CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 36
on the case-law of the Court
November 2001

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

Statistical information[1]

		November	2001
I. Judgments delivered[2]			
Grand Chamber		3	21(23)
Chamber I		3(6)	276(293)
Chamber II		2	174
Chamber III		4	144(156)
Chamber IV		6	148(155)
Total		**18(21)**	**767(801)**
II. Applications declared admissible			
Section I		14(15)	111(121)
Section II		10(11)	221(224)
Section III		16	216(222)
Section IV		6	148(150)
Total		**46(48)**	**696(717)**
III. Applications declared inadmissible			
Section I	- Chamber	13	85
	- Committee	182	1331
Section II	- Chamber	7	87(88)
	- Committee	326	1818
Section III	- Chamber	12	101(102)
	- Committee	174	2070(2071)
Section IV	- Chamber	0	87(98)
	- Committee	313	1948(2026)
Total		**1794**	**7527(7619)**
IV. Applications struck off			
Section I	- Chamber	1	30
	- Committee	3	31
Section II	- Chamber	0	37(219)
	- Committee	6	35
Section III	- Chamber	2	18
	- Committee	2	36
Section IV	- Chamber	3	11(13)
	- Committee	3	15
Total		**20**	**213(397)**
Total number of decisions[3]		**1860(1862)**	**8436(8733)**
V. Applications communicated			
Section I		46(48)	359(378)
Section II		18	251(256)
Section III		19(20)	204(210)
Section IV		12(382)	243(617)
Total number of applications communicated		**95(468)**	**1057(1461)**

[1] The statistical information is provisional.

[2] The statistics concerning Section judgments refer to judgments adopted prior to the recomposition of the Sections on 1 November 2001. The totals for other cases do not take account of the recomposition.

[3] Not including partial decisions.

Judgments delivered in November 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
Section I	1	2(5)	0	0	3(6)
Section II	2	0	0	0	2
Section III	4	0	0	0	4
Section IV	5	1	0	0	6
Total	**15**	**3(6)**	**0**	**0**	**18(21)**

Judgments delivered in January - November 2001[1]					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	19(21)	0	1	1[1]	21(23)
Section I	212(215)	61(74)	2	1(2)[1]	276(293)
Section II	121	52	0	1[2]	174
Section III	131(141)	9	2	2(4)[3]	144(156)
Section IV	129(135)	18(19)	1	0	148(155)
Total	**612(633)**	**140(154)**	**6**	**5(8)**	**763(801)**

[1] The statistics concerning Section judgments refer to judgments adopted prior to the recomposition of the Sections on 1 November 2001.
[2] Just satisfaction.
[3] Revision.
[4] Of the 593 judgments on merits delivered by Sections, 593 were final judgments.

ARTICLE 2

LIFE
Disappearance of persons allegedly taken into detention: *friendly settlement*.

I.I. and others v. Turkey (Nos. 30953/96, 30954/96, 30955/96 and 30956/96)
Judgment 6.11.2001 [Section I]

The applicants allege that their relatives were taken from their village by a military helicopter in 1994 and that they have not been seen or heard of since.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicants of £34,000 (GBP). Furthermore, the Government made the following declarations:

- The Government regret the occurrence of the actions which have led to the bringing of the present applications, in particular the disappearance of the applicants' close relatives and the anguish caused to their family.
- It is accepted that the unrecorded deprivation of liberty and insufficient investigations into the allegations of disappearance constituted violations of Articles 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention.

LIFE
Refusal of courts to award applicant compensation for non-pecuniary damage resulting from daughter's death following road accident: *communicated*.

ZAVOLOKA - Latvia (N° 58447/00)
[Section II]

In September 1996 the applicant's daughter, aged twelve, was knocked over by a car being driven by A.A. She died as a result of her injuries. In March 1997 the District Court convicted A.A. of failing to assist a person in danger and assault as a result of breaching the road-safety rules. It sentenced him to three years' imprisonment. In September 1997 the applicant lodged an application with the District Court for compensation from A.A. for the non-pecuniary damage sustained as a result of her daughter's death. The court dismissed her application on the ground that there was no provision in the Civil Code for that type of compensation. The applicant appealed against that decision to the Regional Court, which gave judgment in March 1998 upholding her appeal. The court acknowledged that the Civil Code did not expressly provide for compensation for non-pecuniary damage and stated, further, that it contained no definition of that type of damage. Referring, among other things, to Article 1635 of the Civil Code, which provides for a general obligation to compensate damage caused to another, the court concluded, nonetheless, that the applicant had a right to claim damages from A.A. for her non-pecuniary loss. A.A. appealed on points of law to the Supreme Court. The Supreme Court held that Article 1635 of the Civil Code concerned only compensation for pecuniary damage and, in a judgment of March 1998, quashed the Regional Court's judgment and remitted the case to it for a rehearing. The Supreme Court found, contrary to the Regional Court's ruling, that the Civil Code did contain a definition of non-pecuniary damage, but held that the applicant's situation was not covered by any of the – exhaustively prescribed – cases conferring a right to compensation for non-pecuniary damage. In a judgment of August 1999

the Regional Court, to which the case had been remitted, dismissed the applicant's claim. Her appeal on points of law was subsequently also dismissed.
Communicated under Articles 2 and 13.

LIFE
Death of detainee, allegedly as a result of torture and lack of medical treatment: *admissible*.

YAMAN - Turkey (Nº 37049/97)
Decision 22.11.2001 [Section I]

The applicant's son was arrested in June 1996 by security forces after a member of a terrorist organisation (the PKK) had been reported to be in the vicinity of a village. He was unable to talk or walk. According to a medical report, he suffered from injuries and grazes but no there were no marks of violence. After he had been taken into hospital the decision was taken to transfer him to a hospital sufficiently well equipped to treat the malnutrition and the infectious disease from which he was suffering because the treatment he had already received had not cured him. At the end of June 1996 the applicant's son gave evidence about the PKK and his activities within that organisation, following which the district-court judge ordered him to be remanded in custody. He was detained for nearly one month at Elazığ Prison before being transferred to Ankara Prison for appropriate medical treatment at the city civil hospital. According to the medical certificate drawn up at that time, he was suffering from "muscular atrophy". At the beginning of August 1996 the applicant contacted the Ministry of Justice and the Ministry of Health requesting that his son be taken into hospital again and complaining of negligence by the authorities in administering medical care to his son and of the treatment which he had allegedly suffered. The Ministry of Justice appointed an inspector to investigate those allegations and an administrative inquiry was carried out. At the end of August 1996 Mr Yaman was admitted to a hospital cardiology department where non-inflammatory injury to the myocardium, and malnutrition and severe weakness were diagnosed. The inspector took a statement from him according to which he had, among other things, been undernourished for one month, up until his arrest during the operation carried out by the security forces, and had not received appropriate medical treatment at the hospital for the illness from which he had been suffering at the time of his arrest. The inspector then interviewed the public prosecutor, the governor and doctor of Elazığ Prison and the doctor who had drawn up a medical report on the applicant in June 1996. The latter stated that he had observed that the applicant's son was very undernourished. While the administrative inquiry was in progress, the applicant died at the Ankara civil hospital. Two autopsies were carried out at the request of the prosecution. In September 1996 the inspector at the Ministry of Justice requested that a preliminary investigation be commenced. He referred to the applicant's complaint that his son had been beaten by gendarmes during questioning lasting twenty days and that the gendarmes had stubbed their cigarettes out on his son's body. He also mentioned his son's allegation in his statement that the persons who had questioned him when he was taken into hospital had beaten him on the soles of his feet. In September 1996 the applicant lodged a complaint with the Aydın public prosecutor's office against the police officers at the Elazığ Security Headquarters and the doctors who had treated his son in hospital. He stated in his complaint that he had visited his son in August 1996 when he had been in Ankara Prison. His son had told him that he had been kept in police custody for twenty days, during which time he had been tortured. He requested that the police officers and doctors be prosecuted for murder. A criminal investigation was begun into the allegations of ill-treatment inflicted on the applicant's son during police custody and an administrative inquiry into his stay in hospital and his medical treatment. Evidence was heard from the gendarmes who had questioned the applicant's son. They refuted all the allegations. The incident report describing the conditions in which the applicant's son had been arrested, his statement in June 1996 and statements from the public prosecutor, the prison governor, the prison doctor and other doctors were taken into consideration. In February 1997 a decision was given discontinuing the

proceedings against the gendarmes for lack of sufficient evidence on which to press charges. The applicant's appeal against that decision was dismissed. The complaint against the doctors was likewise dismissed. The supplementary evidence submitted by the parties to the Court, including statements by a sociologist imprisoned in Ankara Prison at the same time as the applicant's son, and statements by the applicant's father, brother and uncle, indicated that the applicant's son had told them that he had been tortured in detention and had lacked adequate medical treatment and that cigarettes had been stubbed out on various parts of his body.
Admissible under Articles 2, 3, 6 (access to a tribunal) and 13. In respect of the preliminary objection raised by the Government, based on failure to comply with the six-month time-period and referring to the complaints under Articles 6 and 13, it should be noted that those complaints related to the lack of an effective and thorough inquiry, which was an aspect which would be examined under Articles 2 and 3. It was therefore appropriate to join the objection to the merits.

LIFE
Loss of unborn child due to error by doctor, prosecuted unsuccessfully for manslaughter: *communicated.*

VO - France (N° 53924/00)
[Section III]

Following a mistake of identity between two patients of the same name attending the same hospital gynaecology department, a doctor attempted to remove a coil from the applicant, who had attended for a routine pregnancy check-up. Consequently, he broke the patient's amniotic sac, rendering an abortion necessary for medical reasons. The applicant and her boyfriend lodged a criminal complaint for negligence causing bodily injuries resulting in total unfitness for work for less than three months in respect of the applicant and involuntary manslaughter of the unborn child. After three expert reports had been filed, the doctor was committed for trial at the Criminal Court for having inadvertently, negligently and carelessly caused the child's death by breaking the amniotic sac in which the applicant's foetus was growing, and for assaulting the mother causing her bodily harm and total unfitness for work for a period not exceeding three months. The court found that the offence of causing bodily injury resulting in temporary unfitness for work was covered by an amnesty, and went on to hold that a foetus of twenty to twenty-one weeks was not viable and was not a "human being" or "another" within the meaning of the Criminal Code. It held, accordingly, that the offence of involuntary manslaughter or taking the life of a foetus of twenty to twenty-one weeks had not been made out. The judgment was overturned on an appeal by the applicant. The Court of Appeal held that the law enshrined the principle of respect for any human being from the very beginning of life and did not require that the child be born viable, as long as it was alive at the time of the assault in question, and that, on the facts, the offence should be classified as involuntary manslaughter since it concerned a negligent act or omission causing death to a foetus aged between twenty and twenty-four weeks and in perfect health. The applicant was given a six-month suspended prison sentence and fined 10,000 francs. Subsequently, the Court of Cassation quashed the judgment on an appeal by the doctor. The Court of Cassation held that the facts did not fit the criminal classification on which the Court of Appeal had based its judgment.
Communicated under Article 2.

POSITIVE OBLIGATIONS
Alleged inadequacy of remedies to contest hospital authorities' decision to administer diamorphine to a child, contrary to mother's wishes and following a wrong diagnosis: *communicated*.

GLASS - United Kingdom (N° 61827/00)
[Section IV]
(see Article 8, below).

ARTICLE 3

TORTURE
Alleged torture and absence of medical treatment of detainee: *admissible*.

YAMAN - Turkey (Nº 37049/97)
Decision 22.11.2001 [Section I]
(see Article 2, above).

POSITIVE OBLIGATIONS
Granting of State immunity in proceedings against a foreign government in respect of alleged torture: *no violation*.

AL-ADSANI - United Kingdom (Nº 35763/97)
Judgment 21.11.2001 [Grand Chamber]
(see Article 6(1), below).

DEGRADING TREATMENT
Abusive remarks made by prison guards during strip search: *violation*.

IWAŃCZUK - Poland (Nº 25196/94)
*Judgment 15.11.2001 [Section IV]

Facts: Criminal proceedings were brought against the applicant and he was placed in detention in May 1992. His detention was prolonged on several occasions but in December 1993 the Regional Court ordered his release on bail of 2,000,000,000 (old) zlotys. The Court of Appeal upheld this decision in January 1994. The Regional Court subsequently reduced the amount of bail to 1,500,000,000 (old) zlotys. The applicant requested that bail be accepted in the form of a mortgage on his property and produced an expert valuation and evidence of his ownership. In February 1994 he complained that the Regional Court had failed to take any steps to implement its decision of December 1993 and submitted that his detention since then had been unlawful. The court later ordered that the bail had to be deposited in cash or in State obligations. However, in April 1994 the Court of Appeal quashed the decision relating to the amount of bail and the Regional Court then lowered the amount to 100,000,000 (old) zlotys in cash and a mortgage of 750,000,000 (old) zlotys. The applicant was released in May 1994. The criminal proceedings are still pending. The applicant claims that during his detention he was ordered to undergo a body search before he could exercise his right to vote. He had to strip to his underwear and was subjected to humiliating and abusive remarks by the guards. As he refused to remove his underwearm, he was not allowed to vote.

Law: Article 3 – The applicant was not charged with a violent crime, had no criminal record and had been peaceful throughout his detention. It had not been shown that there were grounds for fearing that he would behave violently and consequently it had not been shown that a body search was justified. Moreover, in the absence of a proper investigation into the applicant's allegations about the guards' abusive remarks, little weight could be attached to the Government's arguments refuting them. While strip searches may sometimes be necessary, they must be conducted in an appropiate manner. In this case, the guards' behaviour was intended to humiliate and amounted to degrading treatment.
Conclusion: violation (6 votes to 1).
Article 5(3) – The courts had found in December 1993 that the applicant's release would not jeopardise the proceedings, but he was only released over four months later, as during that period the decisions as to the amount and form of bail were changed several times. The courts initially refused to accept bail in the form of a mortgage, without questioning the applicant's title to the property, indicating a reluctance on their part to accept that form of bail, which would require further formalities in the event of non-appearance. However, that was not a sufficient reason for keeping the applicant in detention for four months after the decision that he could in principle be released.
Conclusion: violation (unanimously).
Article 6(1) – Despite the complexity of the proceedings, the length (8½ years since Poland's acceptance of the right of individual petition) could not be regarded as reasonable.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 30,000 (new) zlotys (PLN) in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

EXPULSION
Deportation to Turkey, where the applicant, undergoing continuous medical treatment, claims his life will be at risk due to the absence of the necessary medicines: *inadmissible*.

KARAGOZ - France (N° 47531/99)
Decision 15.11.2001 [Section I]

The applicant is a Turkish national who arrived in France at the age of seventeen and married a Turkish woman with whom he had four children. He worked in France from 1973 to 1986, when he was dismissed. He was subsequently convicted of drug-trafficking offences, sentenced to ten years' imprisonment and made subject to an order permanently excluding him from French territory. He applied for a discharge of the order but his application was dismissed twice, in 1995 and 1998. The prison doctor certified that he had a thyroidal problem requiring an operation and subsequent life-long treatment and regular biological follow-up. The applicant also suffers from a gastric ulcer requiring long-term treatment. Referring to his health problems, the applicant lodged a third application for a discharge of the order. Following the operation, the relevant medical authorities indicated that the treatment was relatively simple but should not be interrupted if the patient's life were not to be endangered, and that it could be continued without any major risk in his country of origin. In April 1999 a decision was taken to deport the applicant to Turkey. Following the application by the Court of Rule 39 of its Rules of Court, the applicant was assigned to compulsory residence by the French authorities. The Administrative Court dismissed his appeals against the decision deporting him to Turkey on the ground that, since his operation, he had undergone the prescribed tests and check-ups and that the necessary medical treatment was a simple course of treatment which could be continued in his country of origin. In May 1999 his third application for a discharge of the exclusion order was rejected because he had not produced any evidence to establish that he could not obtain the necessary medical treatment in Turkey.
Inadmissible under Articles 2 and 3, and 3 and 13 taken together: the applicant had undergone a serious operation and the day before the date scheduled for his deportation the prison doctor

had considered that since his condition was not yet stable he would require regular supervision and a further check-up within three months if his life were not to be endangered. Those were the factors which had resulted in the application of Rule 39 of the Rules of Court. With regard to a real and genuine risk of ill-treatment, the assessment of whether there was a real risk of treatment contrary to Article 3 of the Convention in cases of serious illness was made, *inter alia*, by checking whether the person concerned could obtain the medication necessitated by his state of health and examining whether their state of health required treatment of such a special nature that it placed the individual in a different situation from that of other nationals of the country of destination suffering from similar disorders. In the case in question the applicant had shown neither that he was unable to obtain the medication he required in Turkey, nor that his current state of health prevented him from travelling back to that country. The French Government had given assurances that he would have access to treatment notwithstanding the lack of insurance cover in Turkey and that the drugs necessary for his treatment were in circulation and accessible, and had guaranteed that if he were to encounter difficulties on his arrival in his country of origin he would have a stock of medicine to last him a reasonable time. There was thus no longer any known and serious reason for believing that the decision to deport the applicant to Turkey, if enforced, would violate Articles 2 and 3; the applicant had, moreover, had numerous remedies under the domestic law: manifestly ill-founded.
Inadmissible under Article 8 (private and family life): The Government's objection on grounds of non-exhaustion of domestic remedies was upheld because the applicant had not appealed to the Court of Cassation against the judgments rejecting his three applications for a discharge of the order excluding him from French territory and, in particular, the most recent judgment: non-exhaustion.

ARTICLE 5

Article 5(1)(a)

AFTER CONVICTION
Applicant serving sentence longer than that imposed, taking into account remission: *communicated*.

GRAVA - Italy (N° 43522/98)
[Section I]
(see Article 13, below).

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Continuing detention in mental hospital: *admissible*.

HUTCHISON REID - United Kingdom (N° 50272/99)
Decision 15.11.01 [Section III]

In 1967, the applicant was convicted in Scotland of culpable homicide. It was established by psychiatrists that he suffered from a mental deficiency which required his detention in a mental hospital. According to the Mental Health Act 1984, a person suffering from a

persistent mental disorder with abnormally aggressive or seriously irresponsible conduct had to be released if detention in hospital was not appropriate for his treatment or if the treatment provided in hospital was not necessary for his health and safety or the protection of other persons. In 1985, the applicant was conditionally discharged and transferred to an open hospital. In 1986, he was arrested after having attempted to abduct a child. He was sentenced to three months' imprisonment, psychiatrists having considered that his detention in a mental hospital would be inefficient given the incurable character of his personality disorder. However, after having served his sentence, he was sent back to hospital by the Secretary of State, pursuant to the 1984 Act, on the recommendation of a doctor. The applicant sought a discharge, relying on numerous psychiatric reports establishing that he did not suffer from a mental disorder justifying continuing detention in view of its incurable character. His application was refused and his subsequent petition for judicial review rejected. The Court of Session allowed his appeal and quashed the decision of the sheriff but on a further appeal by the Secretary of State the House of Lords restored the decision dismissing the applicant's petition.
Communicated under Article 5(1)(e) and (4).

Article 5(3)

GUARANTEES TO APPEAR FOR TRIAL
Refusal to accept particular form of bail: *violation*.

IWAŃCZUK - Poland (Nº 25196/94)
*Judgment 15.11.2001 [Section IV]
(see Article 3, above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Disciplinary proceedings leading to dismissal of teachers: *communicated*

MOLLA HOUSEÏN - Greece (N° 63821/00)
KARAOUYIOUKLOU - Greece (N° 63824/00)
OUZOUN - Greece (N° 63976/00)
[Section I]

The three applicants are Greek nationals belonging to the Muslim Turkish minority of Thrace. At the material time, they were teachers in schools of their minority and were employed under the same conditions as other civil servants. In January 1993 the Minority Schools Office of the Prefecture called all Muslim teachers of the minority school of the area to attend an educational meeting, on the occasion of which the news books selected by the authorities for teaching Turkish would be presented to them. However, a local union of Turkish teachers issued a statement according to which minority schools would be closed from 1 to 5 February 1993, as a token of protest against the new books which according to them did not respect the minority. Teachers were to participate in the strike. The applicants signed a statement on 1 February 1993 in which they expressed their refusal to attend the educational meeting organised by the Prefecture in order to protest against allegedly unfair decisions regarding

transfer, secondment and their exclusion from some training seminars. They specified that they would be on strike until 5 February 1993. Disciplinary proceedings were initiated against them on 8 February 1993. The Regional Disciplinary Board, in a decision of 5 April 1994, dismissed the applicants and the Prefect ordered the dismissals on 7 April 1994. The applicants challenged both decisions before the Council of State. In June 1995 the Council of State rejected their appeals as regards the Disciplinary Board's decision. The Prefect subsequently revoked his previous order of dismissal and issued a new one in view of the Council of State decision. In April 1996 the Council of State struck out the proceedings regarding the Prefect's first order as it had been revoked by then. In December 1997 the Prefect for the third time ordered the applicants' dismissals. In the meantime, the applicants had instituted several proceedings in order to recover, *inter alia*, arrears of salaries and compensation for dismissal. They alleged that one of the proceedings, commenced in June 1997, was still pending. In March 1998 the applicants appealed against the Prefect's decision of December 1997 to the Administrative Court of Appeal. The court rejected the appeals in June 2000. The applicants did not appeal against this decision before the Council of State.
Communicated under Article 6(1) and Article 1 of Protocol N° 1.

APPLICABILITY
Proceedings concerning the dismissal of a secondary school teacher: *Article 6 applicable*.

VOLKMER - Germany (N° 39799/98)
Decision 22.11.2001 [Section III]
(see Article 10, below).

APPLICABILITY
Proceedings concerning the exclusion of a university professor from the civil service: *Article 6 applicable*.

PETERSEN - Germany (N° 39793/98)
Decision 22.11.2001 [Section III]
(see Article 10, below).

APPLICABILITY
Proceedings concerning the exclusion of a nursery school teacher from the civil service: *Article 6 applicable*.

KNAUTH - Germany (N° 41111/98)
Decision 22.11.2001 [Section III]
(see Article 8, below).

CIVIL RIGHTS AND OBLIGATIONS
Revocation by new Government of nomination by previous Government to a post in an international organisation: *inadmissible*.

BOZHILOV - Bulgaria (N° 41978/98)
Decision 22.11.2001 [Section IV]

In 1996 the Bulgarian Government nominated the applicant for the post of Director of the permanent secretariat of the Black Sea Economic Co-operation (BSEC), an international organisation. In October 1996, following a decision taken by the Ministers of Foreign Affairs

of the member States of the BSEC, the applicant was appointed Director of the secretariat as of 1st May 1997. In February 1997 there was a change of Government in Bulgaria. As a result the new Minister of Foreign Affairs withdrew the applicant's nomination for the post of Director of the permanent secretariat of the BSEC. The new Government nominated another person who, on 30 April 1997, was appointed to the post of Director by decision of the Ministers of Foreign Affairs of the member States of the BSEC. The applicant unsuccessfully lodged an appeal with the Supreme Administrative Court against the decision of the Government of April 1997. The court held that the impugned decision was not an administrative act within the meaning of Article 120 of the Constitution and thus was not subject to judicial review.

Inadmissible under Articles 9, 10, 11 and 14: The applicant complained that he was removed because of his links with the socialist party. It had to be determined whether the disputed measure amounted to an interference with the exercise of freedom of expression or association or whether it was within the sphere of the right of access to the civil service, a right not secured by the Convention. In the instant case, the impugned act is the decision of the Bulgarian authorities to withdraw the applicant's nomination as a candidate for the post of Director in an international organisation. Therefore, the impugned measure concerned access to a post in an international governmental organisation, a matter which is not within the ambit of the Convention. Moreover, the rules of the BSEC regarding the appointment of the Director of its permanent secretariat required that the candidate be nominated by one of the member States, on the basis of rotation. The nomination of a candidate is clearly within the discretionary powers of States. In the present case, the decision of the Government to withdraw the nomination of the applicant was clearly within these discretionary powers and could not be seen as an interference with Articles 9, 10 or 11 or in breach of Article 14 taken together with any of the aforementioned articles: manifestly ill-founded.

Inadmissible under Article 6(1): (a) Whether the dispute for which the applicant sought access to the Supreme Administrative Court concerned his civil rights and obligations – the impugned decision of the Government fell within its discretionary powers, the authorities enjoying full discretion in their choice of candidate. The applicant had not shown that he could claim any right under domestic law to be nominated by the authorities as candidate. Nonetheless, he stated that by withdrawing his nomination the authorities had deprived him of a right already acquired, namely the right to take over the duties of Director of the BSEC secretariat as of 1st May 1997, since he had been elected to the post following a meeting of the Ministers of Foreign Affairs of member States in October 1996. However, the applicant could not claim to have a right within the meaning of the present Article to have the continued support of the Government for his nomination: incompatible *ratione materiae*.

(b) Whether the events complained of as a whole amounted to an infringement of the applicant's access to a court – although the applicant directed his complaints against the Government decision of April 1997, it could be understood that he complained more generally of not having had access to a judicial body in the determination of the dispute on whether he had been unlawfully removed from a post in an international organisation. His only attempt to obtain a judicial decision was directed against the Government decision and not against the BSEC or any of its organs. He could only claim rights under his alleged employment as Director of the BSEC by challenging acts and decisions of the organisation in question, which he failed to do. Furthermore, he did not allege that there were legal obstacles to his bringing an action against the BSEC or that the responsibility of the Bulgarian authorities could be engaged in respect of any such impediment if it existed: manifestly ill-founded.

CIVIL RIGHTS AND OBLIGATIONS
Dispute over an application for annulment of a decree publishing an agreement between France and Switzerland: *communicated*.

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

The applicants are companies involved in the implementation of a plan to create an industrial estate in the municipality of Blotzheim (as part of an integrated enterprises zone – "ZAC"), in the vicinity of Basle-Mulhouse International Airport. The first applicant, which is the promoter of the planned industrial estate, purchased plots of land inside the perimeter of the zone with a view to developing them in connection with the project. The second applicant was the entity which had ordered the construction of industrial buildings inside the perimeter of the industrial estate. The Administrative Board of Basle-Mulhouse Airport ratified an extension project which involved the use of the same areas. Prefectoral orders were issued recognising the public interest of that project and officially instructing the municipality of Blotzheim to bring its land-use plan into conformity with it (the effect of which was to prevent the planned industrial estate from going ahead). The Strasbourg Administrative Court set aside those orders on the ground that the extension project adopted by the Administrative Board exceeded the limits stipulated in the Franco-Swiss Convention of 4 July 1949 governing the operation of the airport. Subsequently, in an exchange of notes, the Swiss and French Governments amended that Convention to allow the above-mentioned extension project to be implemented. In May 1996 an order was made publishing that agreement. The applicants applied to the *Conseil d'Etat* for that order to be set aside. The *Conseil d'Etat* dismissed their application in a judgment of December 1998, holding, *inter alia*, that it was an act that fell within the Government's prerogative and that the *Conseil d'Etat* did not have power to review the validity of an international undertaking, signed in the instant case by France, in relation to another international undertaking.
Communicated under Article 6(1) (applicability, adversarial proceedings, right to a tribunal).

ACCESS TO COURT
Striking out of proceedings on ground of State immunity: *no violation*.

AL-ADSANI - United Kingdom (Nº 35763/97)
Judgment 21.11.2001 [Grand Chamber]

Facts: The applicant, a dual British/Kuwaiti national, served as a pilot in the Kuwaiti Air Force during the Gulf War and remained in Kuwait after the Iraqi invasion. He came into possession of sexual video tapes involving a sheikh related to the Emir of Kuwait. According to the applicant, the sheikh, who held him responsible for the tapes entering general circulation, gained entry to his house along with two others, beat him and took him at gunpoint to the State Security Prison, where he was detained for several days and repeatedly beaten by guards. He was later taken at gunpoint to a palace where he was repeatedly held under water in a swimming pool before being taken to a small room where the sheikh set fire to mattresses soaked in petrol, as a result of which the applicant sustained serious burns. After returning to the United Kingdom, the applicant instituted civil proceedings against the sheikh and the Government of Kuwait. He obtained a default judgment against the sheikh and was subsequently granted leave to serve proceedings on two named individuals. However, he was refused leave to serve the writ on the Kuwaiti Government. On appeal, the Court of Appeal concluded that leave should be granted and the writ was served, but on the application of the Kuwaiti Government the High Court ordered that the proceedings be struck out on the ground

that the Kuwaiti Government was entitled to state immunity. The applicant's appeal was dismissed by the Court of Appeal and leave to appeal to the House of Lords was refused.

Law: Article 3 – Although Articles 1 and 3 taken together place a number of positive obligations on States, designed to prevent and provide redress for torture and other ill-treatment, the obligation applies only in relation to acts allegedly committed within the State's jurisdiction. Article 3 has some, limited, extraterritorial application, in so far as the State's responsibility may be engaged if it expels an individual to a country where there are substantial grounds for believing that there is a real risk of torture or ill-treatment. However, any liability would be incurred by reason of the expelling State having taken action which had as a direct consequence the exposure of the individual to such treatment. In the present case, as the applicant did not contend that the alleged torture took place within the jurisdiction of the United Kingdom or that the United Kingdom authorities had any causal connection with its occurrence, it could not be said that the State was under a duty to provide a civil remedy in respect of torture allegedly carried out by the Kuwaiti authorities.

Conclusion: no violation (unanimously).

Article 6(1) – Whether a person has an actionable domestic claim may depend not only on the substantive content of the right as defined under national law but also on the existence of procedural bars. It would not be consistent with the rule of law or the basic principle underlying Article 6(1) if a State could, without control by the Convention organs, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on large groups or categories. In the present case, the proceedings which the applicant intended to pursue concerned a recognised cause of action, namely damages for personal injury, and the grant of immunity did not qualify a substantive right but constituted a procedural bar on the courts' power to determine the right. There thus existed a serious and genuine dispute over civil rights and Article 6 was applicable.

The right of access to court may be subject to limitations, provided they do not impair the very essence of the right. Such limitations must pursue a legitimate aim and be proportionate. The grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States. As to proportionality, the Convention should as far as possible be interpreted in harmony with other rules of international law, including those relating to State immunity. Thus, measures taken by a State which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court. In that respect, the relevant United Kingdom statute complies with the 1972 Basle Convention. However, the applicant contended that the prohibition of torture had acquired the status of *jus cogens*, taking precedence over treaty law and other rules of international law. While his allegations had never been proved, the alleged ill-treatment could properly be categorised as torture within the meaning of Article 3 of the Convention. The right enshrined in that provision is absolute and several other international treaties also prohibit torture; in addition, a number of judicial statements have been made to the effect that the prohibition of torture has attained the status of a peremptory norm or *jus cogens*, which the Court accepted. However, the present case did not concern the criminal liability of an individual but the immunity of a State in civil proceedings and there was no firm basis in international instruments, judicial authorities or other materials for concluding that, as a matter of international law, a State no longer enjoys immunity from civil suit in the courts of another State in respect of alleged torture. Consequently, the United Kingdom statute was not inconsistent with those limitations generally accepted by the community of nations as part of the doctrine of State immunity and the application of its provisions could not be said to have amounted to an unjustified restriction on the applicant's access to court.

Conclusion: no violation (9 votes to 8).

ACCESS TO COURT
State immunity bar on claim of sex discrimination in respect of refusal of employment by foreign embassy: *no violation.*

FOGARTY - United Kingdom (Nº 37112/97)
Judgment 21.11.2001 [Grand Chamber]

Facts: The applicant, an Irish national, was dismissed from post as an administrative assistant by the United States Embassy in London. She brought proceedings against the United States Government, alleging sex discrimination. Her claim was upheld by an industrial tribunal and compensation of £12,000 was agreed between the parties. The applicant subsequently applied unsuccessfully for other posts at the embassy. She brought further proceedings in the industrial tribunal, claiming that the refusal to employ her was a consequence of her previous claim and thus constituted victimisation and discrimination under the Sex Discrimination Act. The United States Government notified the tribunal that it intended to claim immunity from jurisdiction and submitted an affidavit to the effect that the posts involved were part of the administrative and technical staff of the embassy and thus covered by immunity. The applicant was advised by counsel that the United States Government was entitled to claim immunity and that there was no domestic remedy.
Law: Article 6(1) – Whether a person has an actionable domestic claim may depend not only on the substantive content of the right as defined under national law but also on the existence of procedural bars. It would not be consistent with the rule of law or the basic principle underlying Article 6(1) if a State could, without control by the Convention organs, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on large groups or categories. In the present case, the proceedings which the applicant intended to pursue concerned a recognised cause of action, namely sex discrimination in employment, and the grant of immunity did not qualify a substantive right but constituted a procedural bar on the courts' power to determine the right. It was not necessary to decide whether the applicant's case fell within the category of disputes concerning public servants which was excluded from the scope of Article 6, and the Court proceeded on the basis that Article 6 was applicable.
The right of access to court may be subject to limitations, provided they do not impair the very essence of the right. Such limitations must pursue a legitimate aim and be proportionate. The grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States. As to proportionality, the Convention should as far as possible be interpreted in harmony with other rules of international law, including those relating to State immunity. Thus, measures taken by a State which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court. In that respect, international practice is divided on the question whether State immunity continues to apply to proceedings relating to employment in foreign embassies and, if it does so apply, whether it extends to disputes involving all staff or only senior members. Certainly, the United Kingdom is not alone in holding that immunity applies. Moreover, the proceedings in the present case did not concern the contractual rights of an existing employee but alleged discrimination in the recruitment process, which in the case of embassies may by its very nature involve sensitive and confidential issues. There does not appear to be any trend in international law towards a relaxation of the rule of State immunity in this area and in these circumstances the United Kingdom could not be said to have exceeded the margin of appreciation.
Conclusion: no violation (16 votes to 1).
Article 14 in conjunction with Article 6 – The immunity at issue applies to proceedings involving employment of all staff by an embassy, irrespective of the subject-matter and of the sex, nationality or other attributes of the individual concerned. Consequently, the applicant

had not been treated differentl from any other person wishing to bring employment-related proceedings against an embassy.
Conclusion: no violation (unanimously).

ACCESS TO COURT
State immunity bar on claim for damages in respect of acts of foreign soldier: *no violation.*

McELHINNEY - Ireland (Nº 31253/96)
Judgment 21.11.2001 [Grand Chamber]

Facts: The applicant, an Irish police officer (garda), accidentally drove into the barrier at a British army check-point when crossing from Northern Ireland into the Republic of Ireland. The vehicle which the applicant's car was towing apparently hit a British soldier, who was thrown on to the tow-bar, although the applicant maintained that he was unware of this. The soldier fired a number of shots and the applicant, fearing a terrorist attack, drove on. He drove to a police station, where the soldier ordered him to get out of the car and stand against a wall with his hands up. When the applicant turned to explain that he was a police officer, the soldier attempted to fire his weapon which, however, jammed. The applicant was arrested by the Irish police on suspicion of having driven after consuming excess alcohol and was later convicted of having refused to provide a blood or urine sample. He lodged an action in the Irish High Court against the soldier and the British Secretary of State for Northern Ireland. However, on the application of the latter, who invoked sovereign immunity, the High Court struck out the summons on the ground that the applicant was not entitled to bring an action in the Irish courts against a member of a foreign government. The applicant's appeal was dismissed by the Supreme Court. He did not pursue the proceedings against the soldier.
Law: Article 6(1) – Whether a person has an actionable domestic claim may depend not only on the substantive content of the right as defined under national law but also on the existence of procedural bars. It would not be consistent with the rule of law or the basic principle underlying Article 6(1) if a State could, without control by the Convention organs, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on large groups or categories. In the present case, the action which the applicant intended to pursue was well known to Irish law, namely an action for damages for assault, trespass to the person, negligence and breach of duty, and the grant of immunity did not qualify a substantive right but constituted a procedural bar on the courts' power to determine the right. There thus existed a serious and genuine dispute over civil rights and Article 6 was applicable.
The right of access to court may be subject to limitations, provided they do not impair the very essence of the right. Such limitations must pursue a legitimate aim and be proportionate. The grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States. As to proportionality, the Convention should as far as possible be interpreted in harmony with other rules of international law, including those relating to State immunity. Thus, measures taken by a State which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court. In that respect, while there appears to be a trend in international and comparative law towards limiting State immunity in respect of personal injury caused by an act or omission within the forum State, this practice is by no means universal and indeed the trend may primarily refer to "insurable" personal injury, that is incidents arising out of ordinary road traffic accidents, rather than matters relating to the core area of State sovereignty such as the acts of a soldier on foreign territory which, of their very nature, may involve sensitive issues affecting diplomatic relations between States and national security. Certainly, Ireland is not alone in holding that immunity applies in this area and it is not possible to conclude that Irish law conflicts with the general principles of international law. Moreover, in the present case it would have been open to the applicant to bring an action in

Northern Ireland against the British Secretary of State for Defence. In these circumstances, Ireland could not be said to have exceeded the margin of appreciation.
Conclusion: no violation (12 votes to 5).

ACCESS TO COURT
Impossibility of suing Minister for defamation in respect of statement made in Parliament, due to absolute privilege attaching to such statements: *communicated*.

ZOLLMANN - United Kingdom (N° 62902/00)
[Section III]

The applicants, Belgian nationals, run an international diamond business, which involved, *inter alia*, importing diamonds to their business based in Belgium. By a resolution of June 1998, the United Nations Security Council imposed an embargo on the export of diamonds by UNITA due to the role of that organisation in the continuing war in Angola. It also requested that States take measures against persons or bodies which breached the sanctions and impose appropriate penalties. In February 2000 Mr P. Hain, the Minister of State at the Foreign and Commonwealth Office responsible for Africa, made a statement in the House of Commons with a view to "naming and shaming" those who broke the sanctions and referred to the applicants' involvement in exporting diamonds from Angola for UNITA. An investigation was opened by the prosecutor in Belgium, but no proceedings have ensued. The applicants' complaints are based primarily on the absolute privilege attaching to statements made in Parliament: even if the statements prove untrue, a Member of Parliament cannot be found liable in defamation in respect of statements made in Parliament. The applicants complain under Article 6(2) that Mr Hain's statement violated the presumption of innocence in constituting a declaration of guilt made in public by a high official of the State prior to any proceedings being properly instituted and issued with punitive intent. They invoke Article 8, contending that the impugned declaration was defamatory, without any basis in legally established facts, and thus constituted a breach of their right to respect for private life. They complain under Article 6(1) that they were unable to sue Mr Hain for defamation and under Article 13 that no effective remedy was available to them. Finally, they complain under Article 14, in conjunction with Articles 6(2) and 8, that they were subjected to "naming and shaming" as they were not United Kingdom nationals, Mr Hain having stated that the policy in respect of United Kingdom individuals and companies was for any information about alleged breaches of the UN embargo to be passed on to the appropriate United Kingdom enforcement body.
Communicated under Articles 6(1) and (2), 8, 13 and 14.

ACCESS TO COURT
Impossibility for applicants to continue action brought by their father/husband in the Council of State, following his death: *inadmissible*.

SADIK AMET - Greece (N° 64756/01)
Decision 29.11.2001 [Section I]

The applicants, who are Greek nationals of Muslim denomination, are the heirs of a former member of Parliament of the Muslim faith who died in 1995. In 1990 the latter had instituted proceedings in the Supreme Administrative Court for the revocation of a decision of the Minister for National Education and Religious Worship appointing a mufti. He had argued that the appointment was in breach of the legislation providing that the mufti should be elected by citizens of Muslim faith. The applicants, who are the deceased's heirs, expressed the wish to pursue the legal proceedings brought by their father and husband respectively. In 1998 the case was referred to the chamber dealing with cases concerning civil servants. In

July 2000 the Supreme Administrative Court held that the proceedings should be struck out and, accordingly, did not examine the merits of the case. The court found that the application, which was based on an alleged breach of the right to take part in the election of the mufti, was so closely linked to the person of the deceased plaintiff that the right to pursue the proceedings was not transmissible to his heirs. The latter could, as Muslims, have themselves brought such proceedings, but did not have *locus standi* to pursue the proceedings brought by their father and husband.
Inadmissible under Article 6(1) (access to a tribunal): presuming this provision to be applicable, it appeared that in concluding that the proceedings in the Supreme Administrative Court were closely linked to the person of the deceased plaintiff and, accordingly, that the applicants did not have *locus standi* to pursue them, the Supreme Administrative Court had based its decision on the relevant legislation. Moreover, the applicants had the right, under the domestic law, to bring an action themselves similar to the one they wished to continue: manifestly ill-founded.

RIGHT TO A COURT
Refusal of *Conseil d'Etat* to review compatibility of one international agreement with another: *communicated*.

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

ADVERSARIAL PROCEEDINGS
Communication to the *commissaire du gouvernment* at the *Conseil d'Etat* but not to the applicants, of the rapporteur's report and draft decision: *communication*.

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

IMPARTIAL TRIBUNAL
Judge participating in court decision to remove liquidator after making the same proposal to the court: *violation*.

WERNER - Poland (Nº 26760/95)
Judgment 15.11.2001 [Section IV]

Facts: Insolvency judge M. requested the District Court to dismiss the applicant from his function as judicial liquidator of a company, on the ground that it had been established in separate court proceedings that he had failed to pay employees of a company which he owned. The District Court, including M. as one of the three judges on the bench, dismissed the applicant and appointed a new liquidator. The applicant was not informed of the court session, which was held *in camera*. The District Court rejected the applicant's appeal, on the ground that no appeal lay, and the Regional Court confirmed this.
Law: Article 6(1) – There were no grounds for assimilating the applicant's functions to those of a civil servant, his dismissal involved his pecuniary interests and the proceedings could be regarded as concerning his reputation. Article 6 therefore applied. The question of the dismissal came before the court at the request of the insolvency judge, so that it could not be said that she had no preconceived idea on the issue to be decided by the court. It was

reasonable to conclude that she held a personal conviction that the dismissal request – which she had made – should be granted. Moreover, this situation gave objective grounds for believing that the court was not impartial. It was furthermore undisputed that the applicant did not have access to a higher court. Finally, the proceedings were not fair in so far as the court hearing was held *in camera* and the applicant was not given any opportunity to put his case.
Conclusion: violation (unanimously).
Article 41 – The Court dismissed the applicant's claim for pecuniary damage but made an award in respect of non-pecuniary damage.

Article 6(1) [criminal]

ACCESS TO COURT
Refusal of court-appointed lawyers to take up applicant's defence, leaving him without the necessary representation to introduce a damages action: *communicated*.

BOSCOLO - Italy (N° 64596/01)
[Section II]

The applicant requested legal aid and the appointment of a lawyer to lodge an action for damages against the lawyers and notaries who had acted on the sale of a house, of which he was co-owner, while he had been detained in a psychiatric hospital. The five lawyers officially assigned, in turn, to represent him each requested to be discharged from their duties on grounds of incompatibility. Consequently, the applicant was unable to lodge a writ because representation by a lawyer was compulsory.
Communicated under Article 6(1).

ACCESS TO COURT
Dismissal of cassation appeal due to appellant's failure to surrender into custody: *admissible*.

PAPON - France (N° 54210/00)
Decision 15.11.2001 [Section III]

The applicant was Secretary-General of the Gironde Prefecture during the German Occupation which followed France's defeat of 1940. After Liberation he carried on a career as a senior official and was a minister from 1978 to 1981. In May 1981 a weekly newspaper published articles questioning his conduct during the Occupation. In December 1981 a criminal complaint, together with an application to join the proceedings as a civil party, was lodged against him for his role in the deportation of Jews. Six further complaints followed. In July 1982 the public prosecutor requested that a judicial investigation be commenced in respect of each of the seven complaints. In January 1983 the investigating judge dealing with the case charged the applicant with crimes against humanity. However, all the investigative measures and procedural steps carried out by the judge were set aside in February 1987 for failure to comply with an essential formality. The applicant was charged afresh in July 1988. During the investigation numerous individuals and associations applied to join the proceedings as civil parties. The applicant was committed for trial at the Assize Court in 1996. He lodged an appeal on points of law against the committal decision, but it was dismissed in 1997. The trial at the Assize Court lasted almost six months. On 2 April 1998, in a 123-page judgment and after deliberations lasting nineteen hours, the Assize Court, replying to 768 questions, found the applicant guilty of aiding and abetting crimes against humanity and sentenced him to ten years' imprisonment. After lodging an appeal on points of law against that judgment, the applicant was informed that before his appeal could be considered,

he had to comply with the legal obligation to "surrender to custody". The relevant provision – now repealed – required persons sentenced to a term of imprisonment of more than one year to surrender to custody before the Court of Cassation would examine their appeal. Relying, among other things, on his advanced age (89 years) and his state of health, the applicant applied to be dispensed from the duty to surrender to custody. His application was refused on the ground that his health did not appear incompatible with his detention in a hospital cardiology department. When the applicant failed to surrender to custody, the Court of Cassation gave judgment on 21 October 1999 holding that he had forfeited his right of appeal.
Admissible under Article 6(1) (access to a tribunal) and Article 2 of Protocol No. 7.
Inadmissible under Article 6(1) (reasonable time): The Government's objection on grounds of failure to exhaust domestic remedies was upheld: an appeal under Article L.781-1 of the Code of Judicial Organisation had by 20 September 1999 acquired a sufficient degree of certainty in domestic law to be able to be – and to require to be –used for the purposes of Article 35 of the Convention and could not have been unknown to the applicant on 14 January 2000, the date on which he lodged his application. He had failed to use that remedy, however.
Inadmissible under Article 6(1) (fair trial), 6 (2) and 6(3)(a), (b) and (d).
Inadmissible under Article 7: paragraph 2 of that Article expressly provided that it did not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations, which was the case of crimes against humanity. According to the Statute of the International Tribunal of Nuremberg and to a French Act of 1964 which made express reference thereto, crimes against humanity were not subject to statutory limitation: manifestly ill-founded.
[Confirmation of the Commission's precedents.]
Inadmissible under Article 6: (a) In so far as the applicant complained of a media campaign, both in the written press and in the audiovisual media, he had not shown that there had been a media campaign against him of such virulence as to influence or be likely to influence the jury's opinion or the outcome of the Assize Court's deliberations. On the contrary, the very length of those deliberations, and the verdict reached, tended to show that the jurors had voted in accordance with the personal conviction required by the most serious charges against him, that is, aiding and abetting murder. Lastly, the applicant had himself given television interviews and his lawyer had published a historian's expert report subsequently annulled by the Court of Cassation: manifestly ill-founded.
(b) In respect of the applicant's complaints relating to the alleged lack of independence and impartiality of the President of the Assize Court, there was no evidence to support the applicant's suspicions of bias on the part of the President in his conduct of the proceedings or of an unfavourable influence of his conduct on the verdict. The conduct, or even the tactics or strategy, of the civil parties to attempt to influence the decision could not engage the State's responsibility unless it was established that it had not taken the measures necessary to remedy a situation which was liable to undermine the authority and impartiality of the judiciary. That was not so in the instant case, however: manifestly ill-founded.
(c) With regard to the applicant's allegation that the Assize Court had not given adequate reasons for its judgment, it was to be noted that the requirement that reasons had to be given for a decision for the purposes of Article 6 had to accommodate the special features of a set of proceedings, particularly in the assize courts, where juries did not have to state why they were satisfied beyond reasonable doubt. In French law the public prosecutor and the accused could challenge questions framed and put to the jury by the President of the Assize Court and request leave to put others, mindful that, in the event of a dispute, the Assize Court would rule, giving reasons, as it had done in this case. In its judgment convicting the applicant, the Assize Court had referred to the replies given by the jury to each of the 768 questions put to them by the President and also to the account of the facts held to be established and the Articles of the Criminal Code which had been applied. While the jury had only been able to reply "yes" or "no" to each of the questions put to it by the President, those questions had formed a framework on which the decision had been based. The precision of those questions

had adequately compensated the lack of reasons for the jury's replies: manifestly ill-founded. [Reference to the Commission precedents.]

FAIR HEARING
Refusal to join five criminal proceedings against a writer in respect of various passages of his book: *communicated*.

GARAUDY - France (N° 65831/01)
[Section I]
(see Article 10, below).

FAIR HEARING
Effects of a media campaign on the fairness of the jury trial of a former Minister: *inadmissible*.

PAPON - France (N° 54210/00)
Decision 15.11.2001 [Section III]
(see above).

FAIR HEARING
Absence of reasons for jury's verdict in criminal trial: *inadmissible*.

PAPON - France (N° 54210/00)
Decision 15.11.2001 [Section III]
(see above).

Article 6(2)

PRESUMPTION OF INNOCENCE
Revocation by court of suspension of prison sentence, on the basis of a finding of guilt in respect of a new offence, although the proceedings dealing directly with the offence were still pending: *admissible*.

BÖHMER - Germany (N° 37568/97)
Decision 15.11.2001 [Section III]

In June 1991 the applicant was convicted by the Regional Court of receiving stolen goods and theft and was sentenced to two years' imprisonment suspended on probation for four years. In March 1993 he was convicted by the Ahrensburg District Court of drunken driving and careless driving without a licence and given a fine. Following this conviction, the Regional Court extended his probation period to six years. In 1995 two sets of proceedings were instituted in the Hamburg District Court against the applicant, both involving fraud. In December 1995, in other proceedings, the applicant was convicted of fraud by the Kiel District Court. After the decision had become final, he lodged a request for retrial. In April 1996 the Regional Court revoked the suspension on the applicant's prison sentence of June 1991, relying on the fact that he had subsequently been convicted twice. The applicant lodged an appeal against this decision. In October 1996 the Court of Appeal dismissed the applicant's appeal. The court considered that his pending request for retrial regarding the conviction by the Kiel District Court might result in the hearing of numerous witnesses and as the prolonged

period of suspension had already expired four months from then, the court deemed that it could not wait for the outcome of these proceedings. The court considered that it could not wait for the outcome of the proceedings pending before the Hamburg District Court either. Having heard the alleged victim of the case before the Hamburg District Court and another witness, in the presence of the applicant's counsel, the court found that it was beyond doubt that the applicant was guilty of fraud. The Federal Constitutional Court refused to entertain his subsequent complaint.
Admissible under Article 6(1) and (2).

PRESUMPTION OF INNOCENCE
Statements in Parliament by Minister of State accusing applicants of breaching UN embargo on export of diamonds: *communicated*.

ZOLLMANN - United Kingdom (N° 62902/00)
[Section III]
(see Article 6(1) [civil], above).

Article 6(3)(c)

DEFEND IN PERSON
Refusal to allow a lawyer to defend himself in criminal proceedings: *inadmissible*.

CORREIA DE MATOS - Portugal (N° 48188/99)
Decision 15.11.2001 [Section III]

The applicant, who is a lawyer and auditor, was struck off the Bar Council roll by a decision of 1993, published in 2000, on the ground that the exercise of the one profession was incompatible with the exercise of the other. In 1996 the applicant was committed for trial at the Ponte de Lima Court for insulting a judge and was officially assigned a lawyer despite having expressed the wish to defend himself. His appeals against the committal order were dismissed on the ground that they had not been lodged by a lawyer and the applicant could not defend himself. He then applied to the Constitutional Court, complaining of his inability to defend himself. On account of having been struck off the Bar Councilroll, he was requested to instruct a lawyer in accordance with the Supreme Court Act. His submission that the Act was incompatible with the Constitution was rejected. In the meantime, the Ponte de Lima Court had set his case down for trial. On the first day of trial the applicant sought leave to defend himself, but his request was allegedly refused by the court. A lawyer was therefore officially assigned to represent him. The court found him guilty of insulting a judge and sentenced him to 170 day-fines and ordered to pay 600,000 Portuguese escudos in damages. His appeals were dismissed. The sentence, which had not been enforced, was extinguished pursuant to an amnesty law, but enforcement proceedings were instituted against him on the initiative of the prosecution for payment of the amount due in damages.
Preliminary objections: (a) (victim): The amnesty from which the applicant had benefited had not remedied all the unfavourable consequences for him resulting from the proceedings since he still had to pay damages: objection dismissed. (b) (non-exhaustion): The question of the possible non-exhaustion of domestic remedies therefore overlapped with the question raised by the complaint, which was whether the applicant could claim to be able to defend himself in the criminal proceedings: separate examination therefore not necessary.
Inadmissible under Article 6(1) and (3)(c): The decision whether to allow an accused to defend himself or whether to assign him a lawyer fell within the margin of appreciation of the Contracting States, which were better placed than the Court to choose the means appropriate

to enable their legal system to guarantee the rights of the defence, the main issue being that the interested party be in a position to present his defence in an appropriate manner and one in conformity with the requirements of a fair trial. In the case in question the grounds for requiring the applicant to be represented by a lawyer were sufficient and relevant. It was, among other things, a measure which was in the accused's interests and aimed at securing him an effective defence, so that the domestic courts were justified in considering that the interests of justice required the compulsory assignment of a lawyer. The fact that the accused was himself also a lawyer did not call that finding into question: the relevant courts were entitled to consider, within the scope of their margin of appreciation, that the interests of justice required the appointment of a representative for a lawyer charged with a criminal offence and who might therefore, on that very ground, not be in a position to make an accurate assessment of the interests at stake and, accordingly, prepare effectively his own defence. In the case in question the applicant had had a proper defence: he had not alleged having been unable to present his own version of the facts to the courts and had been represented by an officially assigned lawyer at trial: manifestly ill-founded. [Confirmation of the precedents established by the Commission relating to compulsory representation by a lawyer and specific points for the case where the "accused" is himself a lawyer.]

ARTICLE 7

Article 7(1)

NULLA POENA SINE LEGE
Applicant serving sentence longer than that imposed, taking into account remission: *communicated*.

GRAVA - Italy (N° 43522/98)
[Section I]
(see Article 13, below).

Article 7(2)

GENERAL PRINCIPLES OF LAW RECOGNISED BY CIVILISED NATIONS
Inapplicability of prescription to crimes against humanity: *inadmissible*.

PAPON - France (N° 54210/00)
Decision 15.11.2001 [Section III]
(see Article 6(1), criminal, above).

ARTICLE 8

POSITIVE OBLIGATIONS
Decision of hospital authorities to administer diamorphine to child, contrary to mother's wishes, and following wrong diagnosis: *communicated*.

GLASS - United Kingdom (N° 61827/00)
[Section IV]

The first applicant is a severely handicapped child, the second applicant being his mother. The first applicant was admitted in hospital suffering from serious respiratory problems. The doctors treating him considered that he was dying and, contrary to the clear wishes of the second applicant, administered diamorphine in order to alleviate his distressed condition. In addition, a "Do Not Resuscitate" order was put in his medical notes without consulting the second applicant. The first applicant, whose health had improved after the second applicant had managed to resuscitate him in spite of the hospital decision, was discharged shortly afterwards. The hospital later wrote to the second applicant indicating that, in the event of her son's future admission, it would take no active steps to prolong his life and that it would be advisable for him to be treated at another hospital. An investigation conducted by the General Medical Council later cleared the doctors of any professional misconduct. The investigation concluded there was no evidence on which to bring disciplinary proceedings against them. A police investigation was also conducted. The Crown Prosecution Service concluded that there was insufficient evidence on which to bring criminal charges against the doctors. The applicants sought a declaration that the doctors had acted unlawfully by failing to obtain court authorisation in order to override the second applicant's opposition to the use of diamorphine. The High Court judge and the Court of Appeal were reluctant to pronounce on the lawfulness of the doctors' actions but gave a clear statement of the second applicant's right to seek the intervention of the High Court should she find herself in conflict with the treatment proposed by doctors in charge of her son.
Communicated under Articles 2 and 8.

PRIVATE LIFE
Prohibiting on consensual homosexual acts between adult males and minors aged between 14 and 18: *admissible*.

S.L. - Austria (N° 45330/99)
Decision 22.11.2001 [Section I]

The applicant, aged 17 when he introduced his application before the Convention organs, started being aware that he was homosexual at the age of 11 or 12 and became sure of his sexual identity when he reached the age of 15. He also indicated that he had a preference for adult men. He lived in a rural area where he stated that homosexuality was still badly considered. He contends that section 209 of the Criminal Code, which prohibits homosexual acts involving an adult male and a minor between 14 and 18, placed him in a position where he could not have sexual relations with an adult due to the fear of exposing that person to prosecution and of being obliged to testify as a witness and thus reveal his sexual identity openly.
Admissible under Article 8: Article 34 entitles individuals to contend that a law in itself violates their rights, without any individual measure of implementation, if they are directly affected by it or run a risk of being directly affected by it. In a number of cases concerning the prohibition by criminal law of homosexual acts between consenting adults, the Court has held

that the very existence of such legislation directly affected the applicant's private life on the ground that he had no other choice than to respect the law and refrain from engaging in prohibited sexual acts to which he was predisposed by his sexual orientation or to commit such acts and thereby become liable to prosecution. The Commission found that legislation prohibiting homosexual acts before the age of 18 directly affected an applicant's private life and this assessment was not invalidated by the fact that the risk of prosecution was rather remote, there being no incidents of prosecution or a claimed policy of non-prosecution. Moreover, the Court has taken into account the fact that the effect of criminally sanctioning homosexual acts reinforced the misapprehension and general prejudice of the public and increased the anxiety and guilt feelings of homosexuals. In the present case, the applicant could engage in a homosexual relationship with another minor before reaching the age of 18 without breaking the law, and in the event that he did so with an adult man, only the latter would risk prosecution. Nonetheless, the impugned provision of the Criminal Code contributes to the general stigmatisation of homosexuality, the ensuing reluctance of teenagers to disclose their sexual orientation, especially in rural areas, and inhibitions imposed on their sexual behaviour. Under the present legislation, the applicant could not have any sexual relationship with an adult man without exposing the latter to criminal prosecution, a risk which in view of the criminal courts' case-law is tangible. Furthermore, he risked being involved in criminal investigations and of having to testify as a witness on his sexual life, which in itself constituted an interference with private life. In conclusion, section 209 of the Criminal Code in itself directly affected the applicant, and would until he reached the age of 18. Therefore, he could claim to be a victim within the meaning of Article 34.

PRIVATE LIFE
Prohibition on consensual homosexual acts between adult males and minors aged between 14 and 18: *admissible*.

G.L. and A.V. - Austria (N^{os} 39392/98 and 39829/98)
Decision 22.11.2001 [Section I]

According to section 209 of the Austrian Criminal Code, consensual homosexual acts between an adult male and a minor, aged 14 to 18 years, is punishable by a prison sentence ranging from 6 months to 5 years. Both applicants were convicted under this provision and sentenced to imprisonment, suspended on probation.
Admissible under Article 8.

PRIVATE LIFE
Civil servants dismissed for having collaborated with the Ministry of Security of the GDR and for having denied this: *inadmissible*.

KNAUTH - Germany (N° 41111/98)
BESTER - Germany (N° 42358/98)
Decision 22.11.2001 [Section III]

The two applicants, both former civil servants of the GDR, were integrated into the civil service of the FRG after the reunification of Germany. Both answered in the negative when asked in a questionnaire, prior to their integration, whether they had collaborated with the Ministry of Security of the GDR. An examination of the data contained in documents of the Ministry of Security revealed their past collaboration with that ministry. The first applicant, an infant school teacher, had been registered as a collaborator of the Ministry of Security between 1973 and 1979. The second applicant had effected his military service in the People's Army of the GDR between 1971 and 1972 and had on that occasion signed a declaration undertaking to collaborate with the Ministry of Security. Both applicants were

consequently barred from the civil service for having collaborated with the Ministry of Security of the GDR and, in particular, for having knowingly concealed that fact at the time of their integration into the civil service of the FRG. Their appeals to the Labour Court and the Federal Court of Justice were unsuccessful, as was their appeal to the Federal Constitutional Court.
Inadmissible under Article 8: the applicants' dismissal was the consequence of the use of data, contained in documents belonging to the Ministry of State Security of the GDR, revealing facts which they had denied. The use of information about an individual's political and/or private past could be considered to be an interference with private life. In the instant case, even if those measures were deemed to be an "interference" with the applicants' right to respect for their private life, they had been "prescribed by law". The possibility of dismissing a civil servant for that reason was provided for by the Law on Protection against Unfair Dismissal, combined with Annex I to the German Unification Treaty, and by the Civil Code and the case-law of the Federal Labour Court and, lastly, by the Law on Documents held by the Department of State Security of the GDR. Those provisions were precise and accessible so that the applicants must have expected their past conduct and the question of possible collaboration to be looked into; lastly, the courts had not interpreted those provisions arbitrarily, but had clearly defined the applicable concepts and criteria on their examination of each case. With regard to the purpose of the measures, they had pursued a public-interest aim: the FRG had legitimately verified *a posteriori* the conduct of persons who, after reunification, had been integrated into its civil service, the members of which were the guarantors of the Constitution and of democracy. The measures in question had therefore pursued the legitimate aims of preventing disorder and protecting the rights of others. Admittedly, the period of their collaboration with the GDR Ministry of State Security had, according to the applicants, occurred some ten or twenty years, respectively, before the time at which they had filled out the questionnaire; nevertheless, the applicants had been able to use legal remedies against the decisions dismissing them from their posts. The domestic courts had made a thorough examination of the allegations against the applicants and of their arguments and had concluded that the lack of sincerity and honesty in their replies meant that they could not continue to be employed in the civil service. Furthermore, the courts dealing with their case had referred to the Supreme Court's established case-law on the subject. The penalties imposed, although heavy, had to be seen in the context of the general interest of German society, having regard to the exceptional historical context in which they had been integrated into the FRG civil service and the conditions set forth in the German Unification Treaty, of which the applicants must have been aware. Having regard, among other things, to the exceptional circumstances linked to German reunification, in so far as there had been interference, taking into consideration the margin of appreciation of the States, it had not been disproportionate to the legitimate aim pursued: manifestly ill-founded.
Inadmissible under Article 6(1) (fair trial) with regard to the first applicant: that provision was applicable to teachers and therefore *a fortiori* to infant school teachers belonging to the civil service, as was the case here. The domestic proceedings examined as a whole had been fair: manifestly ill-founded.

FAMILY LIFE
Deportation from country where close family lives following several convictions: *admissible*.

JAKUPOVIC - Austria (N° 36757/97)
Decision 15.11.2001 [Section III]

The applicant, a national of Bosnia-Herzegovina, born in 1979, arrived in Austria with his brother in 1991, joining their mother who already lived and worked there. She later remarried and had two other children from this marriage. In January 1994 the police filed a complaint against the applicant on suspicion of burglary. The proceedings were discontinued and he was ordered to compensate the victims. In May 1995 the District Administrative Authority issued

a prohibition on possessing arms against him after he had attacked several persons with an electroshock device. In August 1995 the Regional Court convicted him of burglary and sentenced him to five months' imprisonment, suspended for a probation period of three years. In September 1995 the District Administrative Authority issued a ten-year residence prohibition against him on the ground of the aforementioned events and notably his conviction. It found his stay on the territory to be contrary to the public interest. The applicant lodged an appeal against this decision. In February 1996, the Regional Court convicted him once more of burglary, sentencing him to 10 weeks' imprisonment, suspended for a three-year probation period. In May 1996 the applicant's appeal against the residence prohibition was finally dismissed by the Public Security Authority. The authority found that, in spite of the fact that his mother, brother and two half-sisters lived in Austria, the residence prohibition was necessary in the public interest in view of his criminal behaviour. The applicant unsuccessfully filed a complaint with the Constitutional Court. The court, which refused to consider his complaint due to its lack of prospects of success, remitted the case to the Administrative Court. The applicant's complaint was dismissed and he was finally deported to Sarajevo in April 1997.
Admissible under Article 8.

ARTICLE 9

FREEDOM OF CONSCIENCE
Absence of limit to number of convictions imposed on conscientious objector for persistently refusing to wear uniform during compulsory military service: *communicated*.

ÜLKE - Turkey (N° 39437/98)
[Section II]

The applicant is a conscientious objector and an active member of an anti-militarist association. In August 1995, he was summoned to perform his military service. Since September 1995, he has been regularly convicted for turning people against the institution of military service, refusing to wear the uniform or desertion and has, as a result, been sentenced to imprisonment several times. Upon each release from prison, he has been sent back to his military unit and convicted again for persisting in refusing to wear the uniform. There appears to be no limit to this cycle of convictions. Under domestic law, each male citizen is to serve at least a period of basic training, failing which he will be imprisoned. The applicant has not gone through this period of training yet. There is no alternative service for conscientious objectors.
Communicated under Article 9.

ARTICLE 10

FREEDOM OF EXPRESSION
Imposition of fine on ophthalmologist by professional disciplinary body following publication of an article considered as an advertisement contrary to ethical rules: *admissible*.

STAMBUK - Germany (N° 37928/97)
Decision 22.10.2001 [Section III]

The District Disciplinary Court for Medical Practitioners imposed a fine of 2,000 marks on the applicant, an ophthalmologist, for having disregarded the ban on advertising in the relevant provisions of the Land Rules of Professional Ethics and the Act on the Councils for the Medical Professions. A journalist had come to meet the applicant in his surgery in order to discuss a new laser operation technique. An article was subsequently published in a newspaper. In the interview it was reported that the applicant had treated 400 patients using this laser technique, with 100% success. The applicant was reported to have stated that such operations depended notably on the professional experience of the practitioner. The article was also illustrated by a photograph of the applicant in his surgery. The Disciplinary Court considered that he had disregarded several provisions of the Rules of Professional Ethics, whereby no article concerning a practitioner and of an advertising character should be published. The applicant had breached these rules in giving a percentage of success of the operations he had carried out, referring to his professional experience and letting a photograph of him, taken in his professional environment, illustrate the article. The Disciplinary Appeals Court for Medical Practitioners dismissed his appeal and the Federal Constitutional Court refused to admit his constitutional complaint.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Dismissal of teacher for exerting political influence on pupil in the GDR: *inadmissible*.

VOLKMER - Germany (N° 39799/98)
Decision 22.11.2001 [Section III]

The applicant was a schoolteacher in German, Latin and civics in the German Democratic Republic. Between 1970 and 1977 he served as an honorary secretary to the East German Unified Socialist Party (SED) at the school where he taught, and between 1977 and 1981 was employed on a full-time basis in a district executive committee of the SED. After the reunification of Germany, he was incorporated in the Berlin civil service as a teacher. One of his former pupils declared that the applicant, in his capacity of SED representative, had asked him to attend a church conference about which he had later been questioned by an official of the East German authorities. In 1992 the special commissioner of the Government for "person-related" documents of the former GDR informed the authorities that the applicant had been registered as a contact person in the files of the Ministry of State Security. It appeared that he had signed a declaration of confidentiality and had been interviewed on five occasions but that the Ministry had decided not to pursue further co-operation with the applicant. He told the FRG authorities that he had indeed been contacted by the Ministry of State Security but that he had refused to co-operate. He was suspended from his functions soon afterwards and was finally given notice of termination of his contract. The Labour Court found the dismissal to be unjustified. The Higher Labour Court reversed the judgment, and deemed the applicant to be unsuited to continue teaching. The Federal Labour Court considered that the applicant's dismissal was not only based on his SED membership and his

political beliefs but also on the professional and honorary functions he had held within that party and the fact that he had used one of his pupils to spy on SED adversaries. It clearly reflected his commitment to the one-party system of the GDR and demonstrated his unfitness to teach the values of the German free democratic constitutional system. The Federal Constitutional Court declined to entertain the applicant's constitutional complaint.

Inadmissible under Article 10: The applicant's dismissal occurred in the general context of scrutiny of the professional qualifications and personal aptitude of civil servants of the GDR who were integrated in the civil service of the FRG after the German reunification. Having regard to the political context, the applicant's dismissal for lack of personal aptitude was also based on an analysis of his political opinions and activities within the SED. Assuming that the impugned measure constituted an interference with the applicant's freedom of expression, it was prescribed by the German Unification Treaty which provided expressly that a civil servant could be dismissed for lack of personal aptitude. It pursued a legitimate aim, that is to ensure that holders of public authority who had abused their authority within the political system of the former GDR be prevented from exercising their authority in an arbitrary manner contrary to the free democratic constitutional system. As to whether the measure was necessary in a democratic society, a democratic State is entitled to require civil servants to be loyal to the constitutional principles on which it is founded. Germany's determination to avoid the repetition of the numerous instances of abuse of public authority which had occurred within the system of the GDR prompted the requirement of political loyalty imposed on civil servants being transferred into the constitutional order of the FRG. In their judgments the domestic courts not only took into account the applicant's functions as secretary of the SED but also the fact that he had used one of his pupils for the purposes of political spying. Teachers being figures of authority to their pupils, the special duties and responsibilities incumbent on them to a certain extent also apply to their activities outside school. Accordingly, an abuse of this authority gives rise to substantial doubts regarding a teacher's personal capacity to assume his educational responsibilities. In the present case, the Court accepted the reasoning of the Higher Labour Court whereby the use of a pupil as an instrument to spy on political opponents was incompatible with a teacher's duty to educate his pupils so as to ensure their respect for the principles of freedom of expression and tolerance for other opinions. Such a finding was within the margin of appreciation. In view of these elements and the particular circumstances of German reunification, even assuming that there was an interference with the applicant's freedom of expression, it was proportionate to the legitimate aim pursued: manifestly ill-founded.

Inadmissible under Article 6(1): The post of secondary-school teacher does not entail direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. Moreover, it does not belong to the categories of activities and posts listed by the European Commission in its communication of 18 March 1988 and by the Court of Justice of the European Communities which the Court uses as guidance in its assessments in respect of the applicability of the present provision. Accordingly, Article 6(1) applied to the proceedings in issue. In the present case, the applicant had an opportunity to contest the decision of the authorities before the German courts in adversarial proceedings and to submit all the arguments which he considered relevant to his case. Moreover, the domestic courts carefully stated the reasons why the applicant lacked the personal aptitude required for a teacher in the public service. Finally, the domestic courts did not disclose any appearance of arbitrariness or omission with respect to the applicant's arguments: manifestly ill-founded.

FREEDOM OF EXPRESSION
Conviction of writer, in particular for the offences of denial of crimes against humanity and incitement to discrimination, hatred and racial violence: *communicated*.

GARAUDY - France (N° 65831/01)
[Section I]

The applicant is a philosopher, writer and former politician. Following the publication of his book entitled "The founding myths of Israeli politics", a number of criminal complaints, together with applications to join the proceedings as a civil party, in respect of various passages of the book were lodged against him by a series of associations for denial of crimes against humanity, racist libel and incitement to hatred or violence on grounds of race or religion. The applicant was committed for trial at the Paris *tribunal de grande instance* in five sets of criminal proceedings calling into questions two different editions and various different passages of his book. At each stage of the five sets of proceedings the courts ruled on the same day during the same hearings and each of the parties addressed the court once in respect of all five sets of proceedings. The courts were composed of the same judges, who examined the five cases at each stage but delivered five different decisions. The Paris Court of Appeal dismissed the application lodged by the applicant for the five sets of proceedings to be joined; it held that the proceedings brought against the applicant, although they concerned the same author, concerned two different editions of the same work and that the cases were being treated separately as a result of the multiplicity of proceedings brought either by the public prosecutor or by various civil parties which had each singled out different passages of the work or passages of varying length. At the end of those proceedings, brought under the Freedom of the Press Act of 29 July 1881, the applicant was convicted of denying crimes against humanity, libelling a group of individuals, in this case the Jewish community, and inciting to racial discrimination, hatred or violence. He was sentenced to suspended terms of imprisonment and to fines, and ordered to pay damages and compensation to the civil parties. He appealed on points of law to the Court of Cassation, arguing that there had been a violation of Article 10 of the Convention, but his appeal was dismissed on the ground that the measures had been necessary in a democratic society for the prevention of disorder and the protection of the rights of others. The five suspended prison sentences were ordered to run concurrently. The fines, however, were cumulative (totalling 170,000 French francs), as were the damages payable to the civil-party associations (totalling 220,021 French francs).
Communicated under Article 10 and 6(1) (fair trial). The Court decided to give priority to the application (Rule 41 of the Rules of Court).

FREEDOM OF EXPRESSION
Dismissal of professor of modern history from the former GDR for lack of professional qualifications, in particular due to the tenor of his two theses: *inadmissible*.

PETERSEN - Germany (N° 39793/98)
Decision 22.11.2001 [Section III]

The applicant, who had obtained a history degree in 1971, had been a modern history professor at Humboldt University in Berlin, in the former GDR, since 1988. He obtained his teaching certificate and his *Doctor Scientiae* after completing two theses, the first in 1978 on the links between civil research and its military use in the FRG during the 1950s, and the second in 1986 on the CDU and the conception of the social market economy in 1945-1949. After the reunification of Germany the applicant was first provisionally integrated into the civil service of the FGR, before being assessed by the Restructuring and Appointments Board set up to assess university professors from the former GDR. In 1992 a history professor at the Faculty of Historical Sciences at Bochum, who was a member of that board, handed in an

expert report concluding that the applicant could not continue to be employed in the civil service because he lacked the requisite professional qualifications. The report noted that the applicant's first thesis was more political than historical, that the second one did not put forward any fresh evidence, that the requirements of an academic work had not been met and, lastly, that the applicant had not published anything in the meantime. The board heard submissions from the applicant and decided, by four votes to two, to dismiss him from his post. It confirmed its decision in January 1993. In April 1993 the Dean of Humboldt University accordingly dismissed the applicant. In December 1993 the Labour Court upheld the applicant's appeal on the ground, *inter alia*, that the Restructuring and Appointments Board had not complied with the procedural requirements. In June 1994 the Berlin Regional Labour Court set that judgment aside, holding that the dismissal was justified both in substance and in form because even if there had been procedural flaws in the proceedings before the board, they had been of no effect because the board played a merely consultative role and the proceedings before it had been internal and administrative in nature. The Federal Labour Court dismissed an appeal by the applicant for a review of that decision, whereupon the applicant lodged an appeal with the Federal Constitutional Court. In a judgment of July 1997, the Constitutional Court dismissed the applicant's appeal. It held, *inter alia*, that the Regional Court had properly considered that a teacher's qualifications were determined on the basis of his or her academic publications and had properly based its decision on the expert report and on the lack of any subsequent academic publication to make up for the shortcomings of the applicant's theses.

Inadmissible under Article 10: The applicant had been dismissed from the civil service after the reunification of Germany on account of his lack of professional qualifications. The decision to dismiss him had been based on an assessment by the relevant authorities of two theses he had written prior to reunification.

Even considering that measure to have been an "interference" with the exercise of the applicant's right to freedom of expression, it had been "prescribed by law". The possibility of dismissing a civil servant for such a reason was expressly provided for by the Law on Protection against Unfair Dismissal, combined with Annex 1 to the German Unification Treaty; those provisions were precise and accessible so that the applicant must have expected his professional qualifications to be verified; lastly, the courts dealing with this case had not interpreted those provisions arbitrarily, but had clearly defined the applicable concepts and criteria on each examination. With regard to the purpose of the dismissal, it had pursued a general-interest aim: the FRG could legitimately verify *a posteriori* the professional qualifications of persons who, after unification, had been integrated into the civil service, and who had previously worked in totally different conditions, for the purpose of guaranteeing to the public the quality of its staff. The impugned measure had thus pursued the legitimate aims of preventing disorder and protecting the rights of others. As to whether or not it had been proportionate, it should be noted that the theses written by the applicant at the time of the GDR had necessarily borne the mark of the ideological climate imposed by the official line but it was also legitimate that in verifying the professional qualifications of a university lecturer employed to teach students in the FRG, the relevant authorities should base their decision on his former publications as a historian. On appeal by the applicant against the decision, the German courts had re-examined his professional qualifications in the light of the relevant legislation in force and had arrived at their conclusion not only on the basis of the two theses he had written, but especially on the lack of any subsequent academic publication, even after reunification, which might have made up for the shortcomings of those theses. Furthermore, the Constitutional Court had examined in detail whether the interference in question had breached his fundamental rights relating to freedom of work and academic freedom. The penalty imposed on him, although heavy, had thus to be seen against the general interest of German society, having regard to the exceptional historical context in which he had been integrated into the FRG civil service and the conditions set forth in the German Unification Treaty, of which he must have been aware. Having regard, *inter alia*, to the exceptional circumstances linked to German reunification, in so far as there had been interference, having regard to the margin of appreciation of States in the area, that

interference had not been disproportionate to the legitimate aim pursued: manifestly ill-founded.
Inadmissible under Article 6(1) (fair trial): That provision was applicable to teachers and therefore *a fortiori* to university professors, as was the case here. The national proceedings examined overall had been fair: manifestly ill-founded.

FREEDOM TO IMPART INFORMATION
Circulation of newspaper prohibited in region where state of emergency has been declared: *admissible*.

TANRIKULU - Turkey (N° 40150/98)
ÇETIN - Turkey (N° 40153/98)
KAYA and others - Turkey (N° 40160/98)
Decision 6.11.2001 [Section II]

The first applicant is one of the founders of the Human Rights Association in Diyarbakır. The second applicant and most of the applicants who lodged the third application are journalists working for *Ülkede Gündem*, a daily Turkish-language newspaper with its headquarters in Istanbul. The other applicants are office employees who are regular readers of the daily in question. The applicants allege that on several occasions in October and November 1997 circulation of the daily was disrupted in the south-east of the country, a region subject to a state of emergency, due to repeated seizures of the newspaper by security forces. Some of the applicants lodged a criminal complaint with the Diyarbakır public prosecutor on the ground that circulation of the newspaper had been disrupted. In February 1998 the Diyarbakır Administrative Council found that there was no case to answer, a decision which was upheld by the Supreme Administrative Court in March 2000. In November 1997, during the human rights award ceremony in the United States, the first applicant gave a speech on, among other things, the Kurdish problem. His speech provoked a fierce debate in the Turkish press. On 5 December 1997 *Ülkede Gündem* published an article, to which the first applicant had contributed, on the conference held in the United States. In a directive of 1 December 1997, the provincial governor's office for the region subject to the state of emergency prohibited the circulation of the daily in the region. In October 1998 *Ülkede Gündem* ceased operating.
Admissible under Article 10 with regard to the journalists on the daily: The journalist applicants prepared articles on the region in which circulation of the newspaper had been prohibited. Their job of diffusing information was directly concerned by the prohibition on circulation of their newspaper. Their main readers were in the region subject to the state of emergency and had no alternative means of reading their articles than by reading the newspaper. The impugned measure thus had real repercussions on the manner in which those applicants exercised their journalistic profession and each of them could be considered to be a victim of an interference with the exercise of their right guaranteed by Article 10.
Inadmissible under Article 10 in respect of the first applicant and the other applicants: The first applicant's argument was based essentially on the necessity of replying to criticism in the national press following the article published in the newspaper subject to the prohibition measure. That measure had not, however, been motivated by the article in question. Furthermore, the applicant could have reacted through the medium of other newspapers or television. Accordingly, the applicant had not been prevented from informing the public of his ideas or his reactions.
With regard to the status of victim of the first applicant and the other applicants, who were office employees and mere readers of the newspaper, the Convention did not allow for an *actio popularis*. In respect of the possible exercise of their right of individual petition, those applicants, in their capacity as readers, had an adequate choice of means of receiving information and had not shown how the impugned prohibition had directly affected them. They could not therefore claim to be victims of the prohibition on circulation of the newspaper in their region: manifestly ill-founded.

ARTICLE 13

EFFECTIVE REMEDY
Refusal of courts to award applicant compensation for non-pecuniary damage resulting from daughter's death following road accident: *communicated*.

ZAVOLOKA - Latvia (N° 58447/00)
[Section II]
(see Article 2, above).

EFFECTIVE REMEDY
Granting of application for two-year remission of sentence when the period remaining to be served had become less than two years: *communicated*.

GRAVA - Italy (N° 43522/98)
[Section I]

On 6 October 1994 the Trieste Court of Appeal convicted the applicant of fraudulent bankruptcy and sentenced him to four years' imprisonment. That decision became final on 24 October 1995 when his appeal on points of law was dismissed. The applicant lodged three applications for a two-year remission of sentence under Presidential Decree No. 394 of 1990. His applications were dismissed on the grounds, *inter alia*, that other remissions of sentence had been granted him for other criminal convictions he had incurred. However, in a judgment of May 1998 the Court of Cassation held that only the conviction which had become final on 24 October 1995 was enforceable and that, accordingly, the existence of the other convictions did not prevent an award of remission of sentence as requested. On 14 October 1998 the applicant was released. On that date he had served a total sentence of two years, two months and four days. The remaining period to be served was therefore less than two years, which was the period of the remission of sentence finally granted him by the Trieste Court of Appeal in December 1998. Consequently, the applicant had served a sentence which was two months and four days longer than the one imposed for the conviction against him and the remission of sentence.
Communicated under Articles 13, 5 (1) (a) and 7 (1) *in fine*.

ARTICLE 14

DISCRIMINATION (Article 2 of Protocol No. 1)
Impossibility of sending children to school in another district where education in the minority language is provided: *admissible*.

SKENDER - Former Yugoslav Republic of Macedonia (N° 62059/00)
Decision 22.11.2001 [Section III]

The applicant is a national of the Former Yugoslav Republic of Macedonia, of Turkish origin. He has two daughters whom he wished to send to a Turkish-speaking school situated in a other district than the one where they lived, as the school of their own district did not provide teaching in Turkish. According to the Primary Education Act, pupils should attend the State primary school of their place of residence. In February 1997 the applicant asked the Turkish-

speaking school to admit his elder daughter. He received no answer and complained, allegedly on two successive occasions, to the competent authority. He started proceedings before the Supreme Court. The school, at this stage, refused to enrol his elder daughter, as they did not live in the district of the school. The Supreme Court refused, on procedural grounds, to examine the applicant's complaint in respect of the school's refusal. The Constitutional Court did not quash the Supreme Court's decision. The Supreme Court refused to examine the applicant's request for having the proceedings reopened as the applicant had not provided fresh evidence as required by law. As regards the applicant's younger daughter, he unsuccessfully requested the school to admit her in August 1998. The Supreme Court refused, on procedural grounds, to examine his complaint about the decision of the school. His subsequent appeal against the refusal of the school was dismissed by the second instance body, which informed him that he should enrol his daughter in the school of his place of residence. The Supreme Court subsequently dismissed his administrative complaint on the same ground. The court also relied on decision of the Constitutional Court annulling decisions of the Government whereby education should be provided in Turkish in the district where the applicant lived.
Inadmissible under Article 14 taken in conjunction with Article 2 of Protocol N° 1 as regards the applicant's elder daughter: the applicant failed to make proper use of the opportunities to challenge the refusal of the school to enrol his elder daughter or to complain to the Constitutional Court that his elder daughter was discriminated against.
Admissible under Article 14 taken in conjunction with Article 2 of Protocol N° 1 as regards the applicant's younger daughter.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF GRAND CHAMBER
Murder of applicant's son by prisoners on home leave.

MASTROMATTEO - Italy (N° 37703/97)
Decision 14.9.2000 [Section II]

The applicant's son was killed by three bank robbers who were making their getaway. It was later established that the three had final convictions for offences ranging from complicity in armed robbery to complicity in murder and were serving prison sentences for those offences. At the material time two members of the gang were on prison leave, while the third, the applicant's killer, had been on a regime of semi-imprisonment and had failed to return to prison at the end of forty-eight hours' leave. The judges responsible for supervising the execution of the prison sentences had granted the three persons concerned prison leave as, relying on reports by the prison authorities on their behaviour in prison, the judges considered that they did not represent a danger to society. However, no psychological report had been prepared on the prisoner on the semi-imprisonment regime, despite there being a statutory requirement for such a report before acceptance on that regime. Furthermore, the judges responsible for the execution of sentences had not made use of their power to request additional information from the police in order to establish whether the three had maintained contact with criminal gangs operating outside the prison. That information could have led to prison leave being refused. Lastly, although the grant of prison leave had been made subject to conditions, the police did not appear on this occasion to have exercised any supervision over the three persons concerned. The three offenders received long prison sentences for the offences.
[The application was declared *admissible* on 14 September 2000.]

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF GRAND CHAMBER
Return of seized property subject to having citizenship.

POLACEK and POLACKOVA - Czech Republic (Nº 38645/97)
[Section III]

GRATZINGER and GRATZINGEROVA - Czech Republic (Nº 39794/98)
[Section III]

In 1974 and 1983 respectively the applicants were sentenced to terms of imprisonment and their assets confiscated by the former communist regime in Czechoslovakia. They were rehabilitated under the Judicial Rehabilitation Act by a court decision in 1990 and the confiscation of their assets was set aside *ex tunc*. However, they were unable to recover their assets. Implementation of the process of restituting assets is governed by the Extra-Judicial Rehabilitation Act which lays down the principle that only persons having Czech nationality can recover their confiscated property. The applicants brought proceedings in the Czech courts but were unsuccessful. The United Nations Human Rights Committee considered in a similar case that the condition of citizenship laid down by Czech law infringed the rights guaranteed by Article 26 of the Covenant on Civil and Political Rights.
[The Chamber *communicated* the application under Article 1 of Protocol No. 1 and Article 14 taken together with Article 1 of Protocol No. 1.]

ARTICLE 34

VICTIM
Applications by newspaper readers following the decision of the authorities to prohibit the circulation of the newspaper in their region: *inadmissible*.

TANRIKULU - Turkey (N° 40150/98)
ÇETIN -Turkey (N° 40153/98)
KAYA and Others - Turkey (N° 40160/98)
Decision 6.11.2001 [Section II]
(see Article 10, above).

VICTIM
Homosexual applicant under 18 complaining of consequences of statutory prohibition on consensual homosexual acts between adult males and minors aged between 14 and 18.

S.L. - Austria (N° 45330/99)
Decision 22.11.2001 [Section I]
(see Article 8, above).

VICTIM
Association complaining about a parliamentary report on sects which it claims provoked a policy of repression and a law to prevent and repress sects: *inadmissible*.

FEDERATION CHRETIENNE DES TEMOINS DE JEHOVAH DE FRANCE – France
(N° 53430/99)
Decision 6.11.2001 [Section II]

The applicant association is responsible for the representation and legal protection of the 1149 local associations established in France for the purpose of practising the Jehovah's Witnesses religion, which, according to the association, is the country's third Christian religion. Since Jehovah's Witnesses were first registered as a cultural association at a prefecture in 1906, they had practised their religion unhindered on French territory. In 1995 the National Assembly set up a committee to investigate sects. The investigative committee published a report in 1995 (the Gest/Guyard report). The authors of that report, basing their information on a census by the central department of the Intelligence Service, drew up a list of a certain number of movements which it described as sects and classified as dangerous. Jehovah's Witnesses were included in the list. The report was very widely circulated, both to the public authorities and the public at large. In 1998 a second parliamentary committee was set up to continue the investigations undertaken by the first one. It concentrated its study on an examination of the financial and tax position of the sects and their ownership of property. It published a report in 1999 (Guyard/Brard report) containing, according to the applicant association, inaccurate and defamatory statements about the association and, in particular, allegations of tax evasion. The association unsuccessfully requested the President of the National Assembly to have certain passages of the report removed. The applicant complained that the content of the reports had given rise to hostile reactions to Jehovah's Witnesses (hostile press campaign, creation of defence associations, organisation of public debates on sects etc.) or measures, such as decisions by the civil and administrative courts, infringing rights and liberties. Examples of such measures were the refusal to grant or renew permits, and tax and social-security inspections by the URSAFF singling out Jehovah's Witnesses. In June 2001 an Act was adopted "reinforcing the prevention and repression of sectarian movements infringing human rights and fundamental freedoms". It provides, *inter alia*, for the possibility of dissolving, subject to certain conditions, a legal entity governed by a sectarian movement and also puts in place a prosecution procedure.
Inadmissible under Articles 6(1), 9 and 13, taken separately and combined with Article 14: The Court's examination of the complaints would be confined to the 1999 report and the 2001 Act because the complaints relating to the 1995 report were out of time given that the application had been lodged in December 1999. It had not been established that the applicant could claim to be directly affected by the impugned measures as a federal body governing all Jehovah's Witnesses and responsible for protecting their interests. In any event, the impugned measures allegedly resulting from the publication of the investigative report of 1999 were not, in some cases, based on the report in question, and even when reference to the report was made, it was merely *obiter dictum*, which could not in any circumstances be considered as the underlying intention of the measure. Furthermore, a parliamentary report had no legal effect and could not serve as a basis for any criminal or administrative proceedings. The court decisions referred to had been, *inter alia*, civil-law decisions and had concerned facts falling within the trial courts' unfettered discretion; the administrative decisions relating to licenses had concerned individual situations and could have been appealed against in the administrative courts. With regard to the inspections by the URSAFF, they were measures which could have been taken in respect of anyone subject to the law of the land and the applicant had not shown how they had had the purpose or effect of violating its rights under the Convention. With regard to the Act adopted in 2001, since the Court could not rule on legislation *in abstracto*, it could not express an opinion on the compatibility of its provisions with the Convention; according to that Act, sects could be dissolved only following court

proceedings and where certain conditions were met, such as where the sects or their leaders had been convicted by a final judgment of offences (which were exhaustively listed), which should not give the applicant cause for concern. An argument based on assumptions about the legislation and bent on solving a burning issue of society was not a demonstration of probability of a risk incurred by the applicant. Furthermore, the applicant could not, without contradicting itself, rely on the fact that it was not a movement which infringed freedoms and at the same time claim to be a victim of the application of that Act. Accordingly, the applicant could not claim to be a "victim" within the meaning of Article 34 of the Convention.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 33):

BOULTIF - Switzerland (Nº 54273/00)
ELIA s.r.l. - Italy (Nº 37710/97)
Judgments 2.8.2001 [Section II]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Dismissal of teachers: *communicated*.

MOLLA HOUSEÏN - Greece (N° 63821/00)
KARAOUYIOUKLOU - Greece (N° 63824/00)
OUZOUN - Greece (N° 63976/00)
[Section I]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-payment of interest claimed since an award of compensation in 1989: *communicated*

FERNANDEZ-MOLINA GONZALEZ and 370 other applications - Spain (N° 64359/01 and others)
[Section IV]

In May 1981 the applicants and more than 20,000 others were victims of very serious food poisoning causing a condition called "Toxic Oil Syndrome" after consuming denatured rapeseed oil. In June 1981 a criminal investigation was commenced in respect of a suspected public-health offence. The various sets of proceedings commenced in respect of the same facts were joined in the *Audiencia Nacional*, which divided the cases into two groups of separate criminal proceedings. In the proceedings against the individuals and companies involved in the distribution and sale of the rapeseed oil, the *Audiencia Nacional* gave judgment in May 1989 sentencing them to prison sentences and ordering them to pay compensation to the victims on grounds of their principal liability or liability in default. The

court stipulated that the compensation was payable to the victims together with annual interest at the statutory rate plus two points from the date of adoption of the judgment until full and final payment. The main points of the judgment were upheld on appeal in April 1992. The offenders turned out to be insolvent, however, so that judgment was not executed and the victims received nothing in compensation. The proceedings against the civil servants and public authorities involved at the time of the food poisoning ended in September 1997 with the conviction of two civil servants, who were given prison sentences and ordered to pay twice the amount of compensation determined by the court in May 1989, and the acquittal of the other civil servants. The State was ordered, on account of its liability in default, to pay all the sums stipulated in the judgment of May 1989, less the amounts already paid in compensation. The amounts in question were to be paid by the State after being fixed individually. In the enforcement proceedings the *Audiencia Nacional* declared the civil servants insolvent and ordered that the proceedings against the State be continued. In February 1989 the court ordered the enforcement proceedings to begin. Since the standard forms for requesting compensation did not provide for the possibility of claiming default interest, the association *Anasto-Leganes*, of which the applicant is the Chairman and which was set up to obtain full compensation for all the damage suffered by the victims of toxic oil syndrome, drafted a document for claiming default interest calculated from the judgment of May 1989, delivered in the first proceedings, to the date of actual payment of the compensation. According to that document, and to the official consumer price index published by the National Institute of Statistics, prices had increased by 59.2%. The association's claim was dismissed in May 1999 in so far as it concerned default interest from the date of the 1989 judgment and the court fixed at 17,360,000 pesetas the compensation due to it (less a sum paid by the State). An appeal against that decision was dismissed and in July 1999 the court issued the authorities with an order for payment to the first applicant of 17,360,000 pesetas. The first applicant and the other applicants then lodged *amparo* appeals with the Constitutional Court, which were dismissed by decisions delivered between 2000 and 2001. In August 2000 only one quarter of the persons affected by toxic oil syndrome had received compensation.
Communicated under Articles 6 (1), 14 and 1 of Protocol No. 1 and 35 (1) (exhaustion of domestic remedies).

CONTROL OF THE USE OF PROPERTY
Confiscation of assets acquired by dignitaries of GDR through abuse of power: *inadmissible*.

HONECKER - Germany (N° 53991/00)
AXEN, TEUBNER and JOSSIFOV - Germany (N° 54999/00)
Decision 15.11.2001 [Section III]

The first applicant is the widow of E. Honecker, the former president of the State Council of the GDR, who died in 1994. The three other applicants are the widow and daughters of H. Axen, a member of the Political Bureau of the Central Committee of the GDR's Socialist Unity Party (SED), who died in 1992. Between the fall of the Berlin wall on 9 November 1990 and German reunification, which became effective on 3 October 1990, Mr Honecker and Mr Axen had requested the conversion into FRG Deutschmarks (DEM) of credits in GDR marks appearing in their bank accounts. The origin of those amounts was ordinary income. In July 1990 a special committee of the GRD Parliament, set up to examine the origin of assets for conversion into DEM, gave a decision based on a Law of the GDR on convertible assets (a Law which was to become a federal law after reunification) confiscating the credits belonging to Mr Honecker and Mr Axen on the ground that the credits in question had been acquired by a misuse of power to the detriment of the public interest.
On 17 October 1990 H. Axen's heirs, the applicants who lodged the second application, applied to the Administrative Court to challenge the confiscation. Their application was dismissed on the ground that the conditions enacted by the Law on Convertible Assets had

been met because H. Axen's credits had originated from savings acquired by a misuse of power to the detriment of the public interest. On appeal by the applicants, the Administrative Court of Appeal nonetheless set aside the special committee's decision and ordered the accounts in question to be unfrozen. The court held that a confiscation measure of that kind could not apply to savings from ordinary income. However, that judgment was quashed by the Federal Administrative Court, with which the State had lodged an application to reopen the proceedings. The applicants subsequently applied to the Federal Constitutional Court. In July 1999 that court dismissed their appeal, holding that under the Law on Convertible Assets credits originating from ordinary income saved by virtue of advantages obtained by flagrantly immoral means could be excluded.

As for the first applicant, in a judgment of 14 June 1999 the Administrative Court upheld the main provisions of the special committee's decision, except for a sum originating from her pension fund. The court upheld the committee's decision that the remaining credits fell within the scope of the Law on Convertible Assets because they had originated from savings acquired by a misuse of power to the detriment of the public interest. The applicant did not appeal.

Inadmissible under Article 1 of Protocol No. 1: The confiscation of the applicants' credits amounted to an interference with their right to peaceful enjoyment of property. Although the confiscation resulted in a deprivation of property, it fell within the scope of the general rules designed to check the origin of assets in GDR marks for conversion into DEM. Accordingly, the interference amounted to a measure controlling the use of property. The measure had been based on the GDR's Law on convertible assets, which had subsequently become federal law in the FRG. The interference in question had pursued an aim that was in the general interest. The legislature and the court had deemed it legitimate to verify the means by which credits in GDR marks for conversion into DEM had been obtained and had done so by virtue of public-morality requirements. With regard to the proportionality of the interference, the Administrative Court which heard the applicants' appeals had examined the applicants' arguments in detail and had thoroughly analysed the nature of the allegations against Mr Honecker and Mr Axen, and the origin of the amounts appearing in the applicants' bank accounts in their capacity as heirs. Evidence of this lay in the fact that the court had not upheld the confiscation of the credits belonging to the first applicant in respect of the part which turned out to have originated from a pension fund. Having regard to those factors and, among other things, to the exceptional circumstances linked to German reunification, the respondent State had not exceeded its margin of appreciation and had not failed to strike a fair balance between the interests of the applicants and the general interest. Verification of the origin of the credits in GDR marks to be converted into DEM had been a necessary counterpart to the considerable increase in value of those credits once converted into DEM: manifestly ill-founded.

(*Communicated* under Article 6 (1) (length of proceedings) in respect of application no. 54999/00.)

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION

Refusal to examine cassation appeal against a criminal conviction: *admissible*.

PAPON - France (N° 54210/00)
Decision 15.11.2001 [Section III]
(see Article 6(1) [criminal], above).

ARTICLE 5 OF PROTOCOL No. 7

RELATIONS WITH CHILDREN IN THE EVENT OF DISSOLUTION OF MARRIAGE

Legal impossibility for parents to obtain joint custody over child after divorce: *inadmissible*.

R.W. and C.T.G.-W. - Austria (N° 36222/97)
Decision 22.11.01 [Section III]

In 1990, the applicants, who were married at the time, had a child. In 1993, they made a petition for divorce by consent which was granted. In the settlement regulating the legal consequences of their divorce they agreed, contrary to section 177 of the Civil Code, to continue exercising joint custody over their son. This settlement was subject to approval in separate custody proceedings. In these proceedings, the District Court refused to approve the applicants' settlement on the ground that domestic law did not provide for joint custody after divorce except where the former spouses continued living in a common household, which was not their case. The applicants appealed against this decision to the Regional Court, which requested the Constitutional Court to review the constitutionality of section 177 of the Civil Code. The latter court found the provision to be in conformity with the Constitution. Accordingly the Regional Court rejected the applicants' appeal. The Supreme Court dismissed their subsequent appeal on points of law.

Inadmissible under Article 5 of Protocol N° 7: The Court has previously held (Cernecki v. Austria) that the necessity clause in Article 5 of Protocol N° 7 should be interpreted in the same way as the necessity clauses of other provisions of the Convention and that the exclusion of the possibility of awarding joint custody after divorce fell within the margin of appreciation left to the Contracting State when assessing what is necessary in the interests of the children. There is nothing to distinguish the present case: manifestly ill-founded.

Other judgments delivered in November

Articles 5, 6 and 14

TUNCAY and OZLEM KAYA - Turkey (Nº 31733/96)
Judgment 8.11.2001 [Section IV]

The case concerns alleged unlawful detention, failure to provide reasons for arrest, failure to bring promptly before a judge, absence of review of lawfulness of detention, lack of independence and impartiality of State Security Court, denial of access to a lawyer, and discrimination – friendly settlement.

Articles 5(3) and 6(1)

OLSTOWSKI - Poland (Nº 34052/96)
*Judgment 15.11.2001 [Section IV]

The case concerns the length of detention on remand and the length of criminal proceedings – violation.

Article 6(1)

A.V. - Italy (Nº 44390/98)
*Judgment 6.11.2001 [Section I]

FRANCISCO - France (Nº 38945/97)
DURAND - France (no. 1) (Nº 41449/98)
DURAND - France (no. 2) (Nº 42038/98)
*Judgments 13.11.2001 [Section III]

NEMEC and others - Slovakia (Nº 48672/99)
*Judgment 15.11.2001 [Section II]

CERIN - Croatia (Nº 54727/00)
*Judgment 15.11.2001 [Section IV]

These cases concern the length of civil or administrative proceedings – violation.

FERMI and others - Italy (Nº 44401/98)
Judgment 6.11.2001 [Section I]

The case concerns the length of civil proceedings – friendly settlement.

ŠLEŽEVIČIUS - Lithuania (Nº 55479/00)
*Judgment 13.11.2001 [Section III]

The case concerns the length of criminal proceedings – violation.

SARI - Turkey and Denmark (Nº 21889/93)
*Judgment 8.11.2001 [Section IV]

The case concerns the length of criminal proceedings involving a transfer of jurisdiction – no violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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