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EUROPEAN COURT OF HUMAN RIGHTS

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CONTENTS

ARTICLE 9

Judgment

ARTICLE 10

Admissible

Inadmissible

ARTICLE 13

Judgment

ARTICLE 14

Communicated

ARTICLE 34

Inadmissible

ARTICLE 2

LIFE
Shooting by police officer during an attempted arrest, and effectiveness of the investigation: *no violation/violation*.

RAMSAHAI and Others - Netherlands (Nº 52391/99)
Judgment 10.11.2005 [Section III]

Facts: The applicants are the grandparents and father of a young man who was shot dead by a policeman. The facts of the case, as established by the Court on the basis of official documents submitted to it, are as follow. In the evening of 19 July 1998, the applicants' relative forced the owner of a scooter at gunpoint to give up his vehicle. The theft was reported to a pair of unarmed surveillants by the owner of the scooter. The three of them then set off in pursuit. However, as the scooter was too fast for them to catch, the surveillants reported the theft to the local police station. Apparently the surveillants did not know that the applicants' relative had a gun; had they known, being unarmed themselves they would not have gone after him and they would certainly have warned their colleagues. Two police officers who were in the vicinity spotted the applicants' relative and started chasing him. As the latter's behaviour was defiant and he resisted arrest, the first officer tried to grab hold of him. There was a brief struggle from which the applicants' relative managed to break loose, who then adopted a threatening posture and drew his pistol. Seeing the pistol and feeling threatened, the first officer drew his service pistol and in a loud voice ordered the applicants' relative at least once to drop his gun. The latter then pointed his pistol towards the ground, but in a manner which the officer found threatening, and tried to walk away. By this time the second officer arrived at the scene. He saw the applicants' relative holding a pistol, which, despite being kept covered by the first officer, and in defiance of the order to drop it, he did not let go. Both officers saw the applicants' relative turning and raising the hand holding the pistol. The second officer saw him point the pistol in his direction, and therefore drew his service pistol – which he had not yet done – and fired once, killing the applicants' relative. The initial investigation, mainly consisting in the questioning of witnesses, was done by members of the Amsterdam/Amstelland police force to which the police officers themselves belonged. The investigation was then handed over to a member of a specialised police unit, Detective Chief Superintendent Van Duijvenvoorde of the State Criminal Investigation Department, who questioned a number of police and civilian witnesses (including some already heard by officers of the Amsterdam/Amstelland police force). He interviewed the police officers involved for the first time on 22 July 1998, the third day after the fatal shooting, and on 3 and 4 August again, when he confronted them with statements made by civilian witnesses. The public prosecutor placed in charge of the criminal investigation eventually took the decision not to bring any prosecution against the police officer responsible for the shooting. The applicants lodged a complaint to the Court of Appeal about the Public Prosecutor's failure to prosecute the police officer responsible for the shooting. They asked for these proceedings to be public and for additional investigative measures to be ordered. They were unsuccessful in both respects. Moreover, the Court of Appeal did not order any prosecution: it was satisfied on the evidence available that the police officer had acted in legitimate self-defence. The applicants also lodged a complaint to the Police Complaints Board about a press release put out by the public prosecution department which in their view had not reflected the circumstances of their relative's death. An explanation for the wording in the press release was given, but as the discrepancy was not considered to be fundamental an official retraction was not deemed justified.

Law: Article 2 (as regards the shooting of the applicants' relative) – The principal premise on which the applicants based their argument, namely that excessive force had been used to arrest a person suspected of nothing more serious than stealing a scooter, could not be accepted. It was apparent from the facts that the actual attempt to arrest the applicants' relative had led to nothing more serious than a brief scuffle between him and the first police officer; it did not involve the use of firearms. The second police officer had fired only after the applicants' relative, defying unambiguous warnings to give up his weapon, had begun to raise his pistol towards him. In such circumstances, the officer was entitled to consider that a threat to his

life existed. This assessment could not be criticised even with hindsight. The use of lethal force had not therefore exceeded what was "absolutely necessary" for the purposes of effecting the arrest of the applicants' relative and protecting the lives of the police officers involved.
Conclusion: no violation (unanimously).

Article 2 (as regards the investigation following the shooting) – The official investigation undertaken into the events appeared to have been thorough and its findings had been recorded in considerable detail. It had not been established, as claimed by the applicants, that the authorities had failed to seek out witnesses who might have contributed accurate and relevant information to the file. The omission of certain technical examinations had not impaired either the effectiveness of the investigation as a whole. However, as concerns the independence of the investigation, it was noted that essential parts of it were carried out by the same force to which the police officers involved belonged, namely the technical examination of the scene of the shooting, the door-to-door search for witnesses and the initial questioning of witnesses. The Court has already found a violation of Article 2 in its procedural aspect when an investigation into a death in circumstances engaging the responsibility of public authority has been carried out by direct colleagues of the persons allegedly involved. Supervision by another authority, however independent, has been found not to be a sufficient safeguard for the independence of the investigation. The same considerations applied here. The investigation had therefore lacked the requisite independence in the present case. Whilst the decision of the public prosecutor and the Court of Appeal to not prosecute the second police officer had not been unreasonable, and the applicants were granted sufficient information to be able to participate effectively in the proceedings challenging this decision, the procedure followed by the Court of Appeal had fallen short of the standards applicable to this provision in one aspect, namely that the decision of this court had not been made public.
Conclusion: violation (5 votes to 2).

Article 41 – The Court awarded the applicants EUR 20,000 in respect of non-pecuniary damage. It also made an award for costs and expenses.

LIFE
Killing by security forces, and effectiveness of the investigation: *violation*.

KAKOULLI - Turkey (Nº 38595/97)
Judgment 22.11.2005 [Section IV]

Facts: The applicants are the widow and children of a Greek Cypriot national who was shot by a Turkish soldier in the buffer zone between northern and southern Cyprus. The facts at issue are in dispute between the parties. According to the applicants, their deceased relative had gone collecting snails and had wandered accidentally into the territory of northern Cyprus. His daughter's fiancé, who had been with him, alleged that he heard soldiers order him to stop, which he did and raised his hands above his head. Two Turkish soldiers in combat uniform then dropped to battle positions on the ground and aimed their rifles at him. Immediately afterwards, the witness had heard two shots and saw the victim fall to the ground. A few minutes later, while he was still lying on the ground, the witness saw one of the Turkish soldiers move and fire a third shot at him from a distance of about seven to eight metres from where he was lying. The Turkish Government maintained that the applicants' relative had crossed the ceasefire line and, despite being warned verbally and with hand gestures, did not stop, but ran away towards the borderline. One of the soldiers approached him and fired warning shots in the air and at the ground. As he continued to run away, a third round was fired at him below his waist, which apparently caused the fatal wound. The Government further claimed that a bayonet and a garrotte were found on him. Investigators visited the scene. A sketch map of the location was drawn up, photographs taken and statements taken from a number of police officers, officials and the soldiers on guard duty, including the soldier who had shot the victim. Following a first autopsy, it was concluded that the victim had died as a result of internal bleeding caused by a shot to the heart. A second autopsy conducted found three sets of gunshot wounds to the body and that certain wounds had been inflicted by a shot fired while the victim had his hand raised,

and the others while the victim was lying on the ground or crouching down. Following the investigation, no criminal or disciplinary proceedings were brought against the soldier who shot the applicants' relative, the investigating authorities concluding that the killing was justified in the circumstances. The case was classified as "no case", meaning that there would be no further investigation or criminal proceedings. The applicants complained that their relative had been intentionally shot and killed by Turkish soldiers in Cyprus, and also contended that the killing involved discrimination, as he was a Greek-Cypriot and Christian.

Law: The Government's preliminary objection (non-exhaustion): The local remedies advanced by the Government which it sustained were available to the applicants within the judicial system of the "Turkish Republic of Northern Cyprus" ("TRNC") could not be regarded as "domestic remedies" for Convention purposes. However, that decision was not to be seen as in any way putting in doubt the view of the international community regarding the establishment of the "TRNC" or the fact that the Government of the Republic of Cyprus remained the sole legitimate government of Cyprus (objection dismissed).

Article 2 (concerning the killing of the applicants' relative) – Noting that at the time of the killing of the applicants' relative the buffer zone between the two sides in Cyprus was not very peaceful, the Court accepted that border policing undoubtedly presented the authorities with special problems, such as unlawful crossings or violent demonstrations along the borderlines. However, that did not give law-enforcement officials carte blanche to use firearms whenever they were confronted with such problems. On the contrary, they were required to organise their actions carefully with a view to minimising a risk of deprivation of life or bodily harm. States which had ratified the European Convention on Human Rights had a duty to provide effective training to law-enforcement officials operating in border areas and to give them clear and precise instructions as to the manner and circumstances in which they should make use of firearms, with the objective of complying with international standards on human rights and policing. Accordingly, the Turkish Government's argument for justifying the use of lethal force against civilians who breached the borderlines could not be accepted. Even though it had been subsequently discovered that there were a garrotte and a bayonet in the victim's boots, there was no basis for the soldiers on guard duty to reasonably consider that there was any need to resort to the use of their weapons in order to stop and neutralise him. Moreover, even assuming that the victim had failed to stop promptly, following the verbal warning from the soldiers as he passed the border line, there was no basis for the use of force which, whether deliberately or owing to lack of proper aim, was lethal in its effects. The prevalent unrest did not of itself give the soldiers the right to open fire upon people they considered to be suspicious. The soldier in question had used lethal force while there was no imminent risk of death or serious harm to himself or others. It was particularly striking that the last shot was fired several minutes after the two shots, which had already wounded the victim and neutralised him, at a time when it could have been possible to carry out an arrest. Therefore, the use of force against applicants' relative had neither been proportionate nor absolutely necessary for the purpose of "defending any person from unlawful violence" or "effecting a lawful arrest".
Conclusion: violation (unanimously).

Article 2 (effectiveness of the investigation) – There had been a number of significant omissions which raised doubts about the effectiveness and impartiality of the investigation into the applicants' relative's death. It noted in particular that the second autopsy examination failed to record fully his injuries, which hampered an assessment of the extent to which he was caught in the gunfire, and his position in relation to the soldiers on guard duty. Furthermore, the investigating authorities had based their findings solely on the soldiers' account of the facts and did not seek any further eyewitnesses. They did not inquire into whether the victim could have posed a serious threat to the soldiers from a long distance with the alleged weapons, or whether the soldiers could have avoided using excessive lethal force. Nor did the investigators examine whether the soldier in question had complied with the rules of engagement laid down in the relevant military instructions. In the light of the foregoing, the investigation conducted by the "TRNC" authorities into the killing of the applicants' relative had been neither effective nor impartial. Hence, there had also been a violation of Article 2 under its procedural limb.
Conclusion: violation (unanimously).

Article 14 – In the light of the evidence submitted to it, the Court found the applicants' allegation under this provision unsubstantiated.
Conclusion: no violation (unanimously).

Article 41 – The Court awarded the victim's widow and his three children EUR 20,000 and EUR 3,500, respectively, for non-pecuniary damage. It also made an award for costs and expenses.

DEATH PENALTY
Impending expulsion to Syria where applicant had been sentenced to death *in absentia*: *violation*.

BADER - Sweden (N° 13284/04)
Judgment 8.11.2005 [Section II]

Facts: The applicants, a couple and their two minor children, are Syrian nationals living in Sweden. In 2002 they made several requests for asylum which were all rejected, and a deportation order was served on them. In 2004 the family submitted a fresh asylum request and sought a stay of execution of the expulsion order. They referred to a Syrian court judgment of November 2003 which stated that Mr Bader had been convicted, *in absentia*, of complicity in a murder and sentenced to death. The judgment stated that Mr Bader and his brother had, on several occasions, threatened their brother-in-law because they considered that he had ill-treated their sister and paid too small a dowry, thereby dishonouring their family. In 1998 Mr Bader's brother had shot the brother-in-law, after planning the murder with Mr Bader, who had provided the weapon. Noting that the two brothers had absconded, the Syrian court stated that the judgment had been delivered in the accused's absence and could be re-opened.
In 2004 the Aliens Appeals Board rejected the applicants' request for asylum. It relied on research carried out by a local lawyer engaged by the Swedish Embassy in Syria and considered that should Mr Bader return to his country of origin the case against him would be re-opened and he would receive a full retrial. If he were to be convicted, he would not be given the death sentence, as the case was "honour-related". The Board therefore found that the applicants' fears were not well-founded and that they were not in need of protection.

Law: The Court noted that the Swedish Government had obtained no guarantee from the Syrian authorities that Mr Bader's case would be re-opened and that the public prosecutor would not request the death penalty at any retrial. In those circumstances, the Swedish authorities would be placing Mr Bader at serious risk by sending him back to Syria. Mr Bader had a justified and well-founded fear that the death sentence against him would be executed if he was forced to return to his home country. Moreover, since executions are carried out without any public scrutiny or accountability, the circumstances surrounding his execution would inevitably cause Mr Bader considerable fear and anguish while he and the other applicants would all face intolerable uncertainty about when, where and how the execution would be carried out. Furthermore it transpired from the Syrian judgment that no oral evidence had been taken at the court's hearing, that all the evidence examined had been submitted by the prosecutor and that neither the accused nor even his defence lawyer had been present. Because of their summary nature and the total disregard of the rights of the defence the Syrian criminal proceedings therefore had to be regarded as a flagrant denial of a fair trial which gave rise to a significant degree of added uncertainty and distress for the applicants as to the outcome of any retrial in Syria.
In conclusion, the death sentence imposed on Mr Bader following an unfair trial would inevitably cause the applicants additional fear and anguish as to their future, if they were forced to return to Syria as there existed a real possibility that the sentence would be enforced in that country. Thus, having regard to all the circumstances of the case, there were substantial grounds for believing that Mr Bader would be exposed to a real risk of being executed and subjected to treatment contrary to Articles 2 and 3 if deported to his home country.
Conclusions: Violation of Articles 2 and 3 (unanimously).

USE OF FORCE
Use of a firearm during a demonstration: *communicated*.

GIULIANI and others - Italy (N° 23458/02)
[Section IV]

During a demonstration in connection with a G8 summit, the applicants' son and brother was shot and fatally wounded by a member of the security forces. The victim was one of a group of demonstrators brandishing stones, sticks and iron bars who attacked a security forces vehicle and its three occupants. The side windows at the rear of the car and the rear windscreen were smashed and the demonstrators shouted insults and threats at the *carabinieri*, one of whom, crouching down in the back, injured, panicked and fired two shots. The driver managed to restart the engine and, in an attempt to move the car away, reversed and drove over the body of the victim. The investigation included in particular an autopsy report, ballistics reports and an on-site inspection. Evidence was heard from the occupants of the vehicle and from other *carabinieri*. The driver and the person who had fired the fatal shot were placed under investigation for murder. The proceedings were discontinued. According to the judge, the victim's death had not been caused by the manoeuvres of the driver, who had been unable to see the victim. The judge found further that the first and fatal bullet had been deflected, before striking the victim's head, by an object which could have been one of the stones thrown by the demonstrators. It was not possible to assert that the person firing the shot had been able to see the victim when the shot was fired, and therefore that he had aimed at the victim. Admittedly, the *carabiniere* had run the risk of killing somebody, but the likelihood had been that use of the firearm would not cause serious harm, as he had indisputably fired upwards and the trajectory of the bullet had been altered in a way that could not have been foreseen. The judge considered that it had been a case of legitimate defence given the crowd of attackers, the extremely violent situation and the threat to the physical safety of the occupants of the car, who could not get away since the car would not start. In firing into the air after shouting at the demonstrators to stop, the *carabiniere* who had fired the fatal shot had, in the judge's estimation, made proportionate use of the firearm which had been his only means of defence against the violence.
Communicated under Article 2.

POSITIVE OBLIGATIONS
Alleged lack of adequate medical treatment for an HIV-positive detainee during imprisonment : *inadmissible*.

I.T. - Romania (N° 40155/02)
Decision 24.11.2005 [Section I]

The applicant, who has been sentenced to a term of imprisonment, has HIV/Aids. Doctors prescribed daily medical treatment consisting of medication and a high-calorie, protein-rich diet. The applicant's daily Aids treatment is dispensed free of charge. He was admitted to hospital on several occasions and his state of health was found to be compatible with detention. The medicines were usually supplied to him by the prison hospital but, owing to delays in delivery as a result of administrative problems or lack of funds, the applicant was several times left without medication for short periods. He was then given permission to continue his treatment by taking medication which he paid for himself. His general state of health was judged to be relatively good. In early 2005 the doctors concluded that the HIV infection had not developed into full-blown Aids, and that the applicant was responding very well to the prescribed course of medication.

Article 3 – *Alleged lack of appropriate medical treatment in prison*: The evidence contained in the case file did not enable the Court to find that the applicant's infection with HIV had occurred after his being placed in pre-trial detention, or to find that the authorities were responsible for it. There had been shortcomings in the authorities' compliance with their positive obligation to provide the sick prisoner with the necessary medical treatment in terms of the special enriched diet prescribed by the doctors and the course of medication. However, these had related only to short periods, and the authorities' response to the

applicant's health problems had, by and large, been appropriate. Moreover, the development of the applicant's HIV infection had been controlled by the medical treatment prescribed and his health had not deteriorated in prison. In that connection, the Court could not speculate as to how the infection might have developed had the applicant not had the means to continue with his treatment during the periods when there had been delays in supplying his medication. The shortcomings noted above might have caused the applicant a degree of distress, for which the authorities were responsible, but the applicant had not been deprived of medication for long periods, and had not, for the most part, had to bear the cost of treatment. The shortcomings noted in the case did not in themselves provide sufficient basis for finding that the authorities had failed in their duty to protect the applicant's health: *manifestly ill-founded*.

Detention of the applicant while ill: While mindful of the fragile psychological state of the applicant owing to his illness, the Court found that he had not exhausted domestic remedies: objection by the respondent Government allowed.

POSITIVE OBLIGATIONS
Alleged deficiencies in the domestic investigation concerning the death of the applicant's son: *communicated.*

AL FAYED - France (N° 38501/02)
[Section II]
(see Article 6 [criminal] below).

ARTICLE 3

EXPULSION
Impending expulsion to Syria where applicant had been sentenced to death *in absentia*: *violation*.

BADER - Sweden (N° 13284/04)
Judgment 8.11.2005 [Section II]
(see Article 2 above).

INHUMAN OR DEGRADING TREATMENT
Reimprisonment of a convicted person suffering from the Wernicke-Korsakoff syndrome: *violation*.

TEKİN YILDIZ - Turkey (N° 22913/04)
Judgment 10.11.2005 [Section III (former composition)]

Facts: The applicant, who had been sentenced to a prison term for membership of a terrorist organisation, embarked on a prolonged hunger strike while in detention which culminated in his developing Wernicke-Korsakoff syndrome. His sentence was suspended for six months on the ground that he was medically unfit, and the measure was extended on the strength of a medical report which found that his symptoms had persisted. In the light of the results of the next examination, his sentence was suspended until he had made a complete recovery. The applicant was arrested on suspicion of having resumed his activities and was sent back to prison. Despite an early ruling that he had no case to answer, he remained in prison for eight months. The Court conducted a fact-finding mission to Turkey in connection with a group of 53 similar cases, inspecting prisons together with a committee of experts with a mandate to assess the applicants' medical fitness to serve custodial sentences.

Law: Article 3 – All the medical examinations carried out before the applicant was sent back to prison had confirmed the initial diagnosis of Wernicke-Korsakoff syndrome. The applicant's state of health had been consistently found to be incompatible with detention. There was no evidence to cast doubt on those

findings, nor had anything occurred during the period of detention in issue, or subsequently, which might have cast doubt upon them. The committee of experts which had examined the applicant, some time after his release following a period of almost eight months' detention, had concluded that he was suffering from the after-effects of Wernicke-Korsakoff syndrome, rendering him unfit to serve a prison sentence. The applicant's situation, which had been aggravated by his return to prison and subsequent detention, had attained a sufficient level of severity to come within the scope of Article 3. The domestic authorities who had decided to return the applicant to prison and detain him for approximately eight months, despite the lack of change in his condition, could not be considered to have acted in accordance with the requirements of Article 3. The Court considered that the suffering caused to the applicant, which had gone beyond that inevitably associated with detention and the treatment of a condition like Wernicke-Korsakoff syndrome, had constituted inhuman and degrading treatment.
Conclusion: violation (unanimously).

The Court also held unanimously that a violation of Article 3 would occur if the applicant were to be sent back to prison without there being a significant improvement in his medical fitness to withstand such a move.

Article 46 – The Court judged it necessary, on an exceptional basis, to indicate to the respondent State the measures it considered appropriate to remedy certain problems which had come to light regarding the official system of forensic medical reports in operation in Turkey.

Article 41 – The Court awarded the applicant specified sums in respect of non-pecuniary damage and costs and expenses.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Person detained on remand taken from prison to police station for questioning in application of the regulations on the state of emergency: *violation*.

KARAGÖZ - Turkey (N° 78027/01)
Judgment 8.11.2005 [Section II]

Facts: The applicant was arrested by gendarmes in the region where a state of emergency was in force on suspicion of lending assistance to the PKK. He spent four days in police custody before being brought before a prosecutor and then a judge, who ordered his detention in prison pending trial. Under Legislative Decree no. 430 on additional measures to be taken in view of the state of emergency, the applicant was taken from prison back to the gendarmerie for questioning. He remained there for 20 days before being returned to prison. He was subsequently taken again to the gendarmerie for questioning for a further 20 days. The applicant was acquitted. Legislative Decree no. 430 provides that, on a proposal from the regional governor, at the request of the public prosecutor and on a judge's order, persons in pre-trial detention may be taken out of prison for questioning for a period not exceeding ten days.

Law: Article 5(1)(c) – After being placed in pre-trial detention in prison, the applicant had been handed over to the gendarmes again, thus finding himself in a situation equivalent to police custody which, moreover, had lasted for over 40 days. His transfer to the gendarmerie headquarters after being placed in pre-trial detention had denied him proper judicial supervision. Furthermore, handing a remand prisoner over to gendarmes for questioning was a means of circumventing the legislation regulating the length of time spent in police custody. That was the position in which the applicant had found himself when he had been subjected to further questioning a few hours after being remanded in custody. Moreover, the duration

of his stay in police custody had been extended for no apparent reason. That in itself had to be regarded as a breach of the requirement of lawfulness under Article 5(1)(c), a breach that took away all the safeguards, especially access to legal advice, to which persons were entitled when they were questioned.
Conclusion: violation (unanimously).

Article 5(4) – Article 8 of Legislative Decree no. 430 made any effective judicial supervision of decisions taken under its provisions impossible.
Conclusion: violation (unanimously).

The Court did not consider it necessary to examine separately the complaint under Article 5(3). It held that there had been no violation of Article 3.

Article 41 – The Court made an award in respect of non-pecuniary damage and costs and expenses.
N.B. See the similar case *Dağ and Yaşar v. Turkey*, no. 4080/02, judgment of 8 November 2005, Section II.

Article 5(4)

PROCEDURAL GUARANTEES OF REVIEW
Prolongation of detention on remand without public hearing: *no violation*.

REINPRECHT - Austria (N° 67175/01)
Judgment 15.11.2005 [Section IV]

Facts: The applicant complained under Articles 5(4) and 6(1) that the hearings regarding the prolongation of his pre-trial detention had not been public.

Law – Article 5(4): Requirements such as the adversarial nature of the proceedings and the principle of equality of arms are fundamental guarantees of procedure applying in matters of deprivation of liberty. However, there was no basis in the Court's case-law as it stood to support the applicant's claim that hearings on the lawfulness of pre-trial detention should be public. There is a close link between Article 5(4) and Article 6(1) in the sphere of criminal proceedings and the latter provision has been found to have some application at the pre-trial stage during which the review of the lawfulness of pre-trial detention under Article 5(4) typically takes place. This application is nevertheless limited to certain aspects and there was no indication that the non-public nature of the detention hearings at which the applicant had been assisted by counsel could similarly prejudice the fairness of the proceedings as a whole. Although some rights applicable in proceedings under Article 5(4), as for instance the right of access to the file or to the assistance of a lawyer may overlap with the rights guaranteed by Article 6, the link between the two provisions in criminal matters does not justify the conclusion that Article 5(4) requires hearings on the lawfulness of pre-trial detention to be public. The two provisions pursue different purposes, which is why Article 5(4) contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness. Hearings on the lawfulness of pre-trial detention will in practice often be held in remand prisons. Either granting the public effective access to attend hearings in prison or transferring detainees to court buildings for the purpose of public hearings may therefore require arrangements which could run counter to the requirement of speediness. In conclusion, Article 5(4), though requiring a hearing for the review of the lawfulness of pre-trial detention, does not as a general rule require such a hearing to be public. The Court did not exclude the possibility that a public hearing might be required in particular circumstances. However, no such circumstances had been shown to exist in the present case and no other defects in the review of the lawfulness of the applicant's pre-trial detention had been established.
Conclusion: No violation (unanimously).

Article 6(1): Applying Article 6 to the proceedings reviewing the lawfulness of pre-trial detention would be against its wording as the subject matter of those proceedings was not the "determination of a criminal charge". Moreover, the different purposes pursued by Article 5(4) and Article 6 justify the differences as regards procedural requirements. Consequently, there was no basis to conclude that the criminal head of Article 6 applies to proceedings for the review of the lawfulness of detention falling within the scope of Article 5(4).
The Court had found in *Aerts v. Belgium* (judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V) that Article 6(1) applied under its civil head to proceedings concerning the lawfulness of deprivation of liberty, as "the right to liberty" was a "civil right". That judgment, however, and various subsequent cases had concerned proceedings relating to the lawfulness of detention of persons of unsound mind falling within the scope of Article 5(1)(e) which proceedings had been conducted after the applicants' release, that is, when Article 5(4) no longer applied and no potential conflict between the requirements of Articles 5(4) and 6(1) arose. In the current case which concerned criminal proceedings such a conflict did arise as the former provision does not generally require a hearing on the lawfulness of pre-trial detention to be public, while the latter provision requires public hearings in its own sphere of application. It would go against the principle of harmonious interpretation of different Convention provisions to derive from the civil head of Article 6 more stringent requirements than those imposed by the thorough protection system in relation to criminal proceedings set up under Article 5(4) and the criminal head of Article 6. Article 5(4) contains specific procedural guarantees for matters of deprivation of liberty which are distinct from the procedural guarantees of Article 6. Therefore, Article 5(4) is the *lex specialis* in relation to Article 6.
Conclusion: No separate issue (unanimously).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Administrative proceedings regarding entitlement to wage supplements paid to police officers and an office assistant: *admissible*.

ESKELINEN and Others - Finland (N° 63235/00)
Decision 29.11.2005 [Section IV]

The applicants worked at a police district, five of them as officers and one as an office assistant. Under collective agreements concluded in the 1980s they were entitled to a location-specific allowance later replaced by personal wage supplements. In 1990 the district in question was incorporated into another one, leading to a change of duty station for the applicants and loss of their wage supplements. According to the applicants, the provincial police command had promised that their loss would be compensated but the Ministry of Finance refused to authorise such compensation. The applicants then lodged an administrative-law application for compensation of their losses. A county administrative court found that the provincial police command had lacked competence to make any binding promises pertaining to compensation. The court therefore interpreted the applicants' appeal as a request for rectification, which it refused. It found no need for an oral hearing as regards the alleged promise pertaining to compensation. The applicants appealed further, requesting an oral hearing and emphasising that similar allowances had been granted to personnel of other police districts in a corresponding situation. The Supreme Administrative Court upheld the lower court's decision but amended the reasoning, finding *inter alia* that the applicants had enjoyed no statutory right to the wage supplements in question. As the alleged promise by the Provincial Police Command had lacked legal significance there was no need for an oral hearing. The applicants complain about the excessive length of the proceedings concerning the terms of their employment as civil servants, the lack of an oral hearing, unlawful deprivation of their possessions without compensation as well as discrimination.
Admissible as a whole (Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1).

CIVIL RIGHTS AND OBLIGATIONS
Procedure undertaken by two civil servants to contest a decision concerning the appointment to a post of one of their colleagues: *inadmissible.*

REVEL and MORA - France (N° 171/03)
Decision 15.11.2005 [Section II]

The applicants, who at the material time were civil servants working for the publicly-owned posts and telecommunications company, passed an internal competition for engineers and their names were placed on a list of employees awaiting transfer within the *département*, pending a vacancy which matched their qualifications. One of their colleagues, who had passed the same competition a few years later and whose name was on the same list, was appointed ahead of the applicants to a vacant engineer's post in the *département*. The applicants, taking the view that the decisions to appoint their colleague and assign him to a post had been in breach of the order of transfers laid down by the list for the *département* and of the relevant domestic legislation, lodged an internal appeal against the decisions, which was dismissed by the company's regional director. The applicants applied to the administrative court seeking the setting aside of the appointment and posting decisions and of the decisions dismissing their internal appeal. The administrative court granted their applications in full.

Inadmissible under Article 6(1): The right to have the order of transfers laid down by the list for the *département* adhered to was linked to the applicants' professional activity, but only their right to an individual appointment could be characterised as a "civil right". The outcome of the proceedings in issue was not in itself capable of having an impact on the applicants' careers within the company, or, in consequence, on their financial situation. Accordingly, the right which they had asserted could not be characterised as a civil right and the outcome of the impugned proceedings could have only remote consequences for the applicants' civil rights: incompatible *ratione materiae*.

RIGHT TO A COURT
Courts deferring to National Bank's findings as to solvency of bank sought to be wound up: *violation*.

CAPITAL BANK AD - Bulgaria (N° 49429/99)
Judgment 24.11.2005 [Section I]

Facts: The applicant bank was set up and acquired a banking licence in 1993. In 1997 its licence was revoked by the Bulgarian National Bank ("the BNB") and in 1998 it was put into compulsory liquidation. When dealing the BNB's petition to have the applicant bank wound up the courts deferred to the BNB's findings in respect of the applicant bank's insolvency. The courts considered that they only had jurisdiction to verify the formal validity of the Central Bank's decision to revoke its licence on the ground of insolvency. Before the city court the applicant was represented by special administrators appointed by, and answerable to the BNB, and before the Supreme Court of Cassation by the liquidators who also were accountable to the BNB. In 2005 the applicant bank was wound up and struck off the register of companies.

Law – Government's request for a strike-out: In June 2005 the Government had requested the Court to strike the application out of its list pursuant to Article 37(1) on the ground that the applicant bank no longer existed as a legal person, as it had been struck off the register of companies after being liquidated. (In June 2005 the bank which had purchased the applicant bank's entire undertaking at the beginning of 2005, also had requested that the application be struck out of the list under Article 37(1)(a), as, in its alleged capacity of successor to the applicant bank, it no longer intended to pursue the application. The Court declared that request inadmissible.)
As regards the Government's request the Court noted that the application had been lodged on behalf of the applicant bank by the chairman and the vice-chairman of its board of directors and its shareholders when it had already been in liquidation and should normally have been represented by the liquidators. In its admissibility decision the Court had accepted the manner in which the application had been filed, given

the particular circumstances and the need to interpret Article 34 in a practical and effective manner. It was not necessary to examine whether the conditions for striking the application out of its list under Article 37(1)(a)-(c) had been fulfilled, as respect for human rights as defined in the Convention and the Protocols required the further examination of the application. While under Article 34 the existence of a "victim of a violation" is indispensable for putting the Convention mechanism into motion, this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the whole proceedings. As a rule, and in particular in cases which, as the one at hand, primarily involve pecuniary, and, for this reason, transferable claims, the existence of other persons to whom that claim is transferred is an important criterion, but cannot be the only one. Human rights cases before the Court generally also have a moral dimension, which it must take into account when considering whether to continue with the examination of an application after the applicant has ceased to exist, all the more so if the issues raised by the case transcend the person and the interests of the applicant.
The complaints in this case concerned the procedure whereby the applicant bank's licence had been revoked and the bank had been wound up, which ultimately had led to its ceasing to exist as a legal person. Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality.
Conclusion: Government's request rejected (unanimously).

Article 6(1) – *Applicability*: The withdrawing of the applicant bank's licence and the ensuing winding-up order had had a clear and decisive impact on its ability to continue operating as a going concern as well as on its right to manage its own financial affairs and to administer its property. As a result of those measures the bank eventually had been struck off the register of companies and had ceased to exist as a legal person. As the measures had been decisive as far as the bank's civil rights were concerned Article 6(1) applied.

Compliance – Scope of judicial review: When examining the BNB's winding-up petition, the city court and the Supreme Court of Cassation had considered themselves precluded from conducting their own examination of whether the applicant bank's insolvency, deferring instead, in a manner decisive for the outcome of the case, to the BNB's finding in this respect. The Banks Act 1997 explicitly excluded from the scope of judicial review a decision by the BNB to revoke a bank's licence on the ground of insolvency. Neither was the impossibility for the applicant bank to challenge the BNB's decision before the courts warranted by any inherent limitation on the right of access to a court implicit in Article 6(1). In sum, the courts' decision to abide by the BNB's determination without subjecting it to any criticism or discussion, coupled with the absence of any means of scrutinizing that determination in direct review proceedings, had not been justified.

Representation by persons dependent on the adversary: In the proceedings in question the applicant bank had been represented by persons who had been dependent, to varying degrees, on the other party to those proceedings. The rights of access to a court and of adversarial proceedings imply, among other things, the possibility for the parties to a civil or criminal trial to be able to effectively participate in the proceedings and adduce evidence and arguments with a view to influencing the court's decision. As it had been represented by persons dependent on the other party to the proceedings, the applicant bank had been unable, especially when the case was being examined by the Supreme Court of Cassation, to properly state its case and protect its interests. An intervention by the prosecutor's office could not remedy the fact that the applicant was denied the opportunity to present its case before the domestic courts.
Conclusion: Violations of Article 6(1) (unanimously).

Article 1 of Protocol No. 1: The withdrawal of the licence had had the effect of automatically putting the applicant bank into compulsory liquidation and had amounted to a control of the use of the bank's property within the meaning of the second paragraph of the provision. Under the Banks Act 1997 the BNB's could revoke a bank's licence without being obliged to inform the bank itself of the commencement of the procedure. Nor did the BNB have to take into account the bank's representations and objections. Thus, a bank is first officially notified of the withdrawal of its licence only after the BNB's

decision has already been taken, as had happened in the present case. This, combined with the lack of any subsequent possibility for administrative or judicial review of the decision and the view of the courts that examined the winding-up petition that they were bound by the BNB's determination on the question of insolvency, had rendered it impossible for the applicant bank at any stage to state its objections to the BNB's findings of fact and to mount a reasoned challenge to the BNB's conclusion that it was insolvent. Despite the various options available for safeguarding the interests of the applicant bank's depositors and other creditors and protecting the stability of the banking system the legislative framework had opted for the most drastic solution – dispensing with any sort of proceedings in all cases – and there was no indication that other possibilities had been considered. In conclusion, the interference with the applicant bank's possessions had not been surrounded by sufficient guarantees against arbitrariness and thus had not been lawful within the meaning of Article 1 of Protocol No. 1.
Conclusion: Violation (unanimously).

Article 41: While the withdrawal of its licence and the order for its winding-up might well have had adverse financial consequences for the bank, the Court could not speculate as to what the eventual result might have been if the bank had been able to challenge the imposition of those measures in a proper manner. The claim was pecuniary damage was therefore dismissed but the Court awarded a certain amount for costs and expenses.

FAIR HEARING
Procedure leading to the seizure of property of a person subsequently declared incapable: *admissible*

LACARCEL MENENDEZ - Spain (N° 41745/02)
Decision 25.10.2005 [Section IV]

The applicant, who owned the flat in which she was living, failed to pay the communal charges. As a result, the owners of the other flats in the block instituted proceedings against her before the court of first instance. As the applicant did not take any action or appear before the court, the proceedings were conducted in her absence. The applicant appeared just once before the registrar of the court, of her own volition, and held forth to him in an incoherent fashion. Following the hearing in the case, judgment was given by default and the applicant was ordered to pay compensation with interest and costs and expenses. As she appeared to be no longer living in the flat, the judgment was served by being published in the regional Official Gazette. The other owners then applied to have the judgment enforced by means of seizure of the applicant's flat. The application was granted by means of an order which was served by being posted on the notice board of the court and published in the regional Official Gazette. In the meantime, a first-instance judge had authorised the compulsory admission of the applicant to a psychiatric hospital. The hospital order was subsequently reviewed and extended at regular intervals. The applicant's brothers and sisters were informed of the seizure of the property and took the necessary steps to have the applicant declared legally incapacitated. One of her sisters became her legal guardian and lodged an application seeking to have the proceedings before the court of first instance declared null and void on the grounds of the hospital orders and the fact that her sister had been diagnosed with chronic delusional psychosis. The first-instance judge dismissed the application on the ground that individuals should be presumed to have legal capacity until such time as a final judgment had been given declaring them incapacitated. A declaration of that nature could not apply retroactively. The applicant's guardian lodged an *amparo* appeal with the Constitutional Court, which was dismissed on the ground that the applicant had had an opportunity to defend herself, since the decision dismissing the application for the proceedings to be declared null and void had not been unreasonable or arbitrary, nor had it been in manifest breach of the Constitution.

Admissible under Articles 6 and 13 as to the applicant's complaint that she had been denied the opportunity of defending herself during the proceedings at first instance.

Admissible under Article 1 of Protocol No. 1 with regard to the complaint concerning a violation of the applicant's right to peaceful enjoyment of her possessions.

Inadmissible as to the complaints under Articles 8 and 14 of the Convention, owing to a failure to exhaust domestic remedies, as the applicant had omitted to raise the complaints, either expressly or in substance, before the Constitutional Court.

ADVERSARIAL TRIAL
Bank sought to be wound up represented by administrators or liquidators answerable to the National Bank which had initiated the proceedings: *violation*.

CAPITAL BANK AD - Bulgaria (N° 49429/99)
Judgment 24.11.2005 [Section I]
(see above under "Right to a court").

ADVERSARIAL TRIAL
Lack of communication to one of the parties of parts of the case-file on which the legal decision had been based: *admissible*.

GÜNER ÇORUM - Turkey (N° 59739/00)
Decision 3.11.2005 [Section IV]

The applicant, a civil servant working as a nurse in the army, was dismissed for conducting ideological and political activities as a sympathiser of an illegal organisation. She appealed against the decision before the Supreme Military Administrative Court, denying the offence of which she stood accused. She asked to be sent the documents cited by the army as grounds for her dismissal (an inquiry and documents forwarded to the judge). The Supreme Court found that the information and documents submitted in an envelope marked "Secret" showed that the applicant was a member of an extreme left-wing group and had conducted political and ideological activities in the performance of her duties. It dismissed the appeal.

Admissible under Article 6(1) with regard to the fairness of the proceedings before the Supreme Military Administrative Court, and under Article 10.

Inadmissible under Article 6(1) (independent and impartial tribunal) with regard to the status of the members of the Supreme Military Administrative Court.

EQUALITY OF ARMS
Intervention of a law in the course of a dispute with the State: *inadmissible*.

EEG-SLACHTHUIS VERBIST - Belgium (N° 60559/00)
Decision 10.11.2005 [Section I]

In 1995 the applicant company, which is engaged in the livestock trade, brought proceedings, which were still pending when the decision was given in the present case, seeking reimbursement by the State of the contributions it had been obliged to pay into the animal health and production fund. The fund was set up by a law of 24 March 1987 and the amount of the compulsory contributions was laid down by a royal decree of 11 December 1987, subsequently amended on several occasions. However, the system was flawed from the outset, as it had not been notified in advance to the European Commission as required by the Treaty establishing the European Community (EC Treaty), which also prohibited Member States from implementing the measures planned without the Commission's approval. The Commission and the Court of Justice of the European Communities further took the view that the system was in breach of the EC Treaty, as the compulsory contributions were payable also in respect of imported animals, although they were used exclusively to finance assistance to domestic producers. As a result, the legislature amended the system at the end of 1994. A law enacted on 21 December 1994 confirmed, with retroactive effect from 1

January 1988 (the date of entry into force of the decree of 11 December 1987), the various royal decrees relating to compulsory contributions to the fund in respect of domestic animals. With regard to imported animals, it ordered the repayment, subject to certain conditions, of the compulsory contributions paid since 1988. The draft reforms were not notified to the European Commission either. The applicant, taking the view that the contributions it had been obliged to pay between 1988 and 1994 had been in breach of the EC Treaty, instituted proceedings against the State seeking repayment in full. While the proceedings were pending, the legal situation was altered. A law enacted on 23 March 1998 replaced the animal health and production fund with a budgetary fund for the health and quality of animals and animal products and re-established a statutory basis for the contributions previously payable on domestic animals, with retroactive effect. Like the 1994 law, it provided for the repayment of contributions paid since 1988 in respect of imported animals; this time, however, the requirement to inform the European Commission was met, and the latter gave its go-ahead. The applicant applied unsuccessfully to the Administrative Jurisdiction and Procedure Court to have the 1998 law annulled. It complained before the Court about the intervention of the 1998 law during the proceedings between itself and the State.
Inadmissible after dismissal of the preliminary objection as to non-exhaustion of domestic remedies.

Article 6(1) – The Court had to consider whether the measures taken by the legislature to re-establish a statutory basis for the contributions previously payable on domestic products, with retroactive effect, amounted to a violation of the equality-of-arms principle. The applicant had applied for repayment of its contributions in full, and the legislative validation had occurred before the judge ruled on the merits. The applicant had therefore not yet obtained a judgment recognising its right to repayment in full. As in the *Building Societies* case, the legislative action had been justified by the "legitimate aim" of giving effect to the original intentions of the legislature. Those had been expressed in the Law of 24 March 1987 establishing a fund to be financed in particular by compulsory contributions from private individuals and companies engaged in the production, processing, transport, preparation, sale or marketing of animals, with the amounts and arrangements for payment being laid down by royal decree. The legislature, having identified deficiencies in the royal decree, had enacted legislation in order to fill a legal vacuum. Such a move had been foreseeable and had been made on clear and compelling public-interest grounds. It had not created any particular legal uncertainty, given that the legislation was identical in content to the original royal decree. In the context of the pending proceedings there had been nothing to prevent the ordinary courts from reviewing the conformity of the new law with Community law given that, under Belgian law, both royal decrees and legislative provisions must comply with directly applicable international law. The scope of judicial review had not been substantially reduced by the fact that the royal decree had been replaced by a law, as the courts were also empowered to declare inapplicable any law found to be in breach of a rule of international law which applied directly: *manifestly ill-founded*.

Article 1 of Protocol No. 1 – The Law of 24 March 1987 had introduced the principle of compulsory contributions and had stipulated that regulations would be adopted laying down the amounts and the detailed arrangements for payment. This had been done by means of the royal decree of 11 December 1987. However, the decree had been in breach of one of the requirements of Community law, as it had provided for the same contributions to be paid in respect of both domestic and imported products. That defect had been identified both by the Court of Justice and by the Belgian courts, which in 1994 had ordered that the sums paid under that royal decree be reimbursed. The Law of 21 December 1994, which had been enacted after those decisions, had remedied the discrimination but had still failed to meet the requirement of prior consultation of the European Commission. In the circumstances the applicant company had had, at the least, a legitimate expectation that the sums paid would be reimbursed, and had therefore had a claim amounting to a "possession".
In enacting the Law of 23 March 1998 with retroactive effect, the legislature had sought to re-establish and reaffirm its original intention, which had been thwarted by the earlier regulatory and legislative defects. There had been clear and compelling public-interest grounds for ensuring that the fund had the financial means to enable it to operate. The applicant company had not contradicted the assertion, made in the explanatory memorandum to the draft law, that the budgetary implications of having to repay the amounts would imperil the future funding of animal health policy. The retroactive legislative measure had not frustrated the applicant's hopes that the State would be ordered to repay it the contributions it had paid before its entry into force. In short, the measures taken by the respondent State had not upset the balance

which needed to be struck between protection of the applicant's right to repayment of the contributions already paid and the public interest in ensuring the financing of the fund: *manifestly ill-founded*.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Independence and impartiality of the High military administrative court: *inadmissible*.

GÜNER ÇORUM - Turkey (N° 59739/00)
Decision 3.11.2005 [Section IV]
(see Article 6(1), above).

IMPARTIAL TRIBUNAL
Judge at the Constitutional Court which ruled on the constitutionality of a law which had been adopted with his participation as a senator: *communicated*.

POLISH AUTOCEPHALOUS ORTHODOX CHURCH (POLSKI AUTOKEFALICZNY KOŚCIÓŁ PRAWOSŁAWNY) - Poland (N° 31994/03)
[Section IV]
(see Article 14 below).

Article 6(1) [criminal]

APPLICABILITY
Applicability of Article 6 to a dispute concerning the dismissal from his post of a Deputy Solicitor General: *Article 6 not applicable*.

MICKOVSKI - the former Yugoslav Republic of Macedonia (Nº 68329/01)
Decision 10.11.2005 [Section III]

The applicant, who is a member of the Social-Democrat Political Party, was appointed Deputy Solicitor General by the Government for a term of four years. He was dismissed from the post before the expiry of his term. The Constitutional Court refused to examine the applicant's complaint that he had been discriminated against on political grounds, finding that his complaint had been lodged out of time. However, it appeared that the applicant had sent his application by post to the Constitutional Court within the prescribed time-limits but that it had been returned to him since it had not been collected by the receiver. The Supreme Court refused to examine the applicant's complaint considering that it was not amenable to judicial review within the Administrative Disputes Act. The applicant complained that he was denied access to a court.

Inadmissible under Article 6: As a preliminary observation, the Court noted that the applicant had lodged his complaint within the requisite time-limit. He had produced as evidence a receipt from the Post Office showing that his letter had been returned because the Constitutional Court had not made arrangements to collect its mail in the summer period. Once an applicant has taken the appropriate steps to lodge a notice or submission with a court, a court should be able properly to ensure the receipt and recording of those documents. However, as regards the question of the applicability of Article 6, the post of Deputy Solicitor General was an office of Government entrusted with the duty of taking legal measures to protect state property and other state interests, as well as representing the State and its various institutions in domestic and foreign *fora*. Such duties could be regarded as being designed to safeguard the general interests of the State or other public authorities. Hence, the dispute concerning the applicant's discharge from office fell outside the scope of Article 6(1): incompatible *ratione materiae*.

FAIR HEARING
Alleged deficiencies in the domestic investigation concerning the death of the applicant's son: *communicated.*

AL FAYED - France (N° 38501/02)
[Section II]

The applicant's son was killed in a road traffic accident in Paris on 31 August 1997 while travelling in a vehicle with Lady Diana Spencer, Princess of Wales, who also died of her injuries some hours later. The driver of the vehicle was also killed. In view of the circumstances of the accident, which had been preceded by intense activity on the part of press photographers and by their chasing the vehicle in which the victims were travelling, a judicial investigation was opened on 2 September 1997, in the context of which ten photographers were placed under investigation for unintentionally causing death and injury and failing to assist a person in danger. The applicant immediately applied to be joined to the proceedings as a civil party. He also requested that the scope of the investigation should include the invasion of his son's and Lady Diana's privacy, as the offences were connected. When no action was taken in response to his request, he lodged a complaint alleging invasion of privacy on 9 October 1997 and applied to join the proceedings as a civil party. Few if any investigative measures were taken in the context of those proceedings, which were never joined to the first set of proceedings, despite repeated requests to that effect from the applicant. During the proceedings at first instance, in the course of which several requests by the applicant for additional investigative measures were dismissed, the two investigating judges ruled on 3 September 1999 that the persons under investigation had no case to answer. That ruling was upheld by the Investigation Division of the Paris Court of Appeal on 31 October 2000. The same day, in a separate judgment, the Investigation Division remitted the case file concerning the complaint of invasion of privacy to the investigating judge, criticising the "lack of diligence over a period of almost three years". On 3 April 2002 the Court of Cassation dismissed an appeal from the applicant in the context of the proceedings on the charges of unintentionally causing death and injury and failing to assist a person in danger. As to the investigation into the alleged invasion of privacy, the Court of Appeal held that the State's responsibility was engaged on account of gross negligence in the administration of justice (owing to the "failure of the judicial authority to ensure that the victims were kept informed and their rights safeguarded", resulting in "a violation of the right to real and effective access to a court and the right to have one's case heard within a reasonable time") and on account of a denial of justice (characterised by the "unjustified lack of action on the part of the judges over a period of almost three years"). The Court of Appeal awarded the applicant EUR 15,000 in compensation for non-pecuniary damage.
Communicated under Article 2 (procedural aspect) and Article 6(1), with a question as to victim status.

REASONABLE TIME
Alleged delay in the enforcement of final judgments: *inadmissible.*

PRESNYAKOV - Russia (N° 41145/02)
Decision 10.11.2005 [Section I]

The applicant, who was accused of bribery and corruption, was subsequently acquitted of the charges and granted damages for wrongful prosecution. He initially forwarded the writs of execution to the Federal Treasury, instead of to the Ministry of Finance, as provided under domestic law. He corrected the error and sent the writs to the Ministry in February 2002. The money due pursuant to the judgments in his favour granting him damages was transferred to his bank account in February 2003.

Inadmissible under Article 6 and Article 1 of Protocol No. 1: The judgments in favour of the applicant had been fully executed within a period of one year from the date on which he had properly applied for their enforcement. Hence, they had been enforced within a "reasonable time" and there had been no interference with the applicant's property rights: *manifestly ill-founded*.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Criminal court reading out indictment and hearing case in the prosecutor's absence: *admissible*.

OZEROV - Russia (N° 64962/01)
Decision 3.11.2005 [Section III]

Criminal proceedings were brought against the applicant for a traffic offence entailing infliction of bodily harm and a burglary. A district court heard the case in the presence of the applicant, his counsel and the victims. The prosecution was not present and witness L failed to appear, having informed the court that he was on sick leave. The court read out the indictment, heard the applicant and read out L's statements as recorded during the preliminary investigation. The court also heard another witness, police officer Y, who had apprehended the applicant at the site of the burglary. The applicant was convicted on both counts and sentenced to three and a half years' imprisonment and a fine. He appealed to a city court, objecting to the lack of information as to whether the prosecutor had been notified of the hearing and why he had been absent. In assuming the functions of the prosecution the district court had violated the principles of impartiality, equality of arms and adversarial proceedings. Neither had the case file contained any information as to the summoning of witness L. The court's decision to examine his written statements because he had been unable to attend had been unfounded. The city court upheld the applicant's conviction and sentence, noting *inter alia* that according to L's statement during the preliminary investigation the applicant had participated in the burglary.

Article 6(1): The applicant complains that the district court was not impartial as it held the trial in the absence of a public prosecutor, thereby assuming his functions. It is in dispute whether or not the applicant objected to the prosecutor's absence from the district court hearing. *Admissible*.

Article 6(3)(d): The applicant also complained that the district court had failed to obtain the attendance of witness L. The Court noted however that the defence had stated explicitly that it had no objections to the commencing of the district court trial in the absence of witness L. This was tantamount to an unequivocal waiver of the applicant's right to confront that witness. *Inadmissible*.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction based in part on hearsay evidence and in part on other items of evidence: *inadmissible*.

HAAS - Germany (N° 73047/01)
Decision 17.11.2005 [Section III]

A court of appeal convicted the applicant of having aided and abetted an attack on air traffic, the taking of hostages, extortionate kidnapping and attempted murder on two counts in connection with the *Landshut* hijacking in 1977. She was sentenced to five years' imprisonment. Having heard various witnesses, the court based its findings as to the applicant's participation in the offences essentially on the evidence given by Said S., at the time serving a prison sentence in Lebanon. The Lebanese authorities had refused to transfer him to Germany for the purposes of the proceedings. The court of appeal therefore relied on the depositions of witnesses W. and S., officers of the Federal Office of Criminal Investigations who had been present with an interpreter when Said S. had been questioned by the Lebanese police in the course of German preliminary investigations against himself and the applicant's husband. The court of appeal also relied on statements of anonymous informers, as reported by witnesses G. and P., high-ranking officials of the German Intelligence Service and the Federal Office for Criminal Investigations respectively, as well as on various other items of evidence.
The Federal Court of Justice dismissed the applicant's appeal on points of law, noting that the statements obtained from Said S. with regard to the applicant's participation in the hijacking and related crimes had been confirmed by numerous other items of evidence. The court of appeal had correctly taken a cautious

approach in assessing the evidence emanating from anonymous informers and had merely considered it as corroborating the statements of witness Said S. and other items of evidence. The Federal Constitutional Court refused to admit the applicant's constitutional complaint, noting that the trial court's assessment and evaluation of evidence had not been confined to the depositions of police officers W. and S. concerning the highly incriminating statements made by the accomplice Said S. and to information obtained from police and intelligence service informers operating abroad, as presented by the witnesses P. and G. The testimony of witness B. had also constituted important circumstantial evidence.
Before the European Court the applicant complained that the criminal proceedings against her had been unfair because of the way in which evidence had been taken and assessed. Her conviction had been based essentially on hearsay evidence. The defence had not been able to question the key witnesses for the prosecution and to call witnesses for her defence.
The European Court noted that the German courts had used the means at their disposal under domestic law to secure the presence of the witness concerned and could not be accused of a lack of diligence engaging Convention responsibility. It would clearly have been preferable for Said S. to have been heard in person, but his unavailability could not as such block the prosecution. The domestic courts had been aware that they merely disposed of hearsay evidence of Said S.'s questioning as an accused, as reported by the officers of the Federal Office of Criminal Investigations, W. and S. The courts had assessed Said S.'s statements cautiously, taking thoroughly into consideration the circumstances of his questioning. With respect to his hearing under letters rogatory, the courts, having regard to the restrictions on the rights of the defence, had decided not to consider these statements as evidence which could stand on its own. Consequently, the courts had treated the evidence in question with the extreme care required. While the courts had based the applicant's conviction to an appreciable extent on Said S.'s statements when questioned as an accused, these had by far not been the only evidence relied on. The courts had had regard to several further items of evidence and also had considered Said S.'s statements to be corroborated by evidence obtained from several anonymous informers, who had identified the applicant as the person who had transported the weapons for the *Landshut* hijacking. The domestic courts had tried on several occasions to obtain disclosure of the identity of these informers. This had been refused by the competent German authorities on the ground that it was still necessary to protect the informers, who were operating outside Germany. The applicant had been charged with having aided and abetted very serious offences, which had been committed by two terrorist organisations operating together. Moreover, the applicant had kept in contact with her husband, who was still considered capable of organising acts of revenge. Given that the informers in question, who were not police officers, remained abroad, where German authorities could protect them only to a very limited extent, the domestic authorities had adduced relevant and sufficient reasons to keep secret the witnesses' identities. The defence had been offered the opportunity to question witnesses G. and P. in court. Due to the non-disclosure of the informers' identities the defence had lacked information permitting it to test their reliability or cast doubts on their credibility. Furthermore, the Court of Appeal itself had been precluded from forming their own impression on the informers' reliability. However, given that the evidence obtained from anonymous informers had not been decisive for the applicant's conviction and had been corroborated by the various other items of evidence (other than Said S.'s statements), the rights of the defence had been sufficiently respected.
Having regard to the proceedings as a whole, and considering the alleged shortcomings together, the Court noted the accumulation of hearsay evidence. Various witnesses had introduced into the main hearing statements of witnesses whom the applicant, for different reasons, had had no opportunity to examine or have examined. However, the domestic courts had made considerable efforts to obtain oral testimony notably from Said S. and had assessed his depositions, as well as those obtained from the anonymous informers and B., very carefully. Given that the applicant's conviction had also been based on several further items of evidence, the rights of the defence had not been restricted to an extent incompatible with the guarantees of Article 6 §§ 1 and 3(d). *Manifestly ill-founded*.

ARTICLE 8

PRIVATE LIFE
Proceedings disclaiming presumed paternity held to be time-barred under domestic law: *violation*.

SHOFMAN - Russia (Nº 74826/01)
Judgment 24.11.2005 [Section I]

Facts: The applicant's wife gave birth to a son in 1995. The applicant was registered as the child's father. In 1996 the applicant moved to Germany, and the following year his wife informed him that the marriage was over and that she would be applying for maintenance for the child. At about that time the applicant's relatives advised him that he was not the boy's father. The applicant petitioned for divorce and brought an action contesting paternity in December 1997. On the basis of the results of DNA tests, the District Court found it established that the applicant could not be the boy's father but nevertheless ruled that his action was time-barred. The court relied on the Marriage and Family Code of 30 July 1969, which set a one-year limitation period for a paternity action (to be calculated from the date when the putative father was informed that he had been registered as the father). The judgment was upheld on appeal. The applicant alleged a violation of Article 8 of the Convention, in that proceedings to disclaim his presumed paternity were held to be time-barred under the law in force at the material time.

Law: Article 8 – *Applicability*: In cases concerning a husband wishing to institute proceedings to contest the paternity of a child born in wedlock, the Court has previously left open the question whether the paternity proceedings concerned the applicant's "family life", finding that, in any event, the determination of the father's legal relations with his putative child concerned his "private life". Hence, the case fell within the ambit of Article 8. *Compliance*: The introduction of a time-limit for the institution of paternity proceedings could be justified by the desire to ensure legal certainty in family relations and to protect the interests of the child. So far, the Court had only been confronted with cases where the applicant had known with certainty, or had had grounds for assuming, that he was not the father from the first day of the child's life but – for reasons unconnected with the law – had taken no steps to contest paternity within the statutory time-limit (*Yildirim v. Austria* and *Rasmussen v. Denmark*). The situation in the present case was, however, different because the applicant had not suspected that the child was not his and reared him as his own for some two years after birth. The applicant would have had a right under domestic law to contest paternity had he lodged the action within one year after the birth. However, the domestic law in force at the material time made no exceptions to that time-limit, and thus made no allowance for husband's in the applicant's situation who did not become aware of the biological reality until more than a year after the registration of the birth. The Government had not given any reasons why it should have been "necessary in a democratic society" to establish such an inflexible time-limit. The fact that the applicant was prevented from disclaiming paternity because he did not discover that he might not be the father until more than a year after he had learnt of the birth had not been proportionate to the legitimate aims pursued. Hence, despite the respondent State's margin of appreciation, it had failed to secure respect for the applicant's private life.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 6,000 in respect of non-pecuniary damage. It also made an award for costs and expenses.

PRIVATE LIFE
Publication by the media of the name and picture of a minor involved convicted of a serious criminal offence: *communicated*.

X. - Ireland (Nº 14079/04)
[Section IV]

When he was 16 years old the applicant was involved in a road traffic accident in which two persons were killed. The incident received considerable attention by the media. The applicant was arrested and charged with an offence under the Road Traffic Act. The case was initially examined by the Children Court, but then transferred to the Circuit Criminal Court. In October 2003, the Criminal Court sentenced the applicant to eight years for manslaughter. At the time, the applicant was seventeen years and five months old. At the end of the hearing the trial judge vacated an earlier order that the media should not be allowed to identify the applicant. That evening the applicant's name was broadcast on the television and the radio. His picture also appeared on the television. The newspapers later published his name and his picture. The applicant complains about the failure to protect him from having his name and photograph published when he was a minor, maintaining also that had he been tried before the Children Court he would have been protected from such disclosure.
Communicated under Articles 8 and 14, with a question on exhaustion of domestic remedies.

FAMILY LIFE
Imminent expulsion of an illegal immigrant who alleged that his girlfriend was pregnant: *communicated*.

POMA CORDOVA and HUAMANI HUAMANI - Italy (Nº 33801/05)
Decision 24.11.2005 [Section III]

The applicants are Peruvian nationals living in Italy who claim to be cohabitees. A few days after his admission to hospital with a serious eye injury, a deportation order was made against Mr Poma Cordova for illegally entering Italy. The court ruled that, on account of his condition, he could not be held in a temporary detention centre pending deportation. He had an operation on his retina. He appealed, without success, to a justice of the peace against the deportation order, arguing that his partner was pregnant.
Communicated under Article 8. Application to be dealt with as a priority.

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Prohibition for a student to wear the islamic headscarf at university: *no violation*.

LEYLA SAHIN - Turkey (Nº 44774/98)
Judgment 10.11.2005 [Grand Chamber]

Facts: On 23 February 1998 the Vice-Chancellor of Istanbul University issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. At the material time the applicant was a student at the faculty of medicine of the university. In March 1998 she was refused access to a written examination on one of the subjects she was studying because she was wearing the Islamic headscarf. Subsequently, on the same grounds, the university authorities refused to enrol her on a course, and to admit her to various lectures and a written examination. The faculty also issued her with a warning for contravening the university's rules on dress and suspended her from the university for a semester for taking part in an unauthorised assembly that had gathered to protest against the rules. All the disciplinary penalties imposed on the applicant were revoked under an amnesty law. The applicant lodged an application for an order setting aside the circular, but it was dismissed by the administrative courts, who found that that a university vice-chancellor had power to regulate students'

dress for the purposes of maintaining order by virtue of the legislation and decisions of the Constitutional Court and the Supreme Administrative Court, and that the regulations and measures criticised by the applicant were not, under the settled case-law of those courts, illegal.

Law: Article 9 – The circular issued on 23 February 1998 by Istanbul University, which placed restrictions of place and manner on the students' right to wear the Islamic headscarf, constituted an interference with the applicant's right to manifest her religion. As to whether the interference had been "prescribed by law", the Court noted that the circular had a statutory basis which was supplemented by a 1991 decision in which the Constitutional Court had followed its previous case-law. In addition, the Supreme Administrative Court had by then consistently held for a number of years that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the Republic. Furthermore, regulations on wearing the Islamic headscarf had existed at Istanbul University since 1994 at the latest, well before the applicant had enrolled there. Accordingly, there was a legal basis for the interference in Turkish law, the law was accessible and its effects foreseeable so that the applicant would have been aware, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from 23 February 1998, that she was liable to be refused access to lectures and examinations if she continued to wear the headscarf. The interference pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order. As to whether the interference was necessary, the Court noted that it was based in particular on the principle of secularism, which prevented the State from manifesting a preference for a particular religion or belief and whose defence could entail restrictions on freedom of religion. That notion of secularism was consistent with the values underpinning the Convention and upholding that principle could be considered necessary to protect the democratic system in Turkey. In the Turkish context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire to be worn on university premises. As regards the conduct of the university authorities, the Court noted that it was common ground that practising Muslim students in Turkish universities were free, within the limits imposed by educational organisational constraints, to manifest their religion in accordance with habitual forms of Muslim observance. In addition, various forms of religious attire were forbidden at Istanbul University. Further, throughout the decision-making process, the university authorities had sought to avoid barring access to the university to students wearing the Islamic headscarf, through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises. In those circumstances, and having regard to the Contracting States' margin of appreciation, the Court found that the interference in issue was justified in principle and proportionate to the aims pursued, and could therefore be considered to have been "necessary in a democratic society".
Conclusion: no violation (sixteen votes to one).

Article 2 of Protocol No. 1: On the question of the applicability of the provision, the Court reiterated that while the first sentence essentially established access to primary and secondary education, it would be hard to imagine that institutions of higher education existing at a given time did not come within its scope. Nevertheless, in a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 would not be consistent with the aim or purpose of that provision. Consequently, any institutions of higher education existing at a given time came within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions was an inherent part of the right set out in that provision. In the case before it, by analogy with its reasoning under Article 9, the Court accepted that the regulations on the basis of which the applicant had been refused access to various lectures and examinations for wearing the Islamic headscarf constituted a restriction on her right to education. As with Article 9, the restriction was foreseeable to those concerned and pursued legitimate aims and the means used were proportionate. The decision-making process had clearly entailed the weighing up of the various interests at stake and was accompanied by safeguards (the rule requiring conformity with statute and judicial review) that were apt to protect the students' interests. Further, the applicant could reasonably have foreseen that she ran the risk of being refused access to lectures and examinations if she continued to

wear the Islamic headscarf. Accordingly, the ban on wearing the Islamic headscarf had not impaired the very essence of the applicant's right to education.
Conclusion: no violation (sixteen votes to one).

Articles 8, 10 and 14 – The regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions.
Conclusion: no violation (unanimously)

ARTICLE 10

FREEDOM OF EXPRESSION
Dismissal of a civil servant for having carried out ideological and political activities as a sympathiser of an illegal organisation: *admissible*.

GÜNER ÇORUM - Turkey (N° 59739/00)
Decision 3.11.2005 [Section IV]
(see Article 6(1), above).

FREEDOM OF EXPRESSION
Administrative-law sanctions imposed for promoting ethnic hostility by describing territories of neighbouring States as "ethnic Lithuanian lands under temporary occupation": *admissible*.

BALSYTĖ-LIDEIKIENĖ – Lithuania (N° 72596/01)
Decision 24.11.2005 [Section III]

The applicant is the founder and owner of a publishing company which publishes a yearly "Lithuanian calendar" describing various historic dates from the applicant's and other authors' perspective. In January 2000 a parliamentary committee requested the Prosecutor General to investigate whether the 2000 edition was compatible with the Lithuanian Constitution and other legal acts. Two experts noted; among other things, that according to a map in the calendar certain territories of Belarus, Poland and Russia were "ethnic Lithuanian lands under temporary occupation". The experts concluded that the edition contained anti-Semitic and anti-Polish assertions, and declarations of the superiority of Lithuanians vis-à-vis other ethnic groups. The authorities subsequently seized a number of copies in various bookstores and the distribution of the edition was stopped.
In June 2000 a district court found that the applicant had published 3,000 copies of the edition, 588 of which had been sold. Relying mostly on the expert conclusions, the court held that the applicant had intended to distribute material promoting ethnic hostility. The Court imposed an administrative penalty in the amount of 1,000 Lithuanian litai (LTL) and ordered confiscation of all seized copies. The court heard the case in the absence of the applicant or a lawyer for the defence.
The applicant appealed, claiming a violation of Article 10 of the Convention and complaining that her trial had taken place *in absentia*. A regional court quashed the first instance judgment on the ground that she had been hospitalised at the time of the hearing and thus could have not taken part in the first-instance hearing. The case was remitted for a fresh examination. Referring to fresh expertise obtained, the district court found that the applicant's actions in producing and distributing the 2000 edition had promoted ethnic hostility. The edition had caused negative reactions from official representatives of Poland, Belarus and Russia, who had complained about the map denoting some of their territories as "ethnic Lithuanian lands under temporary occupation". The district court concluded that the applicant's actions had not been deliberate but reckless. An administrative warning was imposed and some 1,000 copies of the edition and the means to produce it were confiscated. The case was examined in the presence of the applicant and a representative of the security intelligence authorities. The applicant left the hearing in the course thereof.

The applicant appealed further, claiming in particular that Article 10 of the Convention had been violated. She also complained that the court had not called the experts to give oral testimony, thereby breaching her defence rights. The Supreme Administrative Court rejected the appeal as unsubstantiated without hearing the parties. It found it established that no procedural breaches had occurred before the district court as the applicant had been able to state her case but had left the hearing voluntarily before it had ended. Neither had the first-instance court been required by the relevant procedural provisions to hear the experts orally.

Admissible under Articles 10 and 6 (allegedly unfair proceedings and lack of oral hearing on appeal). *Inadmissible* under Articles 9 and 14 of the Convention.

FREEDOM OF EXPRESSION
Article criticising Archbishop of the Roman Catholic Church: *admissible*.

KLEIN - Slovakia N° 72208/01)
Decision 8.11.2005 Section IV]

The applicant, a journalist and film critic, wrote an article published in a weekly, criticising the Slovak Archbishop of the Roman Catholic Church who, in a broadcast declaration, had demanded that the film "*The People vs. Larry Flynt*" and the poster promoting it, be withdrawn as they amounted to profanation of God. The applicant was convicted of defamation and sentenced to pay 15,000 Slovakian korunas (about 375 EUR) in fines. *Admissible*.

FREEDOM OF EXPRESSION
Refusal for promotion of a civil servant with the police on account of political activities: *inadmissible*.

OTTO v. Germany N° 27574/02)
Decision 24.11.2005 Section III]

The applicant, who was employed as a civil servant with the police, was a member of a political party considered as populist and right-wing (*Die Republikaner*). The party had not been declared unconstitutional but had been under the scrutiny of the authorities. The applicant was refused for a promotion to chief inspector. He was informed by the Regional Council that promotions were generally based on suitability, capabilities and professional qualifications. Given his membership of *Die Republikaner*, a party which was suspected of pursuing anti-constitutional goals, the Council had severe doubts as to his suitability for the post.The applicant instituted proceedings against his non-promotion, but the Administrative Court found that the decision had been lawful. The employer enjoyed a margin of appreciation as regards promotion, and it had not been overstepped by considering that the applicant was unsuitable because of his political activities. The applicant's successive appeals were dismissed.

Inadmissible under Article 10: Although Article 10 did not apply to questions related to the recruitment to the civil service, this was not at the heart of the instant case, which concerned a complaint of not being further promoted because of membership of a political party. The disputed measure had thus amounted to an interference with the applicant's freedom of expression. The measure had been prescribed by law and pursued the legitimate aim of having a politically neutral police force (by imposing an obligation on certain categories of police officials of refraining from political activities). As regards the necessity of the measure in a democratic society, even though no criticism had been levelled at the way the applicant actually performed his duties, he bore a special responsibility as a senior civil servant with the police. That responsibility, which required police officers to have particular balanced views removed from party politics, would even increase upon the applicant's promotion. The *Die Republikaner* had not been banned, but the German courts had carefully examined why this was not considered a prerequisite when assessing the applicant's suitability for the post. The case significantly differed from *Vogt v. Germany*, where the applicant had been dismissed from his job, mainly because the applicant was not threatened with losing his livelihood by not receiving further promotion. Moreover, the applicant had already been promoted

several times during his professional career, and the decision not to promote him further had taken place at a very advanced stage of his career. Therefore, the restriction of the applicant's right to freedom of expression had not been disproportionate or unjustified: *manifestly ill-founded*.

ARTICLE 13

EFFECTIVE REMEDY
Adequacy of investigation into alleged burning of homes: *violation*.

NURI KURT - Turkey N° 37038/97)
Judgment 29.11.2005 [Section II]

Facts: According to the applicant, in 1994 he and his fellow villagers were compelled to leave their homes in Suçıktı after being threatened by State security forces and guards from a neighbouring village who, the following year, set fire to their homes. In 1997 a commission, headed by a gendarme major, launched an investigation but concluded that the homes had been burnt down as a result of a fire which had spread from a neighbouring village and that no proceedings should be brought against the security forces and the village guards. The Diyarbakır Regional Administrative Court upheld that finding. In 2000 a group of people, encouraged by village guards, settled in Suçıktı together with their livestock. The applicant petitioned to have them evicted from his home and requested permission for his family's return, but received no reply.
The Government claimed that the applicant and other villagers had left Suçıktı as they had been threatened by the PKK (the Kurdistan Workers' Party). The Government maintained that some houses in Suçıktı had been burnt down as a result of a fire which had spread from a neighbouring village but that the applicant's house had not been damaged. Furthermore, an investigation revealed that the applicant had leased his land to two villagers.

Law – Article 8 of the Convention and Article 1 of Protocol No. 1: As the applicant had not provided enough evidence to corroborate many of his allegations the Court could not find it established to the required standard of proof that his house had been destroyed by State security forces. Neither had he provided any information or evidence to substantiate his allegation that he had been forced to leave and denied access to his village by State security forces.
Conclusions: No violation (unanimously).

Article 13 of the Convention*:* The Court noted serious defects in the investigation. In particular, the appointment of a gendarme to investigate fellow gendarmes, along with other issues which cast serious doubts on the credibility of the investigation, led the Court to conclude that it had not been thorough and effective.
Conclusion: Violation (unanimously).

Article 14 of the Convention: The applicant's allegations were unsubstantiated.
Conclusion: No violation (unanimously).
The applicant was awarded EUR 4,000 for non-pecuniary damage as well as costs and expenses.

ARTICLE 14

DISCRIMINATION (Aticle 9)
Alleged discrimination towards a branch of the Orthodox Church: *communicated*.

POLISH AUTOCEPHALOUS ORTHODOX CHURCH (POLSKI AUTOKEFALICZNY KOŚCIÓŁ PRAWOSŁAWNY) - Poland N° 31994/03)
[Section IV]

The applicant church uses and administers, among other assets, 24 places of worship which are the subject of a dispute between it and the Byzantine-Ukrainian Catholic Church. A 1991 law granted the applicant title to the buildings in its possession at the time the law entered into force. It stipulated that a separate law was to be enacted to deal with the question of the acquisition of those places of worship in respect of which the State, as the owner of the properties, had granted the applicant rights of use and possession. The applicant applied to the Constitutional Court seeking a review of the constitutionality of some of the law's provisions. It alleged in particular that it had been discriminated against in comparison with the Catholic Church, since the acquisition of the properties to which the latter claimed title had not been made subject to a specific law. The Constitutional Court rejected the application. It pointed out that the draft law had provided for the applicant church to be granted title without any exceptions, and that the amendment complained of had been introduced at the instigation of the Senate. It considered that the situation of the applicant with regard to the properties to which it claimed title differed from that of other religious groups, since the applicant was engaged in a dispute with the Byzantine-Ukrainian Catholic Church concerning ownership of the properties in question. The applicant complained unsuccessfully that one of the judges who had ruled on the constitutionality of the law had, as a member of the Senate, been involved in the decision-making process leading up to enactment of the law. That, in the applicant's view, constituted a lawful ground for challenging the judge. According to the applicant, the legal uncertainty regarding the status of its places of worship infringed its right to peaceful practice of its religious rites. *Communicated* under Articles 6 (impartial tribunal), 9 and 14 and Article 1 of Protocol No. 1 taken in conjunction with Article 14.

ARTICLE 34

VICTIM
Acknowledgment of violation and discontinuation of proceedings, having regard to excessive length of criminal proceedings: *inadmissible*.

SPROTTE - Germany Nº 72438/01)
Decision 17.11.2005 Section III]

Criminal proceedings were instituted against the applicant for a traffic offence in August 1993. The proceedings lasted more than eleven years for four levels of jurisdiction. Due to five remittals, decisions were rendered in sixteen instances. In January 2004 the Federal Constitutional Court found that the applicant's conviction had been disproportionate considering the excessive length of the proceedings, a delay of twenty-two months attributable to the conduct of the lower courts and the relatively insignificant charge. As the applicant's rights to a fair criminal trial had been violated, the Constitutional Court found it unjustified to impose a criminal sanction on the applicant. The proceedings against the applicant were therefore discontinued in December 2004.

Inadmissible under Article 6(1) (reasonable time): The Constitutional Court had expressly established that the length of the criminal proceedings against the applicant had been unreasonable. Hence, the domestic authorities had fully acknowledged the violation of the applicant's rights under Article 6(1). They had also

afforded the applicant adequate redress for the violation: firstly, the proceedings had been discontinued, and, secondly, court fees were borne by the Treasury and the applicant reimbursed half of the necessary expenses incurred by the proceedings: lack of victim status.

VICTIM
Judgment debt assigned to the applicant already quashed at the date of assignment: *inadmissible*.

NOSOV - Russia (N° 30877/02)
Decision 20.10.2005 [Section I]

In 1996 limited liability company A., in which the applicant owned fifty per cent, sold petrol to company T. which in the end paid only a part of the stipulated purchase price. Following unsuccessful attempts to recover the outstanding amount, A. assigned debt to the limited liability company K., of which the applicant was, in his submission, director but not the owner. K. sued T. for the outstanding amount. In 1999 a regional commercial court found in K.'s favour and an appellate panel upheld the judgment, following which it became enforceable and a writ of execution was issued. Later that year K. assigned the debt to Mr Sh., a trader, following which the writ was submitted to the bailiff for enforcement. As no cassation appeal had been lodged within the established time-limit, the judgment became final on 15 May 1999. Later in 1999 K. went into liquidation pursuant to a judicial decision in unrelated proceedings. In 2000 Mr Sh. assigned the debt to the limited liability company P., in which the applicant was, in his submission, director but not the owner. Later in 2000 P. sued T. for damages incurred through its failure to comply with the 1999 judgment.
In January 2001 a federal commercial court issued procedural orders granting T. an extension of the time-limit for its submission of a cassation appeal as well as a deferral of court fees payable in that connection. On 28 February 2001 the federal commercial court quashed the 1999 judgment and remitted the claim for a new examination on the ground that the facts had been assessed incorrectly. The commercial court instructed the first-instance court to examine whether K. had gone into liquidation and, if so, to discontinue the proceedings. Meanwhile, the proceedings regarding the action for damages lodged by P. in 2000 were discontinued as the 1999 judgment had been quashed. Later in 2001 the regional commercial court discontinued the proceedings regarding the 1999 judgment as K. had been liquidated. P. then sold to the applicant the right to claim the debt and damages arising out of the 1999 judgment.
The applicant complained under Article 6(1) of the Convention and Article 1 of Protocol No. 1 that the re-opening of the proceedings and the quashing of the 1999 judgment two years after it had become final and enforceable had violated his right to a fair trial as well as his property rights.
The Court reiterated that the term "victim" in Article 34 denotes the person directly affected by the act or omission which is at issue. Disregarding a company's legal personality as regards the question of being a "victim" will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation or bankruptcy – through its liquidators or trustees in bankruptcy. On the other hand, the sole owner of a company may claim to be a "victim" in so far as the impugned measures taken with regard to his or her company are concerned, because in case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringements of the Convention rights or the most appropriate way of reacting to such infringements.
The Court noted the divergence of views as to who was the actual owner of companies K. and P. Neither party had produced any documents showing the ownership of either company's shares. As in these circumstances the identity of shareholders of either company could not be established with sufficient clarity, the Court could not identify the applicant with either company. The applicant was not a party to the proceedings in 1999 ending with an enforceable judgment in favour of company K. Nor did it appear that he ever attempted to join the proceedings in his personal capacity. Accordingly, he could not claim to be a "victim" of the alleged violation of Article 6.
As for the complaint under Article 1 of Protocol No. 1, the Court noted that by the time when the 1999 judgment had been quashed, the debt arising out of that judgment had been assigned to company P. Only after the quashing had the applicant acquired for himself the right to claim the debt and damages arising

out of the 1999 judgment. A "claim" can only constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable. An assignment of a debt is capable in principle of amounting to such a "possession". However, as the judgment debt which was assigned to the applicant had already been quashed at the date of the assignment, and in the absence of any other apparent benefit to the applicant from the assignment, the assignment did not result in the acquisition by him of a "possession" within the meaning of Article 1 of Protocol No. 1. In so far as the quashing might have affected the property rights of P. which had owned the judgment debt at the material time, no application had been lodged by that company. It had not been claimed that P. had ceased to exist as a legal entity or that it could not present an application in its own name for any other reasons of exceptional nature. Nor had the applicant claimed that he had intended to introduce an application in the name of P. Furthermore, the very fact that he had purchased the right to claim from that company was a clear indication of his intention to introduce the application in his own name rather than on behalf of P. Incompatible *ratione personae.*

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Human Rights Chamber for Bosnia and Herzegovina a "domestic" remedy

JELIČIĆ - Bosnia and Herzegovina (N° 41183/02)
Decision 15.11.2005 [Section IV]
(see below, under Article 35(2)(b)).

Article 35(2)

SAME AS MATTER SUBMITTED TO OTHER INTERNATIONAL PROCEDURE
Human Rights Chamber for Bosnia and Herzegovina a "domestic" rather than "international" body: *Government's objection dismissed*.

JELIČIĆ – Bosnia and Herzegovina (N° 41183/02)
Decision 15.11.2005 [Section IV]

In 1983 the applicant deposited a certain amount of German marks in two foreign-currency savings accounts at a bank located in what is now the Republika Srpska. She later attempted to withdraw her savings on several occasions to no avail. The bank explained that her money had been re-deposited with the National Bank in Belgrade prior to the dissolution of the Socialist Federal Republic of Yugoslavia.
In 1995 the Human Rights Chamber for Bosnia and Herzegovina was set up by the Agreement on Human Rights (Annex 6 to the 1995 Dayton Peace Agreement) in order to assist Bosnia and Herzegovina and its entities in honouring their obligations under that Agreement, namely to secure to all persons within their jurisdiction the highest level of internationally recognised human rights (including those provided in the European Convention on Human Rights).
In 1997 the applicant brought a civil action to recover her savings and in 1998 a first-instance court found in her favour. In 2000 the Human Rights Chamber found a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 arising from the failure to enforce the 1998 judgment. The Republika Srpska was ordered to ensure full enforcement without further delay but its Payment Bureau refused to enforce the judgment relying on various legislation enacted between 1996 and 1999. In 2002 the privatisation of the applicant's bank was completed and the applicant's foreign-currency deposit became a public debt of the Republika Srpska.

Article 35(2)(b): In order to determine whether the Human Rights Chamber was or was not an "international" body the Court took as its starting point the legal character of the instrument founding this body, but also considered the Chamber's composition, its competence, its place (if any) in the existing legal system as well as its funding. True, the Chamber had been set up as a transitional measure, pending Bosnia and Herzegovina's accession to the Council of Europe, and there was no possibility of appeal against a Chamber's decision to the Constitutional Court of Bosnia and Herzegovina or to any other court in Bosnia and Herzegovina. The Chamber nevertheless constituted a particular part of the legal system of Bosnia and Herzegovina. While the Chamber had been set up pursuant to an international treaty, various factors noted by the Court allowed it to consider that the proceedings before the Chamber had not been "international" within the meaning of Article 35(2)(b) and, further, that proceedings before the Chamber should be considered a "domestic" remedy within the meaning of Article 35(1). The Government's objection was therefore dismissed.

Article 35(1): An applicant is required to make normal use of domestic remedies which are effective, sufficient and accessible. In the event of there being a number of remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In the present case, the applicant had pursued an appeal before the Chamber which the Court had found to constitute a "domestic" remedy within the meaning of Article 35(1). The Chamber's decisions had, in general, been enforced and the fact that the Chamber's decision in the instant case had not been enforced did not render that remedy ineffective. Even assuming that an appeal to the Constitutional Court for Bosnia and Herzegovina could be considered to be an effective domestic remedy in the present case within the meaning of Article 35(1), the applicant had been entitled to choose between two effective domestic remedies and her application could not be rejected because of that choice.
Admissible under Article 6(1) of the Convention and Article 1 of Protocol No. 1.

ARTICLE 37

Article 37(1)

SPECIAL CIRCUMSTANCES REQUIRING FURTHER EXAMINATION
Government request for strike-out *rejected*

CAPITAL BANK AD - Bulgaria (N° 49429/99)
Judgment 24.11.2005 [Section I]
(see Article 6(1) [civil] above).

Article 37(1)(c)

CONTINUED EXAMINATION NOT JUSTIFIED
Friendly settlement in domestic proceedings containing a pledge by applicant to withdraw his pending application before the Court: *struck out*.

ZU LEININGEN - Germany (N° 59624/00)
Decision 17.11.2005 [Section III]

Facts: The applicant, who is the eldest son of an old aristocratic family, was completely excluded by his father from the order of succession and from any legacies or financial benefits after his second marriage. His father then appointed the applicant's brother as sole heir. The domestic courts upheld his late father's refusal to consent to the applicant's second marriage and his exclusion from the line of succession. Following the applicant's father's death, the applicant's brother was issued a certificate of inheritance by the German courts, naming him sole heir to the family's considerable fortune. This decision was

confirmed by the domestic courts including the Federal Constitutional Court, which refused to entertain the applicant's complaint as freedom of testamentary disposition enjoyed special protection. The applicant then lodged an application with the Court. In September 2002, in the course of a lawsuit with his brother, the applicant entered into a friendly settlement with him. He acknowledged in the settlement that his brother had become the sole heir to the family's fortune, but received financial compensation in return. The settlement included a provision whereby the applicant undertook to withdraw the application pending before the Court. It however indicated the wrong file number. The settlement closed with the applicant's renunciation of all claims against his brother. In the proceedings before the Court the applicant stated that he would not withdraw his application, because this provision had only been included by accident. In August 2005, in the context of the domestic execution proceedings the applicant also issued a statement announcing that he would not pursue his application pending before the Court. However, he requested the Court to consider the declaration meaningless and to continue the examination of the application.

Law: Article 37(1)(c) – The applicant's behaviour before the Court contravened his own behaviour before the domestic courts and his obligations under domestic law. As to the applicant's claim that it was impossible to renounce the right to lodge and pursue an application, the Court recalled its principles under established case-law that the waiver of a Convention right has to be unequivocal and requires certain minimum guarantees. In the present case, although the application had been wrongly designated in the settlement, the applicant's undertaking to withdraw the case was sufficiently clear and unequivocal. Moreover, the applicant had received considerable financial compensation in return, and, could have rescinded the settlement had he been coerced or misled into it. Therefore, the applicant's pledge to withdraw his application was not only valid under domestic law, but also under valid in respect of the present application. A continued examination of the application was thus no longer justified within the meaning of this provision: *struck out*.

ARTICLE 46

EXECUTION OF A JUDGMENT
Measures to be taken.

TEKİN YILDIZ - Turkey (N° 22913/04)
Judgment 10.11.2005 [Section III (former composition)]
(see Article 3, above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Intervention of a law in the course of a dispute with the State: *inadmissible*.

EEG-SLACHTHUIS VERBIST - Belgium (N° 60559/00)
Decision 10.11.2005 [Section I]
(see Article 6(1) [civil], above).

DEPRIVATION OF PROPERTY
Loss of registered land by application of the law on adverse possession: *violation*.

J.A. PYE (OXFORD) LTD - United Kingdom
Judgment 15.11.2005

Facts: The applicants are two companies, the second one of which was the registered owner of a plot of 23 hectares of agricultural land. The owners of property adjacent to the land, Mr. and Mrs. Graham ("the Grahams") occupied the land under a grazing agreement until 31 December 1983. On 30 December 1983 the Grahams were instructed to vacate the land as the grazing agreement was about to expire. Notwithstanding the requirement to vacate the land at the expiry of the 1983 agreement, the Grahams remained in occupation at all times, continuing to use it for grazing. In 1997, Mr Graham registered cautions at the Land Registry against the applicant companies' title on the ground that he had obtained title by adverse possession. The applicant companies sought the cancellation of the cautions before the High Court and issued further proceedings seeking possession of the disputed land. The Grahams contested the applicant companies' claims under the Limitation Act 1980, which provides that a person cannot bring an action to recover any land after the expiration of 12 years of adverse possession by another. They also relied on the Land Registration Act 1925, which provided that, after the expiry of the 12-year period, the registered owner held the land in trust for the squatter. The High Court gave judgment in favour of the Grahams, holding that they had enjoyed adverse possession of the land as from September 1984 and that the applicant companies had lost their title to the land under the 1980 Act. The Grahams were thus entitled to be registered as the new owners. The Court of Appeal reversed this decision on the ground that the Grahams did not have the necessary intention to possess the land. However, the Grahams appealed to the House of Lords, which restored the order of the High Court, finding that the Grahams did have "possession" of the land in the ordinary sense of the word, and therefore the applicant companies had been "dispossessed" of it within the meaning of the 1980 Act. The Land Registration Act 2002 – which does not have retroactive effect – now enables a squatter to apply to be registered as owner after ten years' adverse possession and requires that the registered owner be notified of the application. The registered proprietor is then required to regularise the situation (for example, by evicting the squatter) within two years, failing which the squatter is entitled to be registered as the owner.
The applicants complained that the law on adverse possession, by which they lost land with development potential to a neighbour, operated in violation of Article 1 of Protocol No. 1 in their case.

Law: Article 1 of Protocol No. 1 – *Applicability*: The provisions of the 1925 and 1980 Acts could not be regarded as limiting the applicants' property rights at the moment of their acquisition. However, at the point when the Grahams had completed 12 years' adverse possession, which directly led to the applicants' loss of their title, Article 1 of Protocol No. 1 came into play. Moreover, the combined operation of the two Acts had constituted an interference with the applicant companies' rights under this provision. As to the nature of the interference, although the Government contended that it was in the nature of a "control of the use of property", the Court considered the applicants had been "deprived of their possessions" by the contested legislation, and the case was to be examined under this angle of Article 1.

Legitimate aim: The Government argued that the contested provisions governing the adverse possession of land served two public interests: firstly, preventing uncertainty and injustice arising from stale claims, and, secondly, ensuring that the reality of unopposed occupation of land and its legal ownership coincided. With one or two limited exceptions, the uncertainties which sometimes arose in relation to the ownership of land were very unlikely to arise in the context of a system of land ownership involving compulsory registration (as in the applicants' case), where the owner of the land was readily identifiable. In the days before registration became the norm, a result whereby an adverse possessor of land was rewarded by obtaining title could be justified as avoiding protracted uncertainty as to where the title to land lay; where land was registered, it was difficult to see any justification for a legal rule which led to such an unjust result. Moreover, many common law jurisdictions which had systems of title registration had either abolished the doctrine of adverse possession completely or had substantially restricted its effects. However, despite the major changes to the law of adverse possession made by the Act of 2002, in the case of registered land, the law itself was not abolished. In these circumstances, and bearing in mind

the margin of appreciation afforded to national authorities, the applicants' argument that the law of adverse possession served no continuing public interest so far as registered land was concerned, could not be accepted. What remained to be determined was whether this public interest was of sufficient weight to find the interference proportionate.

Proportionality: The Court accepted that the limitation period of 12 years was relatively long and that the law of adverse possession was well-established and had not altered during the period of the applicants' ownership of the land. It was further accepted that, in order to avoid losing their title, the applicants had to do no more than regularise the Grahams' occupation of the land or issue proceedings to recover its possession within the 12-year period. The question nevertheless remained whether, even having regard to the lack of care on the part of the applicants, the deprivation of their title to the registered land and the transfer of ownership to those in unauthorised possession, had struck a fair balance with any legitimate public interest served. Firstly, not only were the applicants deprived of their property, but they received no compensation for the loss. The result for them was therefore one of exceptional severity. Under the Court's case-law, the taking of property in the public interest without payment of compensation reasonably related to its value is justified only in exceptional circumstances. The lack of compensation in the applicants' case had to be viewed in the light of the lack of adequate procedural protection for the right of property within the legal system in force at the relevant time. In particular, although it was open to the dispossessed owner of the land to argue after the expiry of the 12-year period that the land had not been adversely possessed, during that period, no form of notification whatever was required to be given to the owner, which might have alerted him to the risk of losing his title. In these circumstances, the application of the provisions of the 1925 and 1980 Acts to deprive the applicant companies of their title to the registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other. There had therefore been a violation of Article 1 of Protocol No. 1.
Conclusion: violation (four votes to three).

DEPRIVATION OF PROPERTY
Procedure leading to the seizure of property of a person subsequently declared incapable: *admissible*.

LACARCEL MENENDEZ - Spain (N° 41745/02)
Decision 25.10.2005 [Section IV]
(see Article 6(1) [civil] above).

CONTROL THE USE OF PROPERTY
Withdrawal of banking licence resulting in compulsory liquidation: *violation*.

CAPITAL BANK AD - Bulgaria (N° 49429/99)
Judgment 24.11.2005 [Section I]
(see Article 6(1) [civil] above).

CONTROL OF THE USE OF PROPERTY
Refusal of clearance by the State guardianship authority for a father to sell a flat jointly owned by himself and his sons: *inadmissible*.

LAZAREV and LAZAREV - Russia (N° 16153/03)
Decision 24.11.2005

The first applicant bought a flat which he registered in his own name and that of his two sons (the younger of which is the second applicant). He subsequently decided to sell the flat and applied for clearance of the transaction to the guardianship and wardship department of the District Council. The District Council did not give clearance because the sale would result in a reduction of his under-age son's property, and, hence,

not in his interests. The first applicant appealed, but the courts dismissed his claim. They found that the flat had been voluntarily transferred to the second applicant, and that a sale would result in a reduction of his property, which was not permitted under the applicable legislation.

Inadmissible under Article 1 of Protocol No. 1: The impugned restriction had been imposed in accordance with a procedure established by domestic law, which vested the discretionary power of giving or withholding consent to a transaction affecting the property of a child in the State guardianship authority. It had also pursued a general interest, namely the protection of children's right to housing, which was of particular relevance in the context of the Russian real-estate market, where children and elderly people had been the prime targets of fraudulent transactions involving their flats. As to the proportionality of the measure, the relevant provisions were accessible and sufficiently accessible. Moreover, the Court could not agree with the applicant's claim that the authorities had withheld consent because they presumed bad faith on his part. His ability to act in the best interests of his children, and to manage the family budget in the way he considered most efficient was not disputed or questioned. The primary concern of the authorities had been to safeguard the possessions of his younger son to the maximum extent possible until he came of age and was able to manage his property for himself. In any event, it seemed peculiar that the first applicant had not at any point in the domestic proceedings suggested any measure for the protection of the second applicant's interests following the sale of his share of the flat. A final element to bear in mind was that the restriction had not been of unlimited duration: it only applied until the second applicant reached the age of fourteen. In such circumstances, the restriction had not represented an individual and excessive burden on either the first or the second applicant: *manifestly-ill founded*.

CONTROL OF THE USE OF PROPERTY
Order to demolish a storage facility on the basis of a law which was amended in the course of the proceedings against the applicant: *no violation*.

SALIBA - Malta (Nº 4251/02)
Judgment 8.11.2005

Facts: The applicant, who acquired ownership of a plot of land on which a storage facility had been built, was charged by the police with having built the facility without permission. The applicant was acquitted of the offence by the Criminal Court in July 1988. However, a second set of proceedings was instituted by the police, which resulted in the applicant's conviction in June 1989 and an order to demolish the facility. The applicant's appeal against conviction on grounds of having been judged twice for the same facts was allowed by the Court of Criminal Appeal, which revoked the June 1989 judgment. The court nevertheless ordered that the building be demolished. It based its decision on an amendment which had in the meantime been made to the applicable law which provided that demolition could be imposed "even where the person charged had been acquitted of the charge if the court was satisfied that the building had been erected in contravention of the law". The applicant's constitutional appeal was rejected.

Law – Article 1 of Protocol No. 1: As the findings of the domestic courts had not in any way adversely affected the applicant's position as the legal owner of the land, and, moreover, the Court had not been informed of any steps which had been taken to enforce the demolition order, it could not conclude there had been a *de facto* expropriation. The demolition order had aimed at ensuring compliance with the general rules concerning the prohibitions on construction, and had thus amounted to a control of "the use of property" within the meaning of this provision. Prior to the amendment of the law which had served as a legal basis for the impugned measure, demolition could only be ordered following a finding of criminal guilt. However, as the Court had stated in its decision on admissibility, the demolition order did not constitute a "penalty" within the meaning of Article 7 of the Convention, and, the legislature was not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws. Moreover, nothing suggested that the amendments introduced were aimed at influencing the outcome of the proceedings which had been instituted against the applicant. Therefore, the measure complained of satisfied the requirement of lawfulness within the meaning of this provision. It also pursued the legitimate aim of preserving the environment and ensuring compliance with building

regulations. As to whether the measure was justified, the effect of ordering the demolition of a totally unlawful construction was to put things back in the position they would have been in had the requirements of the law not been disregarded. Thus, the measure was not disproportionate to the aim pursued. The fact that the applicant had been acquitted at the outset of the criminal proceedings did not change this conclusion. To hold otherwise would be tantamount to oblige the domestic authorities to tolerate unlawful constructions each time their ownership was transferred to a third *bona fide* party.
Conclusion: non-violation (five votes to two).

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Prohibition for a student to wear the Islamic headscarf at university: *no violation*.

LEYLA SAHIN - Turkey (N° 44774/98)
Judgment 10.11.2005 [Grand Chamber]
(see Article 9 above).

ARTICLE 5 OF PROTOCOL No. 7

EQUALITY BETWEEN SPOUSES
Exequatur in France of a foreign unilateral divorce judgment: *struck out*.

D.D. - France (N° 3/02)
Judgment 8.11.2005 [Section II]

Facts: In 1960 the applicant married G., an Algerian national, in France. The couple went on to have six children, who are French nationals. In 1988 G. returned to Algeria, but the applicant refused to accompany him. He was ordered to pay maintenance to the applicant and a contribution to the upkeep of their youngest child, who was still a minor. In 1990 G. filed a petition for divorce alleging fault, which was dismissed by the French courts. In the meantime, he remarried in Algeria. Following proceedings in which the applicant was represented and her interests were protected, the Algerian courts granted G. a divorce at his "sole discretion", as "the person vested with marital authority", while ordering him to pay damages to the applicant for abuse of divorce rights (*divorce abusif*). At G.'s request, the French courts gave authority to execute the judgment on the ground that the unilateral nature of the repudiation and its effects had been mitigated by the fact that the wife had been given financial guarantees and had been able to assert her claims during the proceedings. The French courts dismissed an appeal by the applicant and a further appeal on points of law.

Law: Article 5 of Protocol No. 7: There had been a notable shift in recent times in the case-law of the French Court of Cassation concerning the effects in France of repudiation. In judgments dated 17 February 2004, the Court of Cassation had found that "Even if it follows proper adversarial process, a decision which recognises unilateral repudiation by the husband without giving legal effect to any challenge by the wife is contrary to the principle of equality between spouses on the dissolution of a marriage, as recognised by Article 5 of Protocol No. 7 to the Convention, which France has undertaken to secure to everyone within its jurisdiction. Such a decision, therefore, also contravenes international *ordre public.*" In July 2005 the Court was informed by applicant's counsel that the applicant had expressed a clear intention to withdraw her application. Having noted that there were no particular circumstances relating to respect for the human rights protected by the Convention requiring it to continue examining the application under Article 37(1) of the Convention, the Court decided unanimously to strike the case out of its list.

Other judgments delivered in November

Nedyalkov - Bulgaria (Nº 44241/98), 3 November 2005 [Section I]
Kostov - Bulgaria (Nº 45980/99), 3 November 2005 [Section I]
Marien - Belgium (Nº 46046/99), 3 November 2005 [Section I]
Kukalo - Russia (Nº 63995/00), 3 November 2005 [Section I]
Asito - Moldova (Nº 40663/98), 8 November 2005 [Section IV]
Potier - France (Nº 42272/98), 8 November 2005 [Section II]
S.S. Ozulas Yapi Kooperatifi - Turkey (Nº 42913/98), 8 November 2005 [Section II]
Yasar and others - Turkey (Nº 44763/98), 8 November 2005 [Section II]
Authouart - France (Nº 45338/99), 8 November 2005 [Section II]
Biro - Slovakia (Nº 46844/99), 8 November 2005 [Section IV]
Badowski - Poland (Nº 47627/99), 8 November 2005 [Section IV]
Haydar Kaya - Turkey (Nº 48387/99), 8 November 2005 [Section II]
Zielonka - Poland (Nº 49913/99), 8 November 2005 [Section II]
H.F. - Slovakia (Nº 54797/00), 8 November 2005 [Section IV]
Wojda - Poland (Nº 55233/00), 8 November 2005 [Section IV]
Leshchenko and Tolyupa - Ukraine (Nº 56918/00), 8 November 2005 [Section II]
De Sousa - France (Nº 61328/00), 8 November 2005 [Section II]
Kechko - Ukraine (Nº 63134/00), 8 November 2005 [Section II]
Timotiyevich - Ukraine (Nº 63158/00), 8 November 2005 [Section II]
Wlodzimierz Majewski and others - Poland (Nº 64204/01), 8 November 2005 [Section IV]
Alver - Estonia (Nº 64812/01), 8 November 2005 [Section IV]
Gorshkov - Ukraine (Nº 67531/01), 8 November 2005 [Section II]
Bozon - France (Nº 71244/01), 8 November 2005 [Section II]
Strizhak - Ukraine (Nº 72269/01), 8 November 2005 [Section II]
Das - Turkey (Nº 74411/01), 8 November 2005 [Section II]
Geniteau - France (Nº 4069/02), 8 November 2005 [Section II]
Dag and Yasar - Turkey (Nº 4080/02), 8 November 2005 [Section II]
Khudoyorov - Russia (Nº 6847/02), 8 November 2005 [Section IV]
Zamula and others - Ukraine (Nº 10231/02), 8 November 2005 [Section II]
Tambovtsev - Ukraine (Nº 20625/02), 8 November 2005 [Section II]
Bukhovets - Ukraine (Nº 22098/02), 8 November 2005 [Section II]
Kasperovich - Ukraine (Nº 22289/02), 8 November 2005 [Section II]
Baglay - Ukraine (Nº 22431/02), 8 November 2005 [Section II]
Ishchenko and others - Ukraine (Nº 23390/02, Nº 11594/03, Nº 11604/03 and Nº 32027/03), 8 November 2005 [Section II]
Mezei - Hungary (Nº 30330/02), 8 November 2005 [Section II]
Kuzmenkov - Ukraine (Nº 39164/02), 8 November 2005 [Section II]
Smirnova - Ukraine (Nº 36655/02), 8 November 2005 [Section II]
Kaniewski - Poland (Nº 38049/02), 8 November 2005 [Section IV]
Vladimirskiy - Ukraine (Nº 2518/03), 8 November 2005 [Section II]
Cheremskoy - Ukraine (Nº 7302/03), 8 November 2005 [Section II]
Chernysh - Ukraine (Nº 25989/03), 8 November 2005 [Section II]
Ionescu - Romania (Nº 38608/97), 10 November 2005 [Section III]
Suss - Germany (Nº 40324/98), 10 November 2005 [Section III]
Akkoc - Turkey (Nº 50037/99), 10 November 2005 [Section III]
Celik and Yildiz - Turkey (Nº 51479/99), 10 November 2005 [Section III]
Bocos-Cuesta - Netherlands (Nº 54789/00), 10 November 2005 [Section III]
Schelling - Austria (Nº 55193/00), 10 November 2005 [Section I]
Argenti - Italy (Nº 56317/00), 10 November 2005 [Section III]
Dogru - Turkey (Nº 62017/00), 10 November 2005 [Section III]
Tas - Turkey (Nº 62877/00), 10 November 2005 [Section III]
Aydin - Turkey (no. 2) (Nº 63739/00), 10 November 2005 [Section III]

Dzelili - Germany (Nº 65745/01), 10 November 2005 [Section III]
Farcas and others - Romania (Nº 67020/01), 10 November 2005 [Section III]
Gezici and Ipek - Turkey (Nº 71517/01), 10 November 2005 [Section III]
Forte - Italy (Nº 77986/01), 10 November 2005 [Section III]
Antonic-Tomasovic - Croatia (Nº 5208/03), 10 November 2005 [Section I]
Drakidou - Greece (Nº 8838/03), 10 November 2005 [Section I]
Raguz - Croatia (Nº 43709/02), 10 November 2005 [Section I]
Gullu - Turkey (Nº 1889/04), 10 November 2005 [Section III (former)]
Hun - Turkey (Nº 5142/04), 10 November 2005 [Section III (former)]
Uyan - Turkey (Nº 7454/04), 10 November 2005 [Section III (former)]
Eren - Turkey (Nº 8062/04), 10 November 2005 [Section III (former)]
Kucuk - Turkey (Nº 21784/04), 10 November 2005 [Section III (former)]
Egilmez - Turkey (Nº 21798/04), 10 November 2005 [Section III (former)]
Kurucay - Turkey (Nº 24040/04), 10 November 2005 [Section III (former)]
Gurbuz - Turkey (Nº 26050/04), 10 November 2005 [Section III (former)]
Kukkola - Finland (Nº 26890/95), 15 November 2005 [Section IV]
Czech - Poland (Nº 49034/99), 15 November 2005 [Section IV]
Bzdyra - Poland (Nº 49035/99), 15 November 2005 [Section IV]
Bogucki - Poland (Nº 49961/99), 15 November 2005 [Section IV]
Lammi - Finland (Nº 53835/00), 15 November 2005 [Section IV]
Lanteri - Italy (Nº 56578/00), 15 November 2005 [Section IV]
La Rosa and Alba - Italy (Nº 58386/00), 15 November 2005 [Section IV]
Polacik - Slovakia (Nº 58707/00), 15 November 2005 [Section IV]
Gravina - Italy (Nº 60124/00) 15 November 2005 [Section IV]
Dominici - Italy (Nº 64111/00), 15 November 2005 [Section IV]
Bekos and Koutropoulos - Greece (Nº 15250/02), 15 November 2005 [Section IV]
Bitsinas - Greece (Nº 33076/02), 15 November 2005 [Section IV] (striking out)
Baibarac - Moldova (Nº 31530/03), 15 November 2005 [Section IV]
Suntsova - Russia (Nº 55687/00), 17 November 2005 [Section I]
Istituto Diocesano - Italy (Nº 62876/00), 17 November 2005 [Section I]
La Rosa and Alba - Italy (Nº 63241/00), 17 November 2005 [Section I]
Binotti - Italy (Nº 63632/00), 17 November 2005 [Section I]
Bratchikova - Russia (Nº 66462/01), 17 November 2005 [Section I]
Serrilli - Italy (Nº 77823/01, Nº 77827/01 and Nº 77829/01), 17 November 2005 [Section I]
Andric - Croatia (Nº 9707/02), 17 November 2005 [Section I] (friendly settlement)
Kazartseva and others - Russia (Nº 13995/02), 17 November 2005 [Section I]
Mikhaylova and others - Russia (Nº 22534/02), 17 November 2005 [Section I]
Shestopalova and others - Russia (Nº 39866/02), 17 November 2005 [Section I]
Valentina Vasilyeva - Russia (Nº 7237/03), 17 November 2005 [Section I]
Tolokonnikova - Russia (Nº 24651/03), 17 November 2005 [Section I]
Bobrova - Russia (Nº 24654/03), 17 November 2005 [Section I]
Gerasimenko - Russia (Nº 24657/03), 17 November 2005 [Section I]
Ivannikova - Russia (Nº 24659/03), 17 November 2005 [Section I]
Korchagina and others - Russia (Nº 27295/03), 17 November 2005 [Section I]
Nogolica - Croatia (Nº 29052/03), 17 November 2005 [Section I]
Kaya and others - Turkey (Nº 33420/96 and Nº 36206/97), 22 November 2005 [Section IV]
Karakullukcu - Turkey (Nº 49275/99), 22 November 2005 [Section IV]
Keskin - Turkey (Nº 49564/99), 22 November 2005 [Section IV]
Bulut - Turkey (Nº 49892/99), 22 November 2005 [Section II]
Yagiz and others - Turkey (Nº 57344/00), 22 November 2005 [Section IV]
Demir - Turkey (Nº 60262/00), 22 November 2005 [Section IV]
Freymuth and Golinelli - France (Nº 65273/01 and Nº 65823/01), 22 November 2005 [Section II]
Reigado Ramos - Portugal (Nº 73229/01), 22 November 2005 [Section II]
Karman - Hungary (Nº 6444/02 and Nº 26579/04), 22 November 2005 [Section II]
Taal - Estonia (Nº 13249/02), 22 November 2005 [Section IV]

Antonenkov and others - Ukraine (Nº 14183/02), 22 November 2005 [Section II]
Szoboszlay - Hungary (Nº 16348/02), 22 November 2005 [Section II]
Krutko - Ukraine (Nº 22246/02), 22 November 2005 [Section II]
Szikora - Hungary (Nº 28441/02), 22 November 2005 [Section II]
Kantor - Hungary (Nº 458/03), 22 November 2005 [Section II]
Ovcharenko - Ukraine (Nº 5578/03), 22 November 2005 [Section II]
Romanchenko - Ukraine (Nº 5596/03), 22 November 2005 [Section II]
Tsanga - Ukraine (Nº 14612/03), 22 November 2005 [Section II]
Gayday - Ukraine (Nº 18949/03), 22 November 2005 [Section II]
Melnikova - Ukraine (Nº 24626/03), 22 November 2005 [Section II]
Kozhanova - Ukraine (Nº 27349/03), 22 November 2005 [Section II]
Miroshnichenko - Ukraine (Nº 29420/03), 22 November 2005 [Section II]
Litovkina - Ukraine (Nº 35741/04), 22 November 2005 [Section II]
Ivanov - Bulgaria (Nº 46336/99), 24 November 2005 [Section I]
Tourancheau and July - France (Nº 53886/00), 24 November 2005 [Section I]
Katsoulis - Greece (Nº 66742/01), 24 November 2005 [Section I]
Paolo Cecere - Italy (Nº 68344/01), 24 November 2005 [Section III]
Enrico Cecere - Italy (Nº 70585/01), 24 November 2005 [Section III]
Posedel-Jelinovic - Croatia (Nº 35915/02), 24 November 2005 [Section I]
Ouzounoglou - Greece (Nº 32730/03), 24 November 2005 [Section I]
Proios - Greece (Nº 35765/03), 24 November 2005 [Section I]
Skubenko - Ukraine (Nº 41152/98), 29 November 2005 [Section II]
L.R. - Slovakia (Nº 52443/99), 29 November 2005 [Section IV]
Vanek - Slovakia (Nº 53363/99), 29 November 2005 [Section IV]
Evrim Çiftçi - Turkey (Nº 59640/00), 29 November 2005 [Section II]
Öncü and others - Turkey (Nº 63357/00), 29 November 2005 [Section II]
Şaşmaz and others - Turkey (Nº 67140/01), 29 November 2005 [Section II]
Aşga - Turkey (Nº 67230/01), 29 November 2005 [Section II]
Ekin and others- Turkey (Nº 67249/01), 29 November 2005 [Section II]
Keltaş - Turkey (Nº 67252/01), 29 November 2005 [Section II]
Mikolaj and Mikolajova - Slovakia (Nº 68561/01), 29 November 2005 [Section IV]
Wyszczelski - Poland (Nº 72161/01), 29 November 2005 [Section IV]
Urbino Rodrigues - Portugal (Nº 75088/01), 29 November 2005 [Section II]
Belanova - Ukraine (Nº 1093/02), 29 November 2005 [Section II]
Shevelev - Ukraine (Nº 10336/02), 29 November 2005 [Section II]
Shevchenko - Ukraine (Nº 10905/02), 29 November 2005 [Section II]
Rudenko - Ukraine (Nº 11412/02), 29 November 2005 [Section II]
Karpova - Ukraine (Nº 12884/02), 29 November 2005 [Section II]
Alagia and Nusbaum - France (Nº 26160/02), 29 November 2005 [Section II]
Kim - Ukraine (Nº 29872/02), 29 November 2005 [Section II]
Wingrave - United Kingdom (Nº 40029/02), 29 November 2005 [Section IV]
Kurshatsova - Ukraine (Nº 41030/02), 29 November 2005 [Section II]
Yukin - Ukraine (Nº 2442/03), 29 November 2005 [Section II]
Vishnevskaya - Ukraine (Nº 16881/03), 29 November 2005 [Section II]
Zakharov - Ukraine (Nº 17105/03), 29 November 2005 [Section II]
Ilchenko - Ukraine (Nº 17303/03), 29 November 2005 [Section II]
Nosal - Ukraine (Nº 18378/03), 29 November 2005 [Section II]
Grachevy and others - Ukraine (Nº 18858/03, Nº 18923/03 and Nº 22553/03), 29 November 2005 [Section II]
Buza - Ukraine (Nº 26892/03), 29 November 2005 [Section II]
Rybak - Ukraine (Nº 26996/03), 29 November 2005 [Section II]
Cherginets - Ukraine (Nº 37296/03), 29 November 2005 [Section II]

Referral to the Grand Chamber

Article 43(2)

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

Sisojeva and others - Latvia (N° 60654/00)
Judgment 16.6.2005 [Former Section I]

Hermi - Italy (N° 18114/02)
Judgment 28.6.2005 [Section IV]

Üner - Netherlands (N° 46410/99)
Judgment 5.7.2005 [Former Section II]

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Note No. 77):

Tas and others - Turkey (Nº 46085/99)
Karapinar - Turkey (Nº 49394/99)
Judgments 2.8.2005 [Section I]

Ozdemir - Turkey (Nº 61441/00)
Kolu - Turkey (Nº 35811/97)
Onder and Zeydan - Turkey (Nº 53918/00)
Judgments 2.8.2005 [Section IV]

Dattel - Luxemburg (Nº 13130/02)
Agatianos - Greece (Nº 16945/02)
Loumidis - Greece (Nº 19731/02)
Ioannidis - Greece (Nº 5072/03)
Vozinos - Greece (Nº 5076/03)
Gavalas - Greece (Nº 5077/03)
Spyropoulos - Greece (Nº 5081/03)
Tsaras - Greece (Nº 5085/03)
Koutrouba - Greece (Nº 27302/03)
Judgments 4.8.2005 [Section I]

Stoianova and Nedelcu – Romania (N° 77517/01 and N° 77722/01)
Zeciri - Italy (Nº 55764/00)
Judgments 4.8.2005 [Section III]

Article 44(2)(c)

On 30 November 2005 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Turczanik v. Poland (38064/97) - Section II, judgment of 5 July 2005
Podbielski and PPU Polpure v. Poland (39199/98) - Section IV, judgment of 26 July 2005
Moldovan and Others v. Romania (41138/98 and 64320/01) - former Section II, judgment of 12 July 2005
Ouattara v. France (57470/00) - Section II, judgment of 2 August 2005
Agrotehservis v. Ukraine (62608/00) - Section II, judgment of 5 July 2005
Jedamski and Jedamska v. Poland (73547/01) - Section IV, judgment of 26 July 2005
Baumann v. Austria (76809/01) - former Section I, judgment of 9 June 2005
Fadil Yilmaz v. Turkey (28171/02) - Section III, judgment of 21 July 2005
Mustafa and Mehmet Toprak v. Turkey (28176/02) - Section III, judgment of 21 July 2005
Mustafa Toprak v. Turkey (N° 1) (28177/02) - Section III, judgment of 21 July 2005
Mustafa Toprak v. Turkey (N° 2) (28178/02) - Section III, judgment of 21 July 2005
Mehmet Yiğit v. Turkey (N° 2) (28182/02) - Section III, judgment of 21 July 2005
Hüseyin Yiğit v. Turkey (28183/02) - Section III, judgment of 21 July 2005
Seyit Ahmet Özdemir and Others v. Turkey (28192/02) - Section III, judgment of 21 July 2005
Mehmet Yiğit v. Turkey (N° 3) (28184/02) - Section III, judgment of 21 July 2005
Mehmet Yiğit v. Turkey (N° 4) (28185/02) - Section III, judgment of 21 July 2005
Salih Yiğit v. Turkey (N° 1) (28186/02) - Section III, judgment of 21 July 2005
Salih Yiğit v. Turkey N° 2) (28187/02) - Section III, judgment of 21 July 2005
Mehmet Yiğit v. Turkey (N° 5) (28188/02) - Section III, judgment of 21 July 2005
Kendirci v. Turkey (28190/02) - Section III, judgment of 21 July 2005
Athanasiadis and Others v. Greece (34339/02) - Section I, judgment of 28 April 2005
Faber v. the Czech Republic (35883/02) - Section II, judgment of 17 May 2005
Zolotas v. Greece (38240/02) - Section I, judgment of 2 June 2005
Balliu v. Albania (74727/01) - Section III, judgment of 16 June 2005
Menet v. France (39553/02) - Section II, judgment of 14 June 2005
Trubnikov v. Russia (49790/99) - Section II, judgment of 5 July 2005
Rosenzweig and Bonded Warehouses Ltd v. Poland (51728/99) - Section III, judgment of 28 July 2005
Fadeyeva v. Russia (55723/00) - former Section I, judgment of 9 June 2005
Străin v. Romania (57001/00) - Section III, judgment of 21 July 2005
Frizen v. Russia (58254/00) - Section I, judgment of 24 March 2005
Capone v. Italy (62592/00) - Section I, judgment of 15 July 2005
La Rosa and Alba v. Italy (N° 6) (63240/00) - Section I, judgment of 15 July 2005
Donati v. Italy (63242/00) - Section I, judgment of 15 July 2005
Carletta v. Italy (63861/00) - Section I, judgment of 15 July 2005
Colacrai v. Italy (63868/00) - Section I, judgment of 15 July 2005
Tanis and Others v. Turkey (65899/01) - Section IV, judgment of 2 August 2005
Solodyuk v. Russia (67099/01) - Section IV, judgment of 12 July 2005
Fuklev v. Ukraine (71186/01) - Section II, judgment of 7 June 2005
Mežnarić v. Croatia (71615/01) - Section I, judgment of 15 July 2005
Nastou v. Greece (N° 2) (16163/02) - Section I, judgment of 15 July 2005
Bove v. Italy (30595/02) - Section III, judgment of 30 June 2005
N. v. Finland (38885/02) - former Section IV, judgment of 26 July 2005
Picaro v. Italy (42644/02) - Section III, judgment of 9 June 2005
Chernyayev v. Ukraine (15366/03) - Section II, judgment of 26 July 2005
Baklanov v. Russia (68443/01) - former Section I, judgment of 9 June 2005

Statistical information[1]

Judgments delivered	November	2005
Grand Chamber	1	11(14)
Section I	33(35)	272(279)
Section II	75(81)	330(342)
Section III	16	157(165)
Section IV	36(37)	178(227)
former Sections	9	29(31)
Total	**170(179)**	**977(1058)**

Judgments delivered in November 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	31(33)	1	0	1	33(35)
Section II	74(80)	0	1	0	75(81)
Section III	13	2	0	1	16
Section IV	34(35)	1	1	0	36(37)
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	6	0	3	0	9
former Section IV	0	0	0	0	0
Total	**159(168)**	**4**	**5**	**2**	**170(179)**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	10(13)	0	0	1	11(14)
former Section I	5	0	0	1	6
former Section II	7(8)	1(2)	0	0	8(10)
former Section III	11	0	3	1	15
former Section IV	0	0	0	0	0
Section I	264(271)	5	2	1	272(279)
Section II	312(323)	12(13)	5	1	330(342)
Section III	141(149)	9	4	3	157(165)
Section IV	170(219)	4	3	1	178(227)
Total	**920(999)**	**31(33)**	**17**	**9**	**977(1058)**

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

Decisions adopted		November	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		33	266(271)
Section II		82(87)	311(324)
Section III*		17(18)	182(189)
Section IV		27	149(154)
Total		**159(165)**	**908(938)**
II. Applications declared inadmissible			
Grand Chamber		0	2(4)
Section I	- Chambere	12	66(67)
	- Committee	797	6103
Section II	- Chamber	18	96(97)
	- Committee	679	5633
Section III*	- Chamber	14	144
	- Committee	520	4979
Section IV	- Chamber	20	146(149)
	- Committee	892	7445
Total		**2952**	**24615(24621)**
III. Applications struck off			
Section I	- Chamber	8	59
	- Committee	10	57
Section II	- Chamber	48	121
	- Committee	18	105
Section III*	- Chamber	5	42(62)
	- Committee	8	113
Section IV	- Chamber	1	51(52)
	- Committee	10	110
Total		**108**	**658(679)**
Total number of decisions[1]		**3219**	**26181(26238)**

1. Not including partial decisions.

Applications communicated	October	2005
Section I	58	575
Section II	80	915
Section III	87	519
Section IV	109	500
Total number of applications communicated[1]	**334**	**2509**

1. Including decisions taken in its former composition.

Articles of the European Convention on 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