary damage.

EFFECTIVE REMEDY
Deportation on the day of notification of the expulsion order: *admissible*.

SULEJMANOVIC and SULTANOVIC - Italy (N° 57574/00)
Decision 14.3.2002 [Section I]
(see Article 3, above).

SEJDOVIC and SULEJMANOVIC - Italy (N° 57575/00)
Decision 1.3.2002 [Section I]
(see Article 3, above).

ARTICLE 34

VICTIM
Associations and spokespersons complaining of Common Positions adopted by the Council of the European Union in connection with the fight against terrorism: *inadmissible*.

SEGI and others and GESTORAS PRO-AMNISTIA and others - 15 States of the European Union (N° 6422/02 and N° 9916/02)
Decision 23.5.2002 [Section III]

The applicants are two associations and their spokespersons. The first association claims to be the Basque youth movement, while the other is a non-governmental organisation which defends human rights in the Basque country. Central investigating court No. 5 of the Audiencia Nacional in Madrid ordered, as a preventive measure, the suspension of the activities of the two associations, the first because it was considered to be "an integral part of the ETA-EKIN Basque terrorist organisation", and the second as an integral part of "the ETA Basque independence organisation". In December 2001, the Council of the European Union, within the framework of police and judicial co-operation in criminal matters among the fifteen member States, adopted Common Position 2001/930/CFSP on combating terrorism and Common Position 2001/931/CFSP on the application of specific measures to combat terrorism. The latter applies to "groups and entities involved in terrorist acts", as listed in an appendix. The list includes the names of the two applicant associations, which are, according to the list, subject only to Article 4 of the common position. In March 2002, referring inter alia to Common Position 2001/931/CFSP, the central investigating court ordered the detention in custody of eleven leaders of SEGI, including one of the applicants, on a charge of terrorism-related activities punishable under the Spanish Criminal Code.
Inadmissible under Articles 6, 6(2), 8, 10, 11 and 13, and Article 1 of Protocol No 1: The applicants consider themselves victims of a violation of these articles because of the two common positions adopted by the European Union. The case-law of the organs of the Convention relating to Article 34 concerns the domestic legislation of the States Parties to the Convention, but there are no major obstacles to its application to decisions from an international legal system such as that of the European Union. As to the applicants' status of direct or potential victim, it should be noted that the common positions come within the field of intergovernmental co-operation. Common Position 2001/930/CFSP is not directly applicable in member States, and cannot serve as a direct basis for any criminal or administrative proceedings against individuals, especially as it makes no mention of any organisation or person. As such, it does not therefore give rise to legally binding obligations for the applicants. Article 4 of the second common position is intended to strengthen judicial and police co-operation among the European Union's member States in relation to the combating of terrorism, and may therefore imply concrete measures potentially affecting the applicants, especially in the context of the inter-State police co-operation carried out through

Europol. Article 4 does not, however, add new powers which could be used against the applicants. It is only for member States that it contains an obligation to co-operate, one which, as such, is neither addressed to individuals nor directly affects them. What is more, any concrete measure adopted would be subject to the supervision of a national or international court. This also applies more specifically to the measures which may give rise to challenges under Articles 10 and 11 of the Convention. Nor do the applicants provide any evidence showing that they were subjected to specific implementing measures. The mere fact that they appeared on the list as "groups and entities involved in terrorist acts" is far too tenuous a link to justify application of the Convention. The reference concerned, in practice, which is restricted to Article 4 of the common position, is not equivalent to the committal for trial of the groups and entities concerned, and even less to the establishment of their guilt. To sum up, the applicant associations are concerned only by the closer co-operation among member States on the basis of existing powers, and therefore have to be distinguished from the persons assumed to be genuinely involved in terrorism. Furthermore, where the applicants who are individuals, are concerned, relying on Article 8 of the Convention, they do not appear on the list appended to Common Position 2001/931/CFSP. In conclusion, the situation complained of does not confer on the applicant associations, nor a fortiori on their spokespersons, the status of victims of a violation of the Convention.

HINDER THE RIGHT OF PETITION

Complaint by public authority against applicant's lawyer in domestic proceedings: *failure to comply with obligations*.

McSHANE - United Kingdom (Nº 43290/98)
Judgment 28.5.2002 [Section IV]
(see Article 2, above).

ARTICLE 41

JUST SATISFACTION

BEYELER - Italy (Nº 33202/96)
Judgment (just satisfaction) 28.5.2002 [Grand Chamber]

In a judgment of 5 January 2000 the Court held that there had been a violation of Article 1 of Protocol No. 1, as the applicant had had to bear a disproportionate and excessive burden resulting from the circumstances in which the State exercised its right of pre-emption in respect of a painting which the applicant had acquired. The Court reserved the question of just satisfaction.

Article 41 – Having regard to the diversity of factors to be taken into consideration for the purposes of calculating the damage and to the nature of the case, the Court deemed it appropriate to fix, on an equitable basis, an aggregate sum which took account of the various considerations it had identified. Accordingly, the Court decided to award the applicant 1,300,000 euros (EUR) in compensation for the damage sustained, including ancillary costs and costs incurred before the domestic courts. It also awarded 55,000 euros in respect of the costs incurred in the proceedings before the Court.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 39):

ČONKA - Belgium (N° 51564/99)
Judgment 5.2.2002 [Section III]

LANGLOIS - France (Nº 39278/98)
L.L. - France (Nº 41943/98)
H.L. - France (Nº 42189/98)
BELJANSKI - France (Nº 44070/98)
Judgments 7.2.2002 [Section I]

UYGUR - Turkey (Nº 29911/96)
DINLETEN - Turkey (Nº 29699/96)
METINOĞLU - Turkey (Nº 29700/96)
ÖZCAN - Turkey (Nº 28701/96)
SARITAÇ - Turkey (Nº 29702/96)
ZÜLAL - Turkey (Nº 29703/96)
ÇILENGIR - Turkey (Nº 29912/96)
BINBIR - Turkey (Nº 29913/96)
E.K. - Turkey (Nº 28496/95)
Judgments 7.2.2002 [Section III]

ABDURRAHMAN ORAK - Turkey (N° 31889/96)
Judgment 14.2.2002 [Section I]

TOURTIER - Portugal (Nº 44298/98)
Judgments 14.2.2002 [Section III]

ZAHEG - France (Nº 46708/99)
BOISEAU - France (Nº 53118/99)
Judgments 19.2.2002 [Section II]

GHIDOTTI - Italy (Nº 28272/95)
Judgment 21.2.2002 [Section I]

YILMAZ and others - Turkey (Nº 26309/95, 26310/95, 26311/95 et 26313/95)
MARKS & ORDINATEUR EXPRESS - France (Nº 47575/99)
Judgments 21.2.2002 [Section III]

ZIEGLER - Switzerland (Nº 33499/96)
VICTORINO D'ALMEIDA - Portugal (Nº 43487/98)
Judgment 21.2.2002 [Section IV (former composition)]

H.M. - Switzerland (Nº 39187/98)
Judgment 26.2.2002 [Section II]

DEL SOL - France (N° 46800/99)
FRETTE - France (N° 36515/97)
MORRIS - United Kingdom (Nº 38784/97)
DICHAND and others - Austria (Nº 29271/95)
UNABHÄNGIGE INITIATIVE INFORMATIONSVIELFALT - Austria (Nº 28525/96)
KRONE VERLAG GmbH & Co. KG - Austria (Nº 34315/96)
Judgments 26.2.2002 [Section III (former composition)]

MAGALHÃES PEREIRA - Portugal (N° 44872/98)
Judgment 26.2.2002 [Section IV (former composition)]

222 cases v. Italy
(see Appendix).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Discrepancy between market value of property for the purposes of calculating compensation for expropriation and market value for the purposes of calculating inheritance tax: *violation*.

JOKELA - Finland (Nº 28856/95)
Judgment 21.5.2002 [Section IV]

Facts : The applicants are the beneficiaries of the estate of Timo Jokela, who owned four plots of land totalling 2.9 hectares, part of which was designated for traffic purposes. In 1990 the roads authority requested the expropriation of 1.53 hectares. Timo Jokela died in 1992. The market value of the land was subsequently fixed at FIM 7.50 per square metre by experts who apparently disregarded three voluntary sales in the vicinity, on the ground that the sellers had been in a position to dictate the price, and took into account prices paid in a wider area. The applicants were awarded approximately FIM 115,000. They appealed, submitting evidence which indicated a market value of between FIM 20 and FIM 114 per square metre. They also referred to two witnesses. However, in September 1994, the Land Court dismissed the appeal, agreeing with the experts' assessment of the market value. In the meantime, the market value of the four plots (assessed at FIM 150,000 in the inventory of the estate) had been assessed by the tax authorities for the purposes of inheritance tax at FIM 600,000 (about FIM 20 per square metre). No reasons had been given. The applicants' appeal was rejected by the County Administrative Court in September 1995 and the Supreme Court refused leave to appeal.
Law : Article 1 of Protocol No. 1 – The expropriation constituted a deprivation of possessions to be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1, while the interference which the inheritance tax constituted fell to be considered under the second paragraph of the provision. However, the interconnected factual and legal elements of the case prevented it being classified in part solely as a matter of deprivation and in part as a question of mere taxation. Since such interferences are particular instances of interference with the right to peaceful enjoyment of possessions guaranteed in the first sentence of the first paragraph of Article 1 of Protocol No. 1, it was appropriate to examine first whether the two individual forms of interference were compatible with that provision and, in the affirmative, whether the effects they had on the applicants' situation as a whole were compatible with the general right to peaceful enjoyment of possessions.

(a) As to the expropriation, the Court accepted that it had a legal basis and was in the public interest. With regard to the adequacy of the compensation, there was no indication that the authorities had arbitrarily failed to consider the arguments put forward by the applicants as to the criteria to be applied and, bearing in mind the wide margin of appreciation enjoyed by the national authorities, the Court accepted that the compensation bore a reasonable relation to the value of the expropriated land. Moreover, as to the inherent procedural requirements of Article 1 of Protocol No. 1, the proceedings as a whole had given the applicants a reasonable opportunity of putting their case. There had thus been no violation in that respect.
(b) As to the inheritance tax, the Court accepted that the interference had a legal basis and served the general interest and was in principle compatible with the State's power to enforce tax laws. Nevertheless, it was necessary to consider whether the market value as defined for the purpose of inheritance tax placed a disproportionate burden on the applicants, given the previous assessment of the market value of the expropriated parts. In that connection, certain allowances had to be made for the fact that the local authorities and courts in the respective proceedings were independent of one another. Moreover, the value was based on price levels prevailing at different times. Given the margin of appreciation, Article 1 of Protocol No. 1 could not be interpreted as requiring that exactly the same market value be fixed in the different proceedings. Considering also that the applicants enjoyed the benefit of adversarial proceedings, the inheritance tax, taken separately, did not exceed the State's margin of appreciation and there had been no violation in that respect.
(c) As to the combined effect of the expropriation and the inheritance tax, the general right of peaceful enjoyment of possessions includes the expectation of reasonable consistency between interrelated decisions concerning the same property. It was striking that the market value fixed for the purpose of inheritance tax was four times higher than the value given in the inventory, even accepting that the inventory value was low. Moreover, the summary reasoning given by the County Administrative Court – which gave its decision after the Land Court's assessment of the market value of the expropriated land had acquired legal force – did not suffice for the decision to be regarded as adequate for the purposes of the general principle of peaceful enjoyment of property. The applicants could legitimately expect a reasonably consistent approach from the authorities and courts and, in the absence of such consistency, a sufficient explanation for the different valuation of the property. There was neither consistency nor such explanation as to be compatible with the applicants' legally protected expectations and, in these circumstances, the outcome of the proceedings was incompatible with the right to peaceful enjoyment of possessions.
Conclusion : violation (unanimously).
Article 6(1) – As to the alleged failure to hear witnesses requested by the applicants, the applicants were legally represented throughout the expropriation proceedings and had ample opportunity to request that the witnesses be examined. However, it had not been established that the applicants' lawyer made such a request in an unambiguous and unconditional manner calling for a reasoned decision in the event of a refusal.
Conclusion : no violation (unanimously).
Article 6(1) – As to the failure of the Land Court to give reasons as to why it had not based its decision on the evidence adduced by the applicants, there was no indication that the experts or the Land Court had arbitrarily failed to consider the arguments put forward by the applicants and the requirement to provide sufficient reasons was satisfied in the particular circumstances of the case.
Article 41 – The Court awarded € 1,600 (FIM 9,513.17) each to three of the four applicants in respect of pecuniary damage (the other not having been affected by the inheritance tax). It also awarded each of them € 1,300 (FIM 7,729.45) in respect of non-pecuniary damage. It considered that the finding of a violation constituted sufficient just satisfaction in respect of the other applicant. Finally, the Court made an award in respect of costs and expenses.

ARTICLE 4 OF PROTOCOL No. 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Simultaneous deportation of 56 gypsies refugees living in a camp for nomads: *admissible*.

SULEJMANOVIC and SULTANOVIC - Italy (N° 57574/00)
Decision 14.3.2002 [Section I]
(see Article 3, above).

SEJDOVIC and SULEJMANOVIC - Italy (N° 57575/00)
Decision 1.3.2002 [Section I]
(see Article 3, above).

ARTICLE 1 OF PROTOCOL No. 7

LAWFULLY RESIDENT
Expulsion of illegal immigrants with no valid residence permit: *inadmissible*.

SULEJMANOVIC and SULTANOVIC - Italy (N° 57574/00)
Decision 14.3.2002 [Section I]
(see Article 3, above).

SEJDOVIC and SULEJMANOVIC - Italy (N° 57575/00)
Decision 1.3.2002 [Section I]
(see Article 3, above).

Other judgments delivered in May 2002

Articles 2, 3, 8, 13 and 14

ŞEMSE ÖNEN - Turkey (Nº 22876/93)
Judgment (final) 14.5.2002 [Section II]

shooting of applicant's relatives by unidentified assailants and lack of effective investigation – violation of Articles 2 (lack of effective investigation) and 13.

Article 6(1)

At.M. - Italy (Nº 56084/00)
Judgment 7.5.2002 [Section IV]

SZARAPO - Poland (Nº 40835/98)
Judgment 23.5.2002 [Section III]

GRONUŚ - Poland (Nº 29695/96)
Judgment 28.5.2002 [Section IV]

length of civil proceedings – violation.

F. SANTOS Lda - Portugal (Nº 49020/99)
SIB - Sociedade Imobiliaria da Benedita Lda v. Portugal (Nº 49118/99)
Judgments 16.5.2002 [Section III]

MARTOS MELLADO RIBEIRO - Portugal (Nº 47584/99)
ALMEIDA DO COUTO - Portugal (Nº 48233/99)
VIANA MONTENEGRO CARNEIRO - Portugal (Nº 48526/99)
COELHO - Portugal (Nº 48752/99)
AZEVEDO MOREIRA - Portugal (Nº 48959/99)
Judgments 30.5.2002 [Section III]

length of civil proceedings – friendly settlement.

STRANGI - Italy (Nº 54286/00)
Judgment 7.5.2002 [Section III]

length of proceedings in the Audit Court – friendly settlement.

RIBES - France (Nº 41946/98 and Nº 50586/99)
Judgment 7.5.2002 [Section II]

SPENTZOURIS - Greece (Nº 47891/99)
Judgment 7.5.2002 [Section I]

MEULENDIJKS - Netherlands (Nº 34549/97)
PERHIRIN and others - France (Nº 44081/98)
GENTILHOMME, SCHAF-BENHADJI and ZEROUKI - France
(Nº 48205/99, Nº 48207/99 and Nº 48209/99)
Judgments 14.5.2002 [Section II]

CÂMARA PESTANA - Portugal (Nº 47460/99)
Judgment 16.5.2002 [Section III]

length of administrative proceedings – violation.

LIVANOS - Greece (Nº 53051/99)
Judgment 16.5.2002 [Section I]

length of criminal proceedings which applicants joined as parties seeking damages – friendly settlement.

DEDE and others - Turkey (Nº 32981/96)
Judgment 7.5.2002 [Section III]

GEORGIADIS - Cyprus (Nº 50516/99)
Judgment 14.5.2002 [Section II]

length of criminal proceedings – violation.

GOTH - France (Nº 53613/99)
Judgment 16.5.2002 [Section I]

dismissal of appeal on points of law as a result of appellant's failure to surrender into custody – violation.

PELTIER - France (Nº 32872/96)
Judgment 21.5.2002 [Section II]

lack of access to court to contest imposition of fine for speeding – violation.

Article 6(1) and (3)(c)

KARATAS and SARI - France (Nº 38396/97)
Judgment 16.5.2002 [Section I]

obligation of person convicted *in absentia* to comply with arrest warrant as a prerequisite to lodging an objection, and refusal of court to allow lawyers to represent absent accused – no violation/violation.

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

VASILIU - Romania (Nº 29407/95)
HODOŞ and others - Romania (Nº 29968/96)
SURPACEANU - Romania (Nº 32260/96)
Judgments 21.5.2002 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, and consequent deprivation of property – violation.

BARBARA FERRARI - Italy (Nº 35795/97)
ARRIVABENE - Italy (Nº 35797/97)
FABRIZIO FUSCO - Italy (Nº 42609/98)
V.L. and others - Italy (Nº 44864/98)
AMATO DEL RE - Italy (Nº 44968/98)
Judgments 7.5.2002 [Section I]

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

Article 14

DOWNIE - United Kingdom (Nº 40161/98)
Judgment 21.5.2002 [Section IV]

unavailability of widows' allowance to widower – friendly settlement.

Article 1 of Protocol No. 1

TEMUR ÖNEL - Turkey (Nº 30446/96)
HACI ÖZEL - Turkey (Nº 30447/96)
AHMET ÖNEL - Turkey (Nº 30448/96)
MEHMET ÖNEL - Turkey (Nº 30948/96)
HACI OSMAN ÖZEL - Turkey (Nº 31964/96)
Judgments 23.5.2002 [Section III]

delays in payment of compensation for expropriation – violation.

Article 4 of Protocol No. 7

W.F. - Austria (Nº 38275/97)
Judgment 30.5.2002 [Section III]

conviction in criminal proceedings after previous conviction in administrative proceedings arising out of same facts – violation.

APPENDIX

222 cases v. Italy

V.P. and F.D.R. v. Italy (Nº 44333/98), 12 February 2002 [Section IV]
Ed.M. v. Italy (Nº 44519/98), 12 February 2002 [Section IV]
Rapisarda v. Italy (Nº 52913/00), 12 February 2002 [Section IV]
Bruno v. Italy (Nº 52914/99), 12 February 2002 [Section IV]
Cazzato v. Italy (Nº 52915/99), 12 February 2002 [Section IV]
Ferrara v. Italy (Nº 52916/99), 12 February 2002 [Section IV]
Serino v. Italy (Nº 52917/99), 12 February 2002 [Section IV]
Scinto v. Italy (Nº 52918/99), 12 February 2002 [Section IV]
Luciani v. Italy (Nº 52919/99), 12 February 2002 [Section IV]
De Rosa v. Italy (Nº 52920/99), 12 February 2002 [Section IV]
Damiano v. Italy (Nº 52921/99), 12 February 2002 [Section IV]
Vincenzina Tommaso v. Italy (Nº 52922/99), 12 February 2002 [Section IV]
Giuseppe de Santis v. Italy (Nº 52923/99), 12 February 2002 [Section IV]
Frattini and others v. Italy (Nº52924/99), 12 February 2002 [Section IV]
D'Alfonso v. Italy (Nº 52925/99), 12 February 2002 [Section IV]
Mostacciuolo v. Italy (Nº 52926/99), 12 February 2002 [Section IV]
I.P.A. s.r.l. v. Italy (Nº 52957/99), 12 February 2002 [Section IV]
Francesco Lombardo v. Italy (Nº 52958/99), 12 February 2002 [Section IV]
Sessa v. Italy (Nº 52959/99), 12 February 2002 [Section IV]
Ventrone v. Italy (Nº 52960/99), 12 February 2002 [Section IV]
Raffio v. Italy (Nº 52962/99), 12 February 2002 [Section IV]
Zotti and Ferrara v. Italy (no. 1) (Nº 52963/99), 12 February 2002 [Section IV]
Zotti and Ferrara v. Italy (no. 2) (Nº 52964/99), 12 February 2002 [Section IV]
Vetrone v. Italy (Nº 52965/99), 12 February 2002 [Section IV]
Zotti v. Italy (Nº 52966/99), 12 February 2002 [Section IV]
Vaccarella v. Italy (Nº 52967/99), 12 February 2002 [Section IV]
Del Bono and others v. Italy (Nº 52968/99), 12 February 2002 [Section IV]
Almanio Antonio Romano v. Italy (Nº 52969/99), 12 February 2002 [Section IV]
Ciancetta and Mancini v. Italy (Nº 52970/99), 12 February 2002 [Section IV]
R.O.L. v. Italy (Nº 52971/99), 12 February 2002 [Section IV]
Carmine Falzarano v. Italy (Nº 52972/99), 12 February 2002 [Section IV]
Mattaliano v. Italy (Nº 52973/99), 12 February 2002 [Section IV]
Beneventano v. Italy (Nº 52974/99), 12 February 2002 [Section IV]
Gucci v. Italy (Nº 52975/99), 12 February 2002 [Section IV]
Policriti and Gioffrè v. Italy (Nº 52976/99), 12 February 2002 [Section IV]
Savona v. Italy (no. 2) (Nº 52977/99), 12 February 2002 [Section IV]
Di Niso v. Italy (Nº 52978/99), 12 February 2002 [Section IV]
An.M. v. Italy (Nº 52979/99), 12 February 2002 [Section IV]
Sciacchitano and Lo Sciuto v. Italy (Nº 52982/99), 12 February 2002 [Section IV]
Seccia v. Italy (Nº 52983/99), 12 February 2002 [Section IV]
Ge.Im.A. s.a.s. v. Italy (Nº 52984/99), 12 February 2002 [Section IV]
L.S. v. Italy (Nº 52986/99), 12 February 2002 [Section IV]
Barone v. Italy (Nº 52987/99), 12 February 2002 [Section IV]
Maria Giovanna Rossi v. Italy (Nº 52988/99), 12 February 2002 [Section IV]
Sirufo v. Italy (Nº 52989/99), 12 February 2002 [Section IV]
Stabile v. Italy (Nº 52990/99), 12 February 2002 [Section IV]
Cristina v. Italy (Nº 56085/00), 12 February 2002 [Section IV]
Vazzana v. Italy (Nº 56086/00), 12 February 2002 [Section IV]
It.R. v. Italy (Nº 56088/00), 12 February 2002 [Section IV]
Murru v. Italy (no. 5) (Nº 56089/00), 12 February 2002 [Section IV]
Bernardini v. Italy (Nº 56091/00), 12 February 2002 [Section IV]
Calvagni and Formiconi v. Italy (Nº 56092/00), 12 February 2002 [Section IV]
Società Croce Gialla Romana s.a.s. v. Italy (Nº 56093/00), 12 February 2002 [Section IV]
Sposito v. Italy (Nº 56094/00), 12 February 2002 [Section IV]
Colasanti v. Italy (Nº 56095/00), 12 February 2002 [Section IV]

Regina Venturin v. Italy (Nº 56096/00), 12 February 2002 [Section IV]
Pelagatti v. Italy (Nº 56098/00), 12 February 2002 [Section IV]
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