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LIFE
Effectiveness of a continuing twelve-year inquiry into a fatal explosion in the state-of-emergency region: *violation*.

KAMİL UZUN - Turkey (N° 37410/97)
Judgment 10.5.2007 [Section II]

Facts: At the material time the applicant's parents lived in the state-of-emergency region, where serious fighting raged between security forces and the PKK (Kurdistan Workers' Party). One night in September 1994 a shell blast struck a neighbour's house. Fragments of the shell hit the applicant's mother in the head and neck. Within half an hour she succumbed to her wounds. The next day the applicant's father filed a complaint at the local police station; according to the applicant, while there his father allegedly saw a mortar pointing in the direction of the neighbourhood where the explosion had occurred. Gendarmerie officers drew a sketch of the site and assessed the damage done to the homes. One officer prepared messages for the public prosecutor, enquiring *inter alia* whether he intended to have an autopsy carried out on the body, which had already been buried with the commanding officer's authorisation. It subsequently became clear that the messages were never sent. The local garrisons maintained that no shells had been fired at the time of day concerned and that the two mortars present were out of service. The applicant took the matter to the Istanbul branch of the Human Rights Association, which transmitted the complaint to the Turkish Parliament's Human Rights Committee, which in turn forwarded it to the public prosecutor's office.
The public prosecutor's office ordered an investigation, which revealed, amongst other things, serious omissions in the correspondence between the military and the prosecuting authorities. As the deceased had been buried before the prosecuting authorities were informed of what had happened, her body was exhumed in June 1996 to be autopsied. In November 1996 a gendarmerie officer and a non-commissioned officer were charged with abuse of authority. The former was accused of neglecting to inform the prosecuting authorities of the incident, failing to pass on the formal complaints lodged by the victims, precipitating the victim's burial without having an autopsy performed, and removing the shell fragments collected at the scene. The other officer was accused of concealing evidence by failing to mention it in the report drawn up the day after the tragedy. In 1999 the accused were found guilty of abuse of authority and interfering with the course of justice. They received suspended sentences. In May 2000 the prosecuting authorities issued a warrant valid until 2009, the time-limit for prosecution, authorising the investigation to continue. The investigation was still pending when the Strasbourg Court delivered its judgment.

Law: The origin and context of the impugned shell blast were a source of legitimate doubt, but the evidence at the Court's disposal did not enable it to conclude beyond reasonable doubt, as the standard of proof required, that the applicant's mother had been killed by members of the armed forces.
However, it was still necessary to determine whether it was the investigating authorities' failure to take effective action, when called in to deal with the case, that had made it impossible to establish the facts conclusively.
The inquiry had been carried out by investigators from the local police station, who had not informed the judicial authorities but had acted without their knowledge until the applicant's complaint was transmitted to the public prosecutor's office via the Parliament's Human Rights Committee. So, throughout the initial stage of the investigation, the same people presumed responsible for the incident, all of whom were from the local gendarmerie, had been in charge of the investigation. That was not in keeping with the requirement for an impartial investigation, especially as it had gone on for four months before the public prosecutor took it over. The investigators had effectively deprived the preliminary investigation of any public or judicial control and prevented the true culprits from being identified and called to account. There were flagrant shortcomings in the investigations, including the concealment by the military personnel present at the scene the day after the incident of the shell fragments collected on site. Then certain individuals had removed these pieces of evidence which, if subjected to ballistic tests, might well have

provided cogent evidence of the origin of the fatal shot. The public prosecutor could hardly have been expected to make up for the loss of this evidence with the help of the few small fragments handed over to him by the villagers. Nor could he be blamed, for example, for failing to have tests carried out on the mortars present. Like the belated autopsy, this would have been unlikely to produce any reliable evidence to move the investigation forward, in so far as the local police had revealed a propensity to conspire among themselves.
True, there had been a conviction for abuse of authority, although the sentence had been suspended. However, the persons responsible for the death remained unidentified. And as for the possibility of any implication of the armed forces in the death, if only through negligence, it had to all intents and purposes been excluded from the investigations. The investigations had now been going on since 1995, without any credible progress seeming to have been made, which merely confirmed the feeling of impunity and insecurity that had reigned in the region at the time.
Conclusion: procedural violation of Article 2 (unanimously). The Court considered that with this finding of a violation, the main legal issue raised by the application had been examined. It decided not to rule separately on the other claims, based on Articles 6, 8, 13 and 14 and Article 1 of Protocol No. 1.

Article 41 – EUR 5,000 to the applicant and EUR 15,000 to the victim's other heirs for pecuniary and non-pecuniary damage.

LIFE
Effectiveness of an investigation into a fatal shooting by a police officer, extent to which victim's relatives were able to participate, lack of a public hearing of the relatives' legal challenge against the decision not to prosecute the police officer: *violation/no violation*.

RAMSAHAI and Others - Netherlands (N° 52391/99)
Judgment 15.5.2007 [GC]

Facts: The judgment concerns the death of Moravia Ramsahai, the applicants' son and grandson, who was shot dead by a police officer in Amsterdam, at the age of 19 and a half, in the following circumstances. One Saturday night during a festival, Moravia Ramsahai stole a scooter: he threatened the owner with a pistol and rode away on it. The police were informed of the theft. Two uniformed police officers, B. and B., who were in a patrol car, noticed a scooter being driven by an individual fitting the reported description. One officer ran towards the suspect and tried to arrest him but after a brief struggle Moravia Ramsahai managed to break free. The officer saw him take a pistol out from under his belt, upon which he drew his own service pistol and ordered Moravia Ramsahai to put down his weapon. The youth refused to comply. In the meantime the second officer had left the patrol car and approached the scene. Moravia Ramsahai then apparently raised his weapon and pointed it in the direction of that officer, who drew his gun and fired. The victim was struck in the neck and died upon the arrival of the ambulance. Moravia Ramsahai's pistol was found loaded and ready to fire.
A criminal investigation was opened. It was partly conducted by the police force to which officers B. and B. belonged. This local police force carried out the investigation for the first 15 and a half hours, after which the investigation was taken over and placed under the responsibility of a Detective Chief Superintendent of the State Criminal Investigation Department. The Superintendent sent his report to the public prosecutor, who was the legal officer in charge of criminal investigations carried out at the police station for which officers B. and B. worked. The public prosecutor concluded that the fatal shot had been fired in self-defence and that the officer responsible would not therefore be prosecuted. The applicants obtained a right of access to the case file. They challenged the public prosecutor's decision not to prosecute the police officer, but that decision was upheld by the Court of Appeal, whose proceedings and decision were not public.

Law: Fatal shot by a police officer: The Grand Chamber was concerned about the independence and quality of the investigation into the death. As regards the identity of the officer who fired the fatal shot, there was some discrepancy between the version of the policemen present at the time and the version of the officers who had been contacted by radio after the shooting; moreover, the investigation had been

opened and initially undertaken by police officers who, like B. and B., belonged to the local police force. However, the establishment of the facts as set out in the Chamber judgment had not seriously been called into question by the parties. In addition, the description of Moravia Ramsahai's conduct, as given by officers B. and B., was consistent with the other established facts and in particular the fact that, previously that day, the youth had already brandished a pistol to threaten other people. In those circumstances, the Grand Chamber decided to examine the case in the light of the facts as established by the Chamber. It agreed with the Chamber that the fatal shot had not exceeded what was "absolutely necessary".
Conclusion: no violation (unanimously).

Effectiveness of the investigation into the circumstances surrounding the death:
The Grand Chamber considered, unlike the Chamber, that the adequacy of the investigation had been undermined by certain shortcomings, namely: failure to test the hands of officers B. and B. for gunshot residue and to stage a reconstruction of the incident, the apparent absence of any examination of their weapons or ammunition and the lack of an adequate pictorial record of the trauma caused to the victim's body by the fatal bullet. In addition, officers B. and B. had not been kept separated after the incident and had not been questioned until nearly three days later. Although there was no evidence that they had colluded with each other or with their colleagues, the mere fact that appropriate steps had not been taken to reduce the risk of such collusion had amounted to a significant shortcoming. Those lacunae were all the more regrettable in that there were no witnesses who saw the fatal shot fired from close by, except for the two police officers.
Conclusion: violation on account of the inadequacy of the investigation (thirteen votes to four).

As regards the independence of the police investigation, fifteen and a half hours had passed from the time of the death until the State Criminal Investigation Department had become involved. During that time, essential parts of the investigation had been carried out by the same force to which officers B. and B. belonged. The Government had not pointed to any special circumstances that had necessitated immediate action by the local police force in the present case going beyond the securing of the area in question. Since the State Criminal Investigation Department were able to appear on the scene of events within, on average, no more than an hour and a half, a delay of fifteen and a half hours was unacceptable. As to the other investigations of the local police force, at the request and under the responsibility of the State Criminal Investigation Department after it had taken over the investigation, the Department's subsequent involvement could not suffice to remove the taint of the force's lack of independence.
Conclusion: violation in that the police investigation was not sufficiently independent (sixteen votes to one).

As regards the role of the public prosecutor, the police investigation had been supervised by a public prosecutor who had hierarchical responsibility for the work of officers B. and B. and their colleagues. The same public prosecutor had taken the decision not to prosecute, under authority delegated to her by the Chief Public Prosecutor. Public prosecutors inevitably relied on the police for information and support. This did not in itself suffice to conclude that they lacked sufficient independence *vis-à-vis* the police. Problems might arise, however, if a public prosecutor had a close working relationship with a particular police force. In the present case, it would have been better if the investigation had been supervised by a public prosecutor unconnected to the local police force, especially given the involvement of that force in the investigation itself. Even so, note had to be taken of the degree of independence of the Netherlands Public Prosecution Service and the fact that ultimate responsibility for the investigation was borne by the Chief Public Prosecutor. What is more, the possibility of review by an independent tribunal existed and the applicants had actually made use of it.
Conclusion: no violation as regards the position of the public prosecutor who supervised the investigation (thirteen votes to four).

Involvement of the applicants in the investigation: The Grand Chamber considered, like the Chamber, that the applicants had been granted access to the information yielded by the investigation to a degree sufficient for them to participate effectively in proceedings aimed at challenging the decision not to prosecute.
Conclusion: no violation (unanimously).

Lack of publicity of the proceedings brought by the applicants for a review of the merits of the decision not to prosecute, *and of the decision of the Court of Appeal*:
The Grand Chamber agreed with the Chamber that the proceedings did not have to be open to the public. Unlike the Chamber, however, it took the view that the Court of Appeal's decision was not required to be made public either. The applicants had been allowed full access to the investigation file, had been able to participate effectively in the Court of Appeal's hearing and had been provided with a reasoned decision. There was thus little likelihood that any relevant information might have been concealed from the Court of Appeal or the applicants. In addition, given that the applicants had not been prevented from making the decision public themselves, the requirement of publicity was satisfied to an extent sufficient to obviate the danger of any improper cover-up by the authorities.
Conclusion: no violation (fifteen votes to two).

The Court held, by thirteen votes to four, that Article 6 did not apply to the proceedings brought by the applicants, under Article 12 of the Netherlands Code of Criminal Procedure, against the public prosecutor's decision not to prosecute.

Article 41 – EUR 20,000 for non-pecuniary damage.

LIFE
Failure of the police to protect the lives of the applicant's children, eventually killed by their father: *violation*.

KONTROVÁ - Slovakia (N° 7510/04)
Judgment 31.5.2007 [Section IV]

Facts: In November 2002 the applicant filed a criminal complaint against her husband, accusing him of having assaulted her. She also gave a long account of physical and psychological abuse by her husband. Accompanied by her husband, she later tried to withdraw her criminal complaint. On the advice of a police officer, she consequently modified the complaint such that her husband's alleged actions were treated as a minor offence which called for no further action. During the night of 26 to 27 December 2002 the applicant and her relative called the local police to report that the applicant's husband had a shotgun and was threatening to kill himself and the children. As the husband had left the scene prior to the arrival of the police patrol, the policemen took the applicant to her parents' home and asked her to come to the police station so that a formal record of the incident could be drawn up. On 27 December and 31 December 2002, she went to the local police, enquiring about her criminal complaints. Later, on 31 December 2002 the applicant's husband shot dead their two children and himself. The domestic courts found that the shooting had been a direct consequence of the police officers' failure to act. In 2006 the police officers involved were convicted of negligent dereliction of their duties. The applicant's complaints to the Constitutional Court seeking compensation for non-pecuniary damage were declared inadmissible for lack of jurisdiction.

Law: Article 2 – The situation in the applicant's family had been known to the local police given the criminal complaint of November 2002 and the emergency phone calls of December 2002. In response, under the applicable law, the police had been obliged to: register the applicant's criminal complaint; launch a criminal investigation and criminal proceedings against the applicant's husband immediately; keep a proper record of the emergency calls and advise the next shift of the situation; and, take action concerning the allegation that the applicant's husband had a shotgun and had threatened to use it. However, one of the officers involved had even assisted the applicant and her husband in modifying her criminal complaint of November 2002 so that it could be treated as a minor offence calling for no further action. As the domestic courts had established and the Government had acknowledged, the police had failed in its obligations and the direct consequence of those failures had been the death of the applicant's children.
Conclusion: violation (unanimously).

Article 13 – The applicant should have been able to apply for compensation for non-pecuniary damage, but no such remedy was available to her.
Conclusion: violation (unanimously).

Article 41: EUR 25,000 for non-pecuniary damage.

USE OF FORCE
Fatal shooting by a police officer during an attempted arrest: *no violation*.

RAMSAHAI and Others - Netherlands (N° 52391/99)
Judgment 15.5.2007 [GC]

(see Article 2 "Life" above).

POSITIVE OBLIGATIONS
Failure of the police to protect the lives of the applicant's children, eventually killed by their father: *violation*.

KONTROVÁ - Slovakia (N° 7510/04)
Judgment 31.5.2007 [Section IV]

(see Article 2 "Life" above).

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Failure to carry out an effective investigation into racist attack on a member of the Roma: *violation*.

ŠEČIĆ - Croatia (N° 40116/02)
Judgment 31.5.2007 [Section I]

Facts: The applicant, who was of Roma origin, was attacked by two unidentified men when collecting scrap metal in Zagreb in April 1999. They beat him with wooden planks and shouted racial abuse while two other men kept watch. Shortly afterwards the police arrived, interviewed people at the scene and made an unsuccessful search for the attackers. The applicant sustained multiple rib fractures and was later diagnosed as suffering from post-traumatic stress disorder. In July 1999 his lawyer lodged a criminal complaint. However, neither the applicant nor the eye-witnesses were able to give the police a clear description of the attackers. In 2000 the lawyer informed the state attorney's office that the persons responsible for the attack on the applicant had also carried out a number of other attacks on Roma. She provided two lines of inquiry: an eye witness who had identified one of the attackers and a television interview in which a young skinhead had admitted engaging in attacks on the Roma population in Zagreb. Neither yielded a result. The person identified by the eye witness was eliminated from the inquiry without being questioned because none of the other witnesses had identified him, despite a very noticeable scar, and he did not appear to belong to a skinhead group. Likewise, the police were unable to question the person who had appeared on the television interview as the journalist refused to reveal his identity. In February 2001 the applicant's lawyer informed the prosecuting authorities of several further attacks on the Roma population by skinheads and gave the names and addresses of the victims and witnesses. The criminal proceedings are still at the pre-trial stage. An attempt by the applicant to expedite matters by a complaint to the Constitutional Court was dismissed on the grounds that it had no jurisdiction in such cases.

Law: Article 3 – The applicant's injuries were sufficiently serious to amount to ill-treatment. The authorities had been under a duty to take all reasonable steps to collect the relevant evidence promptly. However, the criminal proceedings had been pending in the pre-trial phase for almost seven years without the police bringing any charges. Although they had concluded that the attack had been carried out by skinheads known to have participated in similar incidents, they did not appear to have questioned anyone belonging to that group or to have followed up the information that had been provided in any way. Moreover, they had excluded the person identified by the eye witness from the list of possible suspects without questioning him. Nor had the police sought a court order to compel the journalist to reveal his source, despite a change in the law in 2003 that had enabled them to do so. Seeking such an order would not necessarily have been incompatible with the freedom of the media guaranteed under Article 10 of the Convention, since it would have been for the competent court to weigh up all the interests and to decide whether the source's identity should be revealed. Lastly, the police had not made use of any of the other investigative measures open to them or taken any action since 2001.
Conclusion: violation (unanimously).

Article 14 in conjunction with Article 3 – The applicant's attackers were suspected of belonging to a group of skinheads. It was in the nature of such groups to be governed by extremist and racist ideology. Accordingly, knowing that the attack was probably the result of ethnic hatred, the police should not have allowed the investigation to drag on for more than seven years without taking any serious steps to identify or prosecute those responsible.
Conclusion: violation (unanimously).

Article 41 – EUR 8,000 for non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Violent assault on a congregation of Jehovah's Witnesses by a group purporting to support the Orthodox Church and lack of an effective investigation: *violation*.

97 MEMBERS OF THE GLDANI CONGREGATION OF JEHOVAH'S WITNESSES AND 4 OTHERS - Georgia (N° 71156/01)
Judgment 3.5.2007 [Former Section II]

Facts: The case concerns an incident in October 1999 in which a fanatical group of Orthodox believers led by a defrocked priest attacked a congregation of Jehovah's Witnesses. The group surrounded and entered a theatre in which 120 members of the congregation were gathered. Although some of the members managed to escape, 60 others, including women and children, were violently assaulted by the attackers, who punched and kicked them, struck them with sticks, iron crosses and belts and pushed them down staircases. One man's head was shaved by a group of chanting assailants. The Jehovah's Witnesses were then searched, their personal effects were removed and any symbols of their beliefs they were carrying were thrown into a fire. 16 people were admitted to hospital, mainly suffering from head injuries and headaches. Although attempts were made to alert the police, the officers on duty were initially reluctant to intervene. One of the applicants was even told by the officer in charge that he would have given the Jehovah's Witnesses "an even worse time". The attack was filmed by one of the assailants. Recordings in which a number of the attackers were clearly identifiable were broadcast on national television and their names given to the authorities by the victims. However, although 42 applicants lodged criminal complaints, only 11 were granted civil-party status. The criminal proceedings were beset by various problems: they were repeatedly suspended, allegedly because the attackers could not be identified; the senior police investigator stated that his Orthodox faith prevented him from conducting an impartial investigation; and, when one of the applicants picked out two of the assailants in an identification parade, he was charged with public-order offences before eventually being acquitted. Little, if any action was taken to bring the assailants to justice: two of the attackers were placed under investigation on suspicion of having burned religious literature, while their leader, who claimed that he would inform the police in advance whenever his group planned to carry out an attack, was later charged in connection with separate incidents.

Law: Article 3 – (a) *Treatment inflicted on the applicants*: Allegations of inhuman treatment were upheld in the cases of 31 applicants in respect of whom there was corroborating medical or video evidence or a precise, unchallenged, description of ill-treatment. A further 6 applicants were held to have been indirect victims of inhuman treatment as a result of beatings administered to their children. 14 applicants whose statements did not specify the nature and gravity of their treatment were found to have been subjected to degrading treatment on account of the broadcasting of the images of the violence, including the religiously inspired debasement of the man whose head was shaved, on national television. No violation was found in the cases of 16 applicants who had escaped the attack and 37 applicants who had not lodged a complaint with the Georgian authorities.
Conclusion: violation in respect of 45 of the applicants (unanimously).

(b) *The authorities' response*: It had not been shown that the authorities were aware that the attack was being planned. However, once it had been reported to them, the police had failed to act diligently. 31 applicants had received no response to their complaints and the proceedings instituted in respect of the 11 applicants who were granted civil-party status were unsuccessful. The case investigator had made clear his bias from the start. A victim who identified some of the assailants had ended up himself being charged. It was regrettable that the Government had continued to assert that the perpetrators of the violence could not be identified, particularly in view of the available video evidence. In sum, the police had refused to intervene promptly to protect the applicants and their children and the applicants had subsequently been faced with total indifference on the part of the authorities who, for no valid reason, had refused to apply the law. Such an attitude on the part of authorities was liable to undermine the effectiveness of any other remedies that may have existed.
Conclusion: violation in respect of 42 of the applicants (unanimously).

Article 9 – The applicants had been attacked, humiliated and severely beaten because of their religious beliefs. Their religious literature had been confiscated and burnt while they were forced to look on. One of the applicants had had his head shaved as religious punishment. The applicants were subsequently confronted with total indifference and a failure to act on the part of the authorities, who, on account of the applicants' adherence to a religious community perceived as a threat to Christian Orthodoxy, took no action in respect of their complaints. Deprived of any remedy, the applicants could not enforce their rights to freedom of religion before the domestic courts. As that attack constituted the first act of large scale aggression against the Jehovah's Witnesses, the authorities' negligence had opened the doors to a generalisation of religious violence throughout Georgia by the same group leaving the applicants to fear renewed violence on each fresh manifestation of their faith. In those circumstances, the authorities had failed in their duty to take the necessary measures to ensure that the group of Orthodox extremists tolerated the applicants' religious community and enabled them to exercise freely their rights to freedom of religion.
Conclusion: violation (unanimously).

Article 14 in conjunction with Articles 3 and 9 – The police's refusal to intervene promptly was largely due to the applicants' religious convictions. The comments and attitudes of the officials alerted about the attack or subsequently instructed to conduct the investigation were not compatible with the principle of equality before the law. No justification for that discriminatory treatment had been put forward by the Government. The authorities had enabled the instigator of the attacks to continue to stir up hatred through the media and to pursue acts of religiously-motivated violence, accompanied by his supporters, while alleging that they enjoyed the unofficial support of the authorities. This suggested possible complicity on the part of State representatives.
Conclusion: violation (unanimously).

Article 41 – Various awards were made in respect of non-pecuniary damage up to a maximum of EUR 850 per applicant.

INHUMAN OR DEGRADING TREATMENT
Conditions of pre-trial detention and detainee's obligation to pay for their improvement: *violation*.

MODARCA - Moldova (N° 14437/05)
Judgment 10.5.2007 [Section IV]

(see Article 5(4) below).

INHUMAN OR DEGRADING TREATMENT
Failure to take into account a prisoner's serious invalidity when arranging for his detention and transfer: *violation*.

HÜSEYİN YILDIRIM - Turkey (N° 2778/02)
Judgment 3.5.2007 [Section IV]

Facts: The applicant sustained injuries in a road accident which left him disabled. He was arrested at his home under an arrest warrant dating back several years, on account of his suspected involvement in the activities of a faction of an extreme left-wing armed organisation, as a result of which he had already been sentenced to seven years' imprisonment. The applicant, who was incapable of moving or looking after his own needs, was placed on a foam mattress and questioned as he lay on it. He was then placed in pre-trial detention and immediately placed in the hospital unit for a few days before being transferred to another prison. His state of health was diagnosed to have deteriorated and he was declared medically unfit to remain incarcerated. He was obliged to undergo serious neurological surgery. He subsequently began to suffer from sphincter problems, requiring him to wear a urethral catheter, and contracted various more or less serious dermatological, neurological or respiratory illnesses; he also showed signs of chronic depression. A panel of specialists from the Institute of Forensic Medicine found that his state of health was incompatible with his imprisonment and declared that he was confined to a wheelchair and that his condition was incurable. The permanent after-effects had previously been diagnosed by the board of health at the public hospital. During his detention the applicant was assisted by some of the prisoners sharing his cell, who prepared his food and fashioned a makeshift a commode by cutting a hole in a plastic stool. He was also under the care of his brother and two sisters, who took turns looking after him in the prison wing of the public hospital. The applicant was transferred in a police van to attend a hearing at the State Security Court. The gendarmes who were accompanying him allegedly dropped him; the press published photographs which showed him on the ground attempting to rise. The applicant was sentenced to life imprisonment, then released under a presidential pardon.

Law: A detainee's clinical details had to be taken into account in arrangements for the enforcement of custodial sentences, particularly concerning the duration of detention of a person with a life-threatening pathology or whose state of health was incompatible with lengthy incarceration. The conditions of detention were plainly inappropriate for the applicant's severe disability, placing him for about three years in a situation which could not but arouse in him constant feelings of anxiety, inferiority and humiliation that were sufficiently strong to amount to degrading treatment. No special steps had been taken to alleviate his stay in prison or in hospital. During the transfers when events that amounted to degrading treatment had occurred, responsibility for the applicant had been placed in the hands of gendarmes who were certainly not qualified to foresee the medical risks involved in moving a disabled person. Although the highest medical authorities, including forensic experts, had strongly recommended his early release, stressing the permanent nature of his illness and the unsuitability of prison conditions for a person in his medical condition, his imprisonment had continued. The applicant had received no assistance to spare him from degrading treatment. The time he spent in detention had infringed his dignity and had certainly caused both physical and mental hardship beyond that inevitably associated with imprisonment and medical treatment.
Conclusion: violation (unanimously).

Article 41 – EUR 10,000 for non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Placement in a disciplinary isolation cell, lack of medical care and under nourishment of a detainee suffering from tuberculosis: *violation*.

GORODNICHEV - Russia (N° 52058/99)
Judgment 24.5.2007 [Section I]

Facts: In February 1995 the applicant was arrested on suspicion of theft and two assaults, and detained pending trial. In November 1995 he was diagnosed with pulmonary tuberculosis. He was admitted to hospital and placed in a cell designed for six people, which housed 24 other detainees suffering from tuberculosis. In 1999 the doctors observed that one of his lungs had "deteriorated". In October 2000, despite his illness, the prison administration decided to send him to a disciplinary isolation cell (SIZO) for 15 days. His detention in the cell was subsequently extended by 10 days. The applicant was sentenced to imprisonment on the two counts of assault and acquitted of theft. He was forced to appear in handcuffs at the public hearings and made several requests for them to be removed, but to no avail. Ruling on an application for supervisory review (*protest*), the domestic courts conceded that being handcuffed had not been in conformity with the applicant's right to due process.

Law: *Medical treatment and conditions of detention*: Concerning medical treatment, the applicant's medical records did not contain any information about the nature of the treatment he had been given while detained, or mention the dosage of the medicines administered to him. In support of their assertion that the applicant had received the necessary medical care, the Government had not put forward any evidence other than their own statements and documents drawn up in 2001 and 2005, which merely attested *ex post facto* that such care had indeed been provided. The Government had not submitted any evidence dating from the relevant period to substantiate their statements. In those circumstances, the Court considered that the national authorities had not taken sufficient care of the applicant's health, except during the time he had been kept in hospital.
As to the applicant's conditions of detention, his placement in a SIZO in spite of his illness was one of the severest punishments that could have been imposed on him during his detention, since it meant that he was prohibited from buying food and receiving parcels of food from his family. In view of the food restrictions resulting from placement in a SIZO under domestic law, and having regard to the fact that for almost two months the applicant had been denied the special dietary regime which, according to doctors, was necessary to improve his health, his allegations that he had been severely undernourished while in prison were not without foundation. The Court observed that the authorities' failings were all the more deserving of criticism in that appropriate nutrition was often an important part of the treatment normally provided to those suffering from tuberculosis. In conclusion, by keeping the applicant in a SIZO for 25 consecutive days, despite the fact that he was ill and undernourished and that the law limited the maximum duration of such a punishment to 15 days, the authorities had inflicted particularly acute hardship on him, causing suffering beyond that inevitably associated with a prison sentence. It therefore considered that, during the relevant period, the applicant had been subjected to conditions of detention that amounted to inhuman treatment.
Conclusion: violation (unanimously).

Wearing of handcuffs in public hearings: None of the evidence in the file suggested that had the applicant not worn handcuffs when appearing before the court there might have been a risk of violence or damage, or of his absconding or hindering the proper administration of justice. That being so, the use of handcuffs had not been intended to exercise reasonable restraint and had been disproportionate to the security requirements cited by the Government. Although it had not been shown that the measure had been aimed at debasing or humiliating the applicant, his appearance in handcuffs at the public hearings amounted to degrading treatment within the meaning of Article 3.
Conclusion: violation (unanimously).

Article 41: EUR 10,000 for non-pecuniary damage.

For further details, see press release no. 336.

INHUMAN OR DEGRADING TREATMENT
Wearing of handcuffs at public hearings not justified by security requirements: *violation*.

GORODNICHEV - Russia (N° 52058/99)
Judgment 24.5.2007 [Section I]

(see above).

INHUMAN OR DEGRADING TREATMENT
Repatriation of a child who had been subjected to abuse in Belarus: *inadmissible*.

GIUSTO, BORNACIN and V. - Italy (N° 38972/06)
Decision 15.5.2007 [Section II]

The applicants are a married couple who claimed they were also acting on behalf of the child they took in as part of a foreign exchange and holiday scheme for children in the care of a Belarusian orphanage. Over the previous three years she had spent about 18 months with them, resulting in a relationship similar to that between parents and their children. According to the applicants, every time she arrived she was bruised, had trouble sleeping and her behaviour was almost autistic; these disorders would gradually subside over time, only to reappear as the date of her return to her country drew closer. She also had cigarette burns on her abdomen. The girl said she had been undressed, bound, kissed and bitten. A psychologist attested the psychological after-effects. The child spoke of suicide and tried to kill herself. She refused to visit a friend, who she said was one of the people who had sexually abused her. The boy concerned confirmed this and the psychologist found both children's stories plausible. The prosecuting authorities opened a file. Medical examinations revealed traces of violence. The applicants applied to the children's court ("the court") to adopt the child, but their application was rejected. When the Belarusian Ministry of Education protested, the embassy invited the court to order the child's repatriation. The court observed the various traces of the violence the child had suffered in the orphanage and the need for therapy. She met two doctors from Belarus but was in a state of stress and adamantly refused to take her clothes off. The embassy sent the court a programme for the child's full psychological, pedagogical and medical rehabilitation. They said that the authorities had taken urgent steps to clarify the situation in the orphanage and undertook to keep the Italian Government informed of any developments. After examining the child, Belarusian medical experts ruled out the possibility that repatriating her might affect her physical or mental health. She would be accompanied on the journey by specialised staff. The embassy considered that there was no objective case for keeping the girl in Italy and invited the authorities to act. Failing that, Belarus would be obliged to suspend international adoptions and holidays for children in Italy. A report drawn up by a child neuropsychiatrist stated that the child was no doubt physically fit but not psychologically fit for the journey. In a note addressed to the president of the court, the Commission for International Adoption of the Presidency of the Council of Ministers expressed its willingness to offer the broadest, most practical cooperation to facilitate the repatriation. The court agreed to the repatriation, specifying that the applicants were authorised to accompany the child on her return journey or, failing that, to join her in her country and stay with her, with the consent of the local authorities, for as long as was deemed appropriate. The court also asked the Belarusian authorities to give it news of the child periodically. The applicants hid the child. The court ordered her to be found and placed in care for as long as was strictly necessary to organise her repatriation. The applicants appealed and requested a stay of execution of the court's decision, which was immediately enforceable. The *carabinieri* found the child and she was placed in an institution. Before the court of appeal the representative of Belarus declared that it was no longer possible to repatriate the child in the conditions initially envisaged. The court of appeal did not rule on the request for a stay of execution of the disputed order. Accompanied by two doctors the

child was taken by taxi to the airport, escorted by a police car. The same day the applicants learnt of the child's transfer on television, and went to the airport with their lawyers. Their representatives filed an application for urgent proceedings under Rule 39 of the Rules of Court, but it did not reach the registry until the child had already boarded the plane. The application was then withdrawn. The court of appeal dismissed the applicants' appeal as the disputed decision had been adopted by the court in the particular circumstances described above. Furthermore, the applicants had no parental authority over the child and were therefore not parties to the judicial proceedings concerning her. Even if the applicants could have been considered to have *locus standi*, their allegations would not have been admissible. The court of appeal stated that it had heard unofficially that the child had already been repatriated on the initiative of the Belarusian authorities, in conditions different from those stipulated by the court. This was allegedly justified by the new court order adopted after the applicants hid the child. The doctors who accompanied the child back to Belarus returned and submitted a report to the court stating that the girl was in good psychological and physical health. The applicants have had no contact with the child and received no news of her state of health, but have learnt through the media that she was with her brother in a foster family.

Inadmissible under Article 3 – In view of all the precautions taken by the authorities, although the child's repatriation inevitably caused a certain amount of suffering, in the particular circumstances of the case it did not amount to treatment at variance with Article 3: *manifestly ill-founded*.

Inadmissible under Article 6(1) – Although under the Italian legal system the applicants had no right to represent the interests of the child, a minor, in court proceedings (*locus standi*) as they were not her guardians and had no parental authority over her, their right to access to justice had not been restricted. The judges had been professionals and the court decisions had been arrived at by means of an adversarial hearing. Lastly, the note from the Italian Ministry of Justice had in no way indicated that the authorities had wished to influence the outcome of the proceedings: *manifestly ill-founded*.

Inadmissible under Article 8 – It was true that the child had stayed with the applicants for periods they claimed totalled eighteen months. The Court considered, however, that these *de facto* ties had not been close enough to qualify as "family life" under Article 8 of the Convention. It attached particular importance to the fact that all the stays had been arranged under a scheme organised by an association. As the domestic courts had pointed out, the purpose of the scheme was not to give orphans new families but simply to enable them to spend holidays in Italy: *incompatible* ratione materiae.

Inadmissible under Article 13 – No defensible grievances: *incompatible* ratione materiae.

Inadmissible under Article 34 – No failure by the respondent Government to comply with a provisional measure stipulated by the Court: *manifestly ill-founded*.

INHUMAN OR DEGRADING TREATMENT

Failure to enforce Human Rights Chamber decisions ordering BIH to protect the well-being and obtain the return of terrorist suspects unlawfully removed from BIH and since detained in Guantánamo Bay: *communicated*.

BOUMEDIENE - Bosnia and Herzegovina (N° 38703/06) and 5 other cases (40123/06, 43301/06, 43302/06, 2131/07 and 2141/07)
[Section IV]

The applicants were arrested in October 2001 on suspicion that they had been planning a terrorist attack on the United States and United Kingdom Embassies in Sarajevo. On 17 January 2002 the competent court released the applicants from pre-trial detention. Later that day, following applications filed by four of them, the Human Rights Chamber issued orders for interim measures, ordering that all necessary steps be taken to prevent their forcible removal from the territory of Bosnia and Herzegovina. At about 11.45 p.m. the applicants were arrested by local police and, a few hours later, handed over to US forces

operating as part of the UN peace-keeping operation. The applicants were taken to a US air force base in Turkey and eventually to Guantánamo Bay. In February 2002 applications were filed before the Human Rights Chamber on behalf of the remaining two applicants.
In October 2002 the Human Rights Chamber delivered its decision relating to Mr. Boumediene and three other applicants. It held, *inter alia*, that their removal from the territory of Bosnia and Herzegovina had been unlawful and that the domestic authorities should have sought assurances from the United States, prior to the hand-over, that the death penalty would not be imposed. The Human Rights Chamber found numerous violations of the Convention and ordered Bosnia and Herzegovina to, *inter alia*, "use diplomatic channels in order to protect the basic rights of the applicants", "take all possible steps to prevent the death penalty from being pronounced against and executed on the applicants, including seeking assurances from the United States via diplomatic contacts" and "retain lawyers authorised and admitted to practice in the relevant jurisdictions and before the relevant courts, tribunals or other authoritative bodies in order to take all necessary action to protect the applicants' rights while in US custody and in case of possible military, criminal or other proceedings involving the applicants". In April 2003 the Human Rights Chamber delivered its decisions relating to the two remaining applicants. These were largely in line with its previous decision but in one case the respondent State was additionally ordered to "take all possible steps to obtain the release of the applicant and his return to Bosnia and Herzegovina".
In June 2004 the Public Prosecutor closed all investigations in Bosnia and Herzegovina, having considered that there was insufficient evidence that the applicants had been planning a terrorist attack.
In July 2004 a representative of the Ministry of Justice of Bosnia and Herzegovina visited the four applicants of Bosnian nationality, having been authorised by the US authorities to put fifteen questions to them. In October 2004 the applicants were declared "enemy combatants" by the US Combatant Status Review Tribunal. In February 2005 the Prime Minister of Bosnia and Herzegovina sought the return to Bosnia and Herzegovina of the four Bosnian applicants. The US Secretary of State replied that each prisoner was the subject of an annual review as to whether he would pose a threat to the United States if released and during which he was allowed to present evidence supporting his release. Apparently the Government of Bosnia and Herzegovina have never provided any such information to the United States.
In June 2005 the US Department of State stated, in a response to a formal enquiry from a US Senator, that the Government of Bosnia and Herzegovina had not indicated that it was prepared or willing to accept responsibility for the applicants upon transfer.
In April 2006 the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina (the legal successor of the Human Rights Chamber) found that the Chamber's decision remained to be implemented and criticised the Government for taking a "particularly passive attitude toward this issue".
In accordance with Annex 6 to the 1995 General Framework Agreement for Peace, Bosnia and Herzegovina and its constituent Entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) shall implement fully the decisions of the Human Rights Chamber. Moreover, pursuant to the 2003 Criminal Code, non-enforcement of a final and enforceable decision of the Chamber amounts to a criminal offence punishable by imprisonment of up to five years.
The applicants complain *inter alia* that Bosnia and Herzegovina has not taken all reasonable measures to protect their well-being and obtain their return to Bosnia and Herzegovina, in violation of the remedies ordered by the Human Rights Chamber and in disregard of the State's duty to exercise diplomatic protection. The applicants do not complain about the hand-over as such as it took place before the ratification of the Convention by Bosnia and Herzegovina on 12 July 2002.
Communicated under Articles 2, 3, 5 and 9 of the Convention, Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13. *Priority treatment* is being given to these cases (Rule 41).

INHUMAN OR DEGRADING TREATMENT
Impending expulsion of HIV-positive to Uganda, where her life expectancy would allegedly be considerably curtailed due to inadequate medical treatment: *relinquishment to Grand Chamber*.

N. - United Kingdom (N° 26565/05)
[Section IV]

The applicant, a citizen of Uganda, was refused asylum. HIV positive and undergoing treatment, she alleges *inter alia* that her removal to Uganda would violate Article 3 as she would not have access to the equivalent anti-viral treatment in her home country and her life expectancy would be considerably curtailed in consequence.
The Court has ordered an interim measure under Rule 39 of the Rules of Court to the effect that the applicant should not be removed from the respondent State until further notice.

ARTICLE 4

PROHIBITION OF SLAVERY AND FORCED LABOUR
Failure to discharge officer from military service despite a final judgment to this effect: *communicated*.

LEVISHCHEV - Russia (N° 34672/03)
[Section V]

The applicant is a military officer. In 2000 a military commission held that he was unfit for further military service. He lodged an action against the head of the military unit seeking discharge from the service, provision of a flat, payment of service-related benefits and compensation for damage. In 2001, the military court found for the applicant. However, he had to continue his military service because under the Russian law in force at the material time his discharge without provision of housing would have been unlawful. In May 2005 he was provided with a flat. The applicant unsuccessfully took proceedings to the military court, claiming that the flat had not satisfied legal requirements as its living surface had not been sufficient for his family. He has not yet been discharged from the military service.
Communicated under Articles 4 and 6 of the Convention and Article 1 of Protocol No. 1.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Circumvention of a domestic law provision on maximum length of detention by re-detaining person ten minutes after release: *violation*.

JOHN - Greece (N° 199/05)
Judgment 10.5.2007 [Section I]

Facts: The applicant is a Nigerian national. On 29 December 2003 he was arrested with no residence permit on arriving at Athens airport and remanded in custody pending expulsion. Soon after that his expulsion was ordered. On 29 March 2004, when the three-month maximum legal period of detention expired, the applicant's release was ordered. Before he left the police station where he had been held, however, the police arrested him again, his detention was prolonged and a new expulsion order was issued. He challenged these decisions in court, but to no avail. On 20 June 2004 he was deported to Nigeria.

Law: The applicant's renewed detention had been judged legal under domestic law, but it was necessary to determine whether it was in conformity with Article 5(1) of the Convention. As he had been taken in charge again ten minutes after being released, to all intents and purposes he had never ceased to be detained, as he had never left the police station and his release had merely consisted in the signing of a certificate of release and had never become a reality. The new expulsion order which had subsequently been issued had merely repeated the reasons put forward in the first one, presenting no new justification for the applicant's renewed detention. It was the Court's view that the police had acted as they had solely to circumvent the law and present the applicant's prolonged detention in a seemingly lawful light. The domestic courts had considered that in the applicant's case it had not been an extension of the initial detention but a new detention based on new material, in particular his intention to travel to Nigeria using false papers. The Court was not persuaded that the existence of these papers was sufficient in itself to justify a new period of detention independent of the first. Unlike in other cases where the law did not lay down clear limits but left the country's authorities a certain margin of appreciation, Greek law on expulsion provided clearly and specifically, without any exception, for a maximum detention period of three months. In the context described above the Court could not ignore the fact that the authorities had let the legal time limit expire without having the applicant expelled. Between 1 January and 29 March 2004, the competent authorities had failed to show due diligence as they had taken no steps to execute the expulsion order and send the applicant to Nigeria before the statutory period had run out. Furthermore, the Government had presented no reasons that might justify this inertia. Extending the applicant's detention beyond the three-month limit was accordingly incompatible with the aim of Article 5(1) and therefore unlawful.
Conclusion: violation (unanimously).

Article 41: EUR 5,000 for non-pecuniary damage.

Article 5(1)(f)

EXPULSION
Circumvention of a domestic law provision on maximum length of detention pending removal: *violation*.

JOHN - Greece (N° 199/05)
Judgment 10.5.2007 [Section I]

(see Article 5(1) above).

Article 5(4)

TAKE PROCEEDINGS
Lack of confidentiality of lawyer-client communications due to indiscriminate use of a glass partition in a detention centre: *violation*.

MODARCA - Moldova (N° 14437/05)
Judgment 10.5.2007 [Section IV]

Facts: In 2004-2005, the applicant, a Municipal Council official subject to a criminal investigation, was detained in the remand centre of the Centre for Fighting Economic Crime and Corruption. His lawyer asked for permission to hold confidential meetings with his client during his detention and was offered a room where they were separated by a glass partition, with no space for exchanging documents, across which they claimed they had to shout to hear each other. Despite requests to be given access to a room allowing confidential meetings and the applicant's hunger strike, no such room was ever provided. The District Court, which had granted this request, reversed its decision a month later, finding that the glass partition had not prevented confidential discussion and that it had been necessary to protect the applicant's

health and safety and to prevent "any destructive action". Upon his transfer to another remand centre, the applicant alleged having suffered inhuman and degrading detention conditions. The Government contested his allegations in this respect.

Law: Article 3 – The applicant was detained for almost nine months in extremely overcrowded conditions (1.2 m^2 of free space per detainee) with little access to daylight, limited availability of running water, especially during the night and in the presence of heavy smells from the toilet, while being given insufficient quantity and quality of food or bed linen. In addition, the applicant had to spend 23 hours a day in those cramped conditions and the only hour allowed for daily walks appeared to have exposed him to the risk of infection with tuberculosis. He also had to invest in the repair and furnishing of the cell.
Conclusion: violation (unanimously).

Article 5(4) - The applicant and his lawyer could reasonably have had grounds to believe that their conversations in the meeting room were not confidential. The lack of any aperture in the glass partition to allow the exchange of documents had rendered the lawyers' task even more difficult. There was nothing in the file to suggest that the applicant had posed a security risk: he had no criminal record and had been prosecuted for non-violent offences. The glass partition was a general measure affecting indiscriminately everyone in the remand centre, regardless of their personal circumstances. The impossibility for the applicant to discuss with his lawyers issues directly relevant to his defence and to his appeal against detention, without being separated by a glass partition, had affected his right to defence.
Conclusion: violation (unanimously).

Article 41: EUR 7,000 in respect of non-pecuniary damage.

For more details, see Press Release no. 294.

See also *Oferta Plus SRL v. Moldova*, no. 14385/04, in Information Note no. 92.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Refusal, without any plausible explanation, of permission to lodge detailed appeal submissions: *violation*.

DUNAYEV - Russia (N° 70142/01)
Judgment 24.5.2007 [Section I]

Facts: The applicant brought civil proceedings against the Ministries of Finance and Defence for compensation for property in Grozny that had been destroyed during an attack by federal forces. His claim was dismissed at first instance. He then lodged a preliminary notice of appeal with the appellate court and indicated that he would lodge detailed submissions later. According to the applicant, he attempted to lodge his detailed submissions both on the day before the hearing of his appeal and at the hearing itself, but was refused permission. This was contested by the Government.

Law: The parties disagreed as to whether the appellate court had accepted and examined the applicant's detailed appeal submissions. The copy produced by the Government did not bear an official stamp or any other formal mark to indicate that they had been registered and accepted for examination. In fact, it was marked "refused" and bore a signature resembling that of the presiding judge, which clearly could not imply acceptance. The refusal to accept the full appeal submissions constituted a restriction on the applicant's right of access to a court for which the Government had provided no plausible explanation.
Conclusion: violation (unanimously).

Article 41 – EUR 2,000 in respect of non-pecuniary damage.

FAIR HEARING
Participation of the Rapporteur in the deliberations of the adjudicating panel of the Audit Court: *inadmissible*.

TEDESCO - France (N° 11950/02)
Judgment 10.5.2007 [Section III]

Facts: In the course of an audit of the Alsace Region's accounts and management the Alsace Regional Audit Court brought charges against the applicant's firm. In successive judgments it declared the firm accountable *de facto* for the Region's public funds, ordered it to pay back the sum of money it had unlawfully misappropriated from the Region, then declared it liable for that sum and sentenced it to pay a fine.
The proceedings before the regional audit court took place in three independent stages. Throughout the proceedings the same member of the regional audit court acted as rapporteur.
In his appeal against the judgment sentencing him to a fine the applicant relied on Article 6 of the Convention, pleading the lack of independence and impartiality of the regional audit court. He complained that, because of the investigative powers the rapporteur had during the preparation of the case, he played a central role on the bench and had a preponderant influence in the deliberations in which he took part. The Court of Audit refuted this and dismissed the applicant's appeal. The *Conseil d'Etat* dismissed an appeal on points of law.
A new law subsequently put a stop to the participation of the rapporteur in the deliberations of adjudicating panels of regional courts of audit in this type of proceedings, as the fact that the rapporteur was at the origin of the action before the audit court, helped to formulate the charges, had the power to discontinue proceedings or extend their scope and had investigative powers authorising him to carry out searches, seize property or take any other coercive measure in the course of the investigation was incompatible with the impartiality principle.

Law: Article 6(1) – *Regional audit court*: *presence of the rapporteur in deliberations*: The rapporteur had been assigned the task of auditing the accounts and management of the Alsace Region, as well as that of investigating the presumed unauthorised agency. He had thus taken part in each decisive step in the proceedings, and in the deliberations leading to all the judgments of the regional audit court. As a result, the rapporteur had been at the origin of the proceedings and had helped to bring the charges against the applicant. The nature and scope of the rapporteur's tasks had been enough to give the applicant objectively justified doubts as to the rapporteur's impartiality at the time of the deliberations in the regional audit court.
Conclusion: violation (unanimously).

Regional audit court: *participation of the Government Commissioner in deliberations*: In *Martinie v. France* [GC], no. 58675/00, judgment of 12 April 2006, (Information Note no. 85), the Court had found fault with the participation or presence of the Government Commissioner in adjudicating deliberations of the *Conseil d'Etat*: he did not have a vote, but could give oral answers to specific questions.
Before the regional audit courts the Government Commissioner did not take part in the vote but presented his conclusions and took part in the debate.
In keeping with the *Martinie* judgment, the participation of the Government Commissioner in the deliberations concerning four of the five judgments delivered by the regional audit board was incompatible with Article 6(1).
Conclusion: violation (unanimously).

Court of Audit: *participation of the rapporteur in adjudicating deliberations*: the judge acting as rapporteur for the adjudicating panel had addressed the Court of Audit concerning a case that had already been investigated, without having taken any investigative action himself that might have influenced his judgment. Furthermore, the hearing had been public and the applicant's counsel had attended and even

addressed the court (unlike the position in the *Martinie* case*)*. There had therefore been no problem with regard to the fairness of the proceedings: *manifestly unfounded.*

Length of the proceedings before the financial courts: the proceedings before the regional audit court comprised three distinct stages.
First of all the judge established that the persons to be called to account for the use made of public funds were in fact accountable. Secondly, the persons concerned submitted their accounts to the court, which examined their receipts and expenditure; if receipts exceeded the amount assigned for expenditure and the persons under audit had not paid a sum equivalent to the excess into the public purse, they were required to pay the public body. Thirdly, the judge could decide to fine the persons concerned for interfering with the allocation of public funds.
These three stages of the proceedings each gave rise to a final decision, subject to appeal on the facts and ultimately on the law. Furthermore, each of the three stages obeyed the "double decision" rule, whereby the audit court judge could not take action against accountants (notification, restitution order, fine) without first having sent them a provisional decision giving them a chance to reply.
In this case the proceedings had lasted eight years. There had been no discontinuity or delay that could be attributed to the conduct of the competent judicial authorities: *manifestly unfounded*.

Article 41 – Non-pecuniary damages: finding of violation sufficient.

EQUALITY OF ARMS
Participation of the Government Commissioner in the deliberations of a regional audit board: *violation*.

TEDESCO - France (N° 11950/02)
Judgment 10.5.2007 [Section III]

(see above).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Rapporteur's presence at the deliberations of a regional audit board: *violation*.

TEDESCO - France (N° 11950/02)
Judgment 10.5.2007 [Section III]

(see above).

Article 6(1) [criminal]

INDEPENDENT AND IMPARTIAL TRIBUNAL
Personal and political animosity between the applicant and the investigating judge and extensive knowledge of the facts and persons concerned in the trial gained by the investigating judge from other activities: *admissible*.

VERA FERNANDEZ-HUIDOBRO - Spain (N° 74181/01)
Decision 2.5.2007 [Section V]

The applicant was Minister of State for Security in the Ministry of the Interior. Criminal proceedings were brought against him on counts of misappropriation of public funds, holding a person against his will and belonging to an armed group (as well as against police officers who confessed their guilt, see decision *Saiz Oceja v. Spain*, 74182/01, below). The case concerning the holding of a person against his will was assigned to central investigating judge no. 5 ("the judge") of the *Audiencia nacional,* who had been

elected to parliament and appointed Government Delegate for the Ministry of the Interior. The applicant was placed under investigation. He filed a criminal complaint against the judge of the criminal section of the Supreme Court, for torture, threats, coercion and provocation during the investigation, aimed at making him divulge secrets. The Supreme Court dismissed the case. The judge summoned the applicant to appear in court as a suspect. The applicant challenged the judge for bias, it being common knowledge that they were not on good terms with each other, and because the judge had taken part in political activities incompatible with his current position as judge. The challenge was rejected, as was the *amparo* appeal the applicant lodged with the Constitutional Court against that decision. The applicant was charged at the judge's request, and appealed. The criminal section of the *Audiencia nacional* decided to release him on bail. A judge delegated by the criminal section of the Supreme Court was assigned to the case and continued the investigation, heard witnesses for the defence and the prosecution and indicted both the Minister of the Interior and the applicant. The criminal section of the Supreme Court dismissed the appeal against the judge's indictment. This was confirmed by a decision of the Supreme Court. Once the investigation was completed, the case was sent before the criminal section of the Supreme Court for trial. The applicant was found guilty on several counts, including holding a person against his will. The Minister of the Interior and the applicant were found guilty of misappropriation of public funds. The criminal section of the Supreme Court dismissed the application for the judge to be withdrawn. It rejected the appeal to set aside the decision based on the new grounds for challenging a judge introduced by the organic law, namely when the judge has held a public office in which he might have been able to form an opinion, to the detriment of the requisite impartiality, about the object of the dispute or its cause, or about the parties, their representatives or the defence counsel, as this legislative reform had no retroactive effect. Four of its judges expressed dissenting opinions. The applicant filed an *amparo* appeal against this judgment with the Constitutional Court. The appeal was declared admissible, but dismissed. The court pointed out that it was not its role to question the courts' assessment of the evidence, and noted, with detailed reasons, that the decision reached by the criminal section of the Supreme Court could not be considered arbitrary or unreasonable. The ground of lack of impartiality was rejected. One judge expressed a separate opinion.

Admissible as regards the complaints of lack of impartiality and the principle of the presumption of innocence.

Inadmissible as regards the remainder of the application (length of proceedings).

FAIR HEARING
INDEPENDENT AND IMPARTIAL TRIBUNAL
Pre-delivery leak and publication in the press of a Supreme Court judgment convicting the applicants: *inadmissible*.

SAIZ OCEJA - Spain (N° 74182/01)
Decision 2.5.2007 [Section V]

The applicants were police officers. Criminal charges were brought against them for holding a person against his will, conspiracy and misappropriation of public funds (see decision *Vera Fernandez-Huidobro v. Spain*, no. 74181/01, above). They were brought before the criminal section of the Supreme Court. The court's deliberations and decision were published in the press before the court announced its guilty verdict. Concerning nullity based on the time-limit for prosecution, the court considered that the running of time had been interrupted by the opening of the criminal proceedings. The applicants filed an *amparo* appeal with the Constitutional Court questioning the fairness of the trial and the impartiality of the court because of the publications in the press. They also complained of the rejection of their preliminary objection concerning the prescription of the offences of which they stood accused. The *amparo* appeal was declared admissible, but rejected.

Inadmissible under Article 6(1) – Even if one of the Supreme Court judges had been the source of the leak, the court could not be said to have lacked impartiality unless it could be proved that the leak had

influenced or altered the opinions of its members. As the application stood, the Court held that this was not a case of "trial by press" likely to have affected the court's impartiality. Although the leaks were regrettable, the Supreme Court had already reached its verdict and determined the corresponding sentences. There was nothing in the case file to indicate that the Supreme Court judges might have been influenced by the content of the information that had appeared in the press prior to the official announcement of the judgment on the merits: *manifestly ill-founded*.

Inadmissible under Article 7 – There was no evidence in this case of an inappropriate change in the case-law of the Supreme Court concerning limitation periods. This interpretation of the *dies a quo* for fixing the time-limit relating to the offences at issue in this case had indeed permitted the applicants' indictment and subsequent conviction, and had therefore been to their disadvantage, contrary to their expectations. However, this had not violated their rights under Article 7, the Supreme Court being the court of last instance when it came to interpreting the law in non-administrative proceedings: *manifestly ill-founded*.

ARTICLE 7

Article 7(1)

NULLUM CRIMEN SINE LEGE
Conviction for entering defence area unmarked on official maps: *no violation*.

CUSTERS, DEVEAUX and TURK - Denmark (N° 11843/03, 11847/03 and 11849/03)
Judgment 3.5.2007 [Section V]

Facts: At the relevant time, the applicants were members of Greenpeace. In 2001 the applicants took part in a campaign around the Thule Air Base aimed at drawing international attention to the Thule Radar used by the American missile defence programme. They also wanted to collect information on the environmental impact of the air base. Before the action in question, the Ministry of Foreign Affairs refused Greenpeace permission to access the territory in question as this was considered a defence area. The applicants were eventually arrested, convicted of trespassing and sentenced to a fine. They appealed unsuccessfully.

Law: The applicants had contested having known that the zone they had entered was a defence area. The air base had been marked with "No Entry" signposts by the normal access routes. The applicants had chosen, however, to enter it by landing at a place that was not included in the defence area. Walking from there, they had reached an emergency shelter which was situated at about 10 km distance from the air base and the radar and where they had been arrested. Moreover, the applicants indisputably had had the intention of approaching the radar and the air base. They had carefully planned their trip and used a GPS; the Greenpeace website had followed their progress along the way; and photos had been taken of the applicants holding banners with some of the air base military facilities in the background. Therefore, despite the fact that the air base was not indicated on the official maps, they could not have been unaware that the area they had entered had not been "freely accessible" within the meaning of the Penal Code. Their act had amounted to an offence defined with sufficient clarity and foreseeability in Danish law.
Conclusion: no violation (unanimously).

NULLUM CRIMEN SINE LEGE
Private-sector employees convicted of accepting bribes when under the wording of the Criminal Code at the material time the offence could only be committed by a public servant or a person working for a State-owned company: *violation*.

DRAGOTONIU and MILITARU-PIDHORNI - Romania (N° 77193/01, 77196/01)
Judgment 24.5.2007 [Section III]

Facts: The two applicants, employees of a privately owned commercial bank, were placed in detention on remand. The County Court established that they had each received a car in exchange for favours to the donor which were incompatible with their professional obligations. They had issued two bank guarantees in the donor's favour when he did not have the necessary funds. They were convicted under the Criminal Code of accepting bribes. The applicants and the prosecution appealed. The applicants claimed, inter alia, that the offences had not been offences under domestic law at the material time. Accepting bribes was an offence at the time only if committed by a public servant or a person working for a State-owned company, whereas they had been employees of a private bank. They agreed that on the date of delivery of the judgment the offences were punishable under criminal law, but the law had not been changed until one year after the offences had been committed. The Court of Appeal allowed the prosecution's appeal and upheld the applicants' conviction. While acknowledging that accepting bribes was an offence under the Criminal Code only if committed by a public servant or a person working for a State-owned company, it held that in view of the Criminal Code and considering the purpose of the law, accepting bribes was also an offence when committed by employees of private firms, even prior to the enactment of the new law. The purpose of the law was to punish any person with professional obligations towards a legal entity who disregarded those obligations in their dealings with others. The Supreme Court upheld the Court of Appeal's decision.

Law: The Supreme Court could not be accused of retroactive application of the criminal law as it had expressly stated that it had applied the law in force at the material time. However, it had never previously been explicitly established that the accepting of bribes by employees of privately owned commercial firms was a criminal offence. Even though the applicants were in a profession where they could seek legal advice, it would have been difficult, if not impossible, for them to foresee the Supreme Court's departure from precedent and thus to know, at the time when they committed them, that their acts might give rise to criminal sanctions. The Court of Appeal had deliberately applied criminal law in an extensive manner. It had simply ascertained that the applicants satisfied all the requisite conditions to be considered as the perpetrators of the offence. Prior to the entry into force of the new law, the relevant sections of the Criminal Code in force at the material time had not indicated that banks might be amongst the organisations covered by the Criminal Code. Only persons working in public organisations could be tried for corruption, not those who worked for private commercial firms.
Conclusion: violation (unanimously)

Article 41 – EUR 3,000 to each applicant for non-material damages.

NULLUM CRIMEN SINE LEGE
Conviction of crimes against humanity committed during the 1956 uprising in Hungary: *relinquishment to Grand Chamber*.

KORBÉLY - Hungary (N° 9174/02)
[Section II]

The case concerns the applicant's contemporary conviction of crimes against humanity for his actions as a military commander during the 1956 uprising. He complains that he was prosecuted for an act which did not constitute any crime at the time of its commission, in breach of Article 7. He also complains that he was convicted without proper reasoning being put forward by the domestic courts, and this on account of

arbitrary findings of fact, in breach of Article 6. This provision is also said to have been violated on account of the length of the proceedings.

ARTICLE 8

PRIVATE LIFE
Failure to perform timely prenatal tests, barring access to abortion and resulting in birth of a child suffering from genetic illness: *communicated*.

R.R. - Poland (N° 27617/04)
[Section IV]

When the applicant was pregnant with her third child, she was informed, on the basis of ultrasound scan results, of the likelihood that the foetus had been affected with Turner syndrome. A genetic examination was recommended to confirm or dispel these suspicions. However, her local physician refused to give her a referral to undergo such an examination as in his view her condition did not qualify for an abortion. She was subsequently refused a genetic examination in local and academic hospitals. In the 23rd week of pregnancy she went, without a referral, to another hospital where she was admitted as an emergency patient. Genetic tests were performed there. In the 25th week of her pregnancy she received the results confirming that the foetus was suffering from Turner Syndrome. Before and after she obtained the results, she again requested the local hospital to carry out an abortion. This was refused since by then it was too late for a lawful abortion on grounds of foetal abnormality. The applicant eventually gave birth to a baby suffering from Turner Syndrome. She unsuccessfully requested the prosecuting authorities to institute criminal proceedings against persons involved in handling her case. She also filed a civil lawsuit for compensation against the relevant physicians and health care institutions. Her claims were dismissed, as the courts found that there had been no procrastination on the doctors' part and that under the World Health Organisation standards termination was permissible only until the 23rd week of pregnancy. The cassation appeal is pending before the Supreme Court.
Communicated under Articles 3, 8 and 13 of the Convention.

ARTICLE 9

FREEDOM OF RELIGION
Alleged State intervention in a leadership dispute within a church and consequential loss of property: *admissible*.

HOLY SYNOD OF THE BULGARIAN ORTHODOX CHURCH (REPRESENTED BY METROPOLITAN INOKENTII) and Others - Bulgaria
(Nos 412/03 and 35677/04)
Decision 22.5.2007 [Section V]

This case concerns alleged State intervention in a leadership quarrel within the Bulgarian Orthodox Church that began in 1989, following the democratisation of Bulgaria, when the legitimacy of the incumbent Patriarch Maxim was challenged by a movement which considered his appointment to have been in violation of traditional canons and the statute of the Church. The applicant organisation represented that movement and gathered support among a number of churches and monasteries. It appointed its own leader, but was unsuccessful in its attempts to have him registered as the Head of the Church. In 2001 a newly elected government publicly expressed their opinion that Patriarch Maxim was the legitimate leader of the Church and stated their intention to introduce legislation to put an end to the divisions within the Church. This was achieved through the introduction of the Religious Denominations Act 2003. It provided for the *ex lege* recognition of the Bulgarian Orthodox Church and required its registration by the city court. The applicant organisation then applied to the city court for the registration

of its local organisation in Sofia. Its request was made by its leader Metropolitan Inokentii, who stated that he headed and represented the Holy Synod and the Bulgarian Orthodox Church. However, the city court, in a decision that was upheld on appeal, rejected the request, noting that it had not been submitted by Patriarch Maxim. Thereafter, religious ministers who continued to support the applicant organisation were dismissed and local prosecutors were instructed to assist the Church, as represented by Patriarch Maxim, to recover premises that had allegedly been unlawfully occupied by the applicant organisation. In one of the decisions authorising eviction, the prosecutor noted that the 2003 Act did not allow the existence of more than one religious denomination with the same name and prohibited the use of the name and property of a religious denomination by persons who had seceded from it. In 2004 police blocked more than fifty churches and monasteries in the country, evicted religious ministers and staff who identified with the applicant organisation and transferred possession of the buildings to representatives of Patriarch Maxim. According to the applicant organisation, these buildings included several new churches that had been built entirely under its leadership.
The applicants complain of State interference in the internal dispute within the Church and with their freedom of religion through the arbitrary, unlawful and unnecessary acts of the authorities that had compelled them to accept Patriarch Maxim's leadership and deprived them of property they had built with their own funds.
Admissible under Articles 6 (access to a court), 9 and 13 of the Convention and Article 1 of Protocol No. 1.

FREEDOM OF RELIGION
Violent assault on a congregation of Jehovah's Witnesses by a group purporting to support the Orthodox Church and lack of an effective investigation: *violation*.

97 MEMBERS OF THE GLDANI CONGREGATION OF JEHOVAH'S WITNESSES AND 4 OTHERS - Georgia (N° 71156/01)
Judgment/Arrêt 3.5.2007 [Former Section II]

(see Article 3 above).

FREEDOM OF RELIGION
Lack of suitable alternative arrangements for pupils opting out of religious instruction in state primary schools: *communicated*.

GRZELAK - Poland (N° 7710/02)
[Section IV]

The applicants complain that their son, who in accordance with their wishes had opted out of religious lessons at his primary school, was not offered an alternative course in ethics or any other organised form of teaching and that, instead of being given a mark for "religion/ethics", his school report merely contained a "straight line" against that subject. They also allege that he had twice had to move school as a result of discrimination and physical and psychological harassment by other pupils. They raised these and other concerns with the Education Minister and the Ombudsman, but were informed, *inter alia*, that the reason some schools required a parental declaration concerning religious instruction was purely organisational, that the Constitutional Court had ruled that including marks for "religion/ethics" on a school report was a consequence of teaching those subjects, and that any discrimination on religious grounds would contravene the legislation and should be referred to the supervisory authorities. They were also told by the school authorities that none of the primary schools attended by their son provided a course on ethics.
Under Polish law religious instruction can be taught in state schools. An ordinance issued in 1992 retained the principle that religious instruction was a voluntary subject and made provision for an alternative course in ethics and for the supervision of pupils who did not follow religious instruction. Marks obtained in respect of religious instruction or ethics were to be included in school reports. Following a challenge by

the Ombudsman, the Constitutional Court for the most part upheld the constitutionality and legality of the ordinance in a landmark decision in 1993. It noted that the inclusion of religious instruction in the public school curriculum did not infringe the constitutional principles of separation of Church and State and of the State's secular basis and neutrality. As regards the insertion of marks for religious instruction in school reports, it observed that that was a consequence of the provision of religious instruction, on a voluntary basis, by public schools.
Communicated under Article 9 and under Article 14 in conjunction with Article 9.

ARTICLE 10

FREEDOM OF EXPRESSION
Ban on Kurdish production of a play in municipal buildings: *violation*.

ULUSOY and Others - Turkey (N° 34797/03)
Judgment 3.5.2007 [Section II]

Facts: The applicants are actors in a theatre troupe. The Regional Governor's Office refused to authorise them to stage a Kurdish-language production of a play. They brought administrative proceedings seeking to have the refusal overturned. The Regional Governor's Office informed the Administrative Court that the play in question was liable to undermine public order, given the criminal records of the actors, who had been convicted or prosecuted for their activities in support of the PKK (Workers' Party of Kurdistan). Their case was dismissed and the proceedings ended with the confirmation of that decision by the Supreme Administrative Court.

Law: The ban on staging the play had amounted to an interference with the applicants' right to freedom of expression. The interference had nevertheless been in accordance with accessible Turkish law and had occurred before the play could be performed in municipal buildings. In view of the sensitive nature of the fight against terrorism and the need for the authorities to remain vigilant in the face of acts likely to kindle violence, the disputed measure had pursued the twofold legitimate aim of preventing disorder and crime. The Regional Governor's Office had refused to authorise the production of the play in municipal buildings, simply citing the law without any further explanation. The Administrative Court had held that the refusal could be considered legal in so far as performing the play might have triggered feelings of hatred and ethnic separatism, as "(...) The case file showed that the play in question would be performed in Kurdish [and that] some of the actors in the troupe had criminal records which mentioned crimes against the integrity of the state.". However, this troupe had already performed the play at a theatre festival without causing any disturbance. Furthermore, no prima facie evidence had been produced in support of the alleged threat to public order. Finally, the reasons the Administrative Court had given for its judgment had given the impression that using the Kurdish language in a theatre production might aggravate the potential disturbance. Accordingly, Turkish law did not indicate with sufficient clarity the extent of the authorities' discretion in the field of prior restrictions, or the manner in which that discretion was to be exercised, and it failed to provide adequate safeguards against abuses in the application of such restrictions. Especially as there was no evidence that the play would provide a tribune for the spread of violent ideas and the rejection of democracy, or have any other adverse effect that justified banning it. The interference caused by the Governor's refusal based on the law could not be considered necessary in a democratic society.
Conclusion: violation (unanimously).

Article 41 – EUR 1,000 to each applicant for non-pecuniary damage.

FREEDOM OF PEACEFUL ASSEMBLY
Unlawful refusal to grant permission for a march and meetings to protest against homophobia: *violation*.

BĄCZKOWSKI and Others - Poland (N° 1543/06)
Judgment 3.5.2007 [Section IV]

Facts: The applicants – a group of individuals and an association – sought permission from the Warsaw municipal authorities to stage a march through the city and hold a series of meetings to alert public opinion to the issue of discrimination against various minority groups (including homosexuals) and women. Citing road traffic regulations and the risk of violent clashes with other demonstrators, the authorities refused permission for the march and some of the meetings. Shortly before the date scheduled for the demonstrations the Mayor of Warsaw said in an interview with a Polish national newspaper that he would refuse the applicants' request in all circumstances and that, in his view, "propaganda about homosexuality is not tantamount to exercising one's freedom of assembly". This, the applicants alleged, indicated that the real reason permission was refused was homophobia on the part of the municipal authorities. The applicants went ahead with their planned march despite the refusal and demonstrations and meetings organised by various other groups were allowed to proceed. Although the municipal authorities' decisions were subsequently quashed on appeal, the applicants argued that the remedy had come too late as the dates planned for the demonstrations had already passed. Parts of the legislation on which the municipal authorities had relied were ruled unconstitutional by the Constitutional Court.

Law: Article 11 – The positive obligation of a State to secure genuine and effective respect for freedom of association and assembly was of particular importance to those with unpopular views or belonging to minorities, because they were more vulnerable to victimisation. Although the assemblies had eventually been held on the planned dates, the applicants had taken a risk in holding them, given the official ban. The refusal of permission could have had a chilling effect on both the applicants and other participants and discouraged other persons from taking part as, without official authorisation, there was no guarantee of protection by the authorities against potentially hostile counter-demonstrators. There had therefore been interference with the applicants' rights under Article 11. Since the decisions to refuse the applicants permission to take part in the demonstrations or to hold assemblies had subsequently been quashed on appeal, that interference was not "prescribed by law", a conclusion that could only be reinforced by the Constitutional Court's ruling that the road-traffic legislation was unconstitutional.
Conclusion: violation (unanimously).

Article 13 in conjunction with Article 11 – Timing could be of crucial importance to the political and social impact of a public assembly. If the assembly was organised after a given social issue had lost its relevance or importance to a current social or political debate, the impact of the meeting might be seriously diminished. Freedom of assembly – if prevented from being exercised in good time – could even be rendered meaningless. Implicit in the notion of an effective remedy, therefore, was the ability to obtain a ruling before the planned events were held. The relevant legislation required requests to hold a demonstration to be submitted to the municipality at least three days beforehand and the applicants had complied with that deadline. However, there was no requirement for the authorities to give a final decision before the demonstrations were due to take place. The Court was not persuaded that the *ex post facto* remedies available could have provided adequate redress to the applicants. They had therefore been denied an effective domestic remedy.
Conclusion: violation (unanimously).

Article 14 in conjunction with Article 11 – There was no overt discrimination behind the decisions to refuse permission, as they were focused on technical aspects of the organisation of the demonstrations, and the Court could not speculate on the existence of motives other than those expressly referred to in the administrative decisions. However, it could not overlook the newspaper interview in which the Mayor had expressed strong personal opinions about freedom of assembly and "propaganda about homosexuality"

and stated that he would refuse permission to hold the demonstrations. There was little room under Article 10 for restrictions on political speech or debate. However, with respect to elected politicians who at the same time held public office at the executive level of government, that freedom entailed particular responsibility. Restraint had to be shown when exercising it, especially when civil servants, whose employment and careers depended on the approval of the politicians concerned, might regard the views expressed as instructions. In the case before the Court, the decisions concerning the applicants' request for permission to hold the demonstrations had been given by the municipal authorities on the Mayor's behalf after he had already made public his opinion on the matter. It could therefore reasonably be surmised that his opinions may have affected the decision-making process and consequently infringed in a discriminatory manner the applicants' right to freedom of assembly.
Conclusion: violation (unanimously).

ARTICLE 13

EFFECTIVE REMEDY
Belated quashing of an unlawful refusal to grant permission for a march and meetings to protest against homophobia: *violation*.

BĄCZKOWSKI and Others - Poland (N° 1543/06)
Judgment 3.5.2007 [Section IV]

(see Article 11 above).

ARTICLE 14

DISCRIMINATION (Article 3)
Failure to carry out an effective investigation into racist attack on a member of the Roma: *violation*.

ŠEČIĆ - Croatia (N° 40116/02)
Judgment 31.5.2007 [Section I]

(see Article 3 above).

DISCRIMINATION (Articles 3 and 9)
Comments and attitudes of authorities on being notified of a violent assault on a congregation of Jehovah's Witnesses: *violation*.

97 MEMBERS OF THE GLDANI CONGREGATION OF JEHOVAH'S WITNESSES AND 4 OTHERS - Georgia (N° 71156/01)
Judgment 3.5.2007 [Former Section II]

(see Article 3 above).

DISCRIMINATION (Article 11)
Possibility that a municipal authority's refusal to grant permission to protest against homophobia was influenced by the mayor's publicly expressed views: *violation*.

BĄCZKOWSKI and Others - Poland (N° 1543/06)
Judgment 3.5.2007 [Section IV]

(see Article 11 above).

DISCRIMINATION (Article 11)
Statutory obligation for Freemasons to declare their membership when applying for regional authority posts: *violation*.

GRANDE ORIENTE D`ITALIA DI PALAZZO GIUSTINIANI - Italy (n° 2) (N° 26740/02)
Judgment 31.5.2007 [Section I]

Facts: The applicant is an Italian Masonic association to which several lodges are affiliated. It has been in existence since 1805 and is affiliated to Universal Freemasonry. It complained of a regional law passed in 2000 which lays down the rules to be followed for appointments to public office at regional level.
The law requires candidates for nomination and appointment to public office at regional level to declare whether they are members of any Masonic or secret association. The absence of a declaration is a ground for refusing appointment.
Of the candidates for a post on the executive board of a company in which the Region was a stakeholder, the only one who had declared his membership of a Masonic lodge was chosen by the Regional Council to carry out those duties.

Law: The applicant association was a grouping of several Masonic lodges. It could claim to be a "victim" of a breach of its right to freedom of association as the legal obligation to declare one's membership of a Masonic lodge when applying for positions of high responsibility might adversely affect its image and associative life.
That conclusion meant that there had been an interference with its right to freedom of association. The provision in question distinguished between secret and Masonic associations, membership of which had to be declared, and all other associations, whose members were exempted from any such obligation; there was therefore a difference of treatment between the members of the applicant association and those of any other, non-secret, association.
In the first case of *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy*, no. 35972/97, CEDH 2001-VIII, the Court had held that the prohibition on appointing Freemasons to public office, which had been introduced in order to "reassure" the public at a time when there had been controversy surrounding their role in the life of the country, had pursued the legitimate aims of protecting national security and preventing disorder.
In the instant case the Court considered that those requirements, valid in 1996, were still valid in 2000. Here, unlike in the legislation challenged in the first case, membership of the Freemasons did not automatically debar the candidate from appointment to one of the offices in question. When such membership was declared the public authority used its discretion in determining whether the link between the candidate and the lodge, possibly in conjunction with other considerations, should disqualify the candidate. This had been demonstrated by the fact that the only candidate to have declared his membership of a lodge had been chosen for a post on the executive board of a company in which the Region was a stakeholder.
However, membership of many other, non-secret associations might create a problem for national security and the prevention of disorder where members of those associations held public office. This might be the case, for example, for political parties or groups advocating racist or xenophobic ideas, or for sects or associations with a military-type internal structure or those that established a rigid and incompressible bond of solidarity between their members or pursued an ideology that ran counter to the rules of democracy.

Yet only members of a Masonic association were under an obligation to declare their membership when seeking appointment to certain public offices for which the Region was the appointing authority. No objective and reasonable justification for this difference in treatment compared with members of non-secret associations had been advanced by the Government.
Conclusion: violation (six votes to one).

Article 46 – It was for the respondent state to take the necessary steps to repair the damage caused by the discrimination suffered by the applicant and considered by the Court to be at variance with the Convention.

Article 41 – Damage: finding of violation sufficient.

See also *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy*, no. 35972/97, judgment of 2 August 2001, Information note no. 33 and ECHR 2001-VIII. See also Article 34.

ARTICLE 34

VICTIM
Association of Masonic lodges complaining of statutory obligation for Freemasons to declare their membership when applying for positions of high responsibility: *victim status upheld*.

GRANDE ORIENTE D`ITALIA DI PALAZZO GIUSTINIANI - Italy (nº 2) (Nº 26740/02)
Judgment 31.5.2007 [Section I]

(see Article 14 above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
EFFECTIVE DOMESTIC REMEDY (Belgium)
Unfair to require an applicant to exhaust a remedy that had only recently been introduced into the legal system following a change in the case-law and had taken six months to acquire sufficient certainty: *preliminary objection dismissed*.

DEPAUW - Belgium (Nº 2115/04)
Decision 15.5.2007 [Section II]

The case concerns a series of civil and criminal proceedings that have been going on for 20 years. The applicant was awarded compensation for wrongful dismissal but was unable to claim it from the firm because it went bankrupt.
On 28 September 2006 the Court of Cassation rejected an appeal and confirmed an appeal court judgment declaring the civil liability of the Belgian Government for unreasonably lengthy proceedings in a civil case.
The applicant complains, inter alia, of the overall length of the proceedings.

Admissible: The application was not about personal negligence by judges but about delays in the processing of a case due to the negligent failure of the authorities to take the legislative and regulatory steps necessary to the proper functioning of the courts. In the past the Belgian Government had unsuccessfully filed an objection with the European Commission on Human Rights for non-exhaustion of

domestic remedies, contending that the possibility, under Article 1382 of the Civil Code, of bringing a claim against the State for damages constituted an effective remedy against unduly lengthy proceedings resulting from delays in processing a case. The Government had raised the same objection in the instant case, relying on progressive interpretation by the ordinary courts and the position of the Court of Cassation in its judgment of 28 September 2006. The Court noted that that judgment referred expressly to Article 6(1) of the Convention and clearly established the principle that the State's civil liability could be incurred if the legislature failed to organise the judicial system in such a way that the courts were able to guarantee the right to obtain a final decision on complaints concerning civil rights and obligations within a reasonable time. The remedy at issue was purely compensatory and afforded no means of speeding up proceedings which were pending. Compensation was an effective remedy within the meaning of Article 13 and Article 35(1) of the Convention only if it compensated not only for pecuniary damage but also for the non-pecuniary damage sustained when proceedings took longer than was reasonable. While it was difficult accurately to assess the length of proceedings and the consequences, particularly in terms of non-pecuniary damage, which by nature must be determined *ex aequo et bono*, reasonable proportion nevertheless had to be kept between the sums awarded and the sums the Court would have awarded in similar cases. First, however, the Court had to determine from what moment the remedy established by the Court of Cassation had become established "with sufficient certainty not only in theory but also in practice" to be usable and indeed mandatory henceforth for the purposes of Article 35(1) of the Convention. It would not be fair to rely on a remedy newly introduced into a Contracting State's legal system against individuals who applied to the Court if they were not yet effectively aware of its existence. In cases like this one, where the domestic remedy was the result of progressive interpretation by the courts, fairness required a reasonable lapse of time to allow the public to become effectively aware of the domestic decision which had established the remedy. The lapse of time varied with the circumstances, particularly how well the decision concerned had been publicised. In the case of the judgment of the Court of Cassation referred to here, the Court noted that, as usual, the judgment had been available for consultation on the Belgian judiciary's internet site two weeks after it had been delivered, and that it had promptly been circulated in legal circles and even to the public. It might therefore be considered, according to the Court, to have acquired a sufficient degree of certainty in the first quarter of 2007, six months after it was delivered. The Court accordingly deemed it reasonable to assume that the public could not have been unaware of the judgment of the Court of Cassation after 28 March 2007. It concluded that it was from that date onwards that applicants should have been required to use the remedy in question, i.e. action for damages against the state based on Article 1382 of the Civil Code for the purposes of Article 35(1) of the Convention. The present case having been brought before the Court on 12 December 2003, long before 28 March 2007, the applicant could not be penalised for not using the remedy: *preliminary objection dismissed*.

EFFECTIVE DOMESTIC REMEDY (Slovenia)
Effectiveness of new domestic remedy concerning length of judicial proceedings: *inadmissible*.

GRZINČIČ - Slovenia (N° 26867/02)
Judgment 3.5.2007 [Section III]

Facts: In 1996 the applicant instituted civil proceedings seeking compensation for non-pecuniary damage suffered as a result of unjustified detention. In 2004 a final judgment awarding the compensation was given.
In 1999 criminal proceedings were instituted against the applicant. They are now pending before a higher court.
Following the judgment in *Lukenda v. Slovenia* (no. 23032/02, 6 October 2005, Information Note no. 79), the Slovenian Government adopted a Joint State Project on the Elimination of Court Backlog, part of which was the 2006 Act on the Protection of the Right to a Trial without undue Delay (the "Act") which entered into force on 1 January 2007. The Act provides for two remedies to expedite pending proceedings – a supervisory appeal and a motion for a deadline– and, ultimately, for a claim for just satisfaction in respect of damage sustained because of the undue delay.

Law: *Civil proceedings* – Given that the impugned civil proceedings had ended and the present application had been communicated to the respondent Government before the 2006 Act became operational, the remedy provided therein could not be regarded as effective. The length of proceedings had been excessive.
Conclusion: violation of Articles 6(1) and 13 (unanimously).

Criminal proceedings – As regards the pending criminal proceedings, the applicant had been entitled to seek their acceleration and redress, when the Act became operational. In particular, a supervisory appeal and a motion for a deadline were designed in the Act to obtain acceleration of pending proceedings and/or a finding that time-limits had been exceeded. Furthermore, the Act provided for a compensatory remedy whereby a party could be awarded just satisfaction for any non-pecuniary and pecuniary damage sustained. The Court was thus satisfied that the aggregate of remedies provided by the Act in cases of excessively long pending proceedings was effective in the sense that they were in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred. As for the exhaustion requirement in respect of applications lodged before the 2006 Act became operational, the purpose of the remedies introduced by it was precisely to enable the Slovenian authorities to redress breaches of the "reasonable time" requirement at domestic level. There was no reason to doubt their effectiveness, even in the absence of long-term practice of domestic authorities applying the Act. That was valid not only for applications lodged after the date on which the Act became operational, but also for those concerning domestic proceedings pending at first and second instance which were already on the Court's list of cases by that date. However, the Court's position could be subject to review in the future and the burden of proof as to the effectiveness of the remedies in practice remained upon the Government. National authorities should therefore take particular care to ensure that the Act be applied in conformity with the Convention as far as both future case-law and the general administration of justice are concerned. Appropriate measures should be taken in order to avoid clogging up domestic avenues. In this connection, the Court noted that the Government had adopted the so-called Lukenda Project to address this structural problem from different angles. The applicant was therefore required by Article 35(1) of the Convention to use the remedies available to him under the Act with effect from 1 January 2007.
Conclusion: inadmissible (non-exhaustion of domestic remedies as regards Article 6 and manifestly ill-founded as regards Article 13).

Article 35(3)

ABUSE OF RIGHT OF PETITION
Applicants' reliance on forged court documents: *inadmissible*.

BAGHERI and MALIKI - Netherlands (N° 30164/06)
Decision 15.5.2007 [Section III]

The applicants, a married Iranian couple, unsuccessfully sought asylum in the Netherlands, this having been refused in the final instance by the Administrative Jurisdiction Division of the Council of State. As regards the copy of a judgment of the Teheran Islamic Revolutionary Tribunal of 2002, the Administrative Jurisdiction Division held that the copy submitted by the applicants did not constitute a "new fact" warranting a reconsideration of the applicants' asylum claim as its authenticity could not be determined by the Netherlands Royal Constabulary. The applicants for their part had not demonstrated by means of evidence and arguments that it was an authentic Iranian document and had given contradictory accounts about the manner in which it had been obtained.
Before the European Court the applicants complained that they had been denied asylum in the Netherlands and that their removal to Iran would be contrary to Article 3 of the Convention. In the ensuing proceedings the respondent Government were requested to draw up an official report on, *inter alia*, the authenticity of the 2002 judgment. The respondent Government later informed the Court that, according to the findings of an inquiry carried out in Iran, the judgment was not an authentic document.

Inadmissible: The Court noted that the applicants had relied on a summons issued by the Shiraz Islamic Revolutionary Tribunal as well as on a judgment given by the Teheran Islamic Revolutionary Tribunal. According to the findings of inquiries carried out in Iran by the Netherlands authorities, these two documents had been forged and the applicants had not disputed those findings. An application may be rejected as abusive if it was knowingly based on untrue facts.

ABUSE OF RIGHT OF PETITION
Leader of applicant party apologises to the Court for having distorted information about the Strasbourg proceedings: *Government's objection dismissed*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Decision 22.5.2007 [Section II]

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

COMPETENCE *RATIONE PERSONAE*
Applications concerning acts performed by KFOR and UNMIK in Kosovo under the aegis of the UN: *inadmissible*.

BEHRAMI and BEHRAMI - France (N° 71412/01)
SARAMATI - France, Germany and Norway (N° 78166/01)
Decision 31.5.2007 [GC]

Behrami and Behrami: The two applicants, Agim Behrami and his son, Bekir Behrami, live in Kosovo, in what used to be the Federal Republic of Yugoslavia (FRY) and is now the Republic of Serbia; the application was also filed on behalf of another son, Gadaf Behrami, who is now deceased. At the material time, in March 2000, the applicants lived in the sector of Kosovo for which a multinational brigade led by France was responsible. The brigade was part of the international security force (KFOR) presence in Kosovo, mandated by UN Security Council Resolution 1244 of June 1999.
A group of children, including Bekir and Gadaf, found a number of unexploded cluster bombs which had been dropped during the bombardment of FRY by NATO in 1999. One of the children threw a bomb into the air; it exploded, killing Gadaf and seriously injuring Bekir. Police from the UN Interim Administration in Kosovo (UNMIK) – also mandated by Resolution 1244 and deployed under the aegis of the United Nations – investigated the incident. They found that the accident amounted to "an unintentional homicide committed by imprudence". It was decided that no criminal prosecution would be brought because the bomb did not explode during the NATO bombardment. Mr Behrami complained to the Kosovo Claims Office that France had not respected the provisions of Resolution 1244 concerning de-mining. The claim was ultimately rejected on the ground that de-mining had been the responsibility of the UN since July 1999.

Saramati: The applicant, of Albanian origin and living in Kosovo, was arrested by UNMIK police in 2001 and placed in detention while a criminal investigation was conducted. He appealed successfully against a further detention order and was released. Later, UNMIK police informed the applicant by telephone that he should go to the police station to pick up his money and personal effects. The applicant complied and went to the police station, where he was arrested by two UNMIK police officers, acting on orders from the KFOR commander (COMKFOR), a Norwegian officer at the time. The police station was located in the zone where the KFOR multinational brigade was under the authority of Germany. COMKFOR extended the applicant's detention. The KFOR Legal Adviser advised the applicant's representatives, who had challenged the legality of his detention, that KFOR had the authority to detain under Resolution 1244 where this was necessary to protect KFOR troops and people residing in Kosovo. The applicant was sent before the district court for trial. His representatives requested his release but the trial court replied that his detention was the responsibility of KFOR. A French general then became COMKFOR. The applicant

was convicted of attempted murder. The Supreme Court of Kosovo quashed the applicant's conviction and his case was sent for re-trial. The applicant was released.

Saramati application in respect of Germany struck out: Mr Saramati initially contended that a German KFOR officer had been involved in his arrest. The German Government replied that thorough investigations had failed to produce evidence of any involvement of a German KFOR officer in the arrest. The applicant requested and obtained the removal of his application concerning Germany from the list.

Inadmissibility for incompatibility ratione personae *of the applications in respect of France and Norway*: The Behramis complained that de-mining had not been carried out, noting that France had been in charge of the multinational brigade responsible for the sector. Mr Saramati complained of his detention by KFOR, emphasising that it had been ordered by COMKFORs of French and Norwegian nationality.
Prior to the material events the FRY had agreed, in a "military/technical agreement" to the presence of international troops. Resolution 1244 had then provided for the deployment of an international security force (KFOR), made up of contingents grouped into multinational brigades under the authority of a commanding country; those countries included France and Germany. The Resolution had also provided for the establishment of a civil administration under the aegis of the United Nations (UNMIK). It assigned KFOR full military control in Kosovo. UNMIK's mission was one of international interim administration; the powers conferred on it by the Security Council included all the prerogatives of the legislature and the executive as well as the running of the judicial system. At the material time, therefore, Kosovo was effectively under the control of the international forces present there, which exercised the powers of public authority normally exercised by the government of the FRY. The question was accordingly whether the Court had jurisdiction to examine, in the light of the Convention, the role played by the States present in these civil and security capacities which were effectively in control of Kosovo.
On the issues of detention and de-mining, KFOR had been responsible for issuing detention orders and UNMIK for supervising de-mining operations. Could the UN be held accountable for the impugned action (Mr Samarati's detention by KFOR) and inaction (UNMIK's failure to clear the area of mines in the Behrami case)? The Security Council had validly delegated its security powers to KFOR and its powers of civil administration to UNMIK on the strength of Chapter VII of the United Nations Charter. The Security Council had retained ultimate authority and control. Effective command of operational matters lay with NATO.
Given that KFOR was exercising powers duly delegated to it by the UN Security Council, in application of Chapter VII, and that UNMIK, which had been set up by virtue of that same Chapter VII, was a subsidiary body of the UN, answerable for its actions to the Security Council, the impugned action and inaction were, in principle, attributable to the UN. That organisation was a legal entity distinct from its member states and was not a contracting party to the Convention.
Was the Strasbourg Court competent *ratione personae* to examine actions carried out by the respondent states on behalf of the UN? More generally, what was the relationship between the European Convention on Human Rights and actions carried out by the UN under Chapter VII of its Charter, entitled "Action with respect to threats to the peace, breaches of the peace and acts of aggression"?
The main aim of the UN was to maintain international peace and security. The protection of human rights made an important contribution to international peace-keeping (cf. the Preamble to the Convention), but the main responsibility for this lay with the UN Security Council, which had substantial means of achieving it under Chapter VII, including the adoption of coercive measures. The Security Council's responsibility in this connection was unique. In the instant cases Chapter VII enabled the Security Council to adopt coercive measures in response to a specific conflict deemed to be a threat to peace, the said measures being set out in Security Council Resolution 1244 establishing UNMIK and KFOR. The operations set in motion by the Security Council's resolutions under Chapter VII of the United Nations Charter were essential to the UN's mission to preserve international peace and security, and relied for their effectiveness on the contributions of the member states.
It followed that the Convention could not be interpreted in such a way as to place under the control of the Strasbourg Court the actions and omissions of contracting parties covered by Security Council resolutions and committed prior to or during UN missions aimed at preserving international peace and security.
This would amount to interference in the accomplishment of an essential mission of the UN in this field, or in the effective conduct of such operations. It would also amount to placing conditions on the

implementation of a Security Council resolution for which no provision was made in the text of the resolution itself. This reasoning also applied to the deliberate acts of the respondent states, for example when a permanent member of the Security Council voted in favour of the particular resolution under Chapter VII and the deployment of troops on a peacekeeping mission: strictly speaking such acts might not be obligations resulting from membership of the United Nations, but they were essential to the effective fulfilment by the Security Council of its mandate under Chapter VII, and therefore to the UN's accomplishment of its paramount task of maintaining peace and security. The complaints must be declared incompatible *ratione personae*.

COMPETENCE *RATIONE PERSONAE*
Political party not actually affected by contested elections: *inadmissible*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Decision 22.5.2007 [Section II]

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

ARTICLE 37

Article 37(1)(c)

CONTINUED EXAMINATION NOT JUSTIFIED
Applicant's failure to keep the Court informed of developments relevant to her application: *admissible case struck out*.

OYA ATAMAN - Turkey (N° 47738/99)
Judgment 22.5.2007 [Section IV]

Facts and initial procedure before the Court: The applicant complained that the refusal of the national authorities to allow her and her husband to bear her maiden name as their family name amounted to a violation of Articles 8 and 14 of the Convention. The case was declared admissible in 2006. The Government later submitted that the applicant has ceased to be a victim of a violation of the Convention on account of her divorce in 2003. Accordingly, the Government invited the Court to strike the case out of its list of cases in accordance with Article 37(1)(c). The applicant asked the Court to rule on the merits, claiming that she remained a victim of a violation of Articles 8 and 14 since she had been obliged to change her surname both upon marrying and after her divorce. Taking into account her profession, this meant that she had been obliged to reintroduce herself constantly.

Law: Since the applicant had given a clear indication that she intended to pursue her application, Article 37(1)(a) was not applicable. Neither could the matter be considered to have been resolved within the meaning of Article 37(1)(b) since, even if the circumstances directly complained of by the applicant no longer prevailed, the effects of a possible violation of the Convention had not been redressed by the domestic authorities. The Court enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application pursuant to Article 37(1)(c), it being understood, however, that such grounds must reside in the particular circumstances of each case. In the instant case, the applicant's complaint concerned her inability, due to domestic law, to use her maiden name as the family name of the couple. In the meantime however it had appeared that she had divorced, a fact which she had failed to mention to the Court until May 2006 notwithstanding the terms of Rule 47 (6) of the Rules of Court according to which applicants are required to keep the Court informed of developments relevant to their application. In the light of that divorce the matter complained of no longer concerned a live issue and it was no longer justified to continue the examination of the case within the meaning of Article 37(1)(c) of

the Convention. Nor were there any reasons of a general character which would require the examination of the application by virtue of that Article.
Conclusion: struck out of the list (unanimously).

Note also Rule 44A of the Rules of Court, on the parties' duty to cooperate fully in the conduct of the proceedings before it.

ARTICLE 38

Article 38(1)(a)

FURNISH ALL NECESSARY FACILITIES
Refusal by Government to disclose documents from ongoing investigation into an abduction and killing by servicemen or into allegations of harassment of the applicants: *failure to comply with Article 38*.

AKHMADOVA and SADULAYEVA - Russia (N° 40464/02)
Judgment 10.5.2007 [Section I]

Facts: The applicants are the mother and widow of Mr Shamil Akhmadov. He was in a group of some 170 people who were detained in a military operation in Chechnya in March 2001. Most were released within days, but Mr Akhmadov was one of 11 men who remained in unacknowledged detention. The Government claimed he was wanted in connection with the possession of drugs. Shortly after the operation ended, the bodies of four of the missing men were discovered near a military base with bullet wounds. Mr Akhmadov's mother was informed that a criminal investigation into his disappearance had been opened and that the involvement of military personnel in his abduction had been established. She was granted victim status. In April 2002 Mr Akhmadov's body was found in a field and identified by his widow from his clothes. The prosecutor's office issued a certificate confirming her identification and that the deceased had met a violent death, probably in March 2001. A death certificate was later issued, indicating 22 March 2001 as the date of death. The criminal investigation into the death was adjourned and reopened on at least six occasions and the case transferred between military and civil prosecutors at least five times. The investigation was still pending in November 2005. The applicants also alleged that they had been subjected to constant pressure and harassment by the military, which had included serious physical assaults, house searches and the destruction of their property.
Despite repeated requests from the Court, the Government refused to provide copies of the documents from the investigation file, arguing that the case was still under investigation and that disclosure would violate Article 161 of the Code of Criminal Procedure. Requests for disclosure of documents relating to the verification by the prosecutor of the second applicant's allegations of harassment were also turned down. Although the Government finally submitted certain procedural documents from the criminal investigation into the abduction, they declined to submit any further documents on the ground that they contained State secrets, including information relating to the location and actions of the military and special forces, and the addresses and personal details of witnesses who had participated in counter-terrorist operations.

Law: Article 2 – (a) *Substantive aspect* – Various factors pointed to a link between Mr Akhmadov's arrest by State servicemen in March 2001 and his death. Official documents (the death certificate and the certificate issued by the prosecutor's office) indicated that the domestic authorities presumed death to have occurred a few days after his arrest. The body was dressed in the same clothes as those Mr Akhmadov had been wearing and a number of other bodies of people who had been detained on the same date had also been discovered. All had apparently met violent deaths and four of the bodies had been discovered on military premises. It had thus been established "beyond reasonable doubt" that State authorities were responsible for the death.
Conclusion: violation on account of the death (unanimously).

(b) *Procedural aspect* – The authorities had been made aware of Mr Akhmadov's detention because the applicants had personally visited the military commander's office and the prosecutor's offices within days. However, the investigation had not been opened until 11 days after his detention. That delay was in itself liable to affect the effectiveness of the investigation. The investigation was dysfunctional and plagued by inexplicable delays in performing the most essential tasks. In a period of five-and-a-half years, it had been adjourned and reopened at least six times and transferred from one prosecutor's office to another on at least five occasions for no apparent reason. Mr Akhmadov's widow was not granted victim status in the proceedings and his mother, notwithstanding her victim status, was not properly informed of progress. It had taken more than a year for the body to be discovered, and even then this was not in any way down to the efforts of the law-enforcement authorities. The reaction of the prosecutor's office to the news of the detention had significantly contributed to the likelihood of the deceased's disappearance, as no necessary steps were taken in the crucial first days or weeks. Its conduct in the face of the applicants' justified complaints created a strong presumption of at least acquiescence in the situation and raised strong doubts as to the objectivity of the investigation.
Conclusion: violation on account of the failure to hold an effective investigation (unanimously).

Article 3 – The relatives of a "disappeared person" could not normally claim to be a victim for the purposes of Article 3 where the person taken into custody was later found dead. In such cases, the Court would normally limit its findings to Article 2. However, if the period of initial disappearance was long enough, it could give rise to a separate issue under Article 3. There had been a distinct period of more than one year before news of Mr Akhmadov's death had come through. The applicants had suffered uncertainty, distress and anguish as a result of his disappearance and of their inability to find out what had happened to him or to receive up-to-date information on the investigation. The manner in which their complaints had been dealt with by the authorities accordingly constituted inhuman treatment.
Conclusion: violation (unanimously).

Article 5 – It was established that Mr Akhmadov had been detained by State servicemen during a security operation and not seen alive again. The Government had not provided any explanation for his detention or any documents of substance from the domestic investigation into his apprehension. He had therefore been a victim of unacknowledged detention. The authorities should have been more alert to the need for a thorough and prompt investigation of Mr Akhmadov's detention in life-threatening circumstances, but had failed to take prompt and effective measures. Accordingly, he had been held in unacknowledged detention without any of the Article 5 safeguards in what constituted a particularly grave violation of the right to liberty and security.
Conclusion: violation (unanimously).

Article 13 – Where, as in this instance, a criminal investigation into a disappearance and death was ineffective and the effectiveness of any other potential remedy capable of leading to the identification and punishment of those responsible was consequently undermined, the State had failed in its obligation under Article 13.
Conclusion: violation of Article 13 in conjunction with Articles 2 and 3.

Article 34 – In the absence of medical or other evidence to corroborate the second applicant's allegations, there was insufficient material before the Court for it to conclude that undue pressure had been put on her to dissuade her from pursuing her application to the Court.
Conclusion: no failure to comply (unanimously).

Article 38(1)(a) – The Government had been asked repeatedly to submit copies of the investigation files, as they contained evidence which the Court regarded as crucial to the establishment of the facts in the case. The Government had refused on the ground that the case was still under investigation. However, the provisions of Article 161 of the Code of Criminal Procedure, on which the Government relied, did not preclude disclosure of the documents from a pending investigation file, but simply set out a procedure for and limits to such disclosure. The Government had failed to specify the nature of the documents and the

grounds on which they could not be disclosed. Accordingly, their explanations were insufficient to justify withholding the key information requested.
Conclusion: failure to comply (unanimously).

Article 41 – EUR 15,000 jointly for pecuniary damage and EUR 20,000 each for non-pecuniary damage.

See also, for previous failures to comply with Article 38: *Shamayev and Others v. Georgia and Russia* (no. 36378/02), reported in Information Note no. 74; *Imakayeva v. Russia* (no. 7615/02) – Information Note no. 91; and *Baysayeva v. Russia* (no. 74237/01) – Information Note no. 96.

ARTICLE 41

JUST SATISFACTION
Pecuniary damage: no award made as it was open to the applicant to bring a civil claim in damages following a finding by the criminal court that he had in fact sustained pecuniary damage.

PAUDICIO - Italy (N° 77606/01)
Judgment 24.5.2007 [Section II]

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

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Failure by the authorities to comply with an order for the demolition of a building unlawfully built close to the applicant's home: *violation*.

PAUDICIO - Italy (N° 77606/01)
Judgment 24.5.2007 [Section II]

Facts: The applicant's neighbours were granted planning permission, in exceptionally urgent circumstances, to build a cowshed. The building was to be demolished within two years, however, as no building whatsoever was permitted on the land concerned under the land-use plan in force at the time. The cowshed exceeded the dimensions for which planning permission had been granted. The building was not demolished. The neighbours were convicted by a criminal court of violation of planning regulations and the mayor was ordered to proceed with the demolition. The criminal court acknowledged the applicant's right to compensation in an amount to be determined by the competent civil courts. The neighbours applied to the municipal authorities to legalise the building. The mayor warned them that the application had no chance of being accepted under the legislation in force. The demolition had not taken place at the date on which the Strasbourg Court delivered its judgment and the legalisation procedure was pending.

Law: The authorities' refusal to comply with the demolition order had resulted in the illegal building remaining standing. The fact that it was so close to the applicant's home had resulted in an interference with his right to peaceful enjoyment of his possessions. A final demolition order had been issued and the enforcement office had ordered the mayor to proceed with the demolition. The criminal court had also found that the applicant had sustained pecuniary damage and was consequently entitled to compensation. The neighbours' application for the building's legalisation remained unanswered twelve years later and the mayor had warned them that there was no chance of it being accepted considering the legislation in force. It follows that the authorities' failure to demolish the building had no legal basis in domestic law.
Conclusion: violation (unanimously).

Article 41 – *Pecuniary damage*: The award of damages would constitute adequate compensation. The criminal courts had ruled that the applicant had sustained pecuniary damage as a result of the neighbours' illegal building. This meant that the applicant could claim damages through the civil courts, so no pecuniary damages were awarded by the Strasbourg Court. *Non-pecuniary damage*: EUR 5,000.

DEPRIVATION OF PROPERTY
Failure to take into account all relevant factors, including the decrease in value of the unexpropriated land, when assessing the compensation payable on the expropriation of part of a farm: *violation*.

BISTROVIČ - Croatia (N° 25774/05)
Judgment 31.5.2007 [Section I]

Facts: A construction company sought to expropriate part of the applicants farmland to build a section of motorway. The applicants appealed to a county court against the expropriation order, arguing that the whole of the property should have been expropriated as they would not be able to use the house and remaining land once the motorway had been built. In the alternative, they contested the level of the compensation award, saying that it had been assessed without the valuer ever visiting the property and did not reflect the true market value of the expropriated land. The county court found that the award was based on expert evidence and that the applicants had not adduced any evidence in support of their claims, which it therefore dismissed. A complaint by the applicants to the Constitutional Court was rejected as ill-founded.

Law: The county court had failed to address a number of relevant questions that had been raised by the applicants. These included the method used to calculate the market value of the property, the precise effect the planned motorway would have on their living conditions, the question whether the expert had ever visited the property and, most crucially, the effect partial expropriation would have on the value of the remaining estate. As in *Ouzounoglou v. Greece* (no. 32730/03), the nature of the construction had directly contributed to the substantial depreciation of the value of the unexpropriated property. The future motorway was scheduled to pass within a few metres of the house and the estate had lost its hitherto pleasant surroundings, a huge courtyard and low noise exposure, all of which had made it very suitable for agricultural activity. Only after verification of all the factors concerning the effects of the motorway construction on the applicants' remaining property, such as the decrease in the value of their estate, the possibility of selling it and the applicants' interest in further use of the remaining estate, would it have been possible for the domestic authorities to fix adequate compensation. By failing to establish all the relevant factors or to grant an indemnity for the decrease in the value of the remaining estate, the national authorities had failed to strike a fair balance between the interests involved or to ensure adequate protection of the applicants' property rights.
Conclusion: violation (unanimously).

Article 41 – EUR 5,000 jointly in respect of non-pecuniary damage. No award was made for pecuniary damage as the Court could not speculate on the value of the land and the applicants could, in any event, request the re-opening of the domestic proceedings and, if necessary, refer the matter back to the Court at the end of that process.

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
Alleged misadministration of electoral rolls, presidential control over electoral commissions and finalisation of country-wide vote tally without elections having been held in two districts: *admissible*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Decision 22.5.2007 [Section II]

In November 2003 regular parliamentary elections were held under both majority (single-mandate constituencies) and proportional systems. In the second of these voting systems, finalised by the vote tally of the Central Electoral Commission, the applicant party received 12% of the votes cast, which corresponded to 20 out of the 150 seats in Parliament reserved for candidates from party lists. The newly elected Parliament convened, but was ousted by the "Rose Revolution" forces at its first session. Later on, the Supreme Court annulled the vote tally as far as the election results under the proportional system were concerned. The results in single-seat constituencies remained in force. Repeat elections were scheduled for March 2004. According to the applicant party, on the eve of those elections, the newly elected President of Georgia declared in mass media that he would not allow its presence in Parliament. Following different complaints about irregularities, the Central Electoral Commission annulled the election results for the two electoral districts in the Autonomous Republic of Ajaria and ordered second repeat elections to be held there. On the election date in April 2004 polling stations in those two districts failed to open. On the same day, the Central Electoral Commission tallied the country-wide parliamentary election votes cast in March and formally confirmed that the applicant party had received 6% of the vote. This was not enough to clear the 7% threshold and thus to obtain seats in Parliament. The applicant party's appeal to the Supreme Court was dismissed. In proceedings before the Constitutional Court the chairperson of the applicant party later challenged the election results as a private person, but his complaint was declared inadmissible.
Before the European Court the applicant party complains *inter alia* about various violations of its right to stand for election and of discriminatory treatment during the repeat parliamentary elections in 2004. It alleges in essence that the election results were rigged in favour of the presidential and pro-presidential parties. In particular, the finalisation of the country-wide election results without second repeat elections actually having been held in two districts in the Autonomous Republic of Ajaria had been unlawful and had prevented the applicant party from clearing the legal threshold for obtaining seats in Parliament.
The applicant party also complained about the presidential election of January 2004 and submitted similar arguments to those made in respect of the repeat parliamentary election.

The Government's objection of abuse of the right of petition: An application, even if it uses offensive language, may only be rejected as abusive if it was knowingly based on untrue facts. However, the persistent use of insulting or provocative language by an applicant may be considered an abuse of the right of individual petition. The Court shared the Government's view that some of the impugned public statements of the applicant party's leader were deliberately untrue statements of fact, apparently motivated by political considerations, and therefore could hardly amount to a legitimate exercise of the right to freedom of expression. Furthermore, two of his interviews in different media were vexing manifestations of irresponsibility and a frivolous attitude towards the Court, in general, and his party's application, in particular. Even though some of those observations had come close to contempt of court, assessed as a whole they had not surpassed the degree of tolerance. Moreover, after his letter of September 2006, in which the party leader made an apology and pledged to show due respect towards the Court, no other comparable statements are known to have been made. In these circumstances, the grounds which might have led to the rejection of the present application as an abuse of the right of individual petition were insufficient.

Inadmissible (*presidential elections of January 2004*): Although Article 3 of Protocol No. 1 is concerned only with the "choice of the legislature", the word "legislature" does not necessarily mean the national parliament; it has to be interpreted in the light of the constitutional structure of the State in question. The Court did not deem it necessary to decide in the present case whether or not the Georgian President constituted part of "the legislature", as, in any event, the applicant party could not validly claim to be a victim under Article 34 of the Convention of the violations alleged with respect to the presidential election: as a party, it could not as such run for President; nor had its Chairperson or any other party member stood in those elections. Consequently, the applicant party was not actually affected by the contested electoral mechanisms and the results of those elections. Those complaints rather expressed concern on behalf of the electorate at large and constituted therefore a clear instance of *actio popularis* which is not provided for under the Convention system: incompatible *ratione personae*.
Repeat parliamentary elections of March 2004: *admissible*.

Other judgments delivered in May

Acciardi and Campagna v. Italy (Nº 41040/98), 3 May 2007 [Section I] (just satisfaction - striking out)
Amato v. Turkey (Nº 58771/00), 3 May 2007 [Section III]
Aydin and Şengül v. Turkey (Nº 75845/01), 3 May 2007 [Section III]
Bakonyi v. Hungary (Nº 45311/05), 3 May 2007 [Section II]
Baz and Others v. Turkey (Nº 76106/01), 3 May 2007 [Section II]
Beneficio Cappella Paolini v. San Marino (Nº 40786/98), 3 May 2007 [Section II (former)] (just satisfaction - striking out)
Bochan v. Ukraine (Nº 7577/02), 3 May 2007 [Section V]
Bösch v. Austria (Nº 17912/05), 3 May 2007 [Section I]
Chrysochoou v. Greece (Nº 10953/05), 3 May 2007 [Section I]
Çiçek and Öztemel and Others v. Turkey (Nº 74703/01, Nº 74069/01, Nº 76380/01, Nº 16809/02, Nº 25710/02, Nº 25714/02 and Nº 30383/02), 3 May 2007 [Section II]
Demokratik Kitle Partisi and Elçi v. Turkey (Nº 51290/99), 3 May 2007 [Section III]
Dursun v. Turkey (Nº 17765/02), 3 May 2007 [Section II]
Emir v. Turkey (Nº 10054/03), 3 May 2007 [Section III]
Ern Makina Sanayi ve Ticaret A.Ş v. Turkey (Nº 70830/01), 3 May 2007 [Section IV]
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Soysal v. Turkey (Nº 50091/99), 3 May 2007 [Section III]
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Benediktov v. Russia (Nº 106/02), 10 May 2007 [Section I]
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Emmer-Reissig v. Austria (Nº 11032/04), 10 May 2007 [Section I]
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Üstün v. Turkey (Nº 37685/02), 10 May 2007 [Section II]
Vurankaya v. Turkey (Nº 9613/03), 10 May 2007 [Section II]
Wende and Kukówka v. Poland (Nº 56026/00), 10 May 2007 [Section IV]

Bülbül v. Turkey (Nº 47297/99), 22 May 2007 [Section IV]
Haggan and McCavery v. United Kingdom (Nº 63176/00 and Nº 64984/01), 22 May 2007 [Section IV]
Kansiz v. Turkey (Nº 74433/01), 22 May 2007 [Section IV]
Kaszczyniec v. Poland (Nº 59526/00), 22 May 2007 [Section IV]
McElroy and Others v. United Kingdom (Nº 57646/00, Nº 57946/00 and Nº 60937/00), 22 May 2007 [Section IV]
Muttilainen v. Finland (Nº 18358/02), 22 May 2007 [Section IV]
O'Connell and Others v. United Kingdom (Nº 58370/00, Nº 61781/00 and Nº 62966/00), 22 May 2007 [Section IV] (friendly settlement)
Rojek v. Poland (Nº 15969/06), 22 May 2007 [Section IV]
Toive Lehtinen v. Finland (Nº 43160/98), 22 May 2007 [Section IV]

Aslan v. Romania (Nº 32494/03), 24 May 2007 [Section III]
Aslaner v. Turkey (Nº 23903/02), 24 May 2007 [Section II]
Butković v. Croatia (Nº 32264/03), 24 May 2007 [Section I]
Da Luz Domingues Ferreira v. Belgium (Nº 50049/99), 24 May 2007 [Section II]
Davut Miçooğullari v. Turkey (Nº 6045/03), 24 May 2007 [Section II]
Ignatov v. Russia (Nº 27193/02), 24 May 2007 [Section I]
Ivanov v. Bulgaria (Nº 67189/01), 24 May 2007 [Section V]
Kuyumdzhiyan v. Bulgaria (Nº 77147/01), 24 May 2007 [Section V]
Milašinović v. Croatia (Nº 41751/02), 24 May 2007 [Section I]
Mishketkul and Others v. Russia (Nº 36911/02), 24 May 2007 [Section I]
Navushtanov v. Bulgaria (Nº 57847/00), 24 May 2007 [Section V]
Paun v. Romania (Nº 9405/02), 24 May 2007 [Section III]
Pshevecherskiy v. Russia (Nº 28957/02), 24 May 2007 [Section V]
Radchikov v. Russia (Nº 65582/01), 24 May 2007 [Section V]
Todicescu v. Romania (Nº 18419/02), 24 May 2007 [Section III]

Tuleshov and Others v. Russia (Nº 32718/02), 24 May 2007 [Section V]
Viktor Konovalov v. Russia (Nº 43626/02), 24 May 2007 [Section I]
Vladimir Solovyev v. Russia (Nº 2708/02), 24 May 2007 [Section I]
Yalman and Türkmen v. Turkey (Nº 23914/02), 24 May 2007 [Section II]
Zelilof v. Greece (Nº 17060/03), 24 May 2007 [Section I]

A. and E. Riis v. Norway (Nº 9042/04), 31 May 2007 [Section I]
Brazda and Malita v. Romania (Nº 75297/01), 31 May 2007 [Section III]
Dika v. Former Yugoslav Republic of Macedonia (Nº 13270/02), 31 May 2007 [Section V]
Durmuş Kurt and Others v. Turkey (Nº 12101/03), 31 May 2007 [Section II]
Gianni and Others v. Italy (Nº 35941/03), 31 May 2007 [Section I]
Gładczak v. Poland (Nº 14255/02), 31 May 2007 [Section IV]
Grozdanoski v. former Yugoslav Republic of Macedonia (Nº 21510/03), 31 May 2007 [Section V]
Horia Jean Ionescu v. Romania (Nº 11116/02), 31 May 2007 [Section III]
Ispan v. Romania (Nº 67710/01), 31 May 2007 [Section III]
Leonidopoulos v. Greece (Nº 17930/05), 31 May 2007 [Section I]
Lizanets v. Ukraine (Nº 6725/03), 31 May 2007 [Section V]
Maria Peter and Others v. Romania (Nº 54369/00), 31 May 2007 [Section III]
Mihajloski v. Former Yugoslav Republic of Macedonia (Nº 44221/02), 31 May 2007 [Section V]
Miholapa v. Latvia (Nº 61655/00), 31 May 2007 [Section III]
Ortner v. Austria (Nº 2884/04), 31 May 2007 [Section I]
Papasteriades v. Greece (Nº 2189/05), 31 May 2007 [Section I]
Polakowski v. Poland (Nº 4657/02), 31 May 2007 [Section IV]
Riihikallio and Others v. Finland (Nº 25072/02), 31 May 2007 [Section IV]
Söğüt v. Turkey (Nº 16593/03 and Nº 16600/03), 31 May 2007 [Section II]
Stojanov v. former Yugoslav Republic of Macedonia (Nº 34215/02), 31 May 2007 [Section V]

Referral to the Grand Chamber

Article 43(2)

The following cases have been referred to the Grand Chamber in accordance with Article 43(2) of the Convention:

KOVAČIČ and Others v. Slovenia (44574/98, 45133/98 and 48316/99) - Section III, judgment of 6 November 2006
BURDEN and BURDEN v. the United Kingdom (13378/05) - Section IV, judgment of 12 December 2006
DEMIR and BEYKARA v. Turkey (34503/97) - Section II, judgment of 21 November 2006

Relinquishment in favour of the Grand Chamber

Article 30

KORBÉLY - Hungary (N° 9174/02)
[Section II]

The case concerns the applicant's contemporary conviction of crimes against humanity for his actions as a military commander during the 1956 uprising. He complains that he was prosecuted for an act which did not constitute any crime at the time of its commission, in breach of Article 7. He also complains that he was convicted without proper reasoning being put forward by the domestic courts, and this on account of findings of fact arbitrarily established, in breach of Article 6. This provision is also said to have been violated on account of the length of the proceedings.

N. - United Kingdom (N° 26565/05)

The applicant, a citizen of Uganda, was refused asylum. HIV positive and undergoing treatment, she alleges *inter alia* that her removal to Uganda would violate Article 3 as she would not have access to the equivalent anti-viral treatment in her home country and her life expectancy would be considerably curtailed in consequence.
The Court has ordered an interim measure under Rule 39 of the Rules of Court to the effect that the applicant should not be removed from the respondent State until further notice.

Judgments which have become final[1]

Article 44(2)(c)

On 23 May 2007 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Ahmet Mete v. Turkey (nº 2)(30465/02) - Section II, judgment of 12 December 2006
Akkan and Erkizilkaya v. Turkey (48055/99) - Section II, judgment of 24 October 2006
Alsayed Allaham v. Greece (25771/03) - Section I, judgment of 18 January 2007
Anter and Others v. Turkey (55983/00) - Section IV, judgment of 19 December 2006
Aubert and Others and 8 autres Case ofs v. France (31501/03, 31870/03, 13045/04, 13076/04, 14838/04, 17558/04, 30488/04, 45576/04 and 20389/05) - Section II, judgment of 9 January 2007
Dóbal v. Slovakia (65422/01) - Section IV, judgment of 12 December 2006
Farhi v. France (17070/05) - Section II, judgment of 16 January 2007
Golik v. Poland (13893/02) - Section IV, judgment of 28 November 2006
Gorou v. Greece (nº 4) (9747/04) - Section I, judgment of 11 January 2007
Hauser-Sporn v. Austria (37301/03) - Section I, judgment of 7 December 2006
Huylu v. Turkey (52955/99) - Section I, judgment of 16 November 2006
Intersplav v. Ukraine (803/02) - Section II, judgment of 9 January 2007
Klimentyev v. Russia (46503/99) - Section V, judgment of 16 November 2006
Kozachek v. Ukraine (29508/04) - Section V, judgment of 7 December 2006
Kunić v. Croatia (22344/02) - Section I, judgment of 11 January 2007
Ldokova v. Ukraine (17133/04) - Section V, judgment of 21 December 2006
Lesar v. Slovenia (66824/01) - Section III, judgment of 30 November 2006
Mas v. Ukraine (11931/02) - Section V, judgment of 11 January 2007
N. A and Others v. Turkey (37451/97) - Ancienne Section II, judgment of 9 January 2007
N.T. Giannousis and Kliafas Brothers S.A. v. Greece (2898/03) - Section I, judgment of 14 December 2006
Namli and Others v. Turkey (51963/99) - Section IV, judgment of 5 December 2006
Oferta Plus SRL v. Moldavie (14385/04) - Section IV, judgment of 19 December 2006
Ogurtsova v. Ukraine (12803/02) - Section V, judgment of 1 February 2007
Paşa and Erkan Erol v. Turkey (51358/99) - Section II, judgment of 12 December 2006
Preložnik v. Slovakia (54330/00) - Section IV, judgment of 12 December 2006
Pruneanu v. Moldova (6888/03) - Section IV, judgment of 16 January 2007
Puzinas v. Lithuania (nº 2) (63767/00) - Section II, judgment of 9 January 2007
Salah Sheekh v. the Netherlands (1948/04) - Section III, judgment of 11 January 2007
Sedmak v. Slovenia (77522/01) - Section III, judgment of 18 January 2007
Sheydayev v. Russia (65859/01) - Section I, judgment of 7 December 2006
Tuncay v. Turkey (1250/02) - Section II, judgment of 12 December 2006
Wassdahl v. Sweden (36619/03) - Section II, judgment of 6 February 2007
Xenides-Arestis v. Turkey (46347/99) - Section III, judgment of 7 December 2006
Yuriy Ivanov v. Ukraine (40132/02) - Section V, judgment of 14 December 2006
Žehelj v. Slovenia (67447/01) - Section III, judgment of 21 December 2006

[1] The list of judgments having become final pursuant to Article 44(2)(b) of the Convention has been discontinued. Please refer to the Court's database HUDOC which will indicate when a given judgment has become final.

Statistical information[2]

Judgments delivered	May	2007
Grand Chamber	1	5
Section I	35(46)	153(165)
Section II	26(34)	95(162)
Section III	23(24)	104(111)
Section IV	30(38)	127(157)
Section V	21(24)	80(91)
former Sections	2	21(23)
Total	**138(169)**	**585(714)**

Judgments delivered in May 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	34(45)	0	0	1	35(46)
Section II	26(34)	0	0	0	26(34)
Section III	23(24)	0	0	0	23(24)
Section IV	24(27)	5(10)	1	0	30(36)
Section V	21(24)	0	0	0	21(24)
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**130(156)**	**5(10)**	**1**	**2**	**138(169)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5	0	0	0	5
Section I	140(152)	0	10	3	153(165)
Section II	95(162)	0	0	0	95(162)
Section III	97(104)	1	3	3	104(111)
Section IV	109(115)	16(40)	1	1	127(157)
Section V	78(89)	1	1	0	80(91)
former Section I	0	0	0	1	1
former Section II	14(16)	0	0	2	16(18)
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Total	**542(647)**	**18(42)**	**15**	**10**	**585(714)**

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

Decisions adopted		May	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		5	18(5)
Section II		4	9
Section III		0	4
Section IV		0	10(2)
Section V		4	15
Total		**13**	**56(7)**
II. Applications declared inadmissible			
Grand Chamber		1	1
Section I	- Chamber	9	25
	- Committee	462	2039
Section II	- Chamber	13	41(22)
	- Committee	273	1229
Section III	- Chamber	8	24
	- Committee	677	1847
Section IV	- Chamber	3	31
	- Committee	651	1947
Section V	- Chamber	17(3)	41(3)
	- Committee	624	2677
Total		**2738(3)**	**9902(25)**
III. Applications struck off			
Grand Chamber		1	1
Section I	- Chamber	13	54
	- Committee	6	46
Section II	- Chamber	13	35(21)
	- Committee	4	33
Section III	- Chamber	10	38
	- Committee	10	28
Section IV	- Chamber	24	56
	- Committee	5	18
Section V	- Chamber	8	23
	- Committee	10	38
Total		**104**	**370(21)**
Total number of decisions[1]		**2855(3)**	**10328(53)**

[1] Not including partial decisions.

Applications communicated	May	2007
Section I	105	320
Section II	68	316
Section III	105	329
Section IV	47	194
Section V	47	155
Total number of applications communicated	**372**	**1314**

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