CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 53
on the case-law of the Court
May 2003

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

Statistical information[1]

Judgments delivered	**May**	**2003**
Grand Chamber	3(6)	5(11)
Section I	11	88(92)
Section II	7	69(71)
Section III	1	32
Section IV	18	57
Sections in former compositions	1	10
Total	**41(44)**	**261(273)**

Judgments delivered in May 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(5)	0	0	1[2]	3(6)
former Section I	0	0	0	0	0
former Section II	1	0	0	0	1
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	7	4	0	0	11
Section II	6	0	0	1[3]	7
Section III	1	0	0	0	1
Section IV	10	7	1	0	18
Total	**27(30)**	**11**	**1**	**2**	**41(44)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4(10)	0	0	1[2]	5(11)
former Section I	4	0	0	0	4
former Section II	1	0	0	0	1
former Section III	4	0	0	0	4
former Section IV	0	0	0	1[4]	1
Section I	65(69)	21	0	2[5]	88(92)
Section II	54(56)	10	2	3[6]	69(71)
Section III	31	1	0	0	32
Section IV	41	13	3	0	57
Total	**204(216)**	**45**	**5**	**7**	**261(273)**

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. Preliminary issue.
3. Just satisfaction.
4. Revision.
5. One revision judgment and one just satisfaction judgment.
6. Two revision judgments and one just satisfaction judgment.

Decisions adopted		May	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		13	60(62)
Section II		30(36)	60(66)
Section III		8(9)	42(43)
Section IV		27(38)	60(95)
former Sections		0	1
Total		**78(96)**	**223(267)**
II. Applications declared inadmissible			
Section I	- Chamber	4	31
	- Committee	628	2163
Section II	- Chamber	10(11)	30(31)
	- Committee	534	1926
Section III	- Chamber	4	36(38)
	- Committee	109	995
Section IV	- Chamber	10	48
	- Committee	373	1351
Total		**1672(1673)**	**6580(6583)**
III. Applications struck off			
Section I	- Chamber	3	8
	- Committee	8	17
Section II	- Chamber	5	18
	- Committee	5	18
Section III	- Chamber	5	25
	- Committee	3	8
Section IV	- Chamber	3	65(83)
	- Committee	1	16
Total		**33**	**175(193)**
Total number of decisions[1]		**1783(1802)**	**6978(7043)**

1. Not including partial decisions.

Applications communicated	May	2003
Section I	68	160(165)
Section II	38	154
Section III	13	251(259)
Section IV	15(28)	156(193)
Total number of applications communicated	**134(147)**	**721(771)**

ARTICLE 2

LIFE
Abduction and murder, allegedly by the police, in 1993, and adequacy of investigation: *no violation/violation*.

TEPE - Turkey (Nº 27244/95)
Judgment 9.5.2003 [Section II (former composition)]

Facts: The applicant alleges that his son, a journalist for *Özgür Gündem*, was taken into detention and tortured by the police in 1993. His body was found a few days later. As the allegations were denied by the Government, a delegation of the European Commission of Human Rights took evidence in the case.
Law: Article 38(1)(a) – The Court found that the Government had failed to provide any convincing explanation for delays and omissions in response to the Court's requests for relevant documents, information and witnesses. It considered that inferences could be drawn from the Government's conduct and furthermore found that the Government had failed to furnish all necessary facilities within the meaning of Article 38.
Assessing the evidence, the Court was unable to make a finding as to who might have been responsible for the death of the applicant's son. It considered that a finding to the effect that secret elements within the State security forces or persons with the connivance of the State authorities had abducted and killed him would be based more on conjecture, speculation and assumption than on reliable evidence. The only evidence that the applicant's son had been detained in Diyarbakır prison was hearsay and the evidence before the Court was incomplete, inconsistent and even contradictory. The Court therefore concluded that the applicant's allegations had not been sufficiently proved.
Article 2 (killing) – While the circumstances in which the applicant's son died and the fact that he was working for a pro-Kurdish newspaper militated in favour of the applicant's allegations, the material in the case file did not enable the Court to conclude beyond all reasonable doubt that the applicant's son had been abducted and killed by any State agent or person acting on behalf of the State authorities.
Conclusion: no violation (unanimously).
Article 2 (effective investigation) – There were striking omissions in the conduct of the investigation, such that the national authorities had failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's son. There had therefore been a violation of Article 2 under its procedural limb.
Conclusion: violation (unanimously).
Articles 3 and 5 – There was no factual basis on which to conclude that there had been any violation of these provisions.
Conclusion: no violation (unanimously).
The Court found that it was unnecessary to examine the applicant's complaint under Article 10, and concluded that there had been no violation of Articles 14 and 18. However, it concluded that there had been a violation of Article 13.
Article 41 – The Court made awards in respect of non-pecuniary and damage and costs and expenses.

POSITIVE OBLIGATIONS
Effective investigation – alleged racism in police investigation into murder of black man: *inadmissible*.

MENSON - United Kingdom (Nº 47916/99)
Decision 6.5.2003 [Section II]

The applicants are the siblings of a black musician, Michael Menson, who died in hospital at the age of 30 following a racist attack in January 1997, during which he was set alight. He suffered from mental health problems during the last years of his life and was living in special accommodation at the time of his death. He was attacked on a London street late at night. The police arrived at the scene shortly afterwards. They concluded that he had set himself on fire and indicated as much to family members. Consequently, no attempt was made to secure evidence in the immediate aftermath of the crime. The next day, Michael Menson informed family members of the attack. They requested the police to take a statement from him and to begin a criminal investigation. However, the police never interviewed Michael Menson, who lapsed into a coma one week after the attack and died shortly afterwards.
In 1998, the police reviewed the conduct of the first stage of the investigation into the attack and concluded that it was not satisfactory. In September 1998, the Coroner's Court recorded a verdict of unlawful killing. The applicants lodged a detailed complaint with the Police Complaints Authority over the handling of the case by the police. In 1999, four persons were tried (one in the "Turkish Republic of Northern Cyprus") in relation to the killing of Michael Menson and received substantial terms of imprisonment. The applicants pursued their official complaint about police handling of the case. The internal inquiry into the affair was hampered by the fact that police officers could not be compelled to answer questions; moreover, certain officers had retired and were therefore no longer subject to police discipline. A copy of the report was passed to the Crown Prosecution Service in December 2002.
Inadmissible under Article 2: The applicants did not seek to blame the authorities for the death of Michael Menson or argue that there had been a positive obligation to protect him. Article 2 requires that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. Where the person dies, the investigation assumes even greater importance. The obligation on the State is one of means, not of result. The authorities must take reasonable steps to secure evidence. Any deficiency in the investigation risks falling foul of the Convention standard. The authorities must act of their own motion and a prompt response is generally essential. Although there was no State involvement in Michael Menson's death, the same basic procedural requirements applied with equal force. Where an attack is racially motivated, the investigation must be pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. The perpetrators in this case were convicted and sentenced and the coroner's court recorded a verdict of unlawful killing. The evidence before the national courts indicated very significant defects on the part of the police which were entirely at odds with the requirements of Article 2. It was, however, decisive that the criminal law had been effectively enforced against those who killed Michael Menson. As for the applicants' complaints regarding racism within the police, the internal inquiry was not yet complete: manifestly ill-founded.
Inadmissible under Article 6: The applicants complained that they were prevented by the rule of absolute immunity from bringing a claim against the police in respect of acts and omissions during the investigation into Michael Menson's death. However, the Court noted a change of practice within the United Kingdom following its judgment in the *Osman* case (*Reports* 1998-VIII), which would have allowed the applicants to argue that it was fair, just and reasonable for their claim to be decided on its merits. As for their contention that they had no remedy under the Race Relations Act 1976, it would have been open to them to invite a national court

to broaden the notion of "provision of services" under that Act to include police activities. In any event, if Parliament had intended to exclude the police from the 1976 Act, the Court could not create a right of action in favour of the applicants based on Article 6(1). The same applied to their arguments regarding common law and statutory rules concerning death as a cause of action: manifestly ill-founded.
Inadmissible under Article 13. The applicants did not have an arguable claim under the other provisions they relied on. The requirements of Article 13 in connection with the right to protection of life are the payment of any appropriate compensation as well as a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the procedure. Article 13 may apply to a case in which the authorities, although not responsible for an unlawful death, acted in a manner that was at variance with their duty to investigate, for example where the investigation procedure was tainted with racism with the result that it failed to identify the perpetrators. In the present case, the perpetrators were caught and punished. Moreover, it had not been established so far that the investigation was significantly tainted by racism: manifestly ill-founded.
Inadmissible under Article 14: The applicants' complaint of police racism was still under internal investigation. Even if valid, the authorities ultimately discharged their obligations under Article 2. The alleged discriminatory treatment of the applicants at a particular phase of the procedure did not ultimately affect the assurance of their or their brother's rights under Article 2: manifestly ill-founded.

POSITIVE OBLIGATIONS
Deaths resulting from flooding of camping site opened with official authorisation and effectiveness of the subsequent criminal investigation: *communicated*.

MURILLO SALDIAS and others - Spain (Nº 76973/01)
[Section IV]

The application concerns the terrible flooding of the camp site at Biescas (Spanish Pyrenees) on 7 August 1996, caused by torrential rain higher up in the Pyrenees. The tragedy left eighty seven people dead and dozens injured. The first applicant is the sole survivor of his family (his parents, brother and sister died) and the other four applicants were seriously injured. The camp site had been developed by a private individual on public land belonging to the local authority. Prior administrative approval to develop the site had been given following an administrative procedure involving a number of territorial administrations; one of the various expert reports drawn up by the competent services concluded that the site represented a risk to the facilities and a danger to persons. Following the accident, criminal proceedings were opened and the applicants claimed civil damages in those proceedings. The investigating judge terminated the proceedings. He considered that the constituent elements of the offence of criminal negligence were not present owing, in particular, to the unforeseeable nature of the intensity and the volume of the rain which had caused the flooding and destruction of the camp site. The judge also observed that the regulatory provisions in force were not sufficient for the land to be qualified as liable to flooding; furthermore, the camp site had been improved and stabilised by canalisation work which protected it against the foreseeable meteorological phenomena. The investigating judge further considered that the was no indication of prevarication in the conduct of the officials who had taken part in the administrative procedure for approval to occupy the public land on which the camp site was developed; he also considered that there had been no abuse of power or arbitrariness in the decision-taking procedure. The applicants appealed against that decision, without success. The Constitutional Court declared their *amparo* action inadmissible.
Communicated under Articles 2 and 13.

ARTICLE 5

Article 5(1)(c)

LAWFUL ARREST OR DETENTION
Detention of TV magnate on charges of fraud: *admissible*.

GUSINSKIY - Russia (Nº 70276/01)
Decision 22.5.2003 [Section I]

The applicant is the former chairman of the Russian media company Media Most, which owns the popular TV channel NTV. In 2000, Media Most was in dispute with the State-controlled company Gazprom over debts towards the latter. Following the breakdown of negotiations, Media Most's Moscow offices were raided by officials, who removed evidence of infringements of privacy allegedly carried out by the company's security staff. This led to the pressing of criminal charges. In parallel, the applicant was under investigation regarding the transfer of a broadcasting licence from a State-owned company to a private company. He was interviewed in relation to this matter in November 1999. In June 2000, he returned to Russia to answer questions as a witness in another criminal case. He was arrested and detained for 3 days in Butyrka prison, described by the applicant as being very harsh and unsanitary, instead of the investigative prison of the Federal Security Service. He was questioned there about the licence transfer. The applicant declined to comment in detail on the charges, expressing the view that they were unfounded and politically motivated. His lawyers applied to the prosecutor for his release, arguing that his detention was unlawful, that their client had the benefit of an amnesty and that the charges were absurd. They also complained to the Tverskoy Intermunicipal Court about his detention. Following his release, the applicant was ordered not to leave the country. During his detention, the acting Minister for Press and Mass Communications offered to have the charges dropped if the applicant agreed to sell Media Most to Gazprom at a price to be set by the latter. The applicant accepted the offer. However, once the charges regarding the licence transfer had been dropped and he was permitted to leave the country, the company refused to honour the agreement on the grounds that it had been reached under duress. Regarding his detention, the applicant's lawyers maintained his complaint before the Tverskoy Intermunicipal Court, which dismissed it. The appeal against this decision was disallowed shortly afterwards.
A further criminal investigation was begun in September 2000 over the use of Media Most funds. The applicant was summoned for interrogation in November 2000, but did not attend. An international warrant for his arrest was issued and he was detained in a Spanish jail for 10 days in December 2000 before being granted bail. The Spanish courts rejected the Russian authorities' extradition request in April 2001, finding that the applicant's claims of a political conspiracy were not completely without foundation.
Following the applicant's application to the Court, a Deputy President of the Supreme Court filed for supervisory review of the decision of the Tverskoy Intermunicipal Court. Following the granting of the application, that court examined the substance of the applicant's complaint and found that the detention had been justified. The applicant's appeal against this ruling is currently pending.
Admissible under Article 5(1)(c).
Inadmissible under Article 13: The application for supervisory review acknowledged in substance that the applicant had been deprived of his right to seek judicial review of the lawfulness of his detention once released. The granting of the application led to a rehearing, at

which the applicant had full opportunity to plead his case in substance. The authorities acknowledged the breach of the applicant's rights under Article 13 and afforded redress for it. He was therefore no longer a victim.

Article 5(1)(e)

LAWFUL DETENTION
Transfer of detainee to psychiatric hospital in another State: *inadmissible*.

FROMMELT - Liechtenstein (Nº 49158/99)
Decision 15.05.2003 [Section III]

The applicant was arrested and taken into detention in August 1997 on suspicion of embezzlement, continuous aggravated fraud and attempted aggravated coercion. The investigating judge considered that there was a reasonable basis for suspecting the applicant's guilt. Moreover, there was a danger of absconding since the applicant's residence was in Switzerland. There was also a danger of interfering with witnesses, which the applicant was in fact suspected of having attempted to do, and of repeat offences, since he had similar previous convictions. Having regard to the seriousness of the offence, the applicant's detention was considered proportionate to the sentence he faced. During the applicant's pre-trial detention, he was diagnosed as suffering from mental problems and having suicidal tendencies. He was transferred to Vaduz hospital. Shortly afterwards, the investigating judge ordered his transfer to the closed psychiatric ward at Rankweil hospital in Austria, on the basis of the 1982 treaty between Austria and Liechtenstein on the Accommodation of Detained Persons. The applicant challenged his transfer for lack of legal and medical basis and complained that he had not been heard. These complaints were subsequently dismissed, since the applicant had in the meantime been returned to prison in Liechtenstein.
Inadmissible under Article 5(1)(c): As to the applicant's complaint that his transfer to Rankweil hospital had no legal basis and no medical justification, the order to commit him to a psychiatric hospital was based on the Liechtenstein Code of Criminal Procedure and the transfer to Rankweil was based on the 1982 Treaty. There was no arbitrariness in the national courts' decisions, since one psychiatric expert had recommended the treatment, which ceased as soon as the applicant's mental state improved: manifestly ill-founded.
Inadmissible Article 3: The applicant contended that his experience in Rankweil as well as the fact that he was serving his sentence in Austria amounted to inhuman treatment. His complaints were directed at Liechtenstein only, raising the issue of whether a Contracting State might bear responsibility for the conditions in which a person sentenced by its courts served a prison sentence in another State. In the present case, though, the applicant's claims, even if conclusively established, would not reach the threshold required to bring them within the scope of Article 3: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

RIGHT TO A COURT
Failure of authorities to comply with court judgment: *violation*.

KYRTATOS - Greece (Nº 41666/98)
Judgment 22.5.2003 [Section I]
(see Article 8, below).

ACCESS TO COURT
Adoption, during court proceedings, of a law excluding court review of the decisions of an administrative commission: *violation*.

CRIŞAN - Romania (Nº 42930/98)
Judgment 27.5.2003 [Section II]

Facts: The applicant challenged before the district court two decisions of the Commission of the Implementation of Legislative Decree No. 118/90 concerning his claims that he had been persecuted for political reasons under the Communist regime. The district court dismissed both actions as inadmissible; it referred to Emergency Order No. 41, adopted in the meantime by the Government, which had expressly repealed Article 9 of Legislative Decree No. 118/90, which provided that an interested party could challenge a decision of the Commission before the courts. The Court of Appeal upheld the decision of the district court.
Law: Article 6(1) – Although it was not the purpose of the legislative reform to influence the judicial outcome of the applicant's action before the national courts, the fact remains that the new procedure and its application made it impossible in this case for the applicant to have the decisions taken by an administrative authority not itself fulfilling the requirements of a "tribunal" within the meaning of Article 6 reviewed by a judicial organ of unlimited jurisdiction. The fact that the courts were unable to examine the lawfulness of the decisions of the administrative authority concerning the applicant's civil rights owing to the amendment of the legislation on the jurisdiction of the courts in the course of the proceedings impaired the very substance of the applicant's right of access to a tribunal.
Conclusion: violation (unanimous).

IMPARTIAL TRIBUNAL
Judicial role of the Council of State in relation to legislation on which it has previously given an advisory opinion: *no violation*.

KLEYN and others - Netherlands
(Nº 39343/98, Nº 39651/98, Nº 43147/98 and Nº 46664/99)
Judgment 6.5.2003 [Grand Chamber]

Facts: In 1991 the Council of State gave an advisory opinion on the Transport Infrastructure Planning Bill, which was intended to provide a legislative framework for the supra-regional planning of a major new transport infrastructure. A number of changes were made to the bill

on the basis of the Council of State's opinion and it eventually came into force as the Transport Infrastructure Planning Act in 1994. In the meantime, the Government had presented a draft Outline Planning Decision concerning a new railway, the Betuweroute railway, which would join up with the German rail network. Following a public consultation process, a revised document was put before both Houses of Parliament. It became valid on its publication in May 1994. A large number of appeals against the revised document had been lodged with the Administrative Jurisdiction Division of the Council of State, which in January 1997 rejected most of the appeals, including those lodged by the applicants. In June 1994, a preliminary draft of the Routing Decision, setting out the exact route of the railway, had been opened to public inspection. Following public consultation, the route was finalised in November 1996. A large number of appeals were lodged with the Administrative Jurisdiction Division, including those of the applicants, two of whom challenged the judges on the ground that the plenary Council of State had been involved in the drafting of the legislation at issue. A special chamber declared the complaint inadmissible in so far as it concerned the Council of State as a whole and rejected the complaint in so far as it was directed against the three judges who were to hear the appeals, on the ground that they had not in any way expressed themselves in a manner contrary to the position of the appellants. The Administrative Jurisdiction Division subsequently dismissed most of the appeals, although it allowed certain specific complaints. The Government considered that the decision left the project 95% intact and that no radical review was needed. New partial decisions were taken in respect of the parts which had been annulled and the applicants' further appeals in that respect were unsuccessful.

Law: (a) Admissibility – The challenge made by two of the applicants to the Council of State judges had been dismissed and the Court failed to see that a further challenge by the other applicants – parties to the same proceedings – could have resulted in a different decision. These applicants were not, therefore, required to try the remedy, which was bound to fail. As to a remedy before the civil courts, the Government had not cited any domestic case-law in which a civil court had agreed to hear an administrative appeal on the ground that the Council of State afforded insufficient guarantees of independence and impartiality. The applicants had sufficiently established that in the present case this remedy could not be regarded as offering any reasonable prospects of success. The applications were therefore admissible.

Article 6(1) – The case did not require the application of any particular doctrine of constitutional law; the Court was faced solely with the question whether, in the circumstances, the Administrative Judicial Division had the requisite appearance of independence or the requisite "objective" impartiality. There was nothing to substantiate the applicants' concerns as to the independence of the Council of State and its members, nor was there any indication of subjective prejudice or bias on the part of any member hearing the applicants' appeals. Nevertheless, the consecutive exercise of advisory and judicial functions within one body may raise an issue under Article 6 as regards objective impartiality (see *Procola v. Luxembourg*, Series A no. 326). The Court was not as confident as the Government that the arrangements made to give effect to the Procola judgment (exclusion of judges who had participated in an advisory opinion if the appeal went to a matter explicitly addressed in the opinion) ensured that in all appeals coming before the Administrative Jurisdiction Division it constituted an impartial tribunal. However, the Court's task was not to rule in the abstract on the compatibility of the system with the Convention. The issue before it was whether, with regard to the appeals brought by the applicants, it was compatible with the requirement of objective impartiality that the Council of State's institutional structure allowed certain of its members to exercise both advisory and judicial functions. In that respect, the plenary Council of State had advised on the Transport Infrastructure Planning Bill, whereas the applicants' appeals were directed against the Routing Decision. Thus, unlike the situation in the Procola judgment, the advisory opinion and the subsequent proceedings on the appeals could not be regarded as involving the "same case" or the "same decision". The references in the advisory opinion to the proposed railway could not reasonably be interpreted as expressing views on, or amounting to a preliminary determination of, any issues subsequently

decided in the Routing Decision. In the circumstances, therefore, the applicants' fears as to a lack of independence and impartiality could not be regarded as being objectively justified.
Conclusion: no violation (12 votes to 5).

REASONABLE TIME
Length of proceedings – limited stakes for applicant: *inadmissible*.

HALLGREN - Sweden (Nº 45402/99)
Decision 20.5.2003 [Section IV]

The applicant moved out of home in April 1994 at the age of 19 and applied to the local council for a rent allowance. Her application was refused on the ground that her mother was in a position to help with the rent. Alternatively, the applicant could move back home. The applicant appealed successfully. The council then appealed to the Administrative Court of Appeal, which ruled in its favour. The applicant lodged an appeal to the Supreme Administrative Court in December 1994. The case was not given priority, since the applicant had been able to support herself financially since August 1994. Her claim therefore only concerned a period of some four months. Similar cases were lodged with the Supreme Administrative Court in 1995, 1996 and January 1997. It was decided to hear them together, so as to ensure a uniform development of case-law. The court ruled against the applicant in December 1997.
Inadmissible under Article 6(1): Although the facts of the case were not complex, there was inconsistency among the lower courts regarding the legal issues. The Supreme Administrative Court's chief responsibility was to develop jurisprudence in the area of administrative law and provide guidance on points that were unclear. The importance of the issue for the applicant was considerably diminished after August 1994. In such circumstances, the Supreme Administrative Court's decision to group together several similar cases was not open to criticism. Once it accepted the cases, it dealt with them within one year: manifestly ill-founded.

Article 6(1) [criminal]

APPLICABILITY
Applicability of Article 6 to constitutional proceedings: *admissible*.

SOTO SANCHEZ - Spain (Nº 66990/01)
Decision 20.5.2003 [Section IV]

In January 1991, the applicant was arrested in the context of a judicial investigation relating to drug trafficking. In June 1993, the *Audiencia Nacional* found the applicant guilty of concealment of drug trafficking, of a financial offence and of forging private documents, and imposed a prison sentence of four years and two months, as well as fines. The applicant appealed on a point of law. In October 1994, the Supreme Court held that the applicant was guilty of the offence of concealment of drug trafficking, with the aggravating circumstance of belonging to an organised group; it increased the penalty to nine years' imprisonment and ordered the applicant to pay a fine. The applicant lodged an *amparo* appeal before the Constitutional Court. In May 1995, the appeal was declared admissible, then various procedural acts were carried out until June 1996. In July 1995, the Court had dismissed the applicant's request to suspend enforcement of the judgment of the Supreme Court. A further application to suspend enforcement was dismissed in December 1997. In May 2000, the Constitutional Court dismissed the *amparo* appeal in part and set aside in part the judgment of

the Supreme Court. In June 2000, the Supreme Court, after dismissing the applicant's application for a reduction in his penalty owing to the length of the proceedings, increased the custodial sentence to seven years.
Admissible under Article 6(1): the Government's preliminary objection that Article 6 was not applicable to the proceedings before the Constitutional Court is rejected. If an *amparo* appeal is upheld in whole or in part, the Constitutional Court does not merely determine the provision of the Constitution which has been infringed; it sets aside the contested decision and the case is remitted for reconsideration before the competent court. The constitutional proceedings thus form a subsequent stage of the corresponding criminal proceedings instances and their outcome may be decisive for the convicted person. As regards the objection of failure to exhaust domestic remedies, it is joined to the merits of the application.
Inadmissible under Article 8: this complaint was raised before the Court more than six months after the final domestic decision had been taken. Admittedly, the Government have not raised any objection of inadmissibility of the application alleging failure to observe the six-month period. However, examination of the six-month rule cannot be dispensed with solely because the Government have not pleaded inadmissibility on that ground (see *Walker v the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). The complaint must therefore be rejected for failure to observe the six-month period.

APPLICABILITY
Proceedings concerning a request for amnesty: *Article 6 not applicable*.

MONTCORNET DE CAUMONT - France (Nº 59290/00)
Decision 13.5.2003 [Section II]

The applicant, who had been convicted of speeding and fined, sought to take advantage of a law granting an amnesty. The Court of Appeal dismissed his application; it observed that the offence of which the applicant had been found guilty was expressly excluded from the scope of the amnesty law. The Court of Cassation dismissed the applicant's appeal on a point of law.
Inadmissible under Article 6(1): proceedings in respect of the conditions of the application of an amnesty law to a conviction which has already become final do not concern the "determination of … civil rights and obligations". Nor, as regards the enforcement of penalties, do such proceedings concern a "criminal charge". Article 6 therefore does not apply to a dispute concerning the existence or the scope of an amnesty law.
Inadmissible under Article 7: The non-application of an amnesty law does not constitute a conviction under the criminal law and does not concern the conditions in which that conviction was pronounced. Article 7 therefore does not apply.

CRIMINAL CHARGE
Nature of proceedings instituted following establishment of unfitness to plead: *inadmissible*.

ANTOINE - United Kingdom (Nº 62960/00)
Decision 13.05.2003 [Section IV]

The applicant was arrested in 1995 in connection with the ritual killing of a 15 year-old boy. He himself was 16 at the time. He and another youth were charged with murder. His co-accused entered a guilty plea to manslaughter by reason of diminished responsibility and was sentenced to committal to a mental hospital without limit of time. At the applicant's trial, three psychiatrists testified that he was suffering from paranoid schizophrenia. The trial judge directed the jury to find that, in light of his mental disability, the applicant was unfit to plead or stand trial. A new jury was empanelled to determine whether, in accordance with the applicable legislation on insanity, the applicant did the act with which he was charged (a

"section 4A" hearing). The procedure followed was akin to that of a criminal trial. The jury found that the applicant had committed the act, a finding which enabled the judge to commit him to a mental hospital without limit of time. The applicant appealed. In 2000, the House of Lords held that in such cases the prosecution only had to prove the *actus reus* and not the *mens rea*. Moreover, in a section 4A hearing, the defence of diminished responsibility was not available. Criminal proceedings against the applicant are currently stayed indefinitely. The Crown Prosecution Service's intention is to revive them, should the applicant recover at any time in the future.
Inadmissible under Article 6(1): The applicant's trial came to an end with the jury's finding that he was unfit to plead or stand trial. The purpose of the section 4A hearing was to establish whether the applicant had carried out the act charged as murder against him. He could have been acquitted of the charge, but, in view of his unfitness to plead, no conviction was possible. These proceedings did not therefore concern the determination of a criminal charge. The fact that an acquittal was possible was to be regarded as a mechanism for protecting an applicant wrongly accused of participation in a purported offence. More decisive for establishing the inapplicability of Article 6(1) were the impossibility of conviction and the lack of punitive sanctions, a hospital order being neither a measure of retribution or deterrence. Although the section 4A hearing bore strong similarities to a criminal trial, it concerned the *actus reus* only and its essential purpose was to protect the public. The procedures employed struck a fair balance between that purpose and the need to protect a person who had in fact done nothing wrong: incompatible *ratione materiae*.
As for the applicant's alternative argument that the criminal proceedings brought against him in 1997 were still pending and therefore of excessive duration, these proceedings were for practical purposes terminated with the finding of his unfitness to plead. While the Secretary of State could re-institute proceedings at a future date in the event of the applicant's recovery, the charge could not be considered as pending in the meantime: manifestly ill-founded.

APPLICABILITY
Application for re-trial following ruling of European Court of Human Rights: *inadmissible*.

FISCHER - Austria (Nº 27569/02)
Decision 6.5.2003 [Section I]

In 2001, the European Court of Human Rights gave judgment in a case introduced by the applicant, finding that there had been a violation of Article 4 of Protocol No. 7 in that the applicant had been tried and punished consecutively for two serious offences containing the same essential elements (No. 37950/97). The applicant requested a retrial in accordance with Article 363a of the Code of Criminal Procedure. The Supreme Court dismissed the application without a hearing.
Inadmissible under Article 6(1): Proceedings under Article 363a of the Code of Criminal Procedure were akin to an application to reopen criminal proceedings. This did not entail the determination of a criminal charge and so Article 6(1) did not apply. Moreover, the Court had no jurisdiction to examine whether a state had observed the final judgment in a case to which it was party, this being the role of the Committee of Ministers under Article 46(2) of the Convention: incompatible *ratione materiae*.

FAIR TRIAL
Loss and destruction of evidence: *inadmissible*.

SOFRI and others - Italy (Nº 37235/97)
Decision 27.5.2003 [Section IV]

(translation – text taken from the press release)

Adriano Sofri, Ovidio Bompressi and Giorgio Pietrostefani are Italian nationals who were born in 1942, 1947 and 1943 respectively. Mr Sofri was sentenced to 22 years' imprisonment for murder and is in Pisa Prison. Enforcement of Mr Bompressi's sentence has been stayed on health grounds. Mr Pietrostefani cannot currently be found.
On 17 May 1972 a police officer, Superintendent Calabresi, was shot dead in Milan by a man who made his getaway in a stolen car. Mr Calabresi had first come into the public eye in 1969 when he was accused of pushing an anarchist out of a window after questioning him during the extreme left-wing demonstrations of that year. Investigators into Superintendent Calabresi's murder failed to find the culprit. On 20 July 1988 a certain Mr Leonardo Marino gave himself up at the police station. He stated that he had taken part in Superintendent Calabresi's murder on the orders of Mr Sofri and Mr Pietrostefani following a decision of the Executive Committee of the left-wing political movement, *Lotta continua,* of which they were the leaders. He also accused Mr Bompressi of carrying out the killing. On 28 July 1988 the applicants were arrested. They were released on 18 October 1988 and committed for trial at Milan Assize Court on 5 August 1989 on a charge of premeditated murder. At their request, the time allowed for preparing their defence and consulting the 12,000-page prosecution file was extended from 10 days to 26. During the trial it emerged that certain evidence (such as Superintendent Calabresi's clothes, the car used by the killers and bullets that had been removed from the body) was unavailable because it had been lost or destroyed. On 2 May 1990 the Assize Court sentenced the applicants to 22 years' imprisonment and Mr Marino to the lesser term of 11 years because he had cooperated with the judicial authorities. It found that Mr Marino was a reliable witness and that his statements had been confirmed by a substantial amount of other evidence. Giving judgment after a rehearing pursuant to a decision of the Court of Cassation, the Assize Court of Appeal acquitted the applicants and Mr Marino on 21 December 1993. The judgment, which was drafted by Judge Pincione, found that Mr Marino's statements had been accurate and consistent, but expressed doubts about some factual circumstances which were insufficiently corroborated by other evidence and which were "obscure points" in Mr Marino's version. Mr Sofri lodged a criminal complaint against the judge but the public prosecutor's office decided not to prosecute. On an appeal by the Principal Public Prosecutor, the Court of Cassation quashed the Assize Court of Appeal's judgment on 27 October 1994 on the ground that it was illogical, contradictory and inadequate. It remitted the case to another division of the Milan Assize Court of Appeal, which gave judgment on 11 November 1995 sentencing the applicants to 22 years' imprisonment and acquitting Mr Marino on the ground that prosecution of the offence had since become time-barred. The applicants appealed to the Court of Cassation, which dismissed their appeal on 22 January 1997. Having learned that, according to two members of the jury, the President of the Assize Court of Appeal, Mr Della Torre, had encouraged the jurors to change their vote so as to secure the applicants' conviction, Mr Sofri lodged a criminal complaint against him for misuse of his powers. No action was taken further to that complaint. Alleging that fresh evidence showed that Mr Marino was not a reliable witness and that they should have been acquitted, the applicants sought leave to apply for a retrial. Their application was granted by the Court of Appeal after a rehearing pursuant to a decision of the Court of Cassation. During the hearing of their application the applicants requested evidence to be heard from Ms Bistolfi, who was Mr Marino's girlfriend. She chose to exercise her right to silence. In a judgment of 24 January 2000 the court dismissed the application for a retrial

on the ground that the evidence submitted did not justify acquitting the appellants. Mr Sofri and Mr Pietrostefani unsuccessfully appealed to the Court of Cassation.

Inadmissible under Article 6(1): The Court found that the Government's preliminary objections of failure to exhaust domestic remedies had to be dismissed. With regard to the applicants' allegations concerning the proceedings at first instance, the Court noted that the applicants had already obtained reparation for their complaints in the domestic courts, as the Court of Cassation had quashed the judgment of the Milan Assize Court of Appeal. Since they could no longer claim to be "victims" within the meaning of Article 34 of the Convention, the Court decided to dismiss the complaints. As regards equality of arms, the applicants complained that they had not been provided with access to the record of Mr Marino's statements to the *carabinieri*. They contested the truth of his assertions and complained that the evidence of the defence witnesses had been rejected. The Court reiterated that it was not its role to review the domestic courts' findings of fact, but to determine whether the procedure as a whole was fair. In the case before it, the applicants had been convicted and sentenced after adversarial proceedings on the basis of evidence on which the parties had been able to make representations at the trial. Further, the applicants, who alleged a violation of their right to be presumed innocent, had not pointed to any decision delivered prior to their conviction from which a finding of guilt could be inferred. Accordingly, that complaint was ill-founded and had to be dismissed. With reference to the destruction and loss of certain items of evidence, the Court considered that it was highly regrettable that evidence in a homicide trial should have been destroyed shortly after the suspects were charged. However, it noted that that situation had not put the applicants at a disadvantage compared to the prosecution, as the public prosecutor had likewise been unable to use the evidence that had been lost or destroyed; the parties had thus been on an equal footing. Furthermore, some of the items had been examined, described and photographed prior to destruction, so that the applicants had been able to exercise their defence rights with regard to that evidence. In the circumstances, the destruction of the evidence had not impaired the fairness of the proceedings and the Court declared that complaint ill-founded.

The applicants also complained that they had not been tried by an independent and impartial court, as Judges Pincioni and Della Torre had not been impartial. The Court considered that there was no evidence to cast doubt on Mr Pincioni's subjective impartiality and nothing to establish that the applicants' fears concerning his impartiality were objectively justified. Furthermore, even if Mr Pincioni had disagreed with the acquittal, that could not of itself give rise to an issue under Article 6 of the Convention; in any event, there was no evidence to support the the applicants' allegation that he had dissented. As for Mr Della Torre, it noted that there was nothing in the case file to suggest that his assessment of the facts had been arbitrary. It could not accept that the applicants had made out their allegation that he had put pressure on the members of the jury or that his conduct was such as to give rise to objectively justified concerns as to his impartiality. Consequently, it declared that complaint ill-founded.

As to the allegations by witnesses that Mr Della Torre had not been sufficiently reserved about the matters he was required to try, the Court noted that, even assuming that the complaint had been made in time, the applicants had not made use of their right to ask him to stand down. It accordingly declared that complaint inadmissible for failure to exhaust domestic remedies.

In a written pleading that was sent to the Court in February 2002, the applicants stated for the first time that one of the members of the jury was the daughter of a police officer and had a conflict of interest with one of the people on trial. The Court dismissed that complaint as being out of time, since it had been made more than six months after the final decision of the domestic courts.

The applicants had also complained that the proceedings on the application for a retrial were unfair, since the evidence of the defence witnesses had been rejected as unreliable and Ms Bistolfi had been allowed to remain silent. The Court noted, however, that the applicants had been given an opportunity to question her before they made their application for a retrial. Moreover, her statement had only been used as corroboration for the main prosecution evidence, namely the statement of Mr Marino, whom the applicants had been given repeated

opportunities to cross-examine. In the circumstances, the Court found that the rights of the defence in those proceedings had not been infringed to the point of constituting a violation of the Convention. Lastly, as to the credibility of certain witnesses, it reiterated that it could not substitute its own assessment of the evidence for that of the domestic courts.
With regard to Mr Bompressi's complaint that he had not been informed promptly of the reasons for his arrest, the Court rejected it as being out of time.

FAIR TRIAL
Alleged incitement by *agents provocateurs* to commit a crime: *inadmissible*.

SEQUEIRA - Portugal (Nº 73557/01)
Decision 6.5.2003 [Section III]

The applicant participated in the import of a significant quantity of cocaine from Brazil with A., a person connected to drug trafficking circles. A. established contact with C., the owner of a boat, in order to organise the transport of the drug to Portugal. C. had already collaborated with the police on a number of occasions in drug trafficking cases. He persuaded A. to collaborate with the police too, without the applicant's knowledge. C.'s boat, with A. and an undercover police officer on board, took the drugs from another boat off Brazil. C. took the boat to a Portuguese port and then A. transported the drugs to a farm which the applicant had bought, where the drugs were unloaded. After A. had left, the police, who were monitoring the entire operation, arrested the applicant and seized the cocaine. The applicant – but not A. or C., who were not prosecuted – was accused of drug trafficking and criminal association. The applicant was convicted at first instance and at second instance. A., C. and the police officers who had participated in the operation gave evidence at the hearing before the court, which also relied on documents seized from the applicant. The Supreme Court agreed with the courts below that A. and C. had acted as undercover agents and not as *agents provocateurs*. None the less, it considered that the particular circumstances of the case, concerning in particular the involvement of these undercover agents, justified increasing the applicant's sentence to nine years' imprisonment.
Inadmissible under Article 6(1): A.'s and C.'s conduct did not exceed that of an undercover agent: they began to collaborate with the police when the applicant had already established contact with A. in order to organise the transport of the cocaine. From that point, A.'s and C.'s conduct was monitored by the police and the prosecution authorities were informed of the operation. Last, the authorities had good reasons to suspect that the applicant intended to organise drug trafficking. Furthermore, A. and C. took part in the proceedings and gave evidence in public before the court. The applicant had the opportunity to cross-examine them and to cast doubt on their credibility and that of the police officer who, acting as an undercover agent, had also participated in transporting the cocaine. Last, the court did no rely solely on the testimony of the infiltrated agents but also on that of the other police officers who had participated in the operation and on documents found on the applicant – manifestly ill-founded.

FAIR TRIAL
Refusal to admit evidence requested by the accused in a defamation case: *no violation*.

PERNA - Italy (Nº 48898/99)
Judgment 6.5.2003 [Grand Chamber]
(see Article 10, below).

FAIR TRIAL
Refusal to allow evidence requested by an accused: *violation*.

PAPAGEORGIOU - Greece (Nº 59506/00)
Judgment 9.5.2003 [Section I]

Facts: The applicant is a Greek national who was born in 1955 and lives at Aghios Stephanos (Attica). He was prosecuted on 2 June 1990 following a complaint to the public prosecutor's office by his employer, the Commercial Bank of Greece, alleging that he and other employees had debited the account of Greek Railways ("*OSE*") using seven cheques from a cheque-book that had been issued but never delivered to Greek Railways. The bank claimed that the loss came to more than 20,000,000 drachmas (EUR 58,700). The applicant was convicted of fraud by the Athens Criminal Court of Appeal, which found that he had worked on the computer that had been used to commit the offence and had signed the cheques. During the proceedings the applicant made several unsuccessful requests for the production of certain evidence, including pages from the electronic calendar on the computer and the originals of the cheques. After the conviction was quashed following an appeal to the Court of Cassation, the case was remitted to the Athens Criminal Court of Appeal, which found the applicant guilty of deception and sentenced him to three years and six months' imprisonment. That decision was upheld by the Court of Cassation on 30 November 1999.
Law: Article 6(1) – Noting that the case had lasted 9 years, 5 months and 28 days and that there had been periods of inaction and delays attributable to the judicial authorities, the Court held that there had been a violation of Article 6(1) on account of the length of the proceedings.
Conclusion: violation (unanimously).
Article 6(1) and (3)(d) – The Court noted that the case concerned a refusal to order production of the originals of documents that had served as a basis for a criminal conviction. At no stage during the proceedings had the trial courts examined the computer's electronic records or the originals of the cheques. They had not even checked whether the copies that had been produced conformed to the originals. Production of the cheques was vital to the applicant's case and might have enabled him to demonstrate that the accusation was unfounded. Despite his repeated requests, essential items of evidence had not been produced or adequately examined at the trial. Accordingly, the Court considered that the proceedings taken as a whole had not met the requisite standards of fairness.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 20,000 euros for non-pecuniary damage and 5,848 euros for costs and expenses.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Witness exercising the right to remain silent: *inadmissible*.

SOFRI and others - Italy (Nº 37235/97)
Decision 27.5.2003 [Section IV]
(see Article 6(3)(d), above).

ARTICLE 8

PRIVATE AND FAMILY LIFE
Effects of urban development on the environment in the vicinity of the applicants' property: *no violation*.

KYRTATOS - Greece (Nº 41666/98)
Judgment 22.5.2003 [Section I]

Facts: The applicants sought judicial review of two decisions of the Prefect and of two building permits issued on the basis of those decisions. The Supreme Administrative Court considered that the applicants had *locus standi*, as they owned property in the area. It quashed one of the decisions on formal grounds and the other on the ground that it was contrary to the constitutional protection of the environment, since it put in jeopardy important natural habitat for protected species. The court consequently quashed the building permits as unlawful. However, the Prefect subsequently issued two decisions excluding the contested buildings from demolition. A special committee of the Supreme Administrative Court found that the authorities had failed to comply with the court's decisions.
Law: Article 6(1) – By failing to take the necessary measures to comply with final, enforceable judicial decisions, the authorities deprived the provisions of Article 6 of all useful effect.
Conclusion: violation (unanimously).
Article 8 – (a) While severe environmental pollution may affect an individual's well-being and prevent him enjoying his home in such a way as to affect his private and family life, the crucial element is the existence of a harmful effect on a person's private and family sphere. A general deterioration of the environment is not sufficient: neither Article 8 nor any other provision of the Convention is specifically designed to provide general protection of the environment. In the present case, the applicants had not produced any convincing arguments showing that the alleged damage to protected species was of such a nature as to affect their rights directly under Article 8.
(b) The disturbances emanating from the neighbourhood as a result of urban development had not reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8.
There had therefore been no lack of respect for the applicants' private and family life.
Conclusion: no violation (6 votes to 1).
Article 41 – The Court, which also found a violation of Article 6(1) with regard to the length of civil and administrative proceedings, made awards in respect of non-pecuniary damage and in respect of costs and expenses.

FAMILY LIFE
Taking of children into care on an urgent basis and prolonged suspension of contacts with their parents: *no violation*.

COVEZZI and MORSELLI - Italy (Nº 52763/99)
Judgment 9.5.2003 [Section I]

Facts: The applicants are married and act on their own behalf and on behalf of their four infant children. One of the children's cousins informed the state prosecutor that she, her brother and her cousins had been sexually assaulted by her parents and other adults, including other members of the female applicant's family. In November 1998, the children's court,

without hearing the applicants, held that the applicants had failed to carry out their parental duties by failing to notice that their children had been subject to repeated sexual abuse and by continuing to entrust them to their close relatives. Consequently, the court ordered that the children be provisionally removed from their parents as an emergency measure and designated a health organisation as temporary custodian of the children and ordered it to carry out a psychological investigation. The court decided that relations between the applicants and their children would be suspended until the parents were reinstated as their children's guardians. The children were placed in four different homes. The Court of Appeal dismissed the parents' objection on the ground that, having been adopted provisionally and as an emergency measure, the decision of the children's court was not amenable to appeal. The applicants then applied to the children's court for annulment of its decision of November 1998. Early in 1999, interviews between the parents and the social services took place in the presence of at least one of the psychologists attending to the children; the applicants then ceased to take part in the meetings. The children's court heard the applicants for the first time in March 1999, in what they regarded as unfavourable circumstances. Their requests that their children be placed in the care of a different local authority and placed in the same home, and that they should be allowed to meet their children, were unsuccessful. The court ordered a report on the applicants' personality, their capacity to exercise parental control and their relations with their children. In the meantime, one of the children stated that he had been sexually abused by the male applicant, with the complicity of the female applicant; investigations were therefore carried out into the applicants. In October 1999, the court granted the state prosecutor's application for an extension of the time limit for submitting the preliminary reports until April 2000. In March 2000, a psychological report confirmed that the applicants' children had indeed been the victims of sexual abuse. In March 2001, the applicants were sent for trial. The were sentenced at first instance, in September 2002, to twelve years' imprisonment and were deprived of parental authority. Previously, in the context of the proceedings relating to the removal of their children, the applicants had requested the court to adopt a final decision concerning their children's situation. The children's court rejected their request, stating that the matter was inevitably linked to the outcome of the criminal investigations. The applicants' appeal against the decision rejecting their request was declared inadmissible on the ground that the decision of the children's court was still an provisional and emergency, and therefore temporary, measure, which was not amenable to appeal. In July 2000, the children's court deprived the applicants of parental authority and upheld the separate placement order in respect of the children. The applicants' appeal was dismissed.

Law: Article 8 : the interferences in question were in accordance with the law and pursued the legitimate aims of "protect[ing] … health or morals" and "protect[ing] … the rights and freedoms of others". It remains to establish whether these interferences were necessary in a democratic society.

(a) The emergency removal of the children: the sexual abuse which they were presumed to have suffered at the hands of persons forming part of the female applicant's family had taken place in conditions of the utmost gravity and although the applicants' attitude did not then indicate any direct involvement in the instances of violence, it revealed a failure to supervise their children. Furthermore, the authorities carefully evaluated the credibility of the statements concerning the abuse and took into account the particularly complex criminal context in which the abuse took place. In those circumstances, the use of an emergency procedure to remove the children was based on relevant and sufficient grounds and was necessary for the protection of the children's health and rights.

Conclusion: no violation (unanimously).

(b) The failure to hear the parents before taking the decision to remover their children: the authorities did not act in a disproportionate manner, since they considered that they must protect the children from any pressure that might be brought to bear in the domestic environment. There were close links between the two applicants and those accused of having sexually assaulted the applicants' children; the facts were serious and other children had already stated that they had been abused by a number of adults. There was, moreover, a

general atmosphere of intimidation towards the children involved and a danger of intimidation on the part of those accused.
Conclusion: no violation (5 votes to 2).
(c) The allegedly brutal nature of the removal of the children: the parties gave the Court different versions of the facts and the applicants adduced no evidence on which their version might be accepted.
Conclusion: no violation (unanimously).
(d) The prolonged break in relations between the applicants and their children: the reason for this was the applicants' genuine inability to protect their children and the need to shelter the children by placing them in a protected environment. The prompt reinstatement of these relations was dependent, in particular, with the outcome of the investigations carried out in connection with the parties concerned in order to determine the children's psychological state and that of the family relations. Commencing on the day after the children were removed, meetings were held between the social services and the applicants in the presence of psychologists and numerous reports on the children's mental and psychological state were prepared. However, the case-file reveals a substantial lack of cooperation and confidence on the part of the applicants towards the competent authorities; moreover, the applicants ceased to take part in these meetings. In addition, the authorities' task was extremely complex and the children consistently refused to return to their parents and showed fear towards them. All in all, the authorities took measures in order to strike a fair balance between the children's interests and the parents' rights under Article 8.
Conclusion: no violation (unanimously).
(e) The fact that the children where placed in separate accommodation: the explanations provided by the national authorities are reasonable and sufficient. The authorities took account of the children's special requirements, of the state of relations between the children themselves and of their psychological state as revealed by the numerous reports. The Court must always attach particular importance to the interest of each child. In those circumstances, placing the children in separate accommodation was proportionate to the legitimate aim pursued.
Conclusion: no violation (unanimously).
(f) During the proceedings concerning their parental rights, the applicants had the opportunity to express their doubts about the competence and good faith of the social services and the experts appointed by the health organisation designated as guardian of the children and the courts delivered decisions in regard to those doubts. None the less, the period of four months during which the applicants were unable to exercise the slightest influence on the outcome of the proceedings reveals an unwarranted delay of at least two months on the part of the national authorities. Also excessive is the length of the period between the children's removal, in November 1998, and the final decision on the applicants' parental authority, dated July 2000. During those twenty months, moreover, the applicants had no remedy against the court's provisional decision. Although the applicants submitted seven appeals against the decision to remove the children as a matter of emergency with a view to obtaining a final decision in respect of their parental rights, the court dismissed all of these applicants, relying on the provisional nature of the contested decision and the need to await the progress of the criminal investigations which were being carried out. Accordingly, the applicants were not properly involved in the decision-making process concerning their parental rights.
Conclusion: violation (6 votes to 1).
Article 41 – The Court considers that the finding of violation is sufficient remedy for the non-pecuniary harm sustained by the applicants. It awards a sum by way of costs and expenses.

FAMILY LIFE
Failure to involve parents in proceedings concerning their rights with regard to their children: *violation*.

COVEZZI and MORSELLI - Italy (Nº 52763/99)
Judgment 9.5.2003 [Section I]
(see above).

FAMILY LIFE
Order by court to return children to their father abroad under the Hague Convention: *inadmissible*.

PARADIS - Germany (Nº 4783/03)
Decision 15.5.2003 [Section III]

The applicants are a mother and her four children, aged between 7 and 18. In 1994, the first applicant, P., married a Canadian national, O., and moved from Germany to Canada with her daughter. Three children were born to the marriage. In February 1997, P. left the family home with her children and went to a women's refuge. O. was granted temporary custody of his three children, who went to live with him. In December 1998, P. was granted permanent sole custody of these children. The court made detailed arrangements for access by O. and his parents. It stipulated that P. was allowed to take the children to visit their German grandparents for visits of no more than two weeks' duration. In June 2000, P. travelled to Germany with her children and did not return. In August 2000, she filed for divorce in Germany and requested sole custody of her children by O. The following month, the Canadian court sentenced her to thirty days' imprisonment for contempt and awarded sole custody to O. In September 2001, the Zweibrücken District Court rejected O.'s request for the return of his children under the Hague Convention. It held that as P. had had sole custody at the time of her refusal to return to Canada, Article 3 of the Hague Convention had not been violated. It considered that the applicability of the Hague Convention where the other parent's custody rights were limited was controversial. In June 2002, the Canadian court certified that the removal of the children from Ontario and refusal to return them was wrongful within the meaning of Article 3 of the Hague Convention. The Palatinate Court of Appeal ordered an expert opinion to determine the true wishes of the children. The expert found that the children's unwillingness to return to their father was only partly based on their mother's animosity towards him. The Court of Appeal ordered the return of the children, authorising the bailiff to use the necessary force. It considered that there was no risk of exposing them to harm or placing them in an intolerable situation (Article 13 Hague Convention). It found P.'s various submissions about O.'s violent behaviour unsubstantiated and did not see why she lacked trust in the Canadian authorities to protect her and her children. The refusal of the children to return could not be decisive. The Federal Constitutional Court refused to entertain the complaint lodged by P. on behalf of the children.
In January 2003, the Zweibrücken District Court ordered the execution of the Court of Appeal's decision, on condition that O. request the Canadian court to refrain from executing the sentence against P. and that he make adequate financial provision for P. and the children. The General Prosecutor in Ontario agreed to withdraw all criminal charges pending against P. if she returned with her children to Canada. In March 2003, the bailiff arrived to enforce the decision, accompanied *inter alios* by O. The attempt was abandoned. O. requested authority for the bailiff or for himself to use force. This was granted by the Court of Appeal, which assumed that the children would quickly adapt to Canada, even if forcibly brought there. It did not accept P.'s argument that the passage of time had changed the situation. In April 2003, the Federal Constitutional Court refused to entertain the constitutional complaint of the three children about the Court of Appeal's ruling. The District Court then ordered the bailiff to

enforce the return of the children, giving him the right to search P.'s premises, with police help if necessary. The competent Youth Office was also ordered to assist.
Inadmissible under Article 8: The return of the children to Canada would involve at least a temporary separation from their mother, thereby interfering with the applicants' family life. The legal basis was the Hague Convention, which is applicable within the German legal order. The aim of the interference was to protect the rights and freedoms of others. As for its necessity, the German authorities were required under the Hague Convention to return O.'s children to Canada once it had been established that they had been wrongfully removed from that jurisdiction. The Court of Appeal had heard P. and two of the children and gave detailed reasons for its decision. Its assessment was not arbitrary, and it took adequate account of the children's interests. Having regard to the authorities' margin of appreciation, the interference complained of was not disproportionate to the legitimate aim pursued. Although there was a risk of P. being separated from her children on returning to Canada, it was of paramount importance that the illegal retention of the children in Germany be brought to an end. P. had Canadian legal remedies at her disposal to defend her interests and those of her children. Regarding the authorisation of the use of force, while coercive measures against children are not desirable, their use cannot be ruled out in the event of unlawful behaviour by one parent. The measures permitted were therefore not disproportionate to the aim pursued. As for the procedural requirements inherent in Article 8, there was nothing to suggest the proceedings were unfair or failed to involve the applicants to a degree necessary to protect their interests: manifestly ill-founded.

FAMILY LIFE
Refusal of permanent residence permit for children who joined their mother in the Netherlands after 5 years' absence: *inadmissible*.

CHANDRA - Netherlands (Nº 53102/99)
Decision 13.5.2003 [Section II]

The first applicant, C., is a Netherlands national of Indonesian origin. The other applicants are her four children, born between 1979 and 1985, resident with her in the Netherlands. In 1992, C. sought a divorce from her husband, father of her four children. She left Indonesia and travelled to the Netherlands, where she met and settled with a Dutch national. The following year, she was granted a residence permit for the specific purpose of living with him. The children remained in Indonesia in their father's care. C. was finally granted custody of the children in 1995. In 1996, C. obtained Dutch nationality. The following year, the relationship with her partner ended. In March 1997, the children were granted a short stay visa for 90 days to visit their mother. They formally applied for a residence permit in May 1997 and have remained in the Netherlands ever since. Their application was rejected by the Deputy Minister of Justice, who considered that the close ties between C. and her children had been severed by their separation and that C. did not have the means to support them. Furthermore, there was no impediment to the family living together elsewhere. The applicants' appeal to the Regional Court was unsuccessful. That court attached particular importance to the fact that it was only in 1997 that C. sought to be reunited with her children. The court did not accept that the refusal of residence permits interfered with the applicants' rights under Article 8, since the case concerned first admission to the country rather than refusal to extend residence. It found that a proper balance had been struck between the interests of the applicants and those of society as a whole.
Inadmissible under Article 8: The case hinged on the question of whether the authorities were under a duty to admit the children to reside with their mother in the Netherlands. C. had been away from her children for over five years before they joined her in 1997. Prior to their arrival in Europe, they had lived all their lives in Indonesia in the care of their father. They had therefore to be deemed to have strong links with the linguistic and cultural environment of their home country. By the time of the Regional Court's ruling, two of the children had

reached the age of majority, while the two youngest were 15 and 13 years and therefore in less need of care than younger children. Moreover, they had other relatives in Indonesia. While the applicants would prefer to remain in the Netherlands, Article 8 did not guarantee the right to choose the most suitable place for a family to live. It had not been established that C. could not return to Indonesia with her children, settling far away from her former husband if necessary. The fact that the children had been in the Netherlands since 1997 did not impose a positive obligation on the authorities to allow them to settle permanently. The applicants were not entitled to expect that, by confronting the authorities with a *fait accompli*, a right of residence would be conferred upon them. The authorities had struck a fair balance between the applicants' interests and those of society in controlling immigration: manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal of permission to solicit signatures for a petition in a privately owned shopping mall: *no violation*.

APPLEBY and others - United Kingdom (Nº 44306/98)
Judgment 6.5.2003 [Section IV]

Facts: The applicants are three individuals and an environmental group which they set up to campaign against a proposed development on a playing field in the vicinity of their town centre. The first applicant set up stands at the entrance to "The Galleries" shopping mall, built by a public development corporation as the new town centre and subsequently sold to a private company. The applicant was obliged to remove the stands after security guards prohibited her from continuing to collect signatures for a petition. She was given permission by the manager of one of the hypermarkets in the mall to set up stands and collect signatures in the store. However, the manager of the mall itself refused permission to set up a stall in the mall or in adjacent car parks, referring to the owner's policy of strict neutrality on political and religious issues. The applicants continued to seek access to the public by setting up stalls on public footpaths and in the old town centre.
Law: Article 10 – The Government did not bear any direct responsibility for the restrictions on the applicants' freedom of expression and the Court was not persuaded that any element of State responsibility could be derived from the fact that a public development corporation had transferred property to the owner or that this had been done with ministerial permission. The issue to be determined was therefore whether the Government had failed in any positive obligation to protect the applicants' rights from interference by the private owner. The matter to which the applicants wished to draw attention was one of public interest. However, freedom of expression is not unlimited and it was necessary to have regard also to another Convention right, namely the owner's right of property. In so far as the applicants referred to case-law from the United States and Canada, it could not be said that there was as yet any emerging consensus that could assist the Court in its examination under Article 10, which did not bestow any freedom of forum. The Court was not convinced that changes in the ways in which people move around and come into contact with each other required the automatic creation of rights of entry to private property, although it did not exclude that a positive obligation to regulate property rights could arise where a bar on access to property had the effect of preventing any effective exercise of freedom of expression or destroying the essence of the right. In the present case, however, the restriction on the applicants' ability to communicate their views was limited to the entrance areas and passageways of the mall; it did not prevent them from obtaining permission from individual businesses within the mall, from distributing their leaflets on the public access paths, from campaigning in the old town centre

or from employing alternative means such as calling door-to-door or seeking exposure through the media. Consequently, the applicants could not claim that they were effectively prevented from communicating their views to their fellow citizens. Balancing the rights at issue, the Court did not find that the Government had failed in any positive obligation to protect the applicants' freedom of expression.
Conclusion: no violation (6 votes to 1)
Article 11 – Largely identical considerations arose under this provision.
Conclusion: no violation (6 votes to 1).
Article 13 – In so far as no remedy existed prior to the Human Rights Act taking effect in October 2000, Article 13 cannot be interpreted as requiring a remedy against the state of domestic law. Thereafter, it would have been possible for the applicants to raise their complaints before the domestic courts.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Conviction of journalist for defamation of prosecutor by alleging abuse of position for political ends: *no violation*.

PERNA - Italy (Nº 48898/99)
Judgment 6.5.2003 [Grand Chamber]

(translation – text taken from the press release)

Facts: The applicant, Giancarlo Perna, is an Italian journalist, who was born in 1940 and lives in Rome. On 21 November 1993 he published in the Italian daily newspaper *Il Giornale* an article about a judicial officer, Mr Giancarlo Caselli, who was at that time the Public Prosecutor in Palermo. The article was entitled "Caselli, the judge with the white quiff" (*Caselli, il ciuffo bianco della giustizia*) and bore the sub-title "Catholic schooling, communist militancy – like his friend Violante..." (*Scuola dai preti*, *militanza communista come l'amico Violante...*). The article first contained a criticism of Mr Caselli's political militancy, referring to "a threefold oath of obedience – to God, to the Law and to via Botteghe Oscure [formerly the headquarters of the Italian Communist Party, now those of the Democratic Party of the Left]" (*un triplo giuramento di obbedienza. A Dio, alla Legge, a Botteghe Oscure*). It then accused Mr Caselli of taking part in a plan to gain control of the public prosecutors' offices in all Italian cities and of using the criminal-turned-informer (*pentito*) T. Buscetta in an attempt to destroy the political career of Mr Giulio Andreotti, a former Italian prime minister, by charging him with aiding and abetting a mafia-type organisation (*appoggio esterno alla mafia*), in the full knowledge that he would eventually have to discontinue the case for lack of evidence. On 10 January 1996, following a complaint for defamation lodged by Mr Caselli, the Monza District Court found the applicant and the then manager of the newspaper guilty of aggravated defamation. They were sentenced to fines of 1,500,000 and 1,000,000 Italian lire (ITL) respectively (about 775 and 515 euros) and ordered to pay damages and costs in the sum of ITL 60,000,000 (about 31,000 euros), reimburse the complainant's costs and publish the judgment. Mr Perna appealed. The Milan Court of Appeal gave judgment against the applicant on 28 October 1997. It held that the passage concerning the oath of obedience was defamatory because it indicated dependence on the instructions of a political party. With regard to the remainder of the article, it held that the allegations concerning Mr Caselli's conduct in the performance of his duties as a member of the State legal service were very serious and highly defamatory in that they were not backed up by any evidence. It further held that it was not necessary to consider the evidence the applicant had sought to adduce because his remarks about Mr Caselli's political allegiance and the use of a *pentito* in the proceedings against Mr Andreotti were not defamatory and therefore had no bearing on the proceedings. The Court of Cassation upheld the Court of Appeal's decision.

Law: Article 6(1) and (3)(d) – The Court observed that the admissibility of evidence was primarily a matter for regulation by national law; its task under the Convention was to ascertain whether the proceedings as a whole, including the way in which evidence was taken, had been fair. It noted that the evidence the applicant had wished to adduce, by producing two press articles and obtaining the examination of Mr Caselli, had been intended to prove the truth of statements which had had no defamatory import according to the courts which had tried the case. The Court agreed with those courts that the evidence concerned would not have been capable of establishing that Mr Caselli had failed to observe the principles of impartiality, independence and objectivity inherent in his duties as an officer of the State legal service. The applicant had not tried to prove the truth of his allegations; on the contrary, he had argued that he had expressed critical judgments which there was no need to prove. Accordingly, the proceedings complained of could not be considered unfair on account of the way the evidence had been taken.
Conclusion: no violation (unanimously)
Article 10 – The applicant's conviction for defamation had incontestably amounted to interference with his right to freedom of expression. That interference, which was prescribed by the provisions of the Criminal Code and the Press Act of 8 February 1948, had pursued a legitimate aim, namely the protection of the reputation and rights of others. As to whether the interference was necessary in a democratic society, the Court had to determine whether the national authorities had made proper use of their power of discretion in convicting the applicant of defamation. The Court observed that it was important not to lose sight of the article's overall content and its very essence. The applicant had not confined his remarks to the assertion that Mr Caselli harboured or had manifested political beliefs which cast doubt on his impartiality in the performance of his duties. As the domestic courts had rightly noted, it was apparent from the whole article that its author sought to convey to the public the following clear and unambiguous message: that Mr Caselli had knowingly committed an abuse of authority by taking part in a plan by the Italian Communist Party to gain control of public prosecutors' offices in Italy. In that context, even phrases like the one relating to the "oath of obedience" took on a meaning which was anything but symbolic. Moreover, as the Court had already found, at no time had the applicant tried to prove the truth of his allegations; on the contrary, he had argued that he had expressed critical judgments which there was no need to prove. That being so, the Court considered that the applicant's conviction for defamation and the sentence imposed on him had not been disproportionate to the legitimate aim pursued, and that the reasons given by the Italian courts in justification of those measures had been relevant and sufficient. The interference with the right to freedom of expression could therefore reasonably be regarded as necessary in a democratic society.
Conclusion: no violation (16 votes to 1).

FREEDOM OF EXPRESSION / LIBERTE D'EXPRESSION
Conviction for insulting judges in a letter: *violation*.
Condamnation pour avoir insulté des juges dans une lettre : *violation*.

SKAŁKA - Poland (Nº 43425/98)
Judgment 27.5.2003 [Section III]

Facts: While serving a prison sentence, the applicant wrote to the President of the Regional Court to complain about a judge who had replied to an earlier letter he had written. The applicant used terms such as "irresponsible clowns" and "cretin". He was convicted of insulting a State authority, namely all the judges of the Division referred to as well as an unidentified individual judge. He was sentenced to 8 months' imprisonment. His appeals were unsuccessful.
Law: Article 10 – The courts are not immune from criticism and scrutiny but a clear distinction must be made between criticism and insult. If the sole intent is to insult a court or

its members, an appropriate punishment would not in principle constitute a violation of Article 10. The applicant clearly used insulting words and the tone of his letter as a whole was derogatory. Moreover, he did not formulate any concrete complaints. However, the nature and severity of the penalty are important factors and the prison sentence imposed was a harsh measure, in particular taking into account that the applicant had not previously been convicted of such an offence. In the circumstances, the interest protected was important enough to justify limitations on freedom of expression and an appropriate sentence would not amount to a violation. The actual sentence in the present case was, however, disproportionately severe, exceeding the seriousness of the offence.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

FREEDOM TO IMPART INFORMATION
Denial of application to broadcast murder trial live on radio: *inadmissible*.

P4 RADIO HELE NORGE - Norway (Nº 76682/01)
Decision 6.5.2003 [Section III]

The applicant radio station applied for permission to broadcast a major murder trial that took place in Norway in 2001. The trial court denied the application. This decision was upheld by the High Court, which ruled that the substance of the trial court's decision was not open to appeal. It nonetheless expressed the view that the refusal was not inconsistent with the Convention. The applicant's appeal to the Supreme Court was dismissed by the Appeals Selection Committee, which took the view that Article 10 of the Convention did not include a right to transmit proceedings in a criminal case. The trial went ahead in open court. In view of the great public and media interest, members of the press were accommodated nearby with live audio and video transmission from the courtroom.
Inadmissible under Article 10: The Court proceeded on the assumption that the impugned restriction on radio transmission constituted an interference with the applicant's right to freedom of expression. It was prescribed by law, and pursued legitimate aims. As for the necessity of the restriction, the Court observed that there was no common ground among the Contracting States regarding the live broadcast of legal proceedings. Depending on the circumstances, live broadcasting of a trial could generate additional pressure on the participants and even unduly influence the manner in which they behave and hence cause prejudice to the fair administration of justice. Since live broadcasting nevertheless entails a certain amount of journalistic filtering, it cannot substitute physical attendance by members of the public, one of the principal means of ensuring transparency and public scrutiny of the judiciary. Accordingly, having regard to the national authorities' margin of appreciation, the presumption against transmission in national law did not in itself raise an issue of failure to comply with Article 10. Furthermore, the manner in which the national law was applied was supported by relevant and sufficient reasons and could reasonably be considered proportionate to the legitimate aims pursued. The criminal proceedings were held in open court, to which members of the public had access. In view of the intense media interest, all members of the press were accommodated on a non-discriminatory basis nearby.
Inadmissible under Article 13: In view of its conclusion under Article 10, this part of the applicant's claim was manifestly ill-founded. Even assuming that Article 13 applied, notwithstanding the limited scope of their jurisdiction, the appellate courts considered the applicant's arguments based on Article 10 of the Convention.

ARTICLE 13

EFFECTIVE REMEDY
Supervisory review of lawfulness of detention conducted after introduction of application with the Court: *inadmissible*.

GUSINSKIY - Russia (Nº 70276/01)
Decision 22.5.2003 [Section I]
(see Article 5(1), above).

ARTICLE 30

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER
Applicability of Article 2 to a foetus: *relinquishment*.

VO - France (Nº 53924/00)
[Section III]

Owing to confusion caused by the fact that two patients present in the same gynaecological department had homonymic names, a doctor performed on the applicant, who had attended for a pregnancy examination, a procedure intended to remove a contraceptive coil, thus rupturing the amniotic sac and necessitating a therapeutic abortion. The Court of Cassation refused to qualify as manslaughter the doctor's act in carelessly or negligently causing the death of a human foetus *in utero* which was not yet viable, albeit close to the threshold of viability, or to regard the foetus as a human person enjoying the protection of the criminal law. The applicant contends that the absence of protection of the unborn child under the French criminal law is unsatisfactory and that it constitutes a violation of Article 2 of the Convention.
The Section has declined jurisdiction in favour of the Grand Chamber.

ARTICLE 34

VICTIM
Retention of victim status despite finding of a violation by a domestic court and payment of compensation.

SCORDINO and others - Italy (Nº 36813/97)
Decision 27.3.2003 [Section I]

The applicants were the owners of certain plots, of which the parts suitable for development were subject to an expropriation permit. The district council determined, by decree, the final compensation for the expropriation. In 1990, the applicants disputed the amount of the compensation before the Court of Appeal. Experts were appointed to determine the compensation, according to new criteria laid down in a law which had been enacted during the course of the dispute and was applicable to the pending proceedings. Eventually, in 1998, the applicants were held to be entitled to compensation in an amount higher then that fixed by the decree. In April 2001, the applicants applied to the Court of Appeal for compensation for

the pecuniary and non-pecuniary harm which they claimed to have sustained owing to the length of the proceedings, as provided for in Law No. 89 of 24 March 2001, the so-called "Pinto Act", which introduced into the Italian legal system a remedy against the excessive length of judicial proceedings. In July 2001, the Court of Appeal awarded them only a certain sum by way of non-pecuniary damages. The applicants did not appeal on a point of law, contending that in the light of the case-law of the Court of Cassation, their appeal would be bound to fail.
Admissible under Article 6(1) (reasonable length of proceedings): (a) The Government's objection of non-exhaustion of domestic remedies: the Court has found no case in which the Italian Court of Cassation took into consideration a complaint, such as that put forward by the applicants, alleging that the amount awarded by the Court of Appeal in respect of the excessive nature of the length of proceedings was insufficient by comparison with the alleged harm or inadequate by comparison with the Strasbourg case-law. The complaints in question had been dismissed by the Court of Cassation. The Court infers that the applicants had no interest in appealing on a point of law. They also incurred the risk of being ordered to pay costs. Accordingly, the applicants were not required, for the purpose of exhausting domestic remedies, to appeal on a point of law. The objection is therefore rejected.
(b) The Government's objection alleging that the applicants were not "victims": the Court of Appeal did indeed acknowledge, by its decision of July 2001, that the length of the proceedings brought by the applicants had been excessive, which may be analysed as recognition of a violation of the Convention. The Court of Appeal awarded each of the applicants approximately EUR 600 in respect of the non-pecuniary harm caused by the length of the proceedings. However, in similar cases the Court has awarded considerably higher amounts. The Court accepts that the national authorities may calculate the compensation in a case involving proceedings of excessive duration in a manner which does not necessarily entail a strict and formalistic application of the criteria adopted by the Court. However, the sum awarded must bear a reasonable relationship to the sum awarded by the Court in similar cases. That is not so here, since the sum awarded in similar cases in the Strasbourg case-law is almost ten times higher than the amount awarded to the applicants by the Italian court. While respecting the margin of appreciation enjoyed by the national courts, those courts must comply with the Court's case-law too and award consistent sums. In the light of the difference, the sum awarded to the applicants cannot be regarded as adequate and thus capable of making good the alleged violation. The applicants can claim to be victims within the meaning of Article 34. This objection is therefore also rejected.
Admissible under Article 6(1) (fair hearing) and Article 1 of Protocol No. 1.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Croatia)
Effective remedy in respect of length of proceedings.

ŠOĆ - Croatia (Nº 47863/99)
Judgment 9.5.2003 [Section I]

Facts: The case concerns the length of five sets of civil proceedings, three of which are still pending.
Law: Government's preliminary objection (non-exhaustion of domestic remedies) – As far as the pending proceedings are concerned, the Court saw no reason to depart from its finding in earlier admissibility decisions (see *Slaviček v. Croatia*, no. 20862/02, decision of 4 July 2002,

and *Nogolica v. Croatia*, no. 77784/01, decision of 5 September 2002) to the effect that a constitutional complaint under Section 63 of the Constitutional Court Act 2002 is an effective remedy in respect of a complaint about the length of proceedings. However, the same is not true where proceedings have ended. Firstly, the wording of the provision is not sufficiently clear to leave no doubt as to its applicability to such proceedings. Secondly, the Government had not supplied any case-law showing that the Constitutional Court deals with complaints about the excessive length of terminated proceedings. On the contrary, the decisions of the Constitutional Court clearly indicate that it has taken the view that Section 63 does not apply to such proceedings. The Government's objection with regard to the two sets of proceedings which had ended was therefore dismissed.
Article 6(1) – The Court concluded that there had been no violation in respect of the two sets of proceedings which had ended.
Article 13 – Referring to its above reasoning, the Court concluded that there had been a violation of this provision.
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

EFFECTIVE DOMESTIC REMEDY (Italy)
Effectiveness of cassation appeal to contest the amount of compensation paid in respect of the excessive length of proceedings: *preliminary objection dismissed*.

SCORDINO and others - Italy (Nº 36813/97)
Decision 27.3.2003 [Section I]
(see Article 34, above).

EFFECTIVE DOMESTIC REMEDY (Portugal)
Length of court proceedings: effectiveness of an action based on the non-contractual liability of the State.

PAULINO TOMAS - Portugal (N° 58698/00)
GOUVEIA DA SILVA TORRADO - Portugal (N° 65305/01)
Decisions 22.5.2003 [Section III]

The applications concern the length of proceedings for damages for the harm sustained following a road traffic accident and enforcement proceedings aimed at seizing the bank accounts of a debtor. The first proceedings have been completed and the second are pending.
Inadmissible under Article 6(1): at least since October 1999, the action to establish non-contractual civil liability on the part of the State provided for in Legislative Decree No. 48051 has become an effective, adequate and accessible means of sanctioning in Portuguese law the excessive length of judicial proceedings. That action must therefore be used for the purposes of Article 35(1) of the Convention where the length of judicial proceedings which have been concluded or which are pending is excessive. However, that conclusion applies only on condition that the action to establish non-contractual liability on the part of the State itself remains an effective, adequate and accessible means of sanctioning the excessive length of judicial proceedings. The adequate nature of the action in liability might be affected by the excessive length of its examination and may also depend on the level of compensation awarded (see the *Scordino* decision of 27.3.2003, see Article 34, above).
The applicants, who complain before the Court of the length of the national proceedings, did not bring an action before the administrative courts to establish non-contractual liability on the part of the State. When they introduced their application, such an action had the nature of a remedy to be exhausted in accordance with Article 35(1) of the Convention: failure to exhaust all domestic remedies.

SIX MONTH PERIOD
Six month issue raised by the Court of its own motion: *inadmissible*.

SOTO SANCHEZ - Spain (Nº 66990/01)
Decision 20.5.2003 [Section IV]
(see Article 6(1) [civil], above).

ARTICLE 37

Article 37(1)

TAHSİN ACAR - Turkey (Nº 26307/95)
Judgment (preliminary issues) 6.5.2003 [Grand Chamber]

Facts: The applicant's brother was abducted in 1994 by two men in plain clothes claiming to be police officers and has been missing since. The applicant and his family submitted petitions and complaints to the authorities, but to no avail. In January 1997 the Provinicial Administrative Council decided not to take any proceedings against two gendarmes and a village guard. Several of the applicant's relatives claim that in 2000 they saw his brother on television among a group of persons who had been apprehended. The prosecution authorities maintained that the individual in question, despite having a similar name, was not the applicant's brother.
In August 2001, the Turkish Government submitted to the Court a declaration in which they offered to make an *ex gratia* payment of 70,000 pounds sterling to the applicant, covering any pecuniary and non-pecuniary damage as well as costs, and made a statement of regret with regard to the occurrence of the actions which had led to the bringing of the application, in particular the disappearance of the applicant's brother and the anguish caused to his family. Furthermore, the Government accepted that unrecorded deprivations of liberty and insufficient investigations into allegations of disappearance constituted violations of the Convention and undertook to issue appropriate instructions and to adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded and that effective investigations into alleged disappearances are carried out. On that basis, the application was struck out of the list of cases in a judgment of 9 April 2002, notwithstanding the applicant's request that the Court continue its examination of the case.
Law: Scope of the case – While the Court had full jurisdiction to examine the case as declared admissible, it considered it appropriate in the particular circumstances to limit its examination at this stage, and without prejudice to the merits, to the question whether the Government's unilateral declaration offered a sufficient basis for holding that it was no longer justified to continue the examination of the case.
Article 37(1)(c) – The Court proceeded on the basis of the Government's unilateral declaration and the parties' observations submitted outwith the framework of confidential friendly settlement negotiations, and disregarded statements made in the context of such negotiations and the reasons for a settlement not being reached. While under certain circumstances it may be appropriate to strike out an application on the basis of a unilateral declaration, despite the applicant's wish for the examination of the case to be continued, it will depend on the particular circumstances whether the declaration offers a sufficient basis for doing so. Relevant factors include the nature of the complaints, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken in the context of the execution of judgments in such cases, and

the impact of these measures on the case at issue. It may also be material to what extent the facts are in dispute and what *prima facie* evidentiary value is to be attributed to the parties' submissions on the facts, and in that connection it will be of significance whether the Court has taken evidence in the case. Other relevant factors may include the scope of any admissions made in the declaration and the manner in which the Government intends to provide redress and, depending on the circumstances of each case, further considerations may come into play. As to the present case, firstly the facts were largely in dispute. Secondly, although the Government had agreed to add "such as in the present case" to the declaration, with reference to the acknowledgement of unrecorded deprivations of liberty and insufficient investigations into allegations of disappearance constituting violations of Articles 2, 5 and 13, they had subsequently made firm submissions to the effect that the declaration could in no way be interpreted as entailing any admission of responsibility or liability for any violation of the Convention, thereby negating the admission of liability contained in the declaration. Thirdly, the declaration differed in a number of crucial respects from that in *Akman v. Turkey*, in which case it had not been disputed that the applicant's son had been killed by the security forces and it had been conceded that the death had resulted from the use of excessive force. Moreover, the Government had already adopted or undertaken to adopt specific measures designed to prevent in future the shortcomings identified by the Court. In the present case, the declaration did not adequately address the applicant's grievances under the Convention: no reference was made to any measures to deal with his specific complaints, the Government merely undertaking a general obligation to pursue their efforts to prevent future disappearances, without regard to what pertinent and practicable measures might be called for in the present case. Although a full admission of liability could not be regarded as a condition *sine qua non* for striking out an application on the basis of a unilateral declaration, in cases concerning disappearances or killings by unknown perpetrators where there was *prima facie* evidence supporting allegations that the domestic investigation fell short of what is necessary under the Convention, a unilateral declaration should at the very least contain an admission to that effect, combined with an undertaking to conduct a proper investigation. As the declaration in the present case contained neither any such admission nor any such undertaking, respect for human rights required that the examination of the case be pursued and the application could not be struck out.

ARTICLE 38

Article 38(1)(a)

FURNISH ALL NECESSARY FACILITIES
Delays and omissions by Government in responding to requests for documents, information and witnesses: *failure to fulfil obligations*.

TEPE - Turkey (Nº 27244/95)
Judgment 9.5.2003 [Section II (former composition]
(see Article 2, above).

ARTICLE 41

JUST SATISFACTION

MOTAIS DE NARBONNE - France (Nº 48161/99)
Judgment 27.5.2003 [Section II]

(translation – text taken from the press release)

Facts: The applicants are the beneficiaries of an estate that formerly included a plot of land in Saint-Denis de la Réunion which was expropriated. In a judgment of 2 July 2002 the Court held that because in the 19 years since its expropriation the land had not been developed the applicants had been unduly deprived of the increase in its value. It accordingly ruled that they had borne an excessive burden on account of the expropriation in issue and concluded that there had been a violation of Article 1 of Protocol No. 1. The Court reserved the question of the application of Article 41 (just satisfaction) as regards pecuniary damage.
Law: The Court decided unanimously to award the applicants, jointly, 3,286,765.70 euros for pecuniary damage.

ARTICLE 43

Article 43(2)

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

KOPECKÝ - Slovakia (Nº 44912/98)
Judgment 7.1.2003 [Section IV]
(See Information Note No. 49).

MAMATKULOV and ABDURASULOVIÇ - Turkey (Nº 46827/99 and Nº 46951/99)
Judgment 6.2.2003 [Section I (former composition)]
(see Information Note No. 50).

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. 50):

RAITIERE - France (Nº 51066/99)
Epoux GOLETTO - France (Nº 54596/00)
BENHAIM - France (Nº 58600/00)
Judgments 4.2.2003 [Section II]

VAN DER VEN - Netherlands (Nº 50901/99)
LORSÉ and others - Netherlands (Nº 52750/99)
Judgments 4.2.2003 [Section I (former composition)]

ATÇA and others - Turkey (Nº 41316/98)
ÖZDEMIR - Turkey (Nº 59659/00)
JAKUPOVIC - Austria (Nº 36757/97)
Judgments 6.2.2003 [Section III]

STATE and others - Romania (Nº 31680/96)
GRIGORE - Romania (Nº 31736/96)
TĂRBĂŞANU - Romania (Nº 32269/96)
Judgments 11.2.2003 [Section II]

HAMMERN - Norway (Nº 30287/96)
O. - Norway (Nº 29327/98)
RINGVOLD - Norway (Nº 34964/97)
Y. – Norway (N° 56568/00)
Judgments 11.2.2003 [Section III (former composition)]

FUCHS - Poland (Nº 33870/96)
BUKOWSKI - Poland (Nº 38665/97)
Judgments 11.2.2003 [Section IV]

ÇETIN and others - Turkey (Nº 40153/98 and Nº 40160/98)
Judgment 13.2.2003 [Section II]

LOUERAT - France (Nº 44964/98)
CHEVROL - France (N° 49636/99)
Judgments 13.2.2003 [Section III]

SCHAAL - Luxembourg (N° 51773/99)
PRADO BUGALLO - Spain (N° 58496/00)
Judgments 18.2.2003 [Section IV]

HUTCHISON REID - United Kingdom (Nº 50272/99)
FORRER-NIEDENTHAL - Germany (N° 47316/99)
KIND - Germany (Nº 44324/98)
MARQUES NUNES - Portugal (Nº 52412/99)
Judgments 20.2.2003 [Section III]

POPOVĂŢ - Romania (Nº 32265/96)
SZAVA and others - Romania (Nº 32267/96)
Judgments 25.2.2003 [Section II]

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
Judgment 25.2.2003 [Section IV]

G. and M. - Italy (Nº 31740/96)
Judgment 27.2.2003 [Section I]

NIEDERBÖSTER - Germany (N° 39547/98)
FERREIRA ALVES - Portugal (Nº 53937/00)
TEXTILE TRADERS LIMITED - Portugal (Nº 52657/99)
Judgments 27.2.2003 [Section III]

Article 44(2)(c)

On 21 May 2003 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

KROLICZEK - France (Nº 43969/98)
Judgment 2.7.2002 [Section II]

JANOSEVIC - Sweden (Nº 34619/97)
VÄSTBERGA TAXI AKTIEBOLAG and VULIC - Sweden (Nº 36985/97)
Judgments 23.7.2002 [Section I (former composition)]
(see Information Note No. 44).

AZAS - Greece (Nº 50824/99)
Judgment 19.9.2002 [Section I]

GÖÇER - Netherlands (Nº 51392/99)
Judgment 3.10.2002 [Section III]

POSTI and RAHKO - Finland (Nº 27824/95)
Judgment 24.9.2002 [Section IV]
(see Information Note No. 45).

VASILOPOULOU - Greece (Nº 47541/99)
Judgment 26.9.2002 [Section I]

BÖHMER - Germany (Nº 37568/97)
Judgment 3.10.2002 [Section III]
(see Information Note No. 46).

G.L. - Italy (Nº 54283/00)
Judgment 3.10.2002 [Section III]

THERAUBE - France (Nº 44565/98)
Judgment 10.10.2002 [Section III]

THIEME - Germany (Nº 38365/97)
Judgment 17.10.2002 [Section III]

MESSINA - Italy (no. 3) (Nº 33993/96)
Judgment 21.10.2002 [Section I]

KORAL - Poland (Nº 52518/99)
Judgment 5.11.2002 [Section IV]

BAKOVÁ - Slovakia (Nº 47227/99)
Judgment 12.11.2002 [Section IV]

MOUISEL - France (N° 67263/01)
Judgment 14.11.2002 [Section I]
(see Information Note No. 47).

JULIEN - France (Nº 42276/98)
Judgment 14.11.2002 [Section III]

BERGER - France (N° 48221/99)
Judgment 3.12.2002 [Section II]
(see Information Note No. 48).

TERAZZI S.A.S. - Italy (Nº 27265/95)
DEP and DICLE - Turkey (Nº 25141/94)
Judgments 10.12.2002 [Section IV]

GOLEA - Romania (Nº 29973/96)
GHEORGHIU - Romania (Nº 31678/96)
MITCHELL and HOLLOWAY - United Kingdom (Nº 44808/98)
FAIVRE - France (Nº 46215/99)
Judgments 17.12.2002 [Section II]

KORELLIS - Cyprus (Nº 54528/00)
Judgment 7.1.2003 [Section II]
(see Information Note No. 49).

C.D. - France (Nº 42405/98)
SCOTTI - France (Nº 43719/98)
Judgments 7.1.2003 [Section II]

BORÁNKOVÁ - Czech Republic (Nº 41486/98)
Judgment 7.1.2003 [Section IV]

PAPADOPOULOS - Greece (Nº 52848/99)
Judgment 9.1.2003 [Section I]

PERHIRIN - France (Nº 60545/00)
Judgment 4.2.2003 [Section II]

PAPADOPOULOS - Greece (Nº 52464/99)
Judgment 6.2.2003 [Section I]

HESSE-ANGER - Germany (Nº 45835/99)
Judgment 6.2.2003 [Section III]

BERTUZZI - France (N° 36378/97)
Judgment 13.2.2003 [Section II]
(see Information Note No. 50).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Non-restitution of property confiscated at end of Second World War: *inadmissible*.

HARRACH - Czech Republic (Nº 77562/01)
Decision 27.5.2003 [Section II]

The applicant was born in 1920 and has both Czech and Austrian nationality. His cousin Johann Harrach owned real estate in the former Czechoslovakia. In 1941 Johann Harrach made his will in which he appointed his son Ferdinand as his universal heir and nominated the applicant as testamentary substitute. Following the testator's death in May 1945, his heir did not acquire the estate. It therefore became *hereditas iacens* in accordance with the Civil Code of 1811, then in force. The estate was confiscated under President Beneš Decree No. 12/1945. The testator's widow requested that the property be excluded from the confiscation on the grounds that her husband had been loyal to Czechoslovakia. Her request was refused by the District National Committee in 1946. This decision was upheld by the National Land Committee in 1947. When Ferdinand Harrach died in 1961, the right to take over the *hereditas iacens* passed to the applicant. He lodged a claim for restitution of the property in January 1993. The District Land Office found in March 1999 that the applicant was the owner of part of the property. It held that confiscation proceedings should not have been brought against the *hereditas iacens*, but should instead have been instituted subsequent to *ex officio* inheritance proceedings. The transfer to the State was therefore unlawful, with reference to the Land Ownership Act, and had infringed the applicant's property rights. In October 1999, this decision was quashed by the Regional Court, which found that the facts of the case had not been sufficiently established, in particular the date on which the property had been confiscated, which would determine whether the case ought to be examined under the Restitution Act. In the Regional Court's view, the relevant date was that of the National Land Committee's decision in 1947. It further considered that the authorities that had dealt with the confiscation were competent to do so, and that confiscation of the *hereditas iacens* had not been excluded by the Civil Code of 1811. It remitted the case to the administrative authority. In the meantime, the District Land Office found that the applicant was the owner of the remainder of the property and that his claim for restitution was covered by the Land Ownership Act. This decision was quashed by the Regional Court in February 2000. It ruled that the main reason for the confiscation of Johann Harrach's property had been his decision to take German nationality in 1939 and his involvement in German political parties, including the Nazi party in 1942. The effective date of confiscation was that of the 1945 Decree, the subsequent decisions being merely declaratory in nature. The confiscation was therefore outside the scope of the Land Ownership Act. It ordered the Land Office to examine whether Johann Harrach satisfied the conditions for property laid down in the Restitution Act. The Land Office decided that the applicant was not the owner of the estate, that it had been confiscated lawfully and that this occurred outside the temporal scope of the Land Ownership Act. As for the Restitution Act, the necessary conditions were not met since Johann Harrach did not renew his Czechoslovakian citizenship. The applicant had not acquired the estate, nor did he have the degree of kinship stipulated in the Restitution Act. On appeal, the Regional Court confirmed this decision. The applicant's appeal to the Constitutional Court was dismissed as manifestly ill-founded.
Inadmissible under Article 6(1): The applicant's claim was dealt with by the national courts at public hearings. He had been assisted by counsel and was able to present his case and challenge the submissions of his adversary. The national judges gave detailed consideration to all aspects of the case, giving full reasons for their conclusions and addressing the applicant's

submissions. There was no indication that the proceedings were unfair or otherwise contrary to Article 6(1): manifestly ill-founded.
Inadmissible under Article 1 of Protocol No. 1: The national courts established that the applicant was not the owner of the estate, never having acquired it in inheritance proceedings. It had been lawfully confiscated in 1945. Neither the original owner nor the applicant satisfied the conditions stipulated in the Restitution Act. The reasons given by the domestic courts were relevant and sufficient, their decisions were not arbitrary and the proceedings were not unfair. The applicant therefore had neither an existing possession nor a legitimate expectation. Accordingly, the facts of the case did not come within the ambit of Article 1 of Protocol No. 1: incompatible *ratione materiae*.
Inadmissible under Article 14: The applicant claimed that he had been discriminated against on the grounds of his nationality. In relation to Article 6(1), his nationality had no bearing on the proceedings. The dismissal of his claim did not in itself constitute discrimination. In relation to Article 1 of Protocol No. 1, since his claim under this provision was incompatible *ratione materiae*, Article 14 was not applicable.

PEACEFUL ENJOYMENT OF POSSESSIONS
Obligation to return land after the reunification of Germany: *admissible*.

RISSMANN, HÖLLER and LOTH - Germany (Nº 72203/01 and Nº 72552/01)
Decision 15.5.2003 [Section III]

In September 1945, plots of more than 100 ha in the Soviet occupied zone of Germany were expropriated in the context of agrarian reform. The land became part of an agrarian land fund, from which plots of 8 ha on average were redistributed to peasants with no or little land of their own. The applicants are the heirs of the new owners of these plots affected by the agrarian reform and situated in the former German Democratic Republic (GDR). The orders on the change of ownership governed the circumstances in which the plots would revert to the agrarian land fund and be allocated to third parties, on condition that the latter undertook to use the plots for agricultural purposes. The Law of 6 March 1990 on the rights of the owners of plots resulting from the agrarian reform, which entered into force on 16 March 1990, lifted all restriction on the disposition of the plots resulting from the agrarian reform, transforming the owners into owners in the true meaning of the word. The first two applicants had inherited plots in the *Land* of Mecklemburg-Western Pomerania in 1978. Since 1996, they had been entered as owners in the land register. In July 1998, the *Land* claimed that the plots should be transferred to it. By judgment of October 1998, the competent regional court ordered the applicants to give up their property to that *Land*, on the ground that on 15 March 1990 they had not been members of an agricultural cooperative in the GDR and had not applied to become members of such a cooperative. The third applicant had inherited a plot in the *Land* of Brandenburg in 1986. Since November 1991, she had been entered as the owner of that plot in the Land Register. In July 1995, the *Land* of Brandenburg claimed that the plot should be transferred to it. By judgment of July 1997, the competent regional court ordered the applicant to give up her property, on the ground that on 15 March 1990, she had not carried out an activity connected with agriculture, forestry or food production. The applicants' appeals were unsuccessful.
Admissible under Article 1 of Protocol No. 1, taken on its own and in conjunction with Article 14.

Other judgments delivered in May 2003

Articles 2, 3 and 13

YAMAN - Turkey (Nº 37049/97)
Judgment 22.5.2003 [Section I]

death of applicant's son in custody in 1996 – friendly settlement (*ex gratia* payment of 60,000 €, statement of regret and undertaking to take appropriate measures).

Article 6(1)

EEROLA - Finland (Nº 42059/98)
Judgment 6.5.2003 [Section IV]

changes in the composition of a court – in particular the lay judges – during the course of criminal proceedings – violation.

PIŁKA - Poland (Nº 39619/98)
MALISZEKSI - Poland (Nº 40887/98)
GRYZIECKA and GRYZIECKI - Poland (Nº 46034/99)
PAŚNICKI - Poland (Nº 51429/99)
MAJKRZYK - Poland (Nº 52168/99)
D.K. - Slovakia (Nº 53372/99)
Judgments 6.5.2003 [Section IV]

SOBIERAJSKA-NIERZWICKA - Poland (Nº 49349/99)
PISKURA - Slovakia (Nº 65567/01)
Judgments 27.5.2003 [Section IV]

length of civil proceedings – violation.

KORNBLUM - France (Nº 50267/99)
Judgment 27.5.2003 [Section II]

length of bankruptcy and civil proceedings – violation.

SZYMIKOWSKA and SZYMIKOWSKI - Poland (Nº 43786/98)
SĘDEK - Poland (Nº 67165/01)
Judgments 6.5.2003 [Section IV]

MICOVČIN - Slovakia (Nº 54822/00)
SISÁK - Slovakia (Nº 62191/00)
RUSNÁKOVÁ - Slovakia (Nº 63999/00)
Judgments 27.5.2003 [Section IV]

length of civil proceedings – friendly settlement.

BORDIERE - France (Nº 53112/99)
Judgment 27.5.2003 [Section II]

length of civil proceedings – no violation.

WITCZAK - Poland (Nº 47404/99)
Judgment 6.5.2003 [Section IV]

length of civil proceedings – struck out.

VERRERIE DE BIOT - France (Nº 46659/99)
Judgment 27.5.2003 [Section II]

length of administrative proceedings – violation.

IMMO FOND'ROY S.A. - Belgium (Nº 50567/99)
Judgment 22.5.2003 [Section I]

length of administrative proceedings – friendly settlement.

SANGLIER - France (Nº 50342/99)
VERHAEGHE - France (Nº 53584/99)
Judgments 27.5.2003 [Section II]

length of proceedings relating to employment – violation.

Articles 6(1) and 10

ZARAKOLU - Turkey (Nº 32455/96)
Judgment 27.5.2003 [Section IV]

conviction for disseminating propaganda supporting a terrorist organisation; independence and impartiality of State Security Court – friendly settlement (*ex gratia* payment and undertaking to implement reforms).

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

VOGLINO - Italy (Nº 48730/99)
CARBONE - Italy (Nº 48842/99)
MOTTOLA - Italy (Nº 58191/00)
Judgments 22.5.2003 [Section I]

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

ATTENE - Italy (Nº 62135/00)
Judgment 22.5.2003 [Section I]

CARLONI TARLI - Italy (Nº 48840/98)
Judgment 30.5.2003 [Section I]

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

Article 8

HEWITSON - United Kingdom (Nº 50015/99)
Judgment 27.5.2003 [Section IV]

absence of legal basis for installation of listening device on private property – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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