CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 47
on the case-law of the Court
November 2002

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

Statistical information[1]

Judgments delivered	November	2002
Grand Chamber	1	11(13)
Section I	43(45)	304(309)
Section II	19(20)	142(151)
Section III	4	158(165)
Section IV	22	138(157)
Sections in former compositions	1	38(39)
Total	**90(93)**	**791(834)**

Judgments delivered in November 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	1[2]	1
former Section I	0	0	0	0	0
former Section II	0	0	0	1[3]	1
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	31(32)	10(11)	1	1[3]	43(45)
Section II	16	2(3)	0	1[2]	19(20)
Section III	4	0	0	0	4
Section IV	15	6	0	1[3]	22
Total	**66(67)**	**18(20)**	**1**	**5**	**90(93)**

Judgments delivered in 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	8(10)	0	1	2[2]	11(13)
former Section I	10	1	0	1[2]	12
former Section II	0	0	0	4[4]	4
former Section III	11	1	0	0	12
former Section IV	8(9)	1	1	0	10(11)
Section I	236(240)	60(61)	3	5[5]	304(309)
Section II	120(126)	18(21)	3	1[2]	142(151)
Section III	112(114)	44(46)	2(5)	0	158(165)
Section IV	117(136)	17	2	2[3]	138(157)
Total	**622(656)**	**142(148)**	**12(15)**	**15**	**791(834)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. Just satisfaction.
3. Revision.
4. Three just satisfaction judgments and one revision judgment.
5. Four revision judgments and one just satisfaction judgment.

Decisions adopted		November	2002
I. Applications declared admissible			
Grand Chamber		0	3(4)
Section I		12	209(218)
Section II		11(13)	98(103)
Section III		5	93(94)
Section IV		15	105(108)
Total		**43(45)**	**508(527)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	3	300(339)
	- Committee	563	3879
Section II	- Chamber	3	86(116)
	- Committee	417	4349
Section III	- Chamber	4	76(82)
	- Committee	499	2773
Section IV	- Chamber	7	122(504)
	- Committee	463	3333
Total		**1959**	**14919(15376)**
III. Applications struck off			
Section I	- Chamber	1(2)	79(103)
	- Committee	8	75
Section II	- Chamber	4	23(24)
	- Committee	4	48
Section III	- Chamber	59	160(165)
	- Committee	8	23
Section IV	- Chamber	3	23(25)
	- Committee	4	25
Total		**91(92)**	**456(488)**
Total number of decisions[1] / Nombre total de décisions[1]		**2093(2096)**	**15883(16392)**

1. Not including partial decisions.

Applications communicated	November	2002
Section I	30	367(375)
Section II	18(24)	252(263)
Section III	117	417(420)
Section IV	30(137)	347(487)
Total number of applications communicated	**195(308)**	**1383(1545)**

ARTICLE 2

POSITIVE OBLIGATIONS
Alleged failure by authorities to conduct effective investigation into killing by unidentified assailant: *communicated*.

ACAT and others - Turkey (Nº 77200/01)
[Section III]

The applicants are the immediate family members of Nezir Acat, who was shot and killed on the street of a town in south-east Turkey in 1994. His killer walked away from the scene. The applicants state that this person has never been apprehended. Security forces arrived at the scene within minutes but did not try to pursue the killer, nor did they gather crucial physical evidence, interview eyewitnesses or take photographs; no post mortem examination was carried out. In the years that followed, the deceased's next of kin sought to obtain information from the public prosecutor regarding the progress of the inquiry. Only in April 2000, when they were finally able to pay for a lawyer, did they learn that the public prosecutor had decided within days of the killing that his office was not competent to investigate and that he had referred the case to the State Security Court. In May 2000, that court informed the applicants that a person had been arrested and indicted in 1995 for many killings, including that of Mr. Acat. The applicants joined the ongoing criminal proceedings as interveners in August 2000, but withdrew shortly afterwards, taking the view that the person accused could not have killed Mr. Acat.
Communicated under Articles 2, 6, 13 and 14.

ARTICLE 3

POSITIVE OBLIGATIONS
Failure of social services to protect children from sexual and physical abuse by mother's partner: *violation*.

E. and others - United Kingdom (Nº 33218/96)
Arrêt 26.11.2002 [Section II]

Facts: The applicants are three sisters and their brother, born between 1960 and 1965. The family came to the attention of the social services in Scotland in the 1970's, primarily on account of the mother's financial difficulties. In 1977 the third applicant, then aged 13, ran away from home, claiming that her mother's cohabitee, W.H., had attempted to rape her. W.H. pleaded guilty to a charge of indecent assault and was sentenced to two years' probation. The applicants maintain that it was a condition of probation that W.H. cease to reside with them but that he breached that condition. Social workers subsequently expressed some suspicion that W.H. might still be living with the family. The situation in the home deteriorated and in 1978 the third applicant was referred to a Children's Hearing for failure to attend school. The background report which was prepared for the hearing made no mention of the history of sexual abuse. The mother died in 1981. In 1988 the three sisters told social workers that W.H. had subjected them to sexual and physical abuse on regular basis in the past and W.H. was subsequently convicted of a number of serious acts of indecency between 1967 and 1978. He was given a suspended sentence of two years' imprisonment, taking into account that most of the offences pre-dated his previous conviction. The applicants then

brought proceedings against the local authority seeking damages for its failure to carry out its statutory duties, in particular with regard to W.H.'s breach of probation. However, following the judgment of the House of Lords in a similar English case, the applicants consented to an order that their action be dismissed. The three sisters were later awarded compensation by the Criminal Injuries Compensation Board but no award was made to their brother, who also claimed that he had been physically abused by W.H.

Law: Article 3 – There was no doubt that the treatment described by the applicants fell within the scope of this provision as inhuman and degrading. W.H. had been convicted of several assaults and the Government had not contested the allegations relating to other abuse. The Court was satisfied that it could make a finding on the materials before it that the applicants had suffered abuse as described, and did not consider that this could be construed as any determination of guilt of criminal offences on the part of W.H., criminal liability being distinct from international law responsibility. The question therefore arose whether the authorities should have been aware of the abuse as from 1977. There was no indication that any of the applicants had complained about assaults until 1988. However, the Government accepted that even if was not a formal condition of W.H.'s probation, it would have been understood that he was no longer permitted to reside in the applicants' home and there were a number of elements which should have alerted the social services to the fact that the situation in the family disclosed a history of abuse and that W.H. was continuing to have close contact with the family. Even if the social services were not aware that W.H. was inflicting abuse, they should have been aware that the children remained at risk and the fact that at the relevant time there was less awareness of the prevalence of sexual abuse was not significant in the present case, in which the social services knew there had been incidences of such abuse and were under an obligation to monitor the offender's conduct. The social services had failed to take steps which would have enabled them to discover the extent of the problem and potentially to prevent further abuse. The test under Article 3 did not require it to be shown that "but for" the failure of the authorities ill-treatment would not have occurred; a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm was sufficient to engage the responsibility of the State. In the present case, the Court was satisfied that the pattern of lack of investigation, communication and cooperation between the relevant authorities had to be regarded as having had a significant influence on the course of events and that proper and effective management of their responsibilities might have been expected to avoid, or at least to minimise the risk or the damage suffered.

Conclusion: violation (unanimously).

Article 8 – In view of the foregoing conclusion, no separate issue arose under this provision.

Conclusion: no separate issue (unanimously).

Article 13 – The Criminal Injuries Compensation Board could not be regarded as providing a mechanism for determining the liability of the social services in respect of any negligence. It made no award to the brother and while it awarded compensation to three sisters, these awards did not take into account any pecuniary loss. Moreover, a complaint to the local authority ombudsman might have led to an investigation of certain aspects of the management of the case but could not provide a binding determination. Finally, the Court was not satisfied, in view of the House of Lords judgment, that at the relevant time the applicants could have successfully pursued a civil action based on a duty of care. Consequently, the applicants did not have an effective remedy at their disposal.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the first three applicants 16,000 € each and the fourth applicant 32,000 € in respect of pecuniary and non-pecuniary damage. It also made an award in respect of costs and expenses.

INHUMAN TREATMENT
Continued detention of prisoner undergoing treatment for cancer: *violation*.

MOUISEL - France (No 67263/01)
Judgment 14.11.2002 [Section I]

Facts: In 1996 the applicant was sentenced to fifteen years' imprisonment for armed robbery carried out as part of a gang, kidnapping and fraud. In January 1999, the doctor in the prison Ambulatory Consultation and Care Unit (UCSA) issued a medical certificate stating that the applicant was suffering from chronic leukaemia. The applicant applied to the Office of the President of the Republic for a pardon on medical grounds; his application was rejected in March 2000. In May 2000, the USCA's doctor certified that the applicant's health was such that he required chemotherapy treatment as a hospital in-patient every three weeks, which meant that the applicant had to be taken from prison to hospital. Following a further application for a pardon on medical grounds, a court expert was instructed by the Ministry of Justice. The expert's report, which was drawn up in June 2000, concluded that the applicant's health had deteriorated and that he needed to be cared for in a special unit. The applicant was transferred as a matter of urgency to another prison nearer a hospital and was given a cell of his own. The applicant complained that he had to wear handcuffs. In November 2000, a fresh application for a pardon was rejected and the applicant received a letter from the USCA doctor describing the change in his health and stating that there was no possibility of a recovery. On 22 March 2001, the judge responsible for the execution of penalties released the applicant provisionally and required that he receive treatment or medical care. The judge found, on the basis of the medical certificates, that the applicant's health had become incompatible with his continuing detention since he required medical care in a proper hospital treatment.
Law: Article 3 – The present case raises the question of the compatibility of a state of health giving ground for serious concern with the applicant's continuing detention in prison in such a state. Following recent changes in French law, the health of a person in custody is now among the factors to be taken into account in the procedures for implementing the custodial sentence, especially as regards the duration of detention. Remedies are available before the judge responsible for the execution of penalties which, where the health of a person serving a custodial sentence has deteriorated significantly, make it possible to apply for the person concerned to be released at short notice. These remedies are available in addition to the application for a pardon on medical grounds, which may be granted only by the President of the Republic. However, these mechanisms were not available to the applicant during the period when he was detained for investigations and the only response to his situation which he received from the State was to have his applications for a pardon on medical grounds refused, without being given any reasons. The applicant could not be granted provisional release until the time when he satisfied the conditions for obtaining it, in 2001; as regards the possibility to seek suspension of the penalty, that too did not yet exist at the time he was detained. The applicant's health was deemed to be constantly giving more cause for concern and increasingly inconsistent with his detention. Both the court expert's report and the letter from the UCSA's doctor emphasized that the disease was progressing and that prison was scarcely appropriate to deal with it, but no special measures were adopted by the prison authorities. Such measures could have included having the applicant admitted to hospital but also any other placement where he would have been monitored and under supervision, especially at nights. As regards the conditions under which he was taken to hospital, the applicant was chained while under escort, although the extent to which he was chained was reduced in so far as the doctors considered it undesirable. Although it has not been shown that he was chained while receiving treatment or that the officers from the prison escort were present during treatment, it is apparent that the applicant's disease did not exempt him from wearing handcuffs and that the use of handcuffs is normal practice connected with detention. Regard being had to the applicant's health, to his hospitalisation, to the discomfort of a session of chemotherapy and to his physical weakness, the wearing of handcuffs was

disproportionate in light of the requirements of security. As regards the danger which the applicant represented, and notwithstanding his criminal history, the Court notes that there is no serious evidence to justify a fear of a significant risk of flight or violence. Last, the Court notes the recommendations of the European Committee for the Prevention of Torture concerning the conditions of transfer and medical examination of prisoners in the light of medical ethics and respect for human dignity. As described by the applicant, the conditions in which he was taken from prison do not seem very remote from the situations with which the Committee is concerned on that point. All in all, the domestic authorities did not ensure that the applicant was given health care which enabled him to avoid treatment contrary to Article 3. His continuing detention, particularly after June 2000, constituted a violation of his dignity and caused suffering in excess of that inevitably associated with a custodial sentence and treatment for cancer.
Held: violation (unanimously).
Article 41 – The Court awards the applicant the sum of €15,000 by way of compensation for the non-pecuniary harm sustained.

INHUMAN TREATMENT
Alleged insufficiency of medical care during detention: *admissible*.

MATENCIO - France (No 58749/00)
Decision 7.11.2002 [Section I]

The applicant had been serving a life sentence since 1976. In 1995, he was the victim of a cerebral vascular accident of which he retained the physical sequelae. In 1997, he was recognized as having a rate of incapacity of 80%. In 1999, the Consultation and Ambulatory Care Unit of the prison noted that the applicant's health was becoming worse, that he would need daily medical treatment for the rest of his life and that it was difficult for the Unit to treat that pathology. In January 2000, the Unit recommended that the applicant be given more intensive multi-disciplinary care. The application for release on health grounds which the applicant submitted during that month was unsuccessful. In June 2000, the International Prisons Observatory referred the applicant's case to the Inspectorate General for Social Matters. The opinion of the Medical inspector for Public Health was sought in order to examine the conditions in which the applicant was being treated. The Prison Governor stated that he had sought a solution which would provide the applicant received permanent medical attention. The applicant had agreed to be transferred to a remand prison in Paris where a doctor would be in permanent attendance, both day and night, and that an undertaking had been obtained that the applicant would be kept in an individual cell. The applicant refused that offer, on the ground that he was at present linked by an alarm with the sanatorium and the central post both day and night. The International Prisons Observatory requested the Ministry of Justice to commute the penalty on medical grounds. On the same date, the judge responsible for the execution of penalties was requested to take emergency steps to allow the applicant to receive hospital treatment necessitated by his health outside the prison. At the end of 2000, the prison Consultation and Ambulatory Care Unit recorded that the applicant's standard of living was being disrupted on a daily basis by the fact that his cell was inappropriate and also by the fact that his handicap could not be given the best treatment in the Unit; likewise, it was indispensable that the applicant was able to receive certain regular and appropriate care which was only available outside the prison. In February 2001, the applicant was admitted to hospital as an emergency case. In August 2001, a new medical certificate stated that his health had deteriorated, although there had been temporary improvements. From December 2001, the applicant was granted provisional release, following a decision which noted the need for him to receive treatment already provided but which would no longer be beneficial to him in a prison environment.
Admissible under Articles 2 and 3.

INHUMAN OR DEGRADING TREATMENT
Prison conditions: *friendly settlement*.

BENZAN - Croatia (Nº 62912/00)
Judgment 8.11.2002 [Section I]

The case concerns the conditions of the applicant's detention in Lepoglava State Prison. He complained about, *inter alia*, overcrowding, poor food and hygiene and lack of activities. He was transferred to a newly renovated wing in June 2002.
The parties have reached a friendly settlement providing for payment of compensation of 12,000 € to the applicant and an undertaking by the Government to renovate the wing in which he was held by the end of September 2003.

INHUMAN TREATMENT
Medical care in prison: *communicated*.

LEGER - France (No 19324/02)
[Section II]
(see Article 5(1)(a), below).

EXPULSION
Expulsion to Bosnia-Herzegovina: *friendly settlement*.

SULEJMANOVIC and others and SEJDOVIC and SULEJMANOVIC - Italy
(Nº 57574/00 and Nº 57575/00)
Judgment 8.11.2002 [Section I]

Fleeing the war in Yugoslavia, the applicant found refuge in a nomads' camp hear Rome. As aliens without residents' permits and subject to an expulsion order, they were returned to Sarajevo with a laisser-passer issued by the Consul of Bosnia-Herzegovina.
The parties have reached a friendly settlement, under which, at point I, the Government express the following positions: the Minister of the Interior undertakes:

- to cancel the expulsion orders;
- to allow the applicants and their respective households to return to Italy, in agreement with the Ministry of Foreign Affairs, at the Government's expense ... Their return to Italy will take place, within the meaning of Article 39 of the Convention, when the Court has recognised the agreement and when it has been formally accepted by the parties, which entails their abandoning the proceedings pending; in any event, they are to return before 31 October 2002, unless unforeseeable events which cannot be attributed to the parties' intention should occur. The applicants or the members of their households, designated below, who do not return to Italy within sixty days following the above period will lose the benefits negotiated and will be entitled only to compensation determined according to the list at point II of the agreement:
- to issue a humanitarian resident's permit, entitling the holder to work and to attend educational institutions, which will be valid for one year and be renewable upon expiry, in the absence of obstacles relating to criminal law on immigration;
- to make representations to the city authorities in Rome to find temporary accommodation for the applicants, following their return to Italy, pending a definitive solution in an equipped camp, and to keep the parties informed of developments in that regard;

- to make representations to the competent authorities to enable the children of school age to attend school and catch up on the schooling they missed following their expulsion to Bosnia;
- to make representations to the competent authorities so that Alisa Sulejmanovic can receive the necessary medical care from the national health service at a public establishment.

Point II of the settlement provides that fifteen applicants are to receive the sum of €7,746.90 and the sixteenth the sum of €45,090.10 (and their lawyer €2,656.3).

EXPULSION
Threatened deportation to Iran: *communicated*.

NASIMI - Sweden (Nº 38865/02)
[Section IV]

The applicant is an Iranian national of Kurdish origin. In September 2000 he lawfully entered Sweden to visit his sister there. In October 2000, he requested asylum on the grounds that his political activities in Iran would lead to imprisonment if he returned. He indicated that the authorities had discovered copies of a subversive journal in his house and had briefly detained and interrogated his wife and questioned his young children. The applicant stated he was an activist in a political organisation and had been imprisoned and tortured for this reason in 1990-1992; both his brother and brother-in-law had been executed for their political activities. In May 2001, the applicant's family arrived in Sweden via Norway. It emerged that his wife had left Iran with a valid passport but had destroyed it herself before entering Sweden. The family's applications for asylum were rejected in January 2002 by the Migration Board, which doubted whether the applicant really had been or would be persecuted by the Iranian authorities. The family's appeal was rejected because their lawyer failed to show she was authorised to represent them. They lodged a new application, containing further information about their past and a medical report stating that the applicant was suffering from post-traumatic stress syndrome and required long-term psychotherapy and medical treatment. This second application was also rejected. The family submitted a third application, including expert testimony regarding the deteriorating mental state of the applicant and his daughter, who were said to be suicidal. In rejecting this application, the Appeals Board took the view that the family's mental state was not so serious that deportation would be inhuman. In October 2002, the family submitted a fourth application, including testimony from two more doctors as to the serious state of the applicant's mental health and the real risk of his committing suicide. This application is still pending.
Communicated under Article 3.

EXPULSION
Threatened deportation to the Democratic Republic of Congo: *communicated*.

N. - Finland (Nº 38885/02)
[Section IV]

The applicant is a national of the Democratic Republic of Congo (DRC) who arrived in Finland in July 1998 and requested asylum. He states that, prior to the overthrow of the Mobutu regime in 1997, he was part of the *Division Spéciale Présidentielle* and was close to the Mobutu family, being of the same ethnic group and originating from the same region as them. Although he was never directly in contact with Mobutu, he was friendly with and worked for his son, Kongulu. He infiltrated student groups in Zaire and, later, Zairean asylum seekers in the Netherlands on behalf of the Mobutu regime. When Kinshasa was taken by the troops of Laurent Kabila, the applicant left the country for Angola, where he was detained and

ill-treated. He eventually reached Finland via South Africa and the Netherlands. Since his arrival, the applicant has avoided contact with other DRC nationals on account of his involvement with the Mobutu regime. In 1999, the applicant met his current partner, E., also an asylum seeker, and they lived together for 9 months, until she was deported. E. returned to visit the applicant in April 2002 and is now expecting their child. In October 2002, E. returned to Finland and again requested asylum. The applicant's asylum application was rejected in March 2001 on the grounds that he had not established his identity and had not shown that there was any real risk of treatment contrary to Article 3 of the Convention if deported to DRC. The applicant appealed. Before the Administrative Court he gave a detailed account of his previous activities and his connection with Mobutu's circles. The court rejected his appeal by a majority of two to one, expressing doubt as to the seriousness of the risk of persecution as well as to the veracity of the applicant's story. The applicant appealed to the Supreme Administrative Court, which indicated to his lawyer that it would not suspend execution of the deportation order, due to take effect on 6 November 2002.
Communicated under Article 3.

EXTRADITION
Staying of extradition because of refusal of authorities of requesting State to accept conditions stipulated: *struck out*.

BILASI-ASHRI - Austria (Nº 3314/02)
Decision 26.11.2002 [Section II]

The applicant is an Egyptian national. In the 1980s, he was an active member of a succession of Islamic fundamentalist groups. He was arrested on a number of occasions over the years because of his activities and detained for periods ranging from several days to a month. He was ill-treated on some of these occasions. In 1991, he obtained a passport and moved to Saudi Arabia for eight months before returning. By 1994 he was no longer politically active, but when Egyptian police began making mass arrests that year he went into hiding and then left the country. He went first to Albania to stay with his sister and was joined there by his wife and son. He arrived in Austria in 1995 and claimed asylum. He was interviewed by police. Later that day he submitted supplementary information about his name appearing in the Egyptian press. His application was dismissed. The authorities considered that although he might have been persecuted in the 1980s, the fact that he had been permitted to leave the country in 1991 and his lower political profile since then suggested that the threat of persecution had receded; moreover, he could have sought asylum in either Albania or Slovenia. He appealed against the refusal, arguing that he had not been allowed to present his case fully, in particular evidence about the renewed threat of persecution in Egypt. The appeal was dismissed. The applicant pursued his claim through the courts until, in March 1998, the Administrative Court transferred the case to the newly-established Independent Asylum Panel, before which proceedings are still pending. In the meantime, criminal proceedings had been instituted against the applicant in Egypt. In December 1995 he was convicted *in absentia* of serious criminal offences and sentenced to 15 years' imprisonment and hard labour. On the basis of this conviction, the Egyptian authorities requested the applicant's extradition in July 1998. The request was eventually granted in November 2001 by the Vienna Court of Appeal, which took the view that there was no real risk of ill-treatment of the applicant and considered that his claim that he had been tortured in the past lacked plausibility. The court stipulated several conditions, including the annulment of the 1995 conviction and the re-trial of the applicant before the ordinary courts, respect for the applicant's safety and an undertaking not to extradite him to a third country. The authorities approved the applicant's extradition the same day, adding a condition that, in the case of acquittal, the applicant would be permitted to leave Egypt within 45 days. The Egyptian authorities were formally notified of the extradition order in January 2002. In March, the UNHCR indicated to the Austrian authorities that it considered that the applicant had a well-founded fear of persecution and should be granted

refugee status. It added that the applicant's case should be dealt with by the relevant specialised body, i.e. the Independent Asylum Panel. In August 2002, the Ministry of Justice stated that the Egyptian authorities did not accept the conditions laid down in the extradition order. The applicant was released that same day.
Article 37(1)(b) – The Court did not accept the argument that, since the extradition order of November 2001 was still in force, the applicant was still at risk of being returned to Egypt. The applicant had failed to substantiate his concern that the Austrian authorities would disregard the conditions stipulated by the Vienna Court of Appeal. The matter giving rise to the application had therefore been resolved within the meaning of Article 37(1)(b).

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Continued detention ordered by authorities of the Autonomous Republic of Ajaria despite pardon by the President of Georgia in a first case and acquittal by the Georgian central courts in a subsequent case: *admissible*.

ASSANIDZE - Georgia (No 71503/01)
Decision 12.11.2002 [Section II]

In November 1994, the applicant was sentenced to eight years' imprisonment by the judicial authorities of the Autonomous Republic of Adjaria, a republic forming part of Georgia. By order of October 1999, the President of the Georgian Republic pardoned the applicant and suspended the two years of the sentence which remained to be served. In November 1999, the Supreme Court of the Autonomous Republic of Adjaria declared the presidential order illegal. That judgment was set aside by the Supreme Court of Georgia at the end of December 1999. In the meantime, the applicant, who was still in prison, was accused of assisting in the organisation of a group of criminals and of kidnapping. At the end of December 1999, a court of first instance of the Autonomous Republic of Adjaria formally ordered that he be placed in preventive detention. At the beginning of October 2000, the applicant was convicted by the Supreme Court of the Autonomous Republic of Adjaria. The applicant appealed on a point of law to the Supreme Court of Georgia. The authorities took a number of steps, without success, to have the applicant transferred from the Autonomous Republic of Adjaria, where he was being held, to Tbilisi for the date of the hearing. At the end of January 2001, the Supreme Court of Georgia, dealing with the matter *in absentia*, set aside the judgment of October 2000, discharged the applicant and ordered his immediate release. The local authorities of the Autonomous Republic of Adjaria had not complied with that decision. The authorities of the central authority of Georgia have on several occasions declared that the applicant's detention by the Adjarian authorities is illegal.
Admissible under Article 5(1), (3) and (4), 6(1), 10 and 13 of the Convention and Article 2 of Protocol No 4.

Article 5(1)(a)

AFTER CONVICTION
Successive rejections of requests for conditional release of a prisoner entitled to be considered for release since 1979: *communicated*.

LEGER - France (No 19324/02)
[Section II]

The applicant was sentenced to life imprisonment in 1966 for the kidnap and murder of a child, with mitigating circumstances. In July 1979, upon expiry of a trial period of fifteen years, the applicant became eligible for release. Each year he applied for conditional release, which was systematically refused. His requests for a pardon were also unsuccessful. In July 2002 he began his thirty-ninth year of detention. As he was serving a long sentence, the applicant had to address his applications for conditional release to the Minister of Justice. Since the Law of 15 June 2000 reinforcing the protection of the presumption of innocence and the rights of victims, responsibility for granting conditional release to those serving long sentences has been entrusted to a regional court for conditional release, at first instance, and to a national court for conditional release on appeal. On 16 January 2001, the applicant lodged a fresh application for conditional release, without success.
Communicated under Articles 3, 5(1)(a) and 8.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Interpretation by courts of procedural requirement, preventing examination of merits of claims and appeals: *violation*.

BĚLEŠ and others - Czech Republic (No 47273/99)
Judgment 12.11.2002 [Section II]

Facts: The applicants are members of the Homeopathic Association, which is itself a member of a free association of persons exercising a medical or paramedical profession (the "Medical Society"). Following the decision of the Medical Society to strike the Homeopathic Association from the list of members, eleven members of the Association, including the applicants, brought an action. The court of first instance dismissed their action without examining the merits. It held that by their action for a declaration of nullity within the meaning of Article 80(c) of the Code of Civil Procedure, the applicants could not secure cancellation of the alleged illegality of the decision to strike the Association from the list. As regards Article 15-1 of Law No 89/1990 on the association of citizens, on which the applicants also relied, it only allowed the court to reconsider the contested decision, but not to amend it or to confirm it. The court further held that the procedure for reconsideration was henceforward included in the part of the Code of Criminal Procedure that defined the administrative jurisdiction governed by the principle of cassation, which intended that reconsideration of a decision within the meaning of Article 15 be interpreted by analogy. The applicants appealed, maintaining, in particular, that when the court considered that it was not

competent to decide the matter on the basis of the provision on which they relied, it should have delivered a decision stating that it lacked jurisdiction and not dismissed their application. The Court of Appeal upheld the judgment at issue. It held that the applicants should have brought an action for reconsideration before the court of first instance, so that that court would then have determined the application in accordance with a different provision of the Code of Civil Procedure, either by dismissing their action or by annulling the contested decision. At the same time, the Court of Appeal dismissed the applicants' application for leave to appeal on a point of law against its judgment. The Constitutional Court declared the applicants' action inadmissible on the ground that they had failed to exhaust the remedies provided for by law, since the applicants had not appealed on a point of law. The Constitutional Court referred to Article 239-2 of the Code of Civil Procedure.

Law: Article 6(1) – a. Fairness of the proceedings before the ordinary courts – The courts held that the applicants should have put forward their arguments in an administrative action based on the provisions of the Code of Civil Procedure on administrative jurisdiction. It is apparent that the provisions of the Code of Civil Procedure to which the courts dealing with the matter referred concern only actions against administrative decisions and, consequently, do not seem capable of applying to the present case, since the Medical Society is a free professional association and not an administrative authority of the State. That observation was put forward by the applicants in the domestic proceedings but neither the courts nor the Government commented on the point. Furthermore, Article 15 of the Law on the association of citizens does not specify under which provision of the Code of Criminal Procedure the competent court must be seised. In the present case, the question put forward relates to the principle of legal certainty; it does not raise a simple problem of interpretation of material rules, but of the interpretation of a procedural requirement which prevented an examination of the merits of the applicants' action, a matter susceptible of amounting to a breach of the right to effective protection by the courts and tribunals. In the light of the foregoing, the applicants are not to be criticized for having erred in basing their action on Article 15 of Law No 83/1990 in conjunction with Article 80(c) of the Code of Civil Procedure. Accordingly, the domestic courts' refusal, on the basis of a particularly strict interpretation of a procedural rule, to determine the merits of the case infringed the very substance of the applicants' right to a tribunal, an ingredient of the right to a fair hearing guaranteed by Article 6(1).

Held: violation (unanimously).

b. Access to the Constitutional Court – The admissibility of the appeal on a point of law, within the meaning of Article 239-2 of the Code of Civil Procedure, depended entirely on the opinion of the Constitutional Court as to whether the contested decision was of "crucial importance from the legal aspect". Thus, neither the applicants nor their lawyer were capable of evaluating the prospects of their appeal on a point of law being declared admissible by the Supreme Court, especially since it had been declared inadmissible by the Court of Appeal. If their appeal on a point of law had been declared inadmissible, the applicants' constitutional action might have been declared inadmissible as being out of time. The simultaneous introduction of the appeal on a point of law and the constitutional action, recommended by the Government, is to be analysed as an aleatory remedy which finds no support in the statutory provisions and does not provide an appropriate solution, in accordance with the requirement of legal certainty. A requirement for the applicants, as well as appealing on a point of law, to bring an action before the Constitutional Court on the same basis would have been the source of legal uncertainty. Moreover, it is difficult in practice for individuals to be aware of that procedure for bringing actions simultaneously. In any event, the application described by the parties of the rules relating to the admissibility of the constitutional remedy does not contribute to ensuring the proper administration of justice, since it prevents the persons concerned from using an available remedy. The requirement to use "all remedies" set out in Articles 72-2 and 75-1 of the Law on the Constitutional Court, without any distinction being drawn – except as regards the action for a review of the procedure – between ordinary actions and extraordinary actions, on the one hand, and the lack of foreseeability of the admissibility of the appeal on a point of law arising under article 239-2 of the Code of Civil Procedure, on the other hand, infringes the very substance of the right of appeal by imposing

on the applicants a disproportionate burden which upsets the fair balance between the legitimate desire to ensure compliance with the procedural rules on bringing an action before the Constitutional Court and the right of access to that court. Since in Czech law an appeal on a point of law is an extraordinary remedy which is not automatically available and the admissibility of which is left to the discretion of the Supreme Court, it cannot be regarded, in this case, as an effective remedy which the applicants can be criticized for having failed to exercise. That is of such a kind as to violate the right to effective protection by the courts and tribunals. In short, the Constitutional Court's decision deprived the applicants of the right of access to a court and, accordingly, of their right to a fair hearing within the meaning of Article 6(1) of the Convention.
Held: violation (unanimously).
Article 41 – The Court dismisses the claim for compensation for pecuniary damage. In agreement with the parties, it decides that the finding of a violation is sufficient to repair the non-pecuniary damage suffered by the applicants. It awards €330 by way of costs and expenses.

ACCESS TO COURT
Inadmissibility of appeal to Constitutional Court: *violation*.

BĚLEŠ and others - Czech Republic (No 47273/99)
Judgment 12.11.2002 [Section II]
(see above).

ACCESS TO COURT
Formal requirements for appeal to Constitutional Court: *violation*.

ZVOLSKÝ and ZVOLSKÁ - Czech Republic (No 46129/99)
Judgment 12.11.2002 [Section II]

Facts: In 1967, the applicants concluded a contract of sale and gift with M.R. whereby the latter sold them a dwelling house and conveyed to them free of charge the associated agricultural land. At the time, the conveyance of a rural holding was made by the sale of the dwelling house and the gift of the associated land operated by a socialist organisation. In accordance with the legal provisions then in force, the applicants, in order to be able to acquire the dwelling house, were required to give an undertaking to work for the socialist cooperative in M.R.'s place. In addition to the purchase price of the real estate, they paid M.R. the sum of 30,000 Czechoslovak crowns (CSK) to compensate for the value of the land conveyed to them. In 1991, M.R. signed a declaration that he had conveyed the land at the material time of his own will. In 1993, M.R. brought an action seeking, *inter alia*, annulment, on the basis of the Law of 1991 on land ownership, of the part of the contract relating to the conveyance of the agricultural land. The competent district court found in favour of M.R. It held that the declaration whereby M.R. expressly stated that he had sold his land voluntarily at the agreed purchase price had no legal value. In February 1996, the regional court upheld the judgment of the district court. At the same time, it dismissed the applicants' application for leave to appeal on a point of law, as no question of crucial legal importance arose. According to Article 239-2 of the Code of Civil Procedure, an appeal on a point of law is admissible where the Court of Cassation considers that the contested decision is of crucial legal importance. Relying on that provision, the applicants appealed on a point of law. In July 1997, the Supreme court declared the applicants' appeal on a point of law inadmissible on the ground that the judgment of the regional court did not constitute a decision of crucial legal importance. The judgment of the Supreme Court was served on the applicants in mid-September 1997 at the earliest. In mid-November 1997, the applicants lodged a constitutional appeal. According to Article 72-2 of the Law on the Constitutional Court, a constitutional

appeal must be brought within sixty days of the date on which the decision on the last legal remedy for the protection of his rights was served on the applicant. The Constitutional Court held that the judgment of the Court of Cassation did not constitute a decision on the last legal remedy for protection of the applicant's rights. A constitutional appeal could only be brought against the judgment of the court of appeal. Since the constitutional appeal had been lodged more than sixty days after the date on which the judgment of the court of appeal had become final, the condition laid down in Article 72-2 of the Law on the Constitutional Court was not satisfied and the appeal was inadmissible on the ground that it was out of time.

Law: Article 6(1) (access to a court) – The question concerns the interpretation of the point at which time begins to run for the purpose of calculating the period of sixty days within which an appeal must be brought before it; the Constitutional Court considered that time began to run as from the date of the decision of the court of appeal, since the appeal on a point of law was declared inadmissible. The admissibility of the applicants' appeal depended entirely on the opinion of the Supreme Court as to whether the contested decision was of "crucial importance from the legal standpoint". In those circumstances, neither the applicants nor their lawyer were in a position to evaluate the chances of their appeal being declared admissible by the Supreme Court. The applicants none the less decided, notwithstanding the refusal by the court of appeal to admit the appeal and in accordance with the case-law of the Constitutional Court, to appeal on a point of law under Article 239-2 of the Code of Civil Procedure. Taking the view that the appeal on a point of law was a last remedy within the meaning of Article 72-2 of the Law on the Constitutional Court, they considered in good faith that the sixty-day period for lodging a constitutional appeal began to run with service of the decision of the Court of Cassation. According to Article 72-2 of the Law on the Constitutional Court, a constitutional appeal must be brought within sixty days from the date on which the applicant was served with the decision on the last legal remedy for the protection of his rights. Article 75-1 of that law provides that a constitutional appeal is inadmissible where the applicant has not exercised all remedies, with the exception of an action for a review of the procedure. Furthermore, under Article 239-2 of the Code of Civil Procedure, the admissibility of an appeal on a point of law depends on the opinion of the Supreme Court as to whether the contested decision is of "crucial importance from the legal standpoint". The application of the rules fixing the periods for lodging appeals must not prevent the person concerned from using an available remedy. In the present case, the issue is the interpretation of a procedural requirement which prevented an examination of the merits of the applicants' case, in breach of the right to effective judicial protection. If the applicants decided to lodge their appeal on a point of law, they were merely making use of the possibility provided by Article 239-2 of the Code of Civil Procedure, and that must not cause them harm. Nor can they be criticised for having erred in not submitting their constitutional appeal until mid-November 1997, since the question of the day on which time began to run was controversial. Article 75-1 of the Law on the Constitutional Court does not distinguish between ordinary appeals and extraordinary appeals and the persons concerned are required to exhaust both appeals, with the exception of an action for a review of the procedure, which is expressly excluded. If the applicants were thus required to appeal on a point of law in order not to have their constitutional appeal declared inadmissible, time for the purpose of introducing the constitutional appeal should not have started to run until the decision of the Supreme Court, or it should have at least been suspended when the appeal on a point of law was lodged. As regards the simultaneous lodging of an appeal on a point of law and a constitutional appeal, recommended by the Government, that is an aleatory remedy which finds no support in the provisions of the law and does not provide an appropriate solution, consistent with the requirement of legal certainty. Accordingly, the period of sixty days for lodging a constitutional appeal should have run only from the date on which the decision of the Supreme Court on the applicants' appeal on a point of law was served on them. Last, the requirement that "all remedies" be exercised, laid down in Articles 72-2 and 75-1 of the Law on the Constitutional Court, without any distinction being drawn – except as regards an action for a review of the procedure – between ordinary appeals and extraordinary appeals and the lack of foreseeability of the admissibility of an appeal on a point of law resulting from the

application of Article 239-2 of the Code of Civil Procedure infringe the very substance of the right of appeal by imposing a disproportionate burden on the applicants. It follows that the particularly rigorous interpretation by the Constitutional Court of the procedural rule in issue deprived the applicants of the right of access to a court.
Conclusion: violation (unanimously).
Article 1 of Protocol No 1 – The domestic courts decided to annul the part of the contract relating to the gift of the land. The interference in the applicants' exercise of their right to the peaceful enjoyment of their possession was provided for by law. The aim pursued by the Law on property ownership is to mitigate the consequences of the economic wrongs caused under the Communist regime and the Court accepts that the Czech State was entitled to deem it necessary to resolve that problem, which it regarded as harmful to its democratic regime. The general objective of the law is "in the public interest". The Law on the ownership of land makes no provision for any form of compensation where a contract of gift is annulled. As it has already been established that the contested interference satisfied the condition of legality and was not arbitrary, the lack of compensation does not in itself render unlawful the State's seizure of the applicants' assets. It is normal that the legislation should take a global approach to the economic wrongs that arose under the Communist regime, although it may be necessary to distinguish them for the purpose of the analysis and the exceptional circumstances in question – the manner, generally, in which the assets were previously acquired – justify the absence of compensation. However, the Court does not understand why the Czech legislation precluded the possibility of examining, in individual cases, the particular circumstances in which the assets were transferred at the material time. In a case like this, it would have been necessary to establish clearly whether the conveyance of the land in question was made against the will of the former owner – which does not appear to have been the case, given the declaration made by the former owner himself – and whether it was indeed an economic wrong, regard being had to the consideration provided. The possibility that the courts might annul the contract without taking into consideration the compensation paid at the material time by the present owners or the declaration by the former owner that he fully assented gives rise to a situation which upsets, to the applicants' disadvantage, the just balance that must be struck between the protection of individual property and the requirements of general interest. Notwithstanding the legitimate aim pursued by the Law on the ownership of land when it was enacted in 1991, the requirement that the applicants give back, without compensation, the assets acquired by them in good faith, in favour of a gift made freely and against payment of an equivalent sum must be analysed as a disproportionate burden which cannot be justified under the second paragraph of Article 1 of Protocol No 1.
Conclusion: violation (unanimously).
Article 41 – The Court considers that the findings of violations provide in themselves just satisfaction for the non-pecuniary harm. It awards the applicants €50,000 by way of compensation for the pecuniary harm and €3,000 by way of costs and expenses.

ACCESS TO COURT
Refusal of legal aid: *communicated*.

LEUSCHNER - Germany (No 58623/00)
[Section III]
(see Article 1 of Protocol No. 1, above).

FAIR HEARING
Interpretation by ordinary courts of procedural requirement, preventing examination of merits of claim: *violation*.

BĚLEŠ and others - Czech Republic (No 47273/99)
Judgment 12.11.2002 [Section II]
(see above).

REASONABLE TIME
Urgent interim proceedings: *violation*.

BOCA - Belgium (No 50615/99)
Judgment 15.11.2002 [Section I]

Facts: The present case concerned two sets of civil proceedings. The first concerned the divorce action brought before the court of first instance in March 1998 and the second, which was brought at the same time, concerned the provisional measures in respect of which the relevant law conferred on the urgent applications court special jurisdiction in that regard during the divorce proceedings. These provisional measures concerned the couple's infant children. The proceedings before the urgent applications court were closed in June 2000 by a judgment recording the parties' withdrawal from the proceedings; the parties had stated that they would comply with the provisional measures made by order at first instance, concerning the resumption of contact by the children with their mother and the payment of maintenance by the father. The substantive proceedings were completed in March 2000 with a judgment of the Court of Appeal.
Law: Article 6(1) – The substantive divorce proceedings must be distinguished from the proceedings before the urgent applications court. The former proceedings lasted two years for two levels of jurisdiction. That period corresponds in the present case to the reasonable time requirement.
Conclusion : no violation (unanimously).
The second set of proceedings covered a period of more than two years and three months for two levels of jurisdiction. The stakes in the urgent applications proceedings were important, since the question to be resolved was that of the custody of two infant children. Urgent applications proceedings are in essence proceedings which cannot suffer any delay, even at the appeal stage and notwithstanding the enforceable nature of the interim order made at first instance. On appeal, owing to the large number of cases on the list, the case was placed on a waiting list and the hearing was fixed one year and two months after the case was ready to proceed. The overall length of the proceedings cannot be considered reasonable in the present case.
Conclusion : violation (unanimously).

ORAL HEARING
Lack of oral hearing in proceedings relating to disability benefits: *violation*.

SALOMONSSON - Sweden (Nº 38978/97)
Judgment 12.11.2002 [Section IV]

Facts: The applicant appealed to the County Administrative Court against the refusal of a disability benefit. The court, without holding an oral hearing, gave judgment in his favour. However, the Social Insurance Board appealed to the Administrative Court of Appeal. The applicant's request for an oral hearing was refused and the court gave judgment in favour of the Board. The Supreme Administrative Court refused the applicant leave to appeal.

Law: Article 6(1) – As Swedish law provides that proceedings before the administrative courts are normally in writing, the applicant could have been expected to request a hearing before the County Administrative Court. Since he did not do so, he could reasonably be considered to have waived his right to an oral hearing before that court. Moreover, since the Supreme Administrative Court determined only whether leave to appeal should be granted, it did not make a full examination of the case and, even assuming Article 6 applied, the matter could be adequately resolved on the basis of the case-file and written submissions. However, it was necessary also to examine the lack of an oral hearing before the Administrative Court of Appeal. It may in some circumstances be acceptable to reject a request for a hearing on appeal, although no hearing was held at first instance. Furthermore, disputes concerning social security benefits are generally rather technical and many such disputes may accordingly be better dealt with in writing. Nevertheless, the Administrative Court of Appeal's jurisdiction was not limited to matters of law but also extended to factual issues and it appeared that an oral hearing could have provided information of relevance to the determination of the case. There were thus no exceptional circumstances which justified dispensing with a hearing and as the applicant had expressly requested an oral hearing before the Administrative Court of Appeal, he was entitled to have one.
Conclusion: violation (unanimously).
Article 41 – The Court rejected the applicant's request for pecuniary damage but made an award in respect of costs and expenses.

LUNDEVALL - Sweden (Nº 38629/97)
Judgment 12.11.2002 [Section IV]

This case raises issues identical to those in Salomonsson v. Sweden, above.

ORAL HEARING
Lack of oral hearing in proceedings relating to benefits: *no violation*.

DÖRY - Sweden (Nº 28394/95)
Judgment 12.11.2002 [Section IV]

Facts: The applicant appealed to the County Administrative Court against decisions to discontinue industrial injury benefits and sickness benefits. She did not request an oral hearing. Her appeals were dismissed and she then lodged separate appeals with the Administrative Court of Appeal. Her requests for an oral hearing were refused and her appeals were rejected. The Supreme Social Insurance Court refused her leave to appeal.
Law: Article 6(1) – As to the lack of an oral hearing before the County Administrative Court and the Supreme Social Insurance Court, the same principles applied as in the Salomonsson v. Sweden case (see above). As to the lack of a hearing before the Administrative Court of Appeal, in the present case the courts' assessments were based entirely on the medical evidence and the dispute before the Administrative Court of Appeal thus concerned the correct interpretation of written medical evidence. That issue could be adequately resolved on the basis of the medical reports and the applicant's written submissions. The applicant did not request that any witnesses be called and did not rely on any other oral evidence. Indeed, she did not state any reasons for her requests that oral hearings be held. There were therefore exceptional circumstances which justified dispensing with a hearing.
Conclusion: no violation (unanimously).

ACCESS TO COURT
Refusal to admit appeal memorial on account of absence of signature of appellant who had chosen not to be represented by a lawyer practising before the supreme courts: *inadmissible*.

MAILLET - France (N° 45676/99)
Decision 12.11.2002 [Section IV]

The applicant was sentenced to ten years' imprisonment for armed robbery; he had previously been convicted of similar offences. Before the Assize Court, he was represented by a lawyer , Q., appointed by the court under the legal aid scheme. The applicant appealed on a point of law. No application for legal aid was made in connection with those proceedings, but Q. drafted the pleadings in support of the appeal, which he filed after signing them. The Court of Cassation held that the pleadings, which were not signed by the appellant and bore only the signature of his counsel, did not satisfy the conditions laid down in Article 584 of the Code of Criminal Procedure and that it could not adjudicate on the pleas they might contain. The Court dismissed the appeal.
Inadmissible under Article 6(1): an appellant who represents himself, without instructing a specialist lawyer belonging to the Bar practicing before the Councils, must file pleadings bearing his own signature, pursuant to Article 584 of the Code of Criminal Procedure. Failure to comply with that requirement for a signature entails the inadmissibility of the pleadings. The regulations on the procedures to be observed when lodging an appeal are designed to ensure the proper administration of justice and that aim is legitimate. The requirement of a signature is an old rule, interpreted by a clear and consistent body of case-law, so that the applicant's counsel, in his capacity as a legal practitioner, was in a position to know precisely what his obligations were. Before the Court of Cassation, the applicant was assisted by Q., who had been appointed by the court during the earlier states before the trial courts. Before the Court of Cassation the applicant had the choice as to whether or not to be represented by a lawyer practicing before the Councils. The system thus proposed in French law offers sufficient guarantees. The applicant chose to continue to avail himself of the services of Q. to lodge his appeal on a point of law. The specific nature of the proceedings before the Court of Cassation may justify greater formality in the proceedings before it. The applicant's decision not to instruct a lawyer practising before the Councils may justify his appeal being subject to stricter conditions of admissibility and his signature being required. In the present case, the applicant or his lawyer had the opportunity to ensure that the rules of procedure before the Court of Cassation were observed. Furthermore, the declaration of inadmissibility penalised the applicant for a material error made in the preparation of his appeal, for which the applicant he had chosen is responsible. Responsibility for the shortcomings of a lawyer chosen by the applicant cannot be imputed to the Government. Owing to the independence of the Bar, the conduct of the defence is essentially a matter for the accused and his representative. It was open to the applicant to avoid the situation complained of by securing the services of a specialist lawyer: manifestly ill founded.

FAIR HEARING
Self-incrimination – eliciting of confession by police informer placed in suspect's cell: *violation*.

ALLAN - United Kingdom (Nº 48539/99)
Judgment 5.11.2002 [Section IV]

Facts: While the applicant was remanded in custody along with another man, G., on suspicion of robbery, their cell and the visiting area which they used were placed under covert audio and video surveillance by the police in connection with a murder investigation. Conversations between the two men and between the applicant a visitor were recorded. Subsequently, a police informer, H., was placed in the applicant's cell for the purpose of eliciting information from him. H., who had been fitted with a recording device, made a statement in which he asserted that the applicant had admitted his presence at the scene of the murder. The admission had not been recorded and there was no other evidence connecting the applicant to the murder. At the applicant's trial, his lawyer unsuccessfully challenged the admissibility of the covert recordings and of the evidence from H. The applicant was convicted and sentenced to life imprisonment. He was refused leave to appeal.
Law: Article 8 – At the relevant time there existed no statutory system to regulate the use of covert recording devices by the police and the interferences were therefore not "in accordance with the law".
Conclusion: violation (unanimously).
Article 6(1) – The recordings were not unlawful in the sense of being contrary to domestic criminal law and there was no suggestion that any admissions made during the conversations with the G. and the visitor were elicited by coercion or that there was any entrapment or inducement. An assessment of the strength or reliability of the evidence concerned was not a straightforward matter and in those circumstances the existence of fair procedures took on particular importance. In that respect, the applicant's lawyer was able to challenge the admissibility of the recordings, the trial judge gave a careful ruling and the decision was reviewed in the leave to appeal proceedings. The Court was not persuaded, therefore, that the use at the applicant's trial of the recordings of conversations with G. and the visitor conflicted with the requirements of fairness under Article 6. However, the way in which H. was used to obtain evidence raised more complex issues. The right to remain silent serves in principle to protect the freedom of a suspect to choose whether to speak or remain silent under police questioning and such freedom is effectively undermined if the authorities use subterfuge to elicit a confession or other incriminating statements. In the present case, the admissions allegedly made to H. were not spontaneous and unprompted but were induced by the persistent questioning of H. who, at the instigation of the police, channelled the conversations in circumstances which could be regarded as the functional equivalent of interrogation, without any of the safeguards which would attach to a formal police interview. While there was no special relationship between the applicant and H. and no direct coercion had been identified, the applicant would have been subject to psychological pressures which impinged on the voluntary nature of the admissions. In those circumstances, the information gained by using H. in that way could be regarded as having been obtained in defiance of the applicant's will and its use at his trial impinged on his right to remain silent and the privilege against self-incrimination.
Conclusion: violation (unanimously).
Article 13 – The Government accepted that the applicant did not have an effective remedy at the relevant time in respect of the complaints under Article 8.
Conclusion: violation (unanimously).
Article 41 – The Court awarded tha applicant 1,642 € in respect of non-pecuniary damage for the violations of Articles 8 and 13. It considered that the finding of a violation of Article 6(1) constituted sufficient just satisfaction in that respect. It also made an award in respect of costs and expenses.

FAIR HEARING
Notification of Court of Cassation hearing by announcement at its registry: *no violation*.

WYNEN - Belgium (No 32576/96)
Judgment 5.11.2002 [Section II]
(see below).

FAIR HEARING
Refusal of Court of Cassation to put preliminary question to Court of Arbitration: *no violation*.

WYNEN - Belgium (No 32576/96)
Judgment 5.11.2002 [Section II]
(see below).

ADVERSARIAL PROCEEDINGS
Alleged absence of opportunity to respond to submissions of public prosecutor: *no violation*.

WYNEN - Belgium (No 32576/96)
Judgment 5.11.2002 [Section II]
(see below).

EQUALITY OF ARMS
Rejection as out of time of supplementary memorial lodged by appellant with Court of Cassation: *violation*.

WYNEN - Belgium (No 32576/96)
Judgment 5.11.2002 [Section II]

Facts: The first applicant is a doctor and the second is an inter-regional hospital. The applicants were prosecuted before the criminal court following a complaint for installing heavy medical equipment without prior approval. The Court of Appeal reversed the judgment, which had acquitted the first applicant and cleared the second applicant. The Court of Appeal imposed a suspended fine with costs on the first applicant and held that the hospital was jointly and severally liable for payment. In their appeal on a point of law, the applicants requested the Court of Cassation to refer a question to the Administrative Jurisdiction and Procedure Court for a preliminary ruling. The applicants filed additional pleadings in which they set out fresh grounds of appeal. Sixteen days before the hearing before the Court of Cassation, the case was entered on the list of pending cases displayed at the registry and in the courtroom of the Court of Cassation, pursuant to the provisions of the Code of Criminal Investigations. The Court of Cassation held a hearing in public, of which the applicants claim not to have been informed. At the hearing, the court heard the judge-rapporteur, the representative of the Attorney General and then the lawyer representing the respondent to the appeal; the representative of the Attorney General was not present during the deliberations. Following the deliberations, the Court of Cassation dismissed the applicants' appeal, after declaring their further pleadings inadmissible as out of time, pursuant to article 420*bis*, paragraph 2, of the Code of Criminal Investigations, which provides that an appellant on a point of law is to lodge all pleadings within two months of the case being entered on the general list. The Court declared that the request for a reference to the Administrative Jurisdiction and Procedure Court for a preliminary ruling was inadmissible.

Law: Article 6(1) – a. As regards the inadmissibility of the further pleadings before the Court of Cassation – An appellant on a point of law must lodge all pleadings within two months of the case being entered on the list, whereas the respondent is not subject to a comparable time-limit and, in the present case, took five months to submit its own pleadings. In addition, that had the consequence of depriving the applicants of the possibility of replying in writing to the respondent's pleadings, since their further pleadings were declared inadmissible as out of time. However, such a possibility may prove essential, since the right to an *inter partes* procedure implies that one party is able to peruse the observations submitted by the other party and to discuss them. The Court is aware of the necessity, emphasised by the Government, not to prolong the proceedings unnecessarily by allowing successive written replies to the pleadings lodged, but the principle of equality of arms does not prevent the achievement of such an objective, provided that it is done without placing one party at a clear disadvantage. That was not so in the present case.
Conclusion: violation (four votes to three).
b. As regards notice of the hearing before the Court of Cassation – The date of the hearing before the Court of Cassation was displayed at the registry and in the courtroom of the Court of Cassation sixteen days before the hearing. The applicants were represented by four lawyers, all members of the Brussels Bar. The rules applicable to the matter are clear from the Code of Criminal Investigations; they were therefore accessible and were also sufficiently coherent and clear, so that, as legal practitioners, lawyers cannot legitimately claim not to have been aware of them. Furthermore, and in particular, there was a practice which allowed the parties and their counsel to request the registry of the Court of Cassation to inform them in writing of the date of the hearing or to obtain information by telephone. It is not unreasonable to require appellants wishing be personally informed of the date on which their case is to be heard to take advantage of this additional means of publicity. In those circumstances, the authorities did not make it impossible for the applicants to attend the hearing before the Court of Cassation.
Conclusion: no violation (unanimously).
c. As regards the failure to communicate in advance the pleadings of the representative of the Attorney General at the Court of Cassation and the fact that it was impossible to lodge a reply – Both the parties to the case and the judges and the public were informed of the nature and the terms of the pleadings of the representative of the Attorney General when he first presented them orally at the public hearing before the Court of Cassation. Accordingly, there is no breach of the principle of equality of arms. As regards the opportunity for the parties to the case to reply to the submissions of the representative of the Attorney General, under the principle of *inter partes* proceedings, the applicants could, had they attended the hearing, have either submitted their observations at the hearing, as the lawyer representing the respondent did, or request that the hearing be adjourned or, again, seek leave to file a memorandum for consideration by the court. The fact that the applicants and their legal representatives did not attend the hearing does not result in an impossibility attributable to the attitude of the authorities (see b. above).
Conclusion: no violation (unanimously).
d. As regards the Court of Cassation's refusal to refer a question to the Administrative Jurisdiction and Procedure Court for a preliminary ruling – The Convention does not guarantee, as such, the right to have a case referred by one national court to another national or international court for a preliminary ruling. It is consistent with the functioning of that mechanism for the court to determine whether it may or must refer a question for a preliminary ruling, while satisfying itself that the question must be resolved to enable it to resolve the dispute before it. Thus, it is not precluded that in certain circumstances a refusal by a national court hearing a matter at last instance may infringe the principle of a fair procedure, especially where such a refusal appears to be arbitrary. The Court of Cassation duly took into account the applicants' complaints on this point and also their request that it refer a question to the Administrative Jurisdiction and Procedure Court for a preliminary ruling. The Court of Cassation then ruled on the request by delivering an adequately reasoned

decision which does not appear to be arbitrary. Furthermore, the interpretation of domestic legislation is primarily a matter for the national courts.
Conclusion: no violation (unanimously).
Article 41 – The Court considers that the non-pecuniary harm sustained by the applicants is sufficiently repaired by the finding of a violation. It awards €5,000 in respect of the costs incurred by the applicants in being represented before it.

IMPARTIAL TRIBUNAL
Making of statements in press by judge dealing with case: *violation*.

LAVENTS - Latvia (No 58442/00)
Judgment 28.11.2002 [Section I]

Facts: In June 1995, the applicant was investigated in connection with the offence of sabotage as a result of his activities as Chairman of the board of directors of the largest bank in Latvia, whose insolvency had had serious consequences for the national economy and led to the ruin of thousands of individuals. He was charged with further offences contrary to banking and economic law and also with illegal possession of firearms. The applicant was placed in provisional detention in July 1995. Various steps relating to his detention and to the investigation were taken until October 1996, when the prosecutor issued the final charge. Between December 1996 and Mars 1997, the applicant was in hospital, under supervision. In June 1997, he was sent for trial before the Riga Regional Court and the trial began in October 1997. From that date, owing to serious health problems, the applicant was placed under house arrest with constant police supervision, until September 1998, when he was returned to prison; his applications for release were all rejected. In October 1997, the largest Latvian daily newspaper published an official joint communication from the Prime Minister and the Minister of Justice, in which they expressed their disagreement with the order placing the applicant under house arrest. During the same month, the judges of Riga Regional Court confirmed the custodial measure and withdrew from the case, invoking the pressure brought to bear by the Government. The case was then assigned to a differently constituted bench of that court. In October 1997, an order was made for seizure and examination of the applicant's correspondence, including his correspondence with his lawyers. While he was in the prison hospital, visits by his family were prohibited. Between April and June 2000, the applicant was transferred to a hospital outside the prison and he was able to meet his family. In September 2000, he was taken to the hospital in Riga central prison, but when it proved impossible to provide him with adequate medical treatment he had to be transferred to an ordinary hospital. In November and December 1999, the national press published statements by the President of the bench of Riga Regional Court dealing with the case. She expressed her views, in particular, on the applicant's numerous requests that she withdraw from the case and on the grounds of defence prepared by the applicant's lawyers, which she claimed not to understand. In August 2001, following a serious heart attack, the applicant was placed in the intensive care unit of a hospital in Riga, where he remained under supervision on the date on which the judgment was adopted. By a judgment of December 2001, the applicant was found guilty of the offences charged and sentenced to nine years' imprisonment. His appeal was pending on the date of adoption of the judgment.
Law: Article 6(1) (impartial tribunal) – in her statements published in the press, the President of the bench of Riga Regional Court dealing with the case criticised the applicant's means of defence. She also made predictions as to the outcome of the case and dismissed the possibility of a full acquittal. What is more, she expressed her astonishment at the applicant's persistence in pleading not guilty to all the charges and suggested that he prove his innocence. In the eyes of the Court, such statements do not constitute a mere "negative assessment of the applicant's case" but amount to adopting a definite position on the outcome of the case, with a clear preference for finding the accused guilty. Apart from the reasons which led the judge to express her views in that manner, her statements are not compatible with the requirements of

Article 6(1) and the applicant had the strongest reasons to fear that the judge lacked impartiality.
Conclusion : violation (unanimously).
Article 6(2) – In her first public interview, the President of the bench of Riga Regional Court dealing with the case stated that she did not yet know "whether the judgment [would] convict [the applicant] or acquit [him] in part". In the eyes of the Court, such an assertion clearly showed that the judge was already convinced of the applicant's guilt, at least on one of the charges, and that she precluded the possibility of finding him completely innocent. As regards the second public interview, the judge expressed her great astonishment that the accused should persist in pleading not guilty to all the charges. In particular, she drew the journalists' and readers' attention to one charge where the applicant's approach seemed most incomprehensible and illogical. Such assertions are also tantamount to recognising that the applicant was guilty. Moreover, the Court can only express its surprise that the judge should suggest that the accused prove to the court that they were not guilty. Owing to its general nature, such a statement is contrary to the very principle of the presumption of innocence.
Conclusion : violation (unanimously).
Article 8 – a. As regards the seizure and examination of the applicant's correspondence: Article 176 of the Code of Criminal Procedure leaves too much latitude to the national courts: it merely identifies the categories of offences that might justify such a measure, designates the authority competent to apply it and defines the precise procedure for the measure. On the other hand, it does not indicate either the duration of the measure or even the reasons that might justify it; furthermore, the checking of the applicant's correspondence, which was ordered in 1997, continued to apply on the date of adoption of the judgment. The law in question does not indicate with sufficient clarity the extent and procedure for the exercise of the discretion of the authorities in the sphere in question. The applicant did not enjoy the minimum level of protection desired by the pre-eminence of the law in a democratic society.
Conclusion : violation (six votes to one).
b. As regards the ban on family visits in prison: the applicant's wife and daughter were not allowed to visit him during three separate periods, the longest of which was one year and seven months. What is more, that ban – which constitutes an interference – was absolute. Furthermore, before being returned to prison, the applicant had spent more than eleven months under house arrest, where his contacts with his family were unlimited; it does not appear that the applicant made any attempt during that period to take advantage of those contacts to arrange any collusion or to hinder the investigation of his case. In those circumstances, the application of such a strict measure was not really indispensable in order to attain any legitimate aims that might have been pursued. That measure was therefore not necessary in a democratic society.
Conclusion : violation (six votes to one).
The Court holds, by six votes to one, that there has been a violation of Articles 5(3) and 6(1) (reasonable time) and, unanimously, that there has been a violation of Articles 5(4) and 6(1) (tribunal established by law).
Article 41 – The Court awards the applicant the sum of €15,000 for costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Making of public statements about case by presiding judge: *violation*.

LAVENTS - Latvia (No 58442/00)
Judgment 28.11.2002 [Section I]
(see Article 6(2), above).

PRESUMPTION OF INNOCENCE
Refusal of compensation for detention on remand, following discontinuation of proceedings, on account of failure to demonstrate innocence: *communicated*.

CAPEAU - Belgium (No 42914/98)
[Section I]

At the end of March 1994, the applicant was arrested in connection with an inquiry into arson and kept in preventive detention until the end of April 1994. It was then decided that no further action would be taken. The applicant claimed compensation for unnecessary preventive detention, relying on the Law of 13 March 1973. The Minister of Justice rejected his claim, taking the view that the applicant had not put forward any factual or legal circumstances to show that he was innocent for the purposes of the law. According to the Minister, such a requirement was justified, since a decision to take no further action does not prevent the case from being re-opened should new evidence or developments come to light. The applicant appealed but his appeal was dismissed.
Communicated under Article 6(2), taken on its own and in conjunction with Article 14.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction based partly on testimony taken abroad and testimony of intelligence officials who did not disclose their sources: *communicated.*

HAAS - Germany (Nº 73047/01)
[Section III]

The applicant was arrested in Germany in March 1992 on suspicion of having acted as an accomplice to the hijacking in 1977 by a Palestinian terror group of a Lufthansa aircraft en route from Palma de Mallorca to Frankfurt/Main. She was released some six weeks later when the warrant was quashed. Further investigations led to her re-arrest in November 1994. In May 1995, she was charged with a series of very serious offences in relation to the hijacking. In addition, she was charged with having been an accomplice to the kidnapping of a leading German industrialist, who was abducted and killed by the members of the Red Army Faction in 1977. The many hearings took place between May 1996 and November 1998. The applicant was convicted by the Frankfurt/Main Court of Appeal of having aided and abetted an assault on air traffic, the taking of hostages, extortionate kidnapping and attempted murder on two counts regarding the 1977 hijacking. In relation to 1977 kidnapping and murder, the court found that her participation could not be proven.
In its judgment, the court accepted as credible the evidence of a person who was, at that time, serving a prison sentence in Beirut and who had been interviewed there by two German police officers, with the assistance of the Lebanese police. The witness was subsequently questioned under letters rogatory by the Beirut Regional Court, where he adhered to his original statement. He admitted to having been a member of the Palestinian terror group. He stated that one week before the hijacking, the applicant had transported weapons and explosives from Palma de Mallorca, and that he had accompanied her and her young daughter. These weapons and explosives were then used to hijack the aircraft. The court considered that the witness had been properly informed of his right under German law to remain silent, and that the means employed to obtain his statement were not unlawful. It underlined the need for caution in considering statements taken from a witness who had not been heard at the trial. However, this testimony was corroborated by other evidence. The court heard from a high-

ranking German intelligence official as well as from a high-ranking official of the Federal Office for Criminal Investigations, both of whom indicated that the witness's version of events was borne out by other sources. However, disclosure of these sources was refused for security reasons. Other evidence included the passenger list from the flight in question, hotel records from Palma de Mallorca, testimony from another witness, B., that the applicant was not in Aden at the end of September 1997 as she maintained, but in Baghdad, where the hijacking was planned. In determining the sentence, the court took account of the lapse of time since the hijacking, as well as the length of the investigations and the trial itself. The applicant was sentenced to five years' imprisonment.
The applicant appealed to the Federal Court of Justice, objecting in particular to the use of hearsay evidence and the refusal to take further evidence as requested by the defence. The court rejected the appeal, finding that the testimony taken in Beirut had been confirmed by numerous other elements of evidence. It considered that the trial court's assessment of the evidence could not be objected to. The non-disclosure of the sources relied on by the intelligence who testified did not give rise to a problem, since their evidence had been treated as merely corroborative. On the other hand, the fact that an oath had been administered to witness B. (a Red Army Faction member) was a procedural flaw, since he could be seen as accessory to the crimes. Having regard to all the circumstances, though, this procedural flaw was irrelevant.
The applicant lodged a complaint with the Federal Constitutional Court, alleging that the proceedings against her had been unfair, in particular the taking and assessment of the main evidence. The court refused to entertain her complaint on the basis that it raised no issue of fundamental interest, since the relevant issues were already settled in constitutional case law. Moreover, examination of the complaint was not necessary to protect the applicant's constitutional rights, although the procedural rulings at the trial might be seen as close to the borderline of what could be expected under the Constitution. The trial court had not based itself solely on the testimony taken in Beirut or that of the intelligence officials, but had also relied on important circumstantial evidence such as B.'s testimony. The Federal Court of Justice's finding that the proceedings, taken as a whole, had not been unfair was unobjectionable.
Communicated under Article 6.

ARTICLE 8

PRIVATE LIFE
Mandatory drug tests for employees : *inadmissible.*

MADSEN - Denmark (Nº 58341/00)
Decision 7.11.2002 [Section I]

The applicant was employed as a passenger assistant on a Danish ferry from 1998 to 2000. Although his work was not directly concerned with the operation of the vessel, he was, like all crew members, part of the safety crew. In 1999, his employer adopted new regulations concerning the possession or consumption of drugs or alcohol by staff when on board. These included the rule that any member of the crew, including the captain, could be obliged to submit to random urine testing at least once a year. Violation of the regulations on this matter would lead to immediate dismissal. All employees received a copy of the regulations and were required to confirm in writing that they understood them. Two trade unions indicated their opposition to the regulations and instituted legal proceedings to overturn them. In September 1999, the applicant was requested to provide a urine sample behind a screen in a room in which the person hired to conduct the test was present. The test results were negative.

The Court of Arbitration ruled in favour of the ferry company, finding that the objective of the regulations was justified, they applied to all members of crew and that the manner in which the test was carried out did not infringe the dignity of crew members or interfere with their lifestyles when on leave.
Inadmissible under Article 8 – The Court proceeded on the assumption that the obligation to submit to a urine test was an interference by a public authority within the meaning of Article 8(1). As to whether the testing was "in accordance with law", the Court considered the specificity of the Danish labour model, the key principle of which is the autonomy enjoyed by the social partners in the field of employment and industrial relations. The habitual form of regulation is therefore collective agreement rather than legislation. In the instant case, the Court considered that the regulations had been issued on the basis of the employer's right to control work, a fundamental principle of Danish labour law recognised since the September Agreement of 1899 as well as in many subsequent collective agreements and in national case law. This legal basis was sufficient for the purpose of Article 8. The aims of the regulations were legitimate: public safety or the protection of the rights and freedoms of others. As to whether the regulations were "necessary in a democratic society", the Court referred to the clearly detrimental effect of alcohol or drugs on a worker's performance. It was absolutely essential for the safety of a ferry that crew members be capable of carrying out their designated safety functions at all times. Furthermore, it noted from the file that there was some evidence that other crew members had possessed or used drugs. As for respect for crew members' private life when not on duty (the working schedule providing for 16 days on-duty followed by 8 days off-duty), the urine test would only detect substances ingested over the previous 48 hours. Given that in the year leading up to his resignation the applicant had been tested just once, the regulations were not applied in a disproportionate manner: *manifestly ill-founded.*

PRIVATE AND FAMILY LIFE
Refusal to allow remand prisoner to attend parents' funerals: *violation*.

PŁOSKI - Poland (Nº 26761/95)
Judgment 12.11.2002 [Section IV]

Facts: While the applicant was in detention on remand on a charges of theft, both his parents died within a few weeks of each other. The applicant's requests to be allowed to attend their funerals were rejected on the ground that he was a habitual offender whose return could not be guaranteed.
Law: Article 8 – The interference with the applicant's private and family life was in accordance with the law and pursued the legitimate aims of the interests of public safety and the prevention of disorder or crime. However, the reasons given by the domestic authorities were not persuasive. In particular, the concern that the applicant might abscond could have been addressed by escorted leave, which was apparently not even considered although provided for by domestic law. Moreover, the charges did not involve violent crimes and the applicant could not be considered as a prisoner without any prospect of being released. Taking into account the seriousness of what was at stake, refusal of permission to attend the funerals could be justified only if there were compelling reasons and no alternative solution such as escorted leaves could be found. While Article 8 does not guarantee a detained person an unconditional right to attend a relative's funeral, in the particular circumstances of the case the refusals were not proportionate to the aims pursued.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 1,500 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

FAMILY LIFE
Refusal to allow natural father to recognise child : *no violation*.

YOUSEF - Netherlands (Nº 33711/96)
Judgment 5.11.2002 [Section II]

Facts: The applicant and R. had a daughter, S., born in 1987. The applicant moved in with R. and S. a few months later and lived with them for about a year. He then went to the Middle East for around two and a half years, during which time his contact with R. and S. was limited to some letters. In 1993, R., who had a terminal illness, made a will in which she expressed the wish that after her death her brother should have guardianship of S. The applicant unsuccessfully brought proceedings for an order that R. give him permission to recognise S. Following R.'s death, S. was placed with another of R.'s brothers and his family, in accordance with a supplementary will. The applicant saw S. every three weeks and was later granted a right of access. However, his request that a deed of recognition be drawn up and registered was refused and his appeals were dismissed. The Supreme Court considered that it was not in S.'s best interests to be removed from the family with which she lived, which would be the result of allowing the applicant to recognise her.
Law: Article 8 – The applicant's biological paternity was not in dispute and he had lived with S. and R. for a certain period after the birth. Moreover, he had continued to have contacts with S. after R.'s death. There was therefore "family life" and the denial of the right to recognise S. constituted an interference. The interference was in accordance with national law, as interpreted by the domestic courts, and pursued the legitimate aim of protecting "the rights and freedoms of others". As to the necessity of the interference, while the result of the decisions of the domestic courts was that no legal family tie between the applicant and his child was recognised, they did not totally deprive him of family life with her, since he continued to have access to her pursuant to court decisions. Thus, it could not be said that his Article 8 rights were disregarded. The courts considered that the changes involved in allowing the applicant to recognise S. – namely, that she would go and live with him and automatically change her surname – would be detrimental to her interests. In the balancing of interests, those of the child must prevail and in the present case there was no indication that the domestic courts had failed to take the applicant's rights sufficiently into account or decided in an arbitrary manner.
Conclusion: no violation (unanimously).

FAMILY LIFE
Enforcement of parental rights: *communicated*.

ZAWADKA - Poland (Nº 48542/99)
[Section III]

The applicant's son, P., was born in 1994. By 1996, his relationship with P.'s mother, O., had broken down. While the applicant was abroad, O. left their common home and did not permit the applicant to have contact with P. The applicant subsequently took P. back to his home. In the ensuing months and years, many sets of legal proceedings were instituted by each parent as a result of each party's determination to be granted custody of P. and to greatly restrict the other party's parental rights. A friendly settlement was agreed in November 1996, in accordance with which P. was to reside with O. but also to spend some days with the applicant each month, but the arrangement failed. First O. denied the applicant contact with P., and then the applicant forcibly removed P. from O.'s care (May 1997). He defied a court order made in July of that year to return P. to O.'s care. The first judicial determination of the dispute (February 1998) saw the district court limit the applicant's parental rights, principally on account of his defiance of court orders and his disregard for the interests of the child. In

June 1998, the regional court deprived the applicant of his parental rights on the grounds relied on by the district court to limit those rights four months before. It was only in August 1998 that P. was finally returned to O. The applicant complained that O. disregarded his right to visit P. and sought assistance from the court in enforcing his right. He was informed in December 1998 that none of the court guardians was willing to assist him in this regard. He also sought unsuccessfully, in 1999, an order depriving O. of her parental rights. In May 2000, O. left the country with P. and moved to London. The most recent ruling, in August 2001, was to stay the enforcement of the orders concerning the applicant's contacts with P. since O.'s whereabouts were unknown.
Communicated under Article 8.

FAMILY LIFE
Refusal of request to remove late husband's ashes to different cemetery: *communicated*.

POHLUA - Sweden (Nº 61564/00)
[Section III]

The applicant was born in 1913. Her husband died in 1963 and his ashes were buried in the city where they resided at that time, Fagersta. The applicant moved to another town in 1980 to be closer to her children. In 1996, she requested the removal of her husband's urn to her family plot in Stockholm, where she herself intends to be buried. She indicated that the family no longer had any connections with Fagersta and that her children were all in agreement with the move. The cemetery authorities denied her request, relying on the relevant provisions of the Act on Burial. The applicant appealed to the County Administrative Board, which upheld the contested decision. The Board found that the right to peaceful rest provided for in the Act on Burials could only be overridden where there were special reasons. The wishes of the deceased should always be taken into account. Moreover, there should normally have been some connection between the deceased and the place to which removal is intended. The applicant's husband had not expressed any wish as to his place of burial. Nor had he had any connection with Stockholm during his life. Leave to appeal was refused by both the Administrative Court of Appeal and the Supreme Administrative Court.
Communicated under Article 8.

FAMILY LIFE
Prohibition on family visits to prisoner: *violation*.

LAVENTS - Latvia (No 58442/00)
Judgment 28.11.2002 [Section I]
(see Article 6(2), above).

CORRESPONDENCE
Control of prisoner's correspondence: *violation*.

LAVENTS - Latvia (No 58442/00)
Judgment 28.11.2002 [Section I]
(see Article 6(2), above).

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Refusal to grant a building permit for place of worship : *admissible*.

VERGOS - Greece (No 65501/01)
Decision 21.11.2002 [Section I]

The applicant belonged to the religious community of "True Orthodox Christians" ("TOC"), who observe the Julian calendar for religious feasts. In June 1991, the applicant applied to the planning authorities for permission to build a house of prayer for the TOC on his land. Permission was, and continues to be, refused. In January 1992, the planning authorities refused permission on the basis of a prefectorial decision suspending planning permission in the area in the interest of protecting antiquities. In November 1993, the authorities informed the applicant that in order to obtain planning permission he must "define the area" within the meaning of the applicable rules. The application submitted in compliance with that requirement was refused by the Mayor in 1995; the decision stated that the applicant was the only inhabitant of the village to belong to the community of TOC, that construction of the house of prayer might provoke the religious feelings of other Christians and thus lead to disruption, that such a house already existed in the neighbouring village and that the applicant's land was not appropriate for such construction. The action which the applicant brought against that decision was dismissed at first instance in 1995, whereupon the applicant brought the matter before the Council of State. By judgment of July 2000, the Council of State dismissed the action on the ground that, as the applicant was the only follower of the TOC in his village, there was no social need to justify altering the existing district plan by granting permission for the construction of a house of prayer such as that sought.
Admissible under Articles 6(1) (reasonable time) and 9.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of mayor of Istanbul by State Security Court for speech made in south-east of country: *communicated*.

ERDOĞAN - Turkey (No 47130/99)
Decision 28.11.2002 [Section III]

At the material time, the applicant was Mayor of the city of Istanbul, having been elected from the list of the *Refah* (Prosperity Party, "PP"). That party was dissolved by the Constitutional Court. Following a public speech which the applicant made in south-east Turkey, he was prosecuted before a National Security Court in Diyarbakir for inciting hatred and enmity, on the basis of a distinction founded on adherence to a religion. The National Security Court found the applicant guilty and sentenced him to six months' imprisonment and a fine. The Court of Cassation upheld the decision. The applicant's action for a retrial was dismissed and, as a legal consequence of his conviction, he was removed from his post as Mayor.
Communicated under Articles 6(1) (independent and impartial tribunal, fair hearing) and 10 taken on its own and in conjunction with Article 14.

FREEDOM OF EXPRESSION
Publisher fined for naming police officer under investigation regarding death of asylum seeker: *inadmissible.*

"WIRTSCHAFTS-TREND" ZEITSCHRIFTEN-VERLAGS GmbH - Austria
(Nº 62746/00)
Decision 14.11.2002 [Section III]

The applicant company owns and publishes the weekly news magazine Profil. In June 1999, an article appeared in Profil concerning the death of a Nigerian national while being forcibly deported by three police officers. The name of one of the officers (K.) as well as his job title appeared above the headline. K. sued the applicant company for compensation under the Media Act. The Regional Court awarded K. compensation of ATS 25,000 (EUR 1,816). It noted that he was, at the time of publication of the article, suspended from duty pending a criminal investigation and disciplinary proceedings. The publication of his name had led to his being isolated within the local community and to arguments over the incident with family and friends. The court found that disclosure of K.'s full name had violated his legitimate private interests. The applicant company appealed to the Court of Appeal, which ruled that while the various issues involved (treatment of asylum seekers, behaviour of the police) were of public interest, deportation practices could have been criticised without disclosing K.'s identity. The public interest in disclosure of the identity of the person concerned was thus outweighed by K.'s legitimate personal interests.
Inadmissible under Article 10: The measure constitued an interference with the applicant company's right to freedom of expression. The interference was prescribed by law and pursued the legitimate aim of protecting the reputation or rights of others. As to the necessity of the measure, the subject matter of the article was an issue of public concern and part of a political debate over the lawfulness of deportation practices in Austria. However, the article included information on criminal proceedings against the police officers, which were pending at an early stage. The applicant company was not prevented from reporting about all details concerning the issue except for the full name of K. The domestic courts took into consideration the public interest in the circumstances surrounding the death and the alleged abusive exercise of authority by the police officers. They weighed this public interest against the private interests of K. and found that disclosure of his identity had negatively affected his private and social life, thus infringing his legitimate interests. Having regard to the early stage of the criminal proceedings against K., care had to be taken to respect the presumption of innocence and prevent trial by the media. The reasons given by the domestic courts were sufficient for the relatively modest fine and the interference with the applicant company's rights could not, therefore, be regarded as disproportionate in the circumstances of the case: manifestly ill-founded.

FREEDOM OF EXPRESSION
Applicants denied permission to conduct campaign inside shopping centre: *admissible.*

APPLEBY and others - United Kingdom (Nº 44306/98)
Decision 15.10.2002 [Section IV]

The applicants are members of a local environmental group who complain that they were denied the right to meet and to impart information to the public in the centre of their town. The place to which they sought access was within an area owned by a private company, having been originally developed by a body established by law and then sold on in 1987. The town centre comprises hypermarkets, shops, adjacent car parks and walkways. A number of public services are accommodated within this area, in premises that belong to the relevant public body (police, post office, social security etc.).

The applicants formed an environmental group in 1997 to campaign against a decision by their local authority to grant planning permission to a college to build on part of a public playing field near the town centre. In 1998, the first applicant set up a stand in the entrance to the shopping mall in the town centre, seeking to alert the public to the loss of a public amenity and to gather signatures for a petition to the local authority. Security guards employed by the owner informed her that the company would not allow her or her assistants to collect signatures on any part of its property. A shop manager permitted her to set up her stand in his store in March 1998, and some more signatures were collected but permission was not granted the following month when the applicant wished to collect signatures for a further petition. The applicants wrote to the manager of the shopping centre seeking permission, but he indicated that the owner wished to maintain a stance of strict neutrality on political and religious issues. Consequently, permission to carry out a petition anywhere on the company's property was denied. The applicants continued their campaign in other, less-frequented parts of the town. They state that although their group was denied access to the town centre, other groups have been permitted to operate there, promoting various causes (Salvation Army, blood transfusion, British Gas etc.). In addition, the local authority ran a consultation campaign in the town centre in 2001 regarding the leadership choices for the future of the council, as required by the Local Government Act: *admissible.*

LICENSING OF BROADCASTING ENTERPRISES
Refusal of licence to broadcast programme on cars via cable television: *no violation*.

DEMUTH - Switzerland (Nº 38743/97)
Judgment 5.11.2002 [Section II]

Facts: The applicant requested a licence for his company to broadcast a television programme about cars via cable television. The request was refused by the Federal Council, which considered that the programme was not able to offer "the required valuable contribution to comply with the general instructions for radio and television" as it focused mainly on "entertainment or on reports about the automobile". The Radio and Television Act provides, *inter alia*, that radio and television must contribute to "general, varied and objective information to the public."
Law: Article 10 – The third sentence of this provision permits States to regulate, by means of a licensing system, the way in which broadcasting is organised on their territories. While technical aspects are important in this respect, the granting of a licence may also be made conditional on other considerations, such as the nature and object of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and international obligations. The licensing system in Switzerland, which includes instructions as to the purposes, functions and contents of television programmes, is capable of contributing to the quality and balance of programmes and is therefore consistent with the third sentence of Article 10(1). In the present case, it was not disputed that the interference had a legal basis. Moreover, it had the legitimate aim of contributing to the quality and balance of programmes, even if this aim did not correspond directly to any of the aims set out in Article 10(2). As to the necessity of the interference, the extent of the domestic authorities margin of appreciation had to be assessed in the light of the company's objectives. In that respect, while it could not be excluded that certain aspects of the proposed broadcast would have contributed to the public debate on the various aspects of a motorised society, the company's purpose was, the Court's opinion, primarily commercial. The margin of appreciation is broader in the field of commercial broadcasting and in view of the strong impact of audio-visual media on the public domestic authorities may aim at preventing a one-sided range of commercial programmes on offer. The particular political and cultural structure of Switzerland, a federal State, necessitated the application of sensitive political criteria such as cultural and linguistic pluralism, balance between lowland and mountain regions and a balanced federal policy and such such factors, encouraging pluralism in broadcasting, could

legitimately be taken into account when authorising radio and television broadcasts. It did not appear unreasonable for the Federal Council to find that the conditions set out in the legislation had not been met. Furthermore, the decision was not categorical and did not exclude a broadcasting licence once and for all, the Federal Council having indicated that a licence could be granted if the content of the programme further contributed to the aims set out in the legislation. Consequently, it could not be said that the decision exceeded the domestic authorities' margin of appreciation.
Conclusion: no violation (6 votes to 1).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Refusal of permission to collect signatures for a petition inside a shopping centre: *admissible.*

APPLEBY and others - United Kingdom (Nº 44306/98)
Decision 15.10.2002 [Section IV]
(see Article 10, above)

ARTICLE 35

Article 35(1)

SIX MONTH PERIOD
Delay between date of letter of introduction of application and posting.

ARSLAN - Turkey (Nº 36747/02)
Decision 21.11.2002 [Section III]

On 9 October 2001, the applicant was arrested and placed in custody. On 12 October, he was brought before a judge who on 13 October ordered that he be placed in provisional detention. The applicant's lawyer dated the application 12 April 2002 and posted it on 19 April.
Article 35(3) – Where there is no remedy in domestic law, the six-month period begins to run when the person concerned becomes aware of the contested act. The applicant, who complains that it was impossible to appeal to a national authority in order to challenge his arrest and the circumstances in which he was held in custody, should have submitted his application with six months of 13 October 2001, the date on which his period in custody came to an end, i.e. no later than 13 April 2002. Although the applicant's counsel dated the letter introducing the application 12 April 2002, he did not post it until 19 April. On the assumption that the applicant's counsel drafted the letter introducing the application on 12 April, he should have posted it no later than the day following the date of the letter, i.e. on 13 April 2002. The applicant has provided no explanation for that six-day gap. The date of introduction of the application is therefore the date on which it was posted, 19 April 2002: out of time.

Article 35(3)

RATIONE TEMPORIS
Search of premises and seizure of files: *incompatible ratione temporis*.

VEEBER - Estonia (no. 1) (Nº 37571/97)
Judgment 7.11.2002 [Section III]

Facts: The premises of the applicant's company were searched by the police in the context of a criminal investigation and files with around 10,000 documents were seized for examination by State auditors. The applicant complained to the public prosecutor, submitting that the wholesale nature of the seizure and the failure to make an individual record of the items was contrary to the requirements of the Code of Criminal Procedure. He was informed that he was free to consult the documents and the public prosecutor instructed the police to make a record of the individual documents and to return documents which were not relevant to the investigation. A number of files were later returned. The applicant's complaint to the Administrative Court was dismissed. The court held that it did not have jurisdiction to review the actions of the police in criminal proceedings, since such supervision rested with the public prosecutor. The Supreme Court refused leave to appeal. The applicant was subsequently convicted in criminal proceedings. The Supreme Court found that the procedures for seizing documents had not been strictly followed but considered that the infringement was not substantial.
Law: Article 8 – The search and seizure took place before entry into force of the Convention in respect of Estonia and were instantaneous acts which did not create a continuing situation. The court judgments were given after the relevant date but divorcing them from the events would amount to giving retroactive effect to the Convention. The Court was therefore precluded, *ratione temporis*, from examining this complaint. Moreover, it was unnecessary to examine whether the applicant had exhausted domestic remedies in that respect. On the other hand, it was necessary to consider whether he had exhausted with regard to the retention of the files after the relevant date. The applicant had not contested the retention before any domestic body but he could have complained to the public prosecutor and there was no indication that he would not have had any prospects of success. He had therefore failed to exhaust domestic remedies with regard to the retention of files.
Article 6(1) – The applicant's claim before the Administrative Court was covered by the civil limb of Article 6, being designed to seek protection of individual rights from interference by the executive authorities. However, the administrative courts declined jurisdiction on the ground that supervision of police actions rested with the public prosecutor, and although further appeal to the State Public Prosecutor and ultimately to the administrative courts was open, the scope of the courts' review was limited to assessing the lawfulness of the State Public Prosecutor's acts. The could not examine questions of fact and law in relation to the actions of the police and could not quash those measures. Thus, they could not have afforded the applicant redress. The applicant's complaint was also examined in the context of the criminal proceedings against him but the assessment was relevant only to the determination of the criminal charge and the criminal courts could not quash the impugned acts or grant appropriate relief. Finally, as regards the possibility of civil proceeidngs for damages against the State, the examples of domestic case-law submitted by the Government did not deal with professional or business activities or premises and moreover related to a period subsequent to the events at issue. The existence of a remedy before the civil courts at the material time had therefore not been established with sufficient certainty.
Conclusion: violation (6 votes to 1).
Article 13 - In view of the foregoing conclusion, it was not necessary to examine this complaint.
Conclusion: not necessary to examine (unanimously).

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction. It made an award in respect of costs and expenses.

ARTICLE 43

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

ÖNERYILDIZ - Turkey (No 48939/99)
Judgment 18.6.2002 [Section I (former composition)]

AZINAS - Greece (Nº 56679/00)
Judgment 20.6.2002 [Section III]

EZEH and CONNORS - United Kingdom (Nº 39665/98 and Nº 40086/98)
Judgment 15.7.2002 [Section III (former composition)]

ARTICLE 44

Article 44(2)(c)

On 8 November 2002 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

SELİM SADAK and others - Turkey (Nos 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95)
Judgment 11.6.2002 [Section IV]

OLIVIEIRA - Netherlands (Nº 33129/96)
Judgment 4.6.2002 [Section I (former composition)]

SOVTRANSAVTO HOLDING - Ukraine (No 48553/99)
Judgment 25.7.2002 [Section IV]

ORHAN - Turkey (Nº 25656/94)
Judgment 18.6.2002 [Section I (former composition)]

H.E. - Austria (Nº 33505/96)
Judgment 11.7.2002 [Section I]

ZWIERZYNSKI - Poland (Nº 34049/96)
Judgment 2.7.2002 (just satisfaction) [Section I (former composition)]

PIALOPOULOS - Greece (Nº 37095/97)
Judgment 27.6.2002 (just satisfaction) [Section I]

DESMOTS - France (Nº 41358/96)
Judgment 2.7.2002 [Section II]

SEGUIN - France (Nº 42400/98)
Judgment 16.4.2002 [Section II]

MARKASS CAR HIRE LTD. - Cyprus (Nº 51591/99)
Judgment 2.7.2002 [Section II]

RAJCEVIC - Croatia (Nº 56773/00)
Judgment 23.7.2002 [Section I]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Obligation to return, without compensation, of property acquired in good faith under the Communist regime by voluntary donation and for value: *violation*

ZVOLSKÝ and ZVOLSKÁ - Czech Republic (No 46129/99)
Judgment 12.11.2002 [Section II]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Level of compensation for loss of property situated in GDR, and length of the proceedings: *communicated*.

LEUSCHNER - Germany (No 58623/00)
[Section III]

In 1990 the applicant sought restitution of his land in the GDR, which had belonged to him before it was acquired in 1987 by a couple from the GDR. In June 1996, the Office for the settlement of unresolved property matters in the town of Magdeburg decided to reject the request for restitution of the land but to award the applicant compensation for the loss of the land. Restitution of the land was not possible because the current owners had acquired it in good faith, within the meaning of the applicable law. In July 1996, the applicant submitted a claim for compensation for the loss of his property. The proposed compensation presented by the Office in 1999 envisaged compensation of DEM 67,000 (EUR 34,256.56). In June 1999, the applicant applied to Magdeburg Administrative Court for legal aid to bring an action for failure to act against the Office. He enclosed with his application a draft action in which he maintained that the duration of the administrative procedure, nine years, was not justified, even though the offices for the settlement of unresolved property matters had received a large number of applications for restitution and compensation. In August 1999, the Administrative Court dismissed the applicant's application. It stated that it had been necessary to suspend the procedure owing to the large number of claims for restitution pending before the Office. The Office had first of all to determine applications in principle before proceeding, in a second procedure which required full investigations, to determine the amount of compensation for each applicant. The court further stated that if it granted the applicant's application it would have to grant the applications of all the other persons in the same situation who had submitted requests to the administrative authorities on the same subject. That would mean that the excessive workload of the offices for the settlement of unresolved property matters would be transferred to the administrative courts, which would be of no help to anyone. The fact that the applicant had made application to the Magdeburg Office in 1990 and that he had reached a certain age could not be taken into account, since many other applicants were in the same position. Following a circular from the Federal Minister of Finance in August 1999, the

proposed decision on compensation was revised. In November 1999, the Federal Constitutional Court decided not to admit the applicant's action. In December 1999, the decision of the Administrative Court was upheld.
Communicated under Articles 6(1) (access to a tribunal) and 1 of Protocol No 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Obligation for an Italian company to pay security to the Turkish court dealing with its case, notwithstanding the provisions of a convention ratified by Italy and Turkey: *communicated*.

FINTECA - Turkey (No 70493/01)
[Section III]

The applicant is an incorporated company having its registered office in Italy. A dispute arose between it and a Turkish electricity production company which had engaged it to construct a hydro-electric plant. The applicant sued the Turkish company for damages for breach of contract. The Turkish company claimed damages for the consequences of the unlawful cancellation of the contract. The Turkish commercial court ordered the applicant to provide a security in order, *inter alia*, to guarantee the costs and expenses of the proceedings and any damages awarded to the Turkish company. By interlocutory order, the court set the amount of the security at 17,846,830 US dollars and 532,127,944 Italian lire, i.e. 20% of the sums claimed by the applicant. The applicant none the less maintained that under the Convention on Civil Procedure concluded at the Hague and ratified by Turkey it could not, as claimant in the proceedings, be required to provide a security for any purpose on the ground that it was a foreign party or that it was not habitually resident or resident in Turkey. Following the rejection of the objections lodged by the applicant, the security was deposited in a blocked account in Turkey.
Communicated under Article 6(1) and Article of Protocol No 1.

DEPRIVATION OF PROPERTY
Deprivation of sole property and residence, acquired under the Communist regime, pursuant to the law on restitution: *violation*.

PINCOVÁ and PINC - Czech Republic (No 36548/97)
Judgment 5.11.2002 [Section II]

Facts: In 1967 the applicant and her husband bought a woodland house with a barn and a stable (the second applicant is their son, who in the meantime has become co-owner) of which they were tenants from its owner, a State undertaking. The asset had been conveyed to the State undertaking under the Communist regime, by confiscation without compensation, under the Law revising the first property reform. In December 1992, after the entry into force of Law No 229/1991 on land ownership of the Czech Republic, the son of the owners of the confiscated property applied for its restitution. The court ordered an expert report in order to establish whether the valuation of the property in 1967 had complied with the rules in question, since restitution was available, in particular, where the property had been acquired at a price lower than that corresponding to the regulations on prices then in force. The expert considered that the valuation of the property in 1967 was not entirely consistent with the legislation then in force. He therefore decided to carry out a full revaluation, applying the then legislation and relying on the state of affairs as described during the proceedings, in order to be able to compare the two evaluations and quantify the difference between them. The applicants submitted that the evaluation in the export report relating to the inhabitable part of the property was practically the same as the 1967 valuation, as the difference was due solely to the valuation of the barn and the stable. The court granted the claim of the son of the former owners and decided to transfer the right of ownership of the disputed property to him.

The court held that the conditions of Article 8-1 of the Law on the ownership of land were satisfied because, in 1967, the applicants had acquired the property at below the real cost, namely the price corresponding to the rules applicable at the material time. It noted that the difference corresponded to a quarter of the real cost of the property. The applicants appealed. Their appeal was dismissed and they brought the matter before the Constitutional Court. They complained, in particular, that they had been deprived of their right of ownership owing to the difference found between two prices calculated according to two different methods. The applicants' application for the proceedings to be reopened was also dismissed. In 1997, the Constitutional Court dismissed the action. The applicants received reimbursement from the Ministry of Agriculture of the purchase price paid in 1967 and also of the amount paid to establish the personal use of the land. Reimbursement of the reasonable costs incurred by the applicants in maintaining the property was deferred, on the other hand, because they disagreed with the State as to the rate applicable. In the absence of payment of the sum which the State had said it was prepared to pay, the applicants brought court proceedings. On the date of adoption of the judgment, the new owner of the property had not proposed alternative housing to the applicants, who were still living in the house, and had brought an action for payment of arrears of rent, plus interest, which was pending. Likewise, the proceedings brought by the applicants for the purpose of determining the amount to be reimbursed to them in respect of the costs incurred in maintaining the property were pending.

Law: Article 1 of Protocol No 1 – The deprivation of possessions suffered by the applicants was provided for by law, since it was based on the Law on land ownership which, subject to a number of conditions, authorised the dispossession of assets in the context of the restitution of certain assets. Its aim is to mitigate the effects of economic wrongs caused under the Communist regime, and the Court accepts that the Czech State deemed it necessary to resolve that problem, which it considered harmful to its democratic regime. The general objective of the Law therefore serves a purpose of public utility. The general objective of the legislation on restitution corresponds to a legitimate aim and to a means of ensuring the legality of legal transactions and of protecting the socio-economic development of the country. It is necessary, however, to ensure that the mitigation of the old infringements does not give rise to new disproportionate wrongs. To that and, the legislation should make it possible to take account of the particular circumstances of each case, so that persons who acquired their assets in good faith are not required to bear the burden of the State which had previously confiscated the assets. The applicants had acquired their assets in good faith, without being aware that the assets had previously been confiscated and without being able to influence the transaction procedure or the purchase price. In addition, it appeals that the finding of the national courts that the applicants had acquired the property at a price lower than the statutory price is primarily due to a different estimate of the non-residential parts of the property. In examining the burden borne by the applicants, the Court is not required to rule on the way in which the national courts should have set the amount of the compensation. However, the purchase price paid in 1967 and reimbursed to the applicants cannot bear a reasonable relationship with the value thirty years later. Furthermore, the house in question provided the applicants with the only possibility of housing; when the decision to restore it to its previous owner was taken, they had lived there for forty two years. The applicants are also in an uncertain, or indeed a delicate, social situation. Following reimbursement of the purchase price, they are not in a position to buy another home. Admittedly, they have not been forced to leave the house, but it has proved impossible for them to claim the right to alternative housing before the courts. In addition, the new owner of the property appears to be taking advantage of his position of strength vis-à-vis the applicants. Accordingly, the “compensation” awarded to the applicants did not take account of their personal and social situation and the applicants were not granted any sum in respect of the non-pecuniary harm sustained owing to the deprivation of their sole property. What is more, the applicants have still not obtained reimbursement of the costs reasonably incurred in maintaining the property, seven and a half years after the transfer of the right of ownership was confirmed. In short, the applicants were required to bear a special and disproportionate burden which upset the fair balance that should exist between the

requirements of general interest and the protection of their right to the peaceful enjoyment of their assets.
Conclusion : violation (unanimously).
Article 41 – The Court awards the sum of €35,000 in respect of pecuniary and non-pecuniary damage and a sum in respect of costs and expenses to be deducted from that already received by way of legal aid.

DEPRIVATION OF PROPERTY
Drastic reduction in value of shareholding in bank: *inadmissible.*

OLCZAK - Poland (Nº 30417/96)
Decision 7.11.2002 [Section III]

In November 1990, authorisation was granted for the establishment of the Lublin First Commercial Bank, a public company with foreign capital. The bank was registered in January 1991. 97.5% of the shares were owned by one person, D.B. In April 1992, the applicant purchased 40% of the bank's equity capital from D.B.. The parties agreed to rescind this sale in June 1992. That same month, the bank took over some of D.B.'s shares following his failure to repay sums owed. The applicant subsequently deposited 307 shares purchased from D.B. The bank sought permission from the President of the National Bank to re-transfer ownership from the applicant to D.B. The President refused permission, citing the National Bank's duty to ensure that savings and investments entrusted to Polish banks were duly protected. D.B. had been extradited in the meantime to the USA and there convicted of financial fraud. There could be no guarantee of customers' interests if he remained the majority shareholder. Furthermore, there was a serious conflict of interest in that a number of companies owned by D.B. had received and defaulted on loans from the bank. In a second letter in August 1992, the President of the National Bank stressed the need to adopt a recovery and restructuring programme. The bank's losses for that year exceeded its capital resources. In February 1993, the National Bank appointed a Board of Receivers for 6 months, in view of the bank's continuing deterioration and the danger of insolvency and in order to improve its financial standing and preserve the assets deposited with it. An external auditors' report to the Board indicated that in 1992 the bank had been run in an unprofessional manner. The Board's original mandate was extended to November 1993 and subsequently renewed again. In October 1993, the Board amended the bank's memorandum of association. The nominal value of its share capital was reduced from 50 billion PLZ to just over 1 billion PLZ through the cancellation of more than half of the shares and very considerable reduction in the value of the remainder. The funds generated were used to cover the bank's losses. The bank's share capital was then increased to 250 billion PLZ through the issue of 6.25 million new shares with extra voting rights. All of these were paid for by the National Bank and were allocated to it. Existing shareholders were prevented from acquiring new shares. The effect of these operations was to reduce the applicant's shareholding from approximately 45% to 0.4%. The Board further amended the bank's memorandum of association so as to permit the cancellation of shares by reducing share capital.
The applicant was involved in various sets of proceedings arising out of the reduction of his shareholding and sought to have the Board of Receivers' resolutions set aside. In July 1994, the Supreme Court ruled that the Board was empowered under the Banking Act to adopt resolutions on matters that were normally reserved by law or by the memorandum of association to the general meeting of shareholders. In October 1994, the action brought by another shareholder was dismissed by the Lublin Regional Court. The applicant joined these proceedings on appeal and contended that the Board's actions were illegal since it had deliberately harmed the interests of shareholders within the meaning of Article 414 of the Commercial Code. In June 1995, the Lublin Court of Appeal ruled that the National Bank had appointed the Board of Receivers in light of the very serious financial situation of the bank and in order to avoid insolvency and protect the assets of clients. The Supreme Court had

found the actions of the Board to be lawful. The applicant had not established that there was a deliberate intention to harm shareholders' interests.
Inadmissible under Article 1 of Protocol No. 1 – The Court considered that the applicant's joinder with the other shareholder in November 1994, leading to a final decision in June 1995 that settled the applicant's situation, meant that it was competent *ratione temporis* to examine the complaint (Poland having accepted Protocol No. 1 in October 1994). As to the applicant's victim status, the Court recalled the considerable problems that would flow from recognising the *locus standi* of a shareholder to bring an action for damages in respect of prejudice to the company. A company's legal personality may be disregarded only in exceptional circumstances. The present case could be distinguished from previous cases in that the shareholders' interests were directly affected. In addition, the very measures that negatively affected the shareholders were in the interests of the bank. Having regard to their economic value, company shares are "possessions" within the meaning of Article 1 of Protocol No. 1. The serious reduction in the value of the applicant's shares amounted to a loss of property and the applicant could therefore claim victim status.
Regarding the substance of the complaint, although the applicant was not technically divested of his shares, the reduction in their economic value constituted a deprivation of property. The interference had been found by the Supreme Court to be in accordance with domestic law. It was also in the public interest, given the very serious financial situation of the bank, its ill-advised transactions and poor management, which failed to pay adequate attention to the interests of it clients and the security of its deposits. The bank had failed to take any action to resolve its situation following the National Bank's warning in August 1992, apart from an unrealistic proposal to seek a commercial investor. Accordingly, the measures complained of did not upset the fair balance between the requirements of the general interests and the protection of the applicant's property rights. They were therefore not disproportionate to the legitimate purpose they pursued: *inadmissible.*

DEPRIVATION OF PROPERTY
Prevention of return to village evacuated and razed in 1994: *communicated*.

DOGAN and others - Turkey (Nº 8803/02 *et seq*.)
[Section III]

The 15 applications all relate to the same event: the evacuation of a village in Tunceli by the security forces in October 1994, on account of disturbances in the region. The applicants state that their houses were destroyed and complain that they have not been permitted to return to their land. Some of the applicants filed petitions with the administrative authorities in 1999 and 2000. They were informed that their petitions would be considered in the context of the "Return to Village and Rehabilitation Project". The other applicants submitted petitions in 2001, but only some received answers. In two cases, the authorities stated that return to the village was forbidden for security reasons. None of the applicants applied to the courts. They indicate that such a course of action would be futile, since acts of the administration taken on the basis of emergency legislation are immune to judicial review.
Communicated under Articles 1, 6, 7, 8, 13, 14, 18 of the Convention and Article 1 of the First Protocol.

PROCEDURAL MATTERS

INTERIM MEASURES

Examination of undertakings given by State requesting extradition: *lifting of provisional measure*.

SHAMAYEV and 12 others - Georgia and Russia (No 36378/02)
[Section II]

In October 2002, thirteen Russian nationals of Czech origin, suspected of being terrorists and detained in Tbilisi (Georgia), submitted a preliminary application to the Court challenging their imminent extradition to Russia. The applicants claimed that if they were extradited they would be exposed to a risk of a violation of Articles 2 and 3 of the Convention. The requested the Court to adopt an interim measure under Rule 39 of the Rules of Court. The Court adopted an interim measure under Rule 39; it expired at midnight on 26 November. That measure consisted in informing the Georgian authorities that the extradition to Russia must be suspended until the Court had received more detailed information concerning the conditions of extradition. Five applicants would have been extradited to Russia. In view of the commitments given by the Russian authorities – who guaranteed that the applicants could have unimpeded access to appropriate medical treatment, to legal advice and also to the Court – the Court decided to lift the interim measure. The Russian authorities have further undertaken that the applicants will not be sentenced to death and that their health and safety will be protected.
It has been decided that priority is to be given to the case, in accordance with Rule 41 of the Rules of Court.

Other judgments delivered in November 2002

Articles 2 and 13

YAKAR - Turkey (Nº 36189/97)
Judgment 26.11.2002 [Section IV]

death of applicant's son while in custody and effectiveness of investigation – friendly settlement (statement of regret, acknowledgement of violation and *ex gratia* payment).

Article 3

KEÇECI - Turkey (Nº 38588/97)
Judgment 26.11.2002 [Section IV]

alleged ill-treatment in custody – friendly settlement.

Articles 3, 8 and 13 and Article 1 of Protocol No. 1

KINAY - Turkey (Nº 31890/96)
Judgment 26.11.2002 [Section II]

destruction of home and possessions by security forces and village guards – friendly settlement (*ex gratia* payment, statement of regret and acknowledgement of violation).

Article 5(3)

KURAY - Turkey (Nº 36971/97)
Judgment 26.11.2002 [Section IV]

alleged failure to bring detainee promptly before a judge – friendly settlement.

Article 5(4)

LAIDIN - France (Nº 43191/98)
Judgment 5.11.2002 [Section IV]

length of time taken to decide on a request for release from psychiatric detention – violation.

Article 6(1)

WALTER - Austria (Nº 34994/97)
Judgment 28.11.2002 [Section I]

failure to comply with time limit due to delay by prison administration in forwarding letter – friendly settlement.

CANCIOVICI and others - Romania (Nº 32926/96)
Judgment 26.11.2002 [Section II]

refusal of claim for restitution on property previously nationalised, without examination of merits – violation.

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

lack of oral hearing in proceedings relating to restitution of property – violation.

ÖZEL - Turkey (Nº 42739/98)
Judgment 7.11.2002 [Section III]

independence and impartiality of State Security Court – violation.

FERREIRA DA NAVE - Portugal (Nº 49671/99)
Judgment 7.11.2002 [Section III]

KORAL - Poland (Nº 52518/99)
PIECHOTA - Poland (Nº 40330/98)
Judgments 5.11.2002 [Section IV]

MATOUŠKOVÁ - Slovakia (Nº 39752/98)
HAVALA - Slovakia (Nº 47804/99)
Judgments 12.11.2002 [Section IV]

OREN and SHOSHAN - Belgium (Nº 49332/99)
S.A. SITRAM - Belgium (Nº 49495/99)
DOOMS and others - Belgium (Nº 49522/99)
LEFEBVRE - Belgium (Nº 49546/99)
OVAL S.P.R.L. - Belgium (Nº 49794/99)
DE PLAEN - Belgium (Nº 49797/99)
RANDAXHE - Belgium (Nº 50172/99)
KENES - Belgium (Nº 50566/99)
Judgments 15.11.2002 [Section I]

length of civil proceedings – violation.

BOCA - Belgium (Nº 50615/99)
Judgment 15.11.2002 [Section I]

length of civil proceedings, including an urgent application – no violation/violation.

GÓRKA - Poland (Nº 55106/00)
Judgment 5.11.2002 [Section IV]

length of civil proceedings – friendly settlement.

TERET - Belgium (Nº 49497/99)
Judgment 15.11.2002 [Section I]

length of civil proceedings – struck out.

MÜLLER - Switzerland (Nº 41202/98)
Judgment 5.11.2002 [Section II]

BUTEL - France (Nº 49544/99)
Judgment 12.11.2002 [Section II]

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

length of administrative proceedings – violation.

FRATTINI and others - Italy (Nº 52924/99)
Judgment 26.11.2002 [Section IV]

CAROLLA - Italy (Nº 51127/99)
Judgment 28.11.2002 [Section I]

length of civil proceedings – revision of judgment.

PIETILÄINEN - Finland (Nº 35999/97)
LISIAK - Poland (Nº 37443/97)
Judgments 5.11.2002 [Section IV]

F.M. - Italy (Nº 43621/98)
MASSIMO PUGLIESE - Italy (Nº 45789/99)
Judgments 28.11.2002 [Section I]

length of criminal proceedings – violation.

PISANIELLO and others - Italy (Nº 45290/99)
Judgment 5.11.2002 [Section IV]

length of criminal proceedings – no violation.

Articles 6(1) and 13

RADOŠ - Croatia (Nº 45435/99)
Judgment 7.11.2002 [Section I]

length of several sets of civil proceedings – violation/no violation.
availability of effective remedy – violation/no violation.

KONČEK - Slovakia (Nº 41263/98)
Judgment 26.11.2002 [Section IV]

fairness and length of proceedings relating to withdrawal of driving licence, and length of criminal proceedings – friendly settlement.

VARGA - Slovakia (Nº 41384/98)
Judgment 26.11.2002 [Section IV]

length of criminal proceedings and alleged lack of effective remedy – friendly settlement.

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

NAGY - Romania (Nº 32268/96)
DRAGNESCU - Romania (Nº 32936/96)
GAVRUS - Romania (Nº 32977/96)
Judgments 26.11.2002 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation and deprivation of property – violation (cf. *Brumarescu* judgment, ECHR 1999-VII).

MOSTEANU - Romania (Nº 33176/96)
Judgment 26.11.2002 [Section II]

exclusion of courts' jurisdiction with regard to nationalisation – violation; alleged lack of independence and impartiality of courts on account of statements by Head of State; alleged deprivation of property – no violation.

LUCIANO ROSSI - Italy (Nº 30530/96)
CILIBERTI - Italy (Nº 30879/96)
V.T. - Italy (Nº 30972/96)
T.C.U. - Italy (Nº 31223/96)
MALTONI - Italy (Nº 31548/96)
GNECCHI and BARIGAZZI - Italy (Nº 32006/96)
L. and P. - Italy (Nº 32392/96)

L.B. - Italy (Nº 32542/96)
FOLLI CARÈ - Italy (Nº 32577/96)
D.V. - Italy (Nº 32589/96)
TOSI - Italy (Nº 33204/96)
TONA - Italy (Nº 33252/96)
CAU - Italy (Nº 34819/97)
Judgments 151.11.2002 [Section I]

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

FRANCESCHETTI - Italy (Nº 35001/97)
C. s.r.l. - Italy (Nº 36112/97)
VISCA - Italy (Nº 36734/97)
CICCONE - Italy (Nº 38043/97)
Judgments 7.11.2002 [Section I]

FABBRINI - Italy (Nº 33115/96)
Judgment 15.11.2002 [Section I]

A.M.M. - Italy (Nº 34742/97)
VIRGULTI - Italy (Nº 57206/00)
Judgments 28.11.2002 [Section I]

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

SERGHIDES - Cyprus (Nº 44730/98)
Judgment 5.11.2002 [Section II]

inclusion of plot of land in road-widening scheme by operation of law without proper notification and without payment of compensation, dismissal of civil action on account of purported lack of *locus standi* and length of the proceedings – violation.

Article 6(2)

DEMIR - Austria (Nº 35437/97)
Judgment 5.11.2002 [Section IV]

refusal, on ground of continuing suspicion, of compensation for detention on remand – violation (cf. *Sekanina, Rushiti and Weixelbraun* judgments).

RADAJ - Poland (Nº 29537/95 and Nº 35453/97)
Judgment 28.11.2002 [Section I]

opening of detainee's correspondence from the European Commission of Human Rights – violation.

MARZIANO - Italy (Nº 45313/99)
Judgment 28.11.2002 [Section I]

alleged violation of presumption of innocence on account of statements made by investigating judge in decision to discontinue criminal proceedings – no violation.

Article 10

ÖZKAN KILIÇ - Turkey (Nº 27209/95 and Nº 27211/95)
Judgment 26.11.2002 [Section II]

conviction for making separatist propaganda – friendly settlement (*ex gratia* payment and undertaking to reform law and practice).

INFORMATIONSVEREIN LENTIA - Austria (no. 2) (Nº 37093/97)
Judgment 28.11.2002 [Section I]

refusal of licence to broadcast via a cable network – friendly settlement.

Article 14 in conjunction with Article 1 of Protocol No. 1

BUCHEŇ - Czech Republic (Nº 36541/97)
Judgment 26.11.2002 [Section II]

discriminatory suspension of pensions of certain former military judges – violation.

Article 41

Former King of Greece and others v. Greece (N° 25701/94)
Judgment 28.11.2002 [Grand Chamber]

just satisfaction

WESSELS-BERGERVOET - Netherlands (Nº 34462/97)
Judgment 12.11.2002 [Section II]

just satisfaction – struck out

Article 1 of Protocol No. 1

MERICO - Italy (Nº 31129/96)
Judgment 15.11.2002 [Section I]

staggering of granting of police assistance to enforce eviction orders – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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