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EUROPEAN COURT OF HUMAN RIGHTS

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ARTICLE 2

POSITIVE OBLIGATIONS
Alleged lack of protection of the applicant's mother against family violence resulting in her killing by the applicant's husband: *communicated*.

OPUZ - Turkey (N° 33401/02)
Section II

Ongoing family disputes and domestic violence between the applicant, her mother and their aggressor (the applicant's husband) resulted in the killing of the applicant's mother by the applicant's husband, H.O. The applicant alleges ineffectiveness of the domestic remedies in providing safeguards for her mother, the authorities having been aware of the events and the applicant's allegations over a considerable period of time. Numerous incidents took place during seven years, the applicant and her mother being attacked and injured by H.O. Several medical reports recorded bodily harm ranging from bruises to life-threatening injuries. Criminal proceedings were initiated against H.O. for aggravated bodily harm, knife assault and death threats. The competent judicial authorities became involved of their own motion due to the gravity of the offences and by way of complaints lodged by the applicant and her mother. H.O. was detained on remand on two occasions. He was convicted of attempted murder and knife assault and sentenced to fines. Some cases were discontinued or resulted in an acquittal after the applicant and her mother withdrew their complaints. Their lawyer maintained that those withdrawals were due to H.O.'s threats and pressure. The applicant's mother was shot dead by H.O. one month after her last application to the public prosecutor stating that H.O.'s threats had intensified and that her life was in immediate danger.
The applicant complains that the authorities were negligent regarding her complaints of violence and injuries and that the proceedings brought against H.O. failed to provide sufficient protection.
Communicated under Articles 2, 3, 13 and 14.

USE OF FORCE
Abduction and killing of a civilian in Chechnya by agents of the Russian State, followed by inadequate criminal investigation: *violation*.

LULUYEV and Others - Russia/Russie (N° 69480/01)
Judgment 9.11.2006 [Section I]

Facts: All ten applicants are relatives of Nura Luluyeva. In June 2000 she went to the market place in the northern part of Grozny where she was detained together with two cousins and loaded into an armoured personnel carrier by a group of servicemen wearing camouflage uniforms and masks and armed with machine guns. When the police appeared and tried to interfere, the military started shooting in the air with a machine gun and then drove away. The deputy chief of the district administration was also present at the scene and attempted to question the servicemen about their mission at the market, but was told only that they were "lawfully carrying out a special operation". Having received that explanation, the officials left the site. The applicants searched for her and her cousins, frequently contacting the authorities and prosecutors at various levels. They also personally visited detention centres and prisons in Chechnya and in the northern Caucasus. Nura Luluyeva's husband was granted victim status in the proceedings concerning her kidnapping. Between June 2000 and the beginning of 2006 the investigation was adjourned and reopened at least eight times. In 2001 news came through that a mass grave with 47 bodies had been uncovered on the outskirts of Grozny, less than one kilometre from the headquarters of the Russian military forces in Chechnya. Nura Luluyeva's relatives identified the three bodies as those of Nura Luluyeva and her two cousins by their earrings and clothes. An official medical death certificate was issued indicating that Nura Luluyeva was murdered in June 2000. A forensic report established that her death had been caused by a multiple skull fracture. The investigation continues, but the people or the

military detachment responsible for the abduction and murder of Nura Luluyeva and others have not yet been identified, and no one has been charged.

Law: Article 2 – Failure to protect right to life – The Government denied that State servicemen were involved in killing Nura Luluyeva, but did not dispute any of the specific facts underlying the applicants' version of her disappearance and death. There was no evidence to imply the involvement of illegal paramilitaries. The Court therefore considered it established that Nura Luluyeva was apprehended and detained by State servicemen in the course of conducting a special security operation. The link between her kidnapping and death had been assumed in all the domestic proceedings. The discovery of her body together with the bodies of the other people with whom she had been detained also strongly suggested that her death belonged to the same sequence of events as her arrest. The fact that the bodies were wearing the same clothes as those worn by the individuals in question on the day of their detention provided further support for that conclusion. Therefore, the body of evidence attained the standard of proof "beyond reasonable doubt", which made it possible to hold the State authorities responsible for Nura Luluyeva's death.
Conclusion: violation (unanimously).

Inadequacy of the investigation – The authorities were instantly aware of Nura Luluyeva's arrest because the police and a representative of the local administration happened to be present at the scene. They did not interfere because they believed that they were witnessing a lawful arrest by a competent law-enforcement body, even though the servicemen refused to identify themselves or tell them on behalf of which agency they were acting. Accordingly, the very least the police could have been expected to do was to verify as rapidly as possible which authority, if any, had taken the women into custody and to open an investigation without further delay if no authority was found to be involved. However, despite the applicants' numerous requests, the first official enquiries were made only a fortnight after the events and the criminal investigation was opened only 20 days after. The Court saw no reasonable explanation for such long delays in a situation where prompt action was vital. Furthermore, the manner in which the criminal investigation was conducted was plagued with delays in taking even the most trivial steps and with repeated failure to comply with the prosecutor's instructions. Although the witnesses had indicated the hull number of the military vehicle, no attempt to track it down was made until this was demanded by the Court. No information had been submitted by the Government as to whether any investigative actions were taken following the discovery of the mass grave, apart from the identification and forensic examination of the bodies. Finally, there had been a substantial delay in granting victim status to the applicants and even thereafter the information concerning the progress of the investigation was provided to them only occasionally and in an incomplete manner. Therefore, the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and death of Nura Luluyeva.
Conclusion: violation (unanimously).

Article 3 – *Concerning Nura Lululyeva* – The description of the injuries found on her body by the forensic experts did not permit the Court to conclude beyond reasonable doubt that she had been tortured or otherwise ill-treated prior to her death.
Conclusion: no violation (unanimously).

Concerning the applicants – The news about Nura Luluyeva's death had been preceded by a 10-month period when she was deemed disappeared and during which the investigation into her kidnapping was being conducted. There was therefore a distinct period during which the applicants sustained uncertainty, anguish and distress characteristic to the specific phenomenon of disappearances, attested by their numerous efforts to prompt the authorities to act, as well as by their own attempts to search for her and her cousins. It was aggravated by their exclusion from monitoring the progress of the investigation. The manner in which their complaints had been dealt with by the authorities constituted inhuman treatment.
Conclusion: violation (unanimously).

Article 5 – It had been established that Nura Luluyeva was detained in June 2000 by State authorities and had not been seen alive since. The Government submitted no explanation for her detention and provided

no documents of substance from the domestic investigation into her arrest. She was a victim of unacknowledged detention, in complete absence of the safeguards contained in Article 5, and the authorities failed to take prompt and effective measures to safeguard her against the risk of disappearance. *Conclusion*: violation (unanimously).

The Court also found that there had been a violation of Article 13 in connection with Article 2.

Article 41 – EUR 4,850 in respect of pecuniary damage, payable to Nura Luluyeva's son on behalf of all the applicants; EUR 12,000 to each of Nura Luluyeva's children in respect of non-pecuniary damage; EUR 10,000 to Nura Luluyeva's parents in respect of non-pecuniary damage; EUR 2,000 each to her brothers in respect of non-pecuniary damage.

For further details, see Press Release no. 675.

See also: *Imakayeva v. Russia*, no. 7615/02, judgment of 9 November 2006 (under Article 8 "Home") and Press Release no. 676.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Anguish and distress resulting from the disappearance of the applicants' relative and the ineffectiveness of the ensuing investigation: *violation*.

LULUYEV and Others - Russia (N° 69480/01)
Judgment 9.11.2006 [Section I]

(see Article 2 above).

See also: *Imakayeva v. Russia*, no. 7615/02, judgment of 9 November 2006 (under Article 8 "Home") and Press Release no. 676.

POSITIVE OBLIGATIONS
Alleged lack of protection against domestic violence: *communicated*.

OPUZ - Turkey (N° 33401/02)
Section II

(see Article 2 above).

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Unrecorded and unacknowledged detention in Chechnya: *violation*.

LULUYEV and Others - Russia (N° 69480/01)
Judgment 9.11.2006 [Section I]

(see Article 2 above).

See also: *Imakayeva v. Russia*, no. 7615/02, judgment of 9 November 2006 (under Article 8 "Home") and Press Release no. 676.

LAWFUL ARREST OR DETENTION
Missionary kept in airport transit area overnight after having been refused re-entry to the country: *admissible*.

NOLAN and K. - Russia (N° 2512/04)
Decision 30.11.2006 [Section I]

(see Article 9 below).

Article 5(1)(a)

AFTER CONVICTION
Disciplinary punishment of house arrest imposed on a member of the Civil Guard by his superior: *violation*.

DACOSTA SILVA - Spain (N° 69966/01)
Judgment 2.11.2006 [Section V]

Facts: The applicant, a member of the Civil Guard, on learning that one of his close relatives was seriously ill, and after informing the duty officer, left for his parents' home, where he stayed for nine days. His immediate superior then imposed on him the disciplinary penalty of six days' house arrest for being absent from the barracks without leave. Appeals by the applicant against that decision were all dismissed.

Law: The Spanish reservation in respect of Articles 5 and 6 of the Convention, which concerned the armed forces' disciplinary rules, did not apply to the Civil Guard's disciplinary rules, which had been introduced by a law that post-dated the reservation. House arrest constituted a form of deprivation of liberty within the meaning of Article 5. The penalty in question, ordered by the applicant's immediate superior, had been immediately enforceable. The lodging of an appeal against it had not suspended its enforcement. The applicant's superior had not been independent from the Civil Guard's hierarchy or from other higher authorities. Accordingly, the disciplinary proceedings over which he had presided had been devoid of the judicial safeguards required by Article 5(1)(a). Consequently, the house arrest imposed on the applicant had not constituted a form of lawful detention "after conviction by a competent court".
Conclusion: violation (unanimously).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings before ministerial disciplinary commission concerning recall from post as head of a research institute and transfer to a post with a lower grade: *Article 6(1) applicable*.

STOJAKOVIC - Austria (N° 30003/02)
Judgment 9.11.2006 [Section I]

Facts: The applicant was the head of the Federal Bacteriological Serological Research Institute in Linz. The Disciplinary Commission at the Ministry for Work, Health and Social Affairs found him guilty of making sexually harassing statements about some of his employees. He appealed, asking for a witness to be examined at an oral hearing. In the meantime, the competent Federal Minister recalled him from his post and transferred him to a post with a lower grade. A ministerial appeals commission dismissed his appeal without holding a hearing. The Constitutional Court also found against him, considering that rights and obligations which resulted from an employment as a civil servant could not be considered as "civil rights" within the meaning of Article 6 of the Convention.

Law: The Government maintained that Article 6 did not apply to the impugned proceedings as the institute is tasked with maintaining a notification system concerning certain infectious diseases, assisting in the elaboration of the relevant legislation and recommendations, and representing the Ministry's department in various expert groups. The Government further pointed to the applicant's degree of responsibility as head of the institute and stressed his authority to issue decisions in accordance with Section 3 of the Civil Servants Act. Furthermore, the applicant had received an extra duties allowance as he had had a considerable level of responsibility for the accomplishment of tasks of general administration. The applicant maintained that being head of the institute in question had involved no participation in the exercise of public authority and that his responsibilities had been comparable of those of a director of a private institution.
The Court noted that the institute's task were in essence restricted to the carrying out of various examinations, the collecting and transfer of data and the giving of expert advice but did not include the taking of any binding decisions or orders to the general public. There was nothing to indicate that the expertise required from the institute was more than of a purely technical nature or that it took part in the State's diplomatic missions in foreign *fora*. The applicant's responsibility and authority as head of the institute did not exceed those of a director of a comparable private institution. The nature of his duties and responsibilities therefore did not entail the exercise of any portion of the State's sovereign power unless this concept was to be construed broadly. However, the correct approach was to adopt a restrictive interpretation of the exceptions to the safeguards afforded by Article 6(1), which provision was *applicable*.
The competent ministerial appeals commission decides in formations consisting of three members: a judge as a chairman, a legally trained civil servant as the representative of the employer and a legally trained civil servant as representative of the employee. The mere fact that the interests of both the employer and of the employee are represented in the composition of a court cannot be considered to be contrary to Article 6(1), if no imbalance between what might be seen as conflicting interests arises in the case concerned. There was no indication of any imbalance in the present case. Moreover, the commission's members are appointed for a term of five years and are not bound by any instruction in the exercise of their functions. In sum, the commission has to be regarded as a *tribunal within the meaning of Article 6(1)*.

It could not be said that the applicant had waived his right to an oral hearing. Under the Court's case-law, he was entitled to a hearing, unless exceptional circumstances justified dispensing with it. As there were no such circumstances in his case there had been a violation of Article 6(1).
Conclusion: violation (unanimously).

APPLICABILITY
Proceedings seeking to have set aside a decision refusing inclusion in the register of the Medical Association: *inadmissible*.

BOUILLOC - France (N° 34489/03)
Decision 28.11.2006 [Section II]

Having obtained the State degree of "doctor of medicine" and a qualification in "general medicine", the applicant sought his registration with the Medical Association by applying to a *département* council of that body. On learning that he had been declared unfit for military service on psychiatric grounds, the *département* council called for an expert's report as provided for in the Public Health Code. The experts then appointed found the applicant to be "unsuitable" for admission to the medical profession and the *département* council refused to register him with the Medical Association. The applicant unsuccessfully challenged that refusal before the disciplinary sections of the Medical Association's regional and national councils, and ultimately appealed to the *Conseil d'Etat* seeking to have the decision set aside. The *Conseil d'Etat* allowed his appeal on the ground that the decision to refuse the applicant's registration had been taken solely on the basis of the expert's report, which had moreover been contradictory. The disciplinary section of the Medical Association's national council subsequently decided to seek a second expert's report on the applicant. The experts then appointed found that his state of health was incompatible with admission to the medical profession. As a result, the disciplinary section decided to dismiss his claim. The applicant's appeal to the *Conseil d'Etat* to have that decision set aside was dismissed on the grounds that the refusal to register him had not been unlawful.

Inadmissible under Article 6(1): The Court considered in general that, where legislation laid down conditions for admission to a profession and a candidate satisfied those conditions, he or she had a right to be admitted to that profession. It had already had occasion to examine the question of the applicability of Article 6(1) to proceedings concerning a refusal of registration with the Medical Association, but it had confined its examination to the first two statutory conditions to be met for such registration, namely possession of a medical qualification and French nationality. But French law also laid down a third statutory condition for admission to the medical profession: inclusion in the Medical Association register. Whilst such inclusion was usually obtained where the first two conditions were met, this was not automatic. In the present case, the fulfilment of the first two conditions had not automatically led to inclusion in the Medical Association register, because the applicant's state of health had been incompatible with the practice of medicine. Consequently, the applicant had failed to fulfil all the statutory conditions required, in the aggregate, for admission to the medical profession under domestic law. He could not therefore invoke any "right" to be admitted to that profession. Accordingly, the applicant's action did not pertain to a "civil right", or to a "criminal charge", within the meaning of Article 6(1): *incompatible ratione materiae*.

ACCESS TO COURT
Obligation to pay expenses prior to the initiation of enforcement proceedings resulting in indigent creditor being unable to obtain enforcement in his favour: *violation*.

APOSTOL - Georgia (N° 40765/02)
Judgment 28.11.2006 [Section II]

Facts: The applicant brought a civil action against a private person. A binding judgment allowed his claim and ordered the debtor to pay him arrears. Since the debtor refused to abide by the judgment, the applicant

requested the initiation of enforcement proceedings. However, pursuant to Article 26 of the Enforcement Proceedings Act, he was to bear "preliminary expenses associated with enforcement measures". The applicant explained that due to his indigence he could not bear the expenses in advance, but was told that the non-payment of the preliminary expenses constituted "an impediment to the enforcement of the judgment". As a result of the non-payment of the preliminary expenses, the judgment remained unenforced.

Law: A constitutional complaint cannot be regarded with a sufficient degree of certainty as an appropriate remedy: *preliminary objection (non-exhaustion) dismissed*.
The obligation to pay expenses in order to have a final judgment enforced constitutes a restriction of a purely financial nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice. It does not flow from the Enforcement Act that the preliminary expenses borne by the creditor are to be fully reimbursed after the enforcement, nor did the Government specify the aim of obliging the applicant to pay for the enforcement. Further, the Enforcement Act obliges the creditor to pay a fee of 7% of the judgment debt retrieved. By shifting onto the applicant the responsibility for financially securing the organisation of the enforcement proceedings, the State tried to escape its positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice. The authorities' stance of holding the applicant responsible for the initiation of enforcement proceedings by requesting him to bear the preliminary expenses, coupled with the disregard for his financial situation, constituted an excessive burden.
Conclusion: violation (unanimously).

Article 41 – Georgia should secure, by appropriate means, the enforcement of the judgment concerned.

ACCESS TO COURT
Impossibility of obtaining judicial review of a decision to end payment of a benefit awarded to former member of the armed forces: *inadmissible*.

CHROUST - Czech Republic (N° 4295/03)
Decision 20.11.2006 [Section V]

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

ORAL HEARING
Lack of oral hearing in proceedings concerning recall from post and transfer to a post with a lower grade for disciplinary reasons: *violation*.

STOJAKOVIC - Austria (N° 30003/02)
Judgment 9.11.2006 [Section I]

(see above, under "Applicability").

REASONABLE TIME
Incompatibility with the Convention of a domestic decision given in the context of a compensatory remedy available to victims of excessively lengthy proceedings: *violation*.

SUKOBLJEVIC - Croatia (N° 5129/03)
Judgment 2.11.2006 [Section I]

Facts: In 1993 the applicant brought a civil action against his employer. In 2002 the municipal court stayed the proceedings on account of the pending bankruptcy proceedings against the defendant company.

Shortly afterwards, the applicant complained to the Constitutional Court about the length of the civil proceedings, to no avail. Both the civil and the bankruptcy proceedings are still pending.

Law: In total, the case had been pending for almost nine years after the entry into force of the Convention in respect of Croatia (in 1997), including almost four years after the decision of the Constitutional Court. In these circumstances, the Court was required to verify whether the way in which the Constitutional Court had interpreted and applied the relevant provisions of the domestic law had produced consequences that were consistent with the principles of the Convention. If so, the Court would, when examining the question of exhaustion of domestic remedies, refrain from dealing with the length of the proceedings subsequent to that decision. Otherwise, a genuine examination of the total length was warranted. The Court therefore examined the period amounting to some five years which had been subject to the Constitutional Court's review. In view of the significant delays attributable to the authorities the length of the proceedings conducted during that period had already been excessive. It had necessarily retained that character throughout the subsequent period. In these circumstances, to ask the applicant to lodge a second constitutional complaint would have overstretched his duties under Article 35(1) of the Convention.
Conclusion: violation (unanimously).

Article 41 – EUR 4,800 in respect of non-pecuniary damage.

See also Information Note No. 85, at p. 19 (*Scordino v. Italy*, no. 36813/97 and *Cocchiarella v. Italy*, no. 64886/01 – violation).

IMPARTIAL TRIBUNAL
Court's failure to refer to a higher instance an allegation of bias, grounded on fact that its president who had not sat on the case was married to applicant's opponent: *admissible*.

PODOREŠKI - Croatia (N° 13587/03)
Decision 16.11.2006 [Section I]

During the first-instance proceedings instituted against her the applicant requested withdrawal of all judges of the competent municipal and county courts, submitting that the acting president of the second-instance court where the case might end up at a later stage, Judge L.H., was the wife of one of the plaintiffs in her case. In 1997, upon referral from the municipal court, the Supreme Court dismissed the applicant's request, finding no indication of bias in respect of the first-instance court. In respect of the second-instance court the Supreme Court concluded that it would be premature to decide on its possible bias before the case actually reached that court. Once the first-instance decision had been rendered, in her appeal to the county court the applicant repeated, in 2001, her request claiming possible bias of that court. However, the county court did not forward her request to the Supreme Court on the grounds that the latter had already ruled on this issue. Instead, the court gave a decision on the merits of the case, dismissing the applicant's appeal. Judge L.H., being at that time president of the civil division of the county court, did not participate in the panel of judges deciding the case. The Constitutional Court dismissed the applicant's complaint, finding that the courts had correctly established the facts and applied the law. It did not refer to the alleged bias of the second-instance court. *Admissible*.

IMPARTIAL TRIBUNAL
Impartiality of court and its president who had accepted favours from applicant's opponent without payment: *violation*.

BELUKHA - Ukraine (N° 33949/02)
Judgment 9.11.2006 [Section V]

Facts: The applicant instituted proceedings before a town court seeking reinstatement to her former post, but to no avail. During the proceedings she unsuccessfully challenged the judge and the court, claiming

that they lacked impartiality as the defendant company had carried out work in the court's new building free of charge and had provided certain goods to the court due to unofficial relations between the court's President and the company's management.

Law: The Government did not contest the applicant's submissions that the President of the town court, who sat alone as a first instance judge in the applicant's case, and whose decision was upheld by the higher courts, had demanded and accepted certain assets from the defendant company for free. In those circumstances the applicant's fears that the President lacked impartiality could be held to be objectively justified, notwithstanding the fact that the town court had allowed one of her claims. Moreover, the higher courts, in dealing with the applicant's appeals, disregarded her submissions to this effect.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for non-pecuniary damage.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Ministerial appeals commission dealing with civil servants' disciplinary matters qualifies as "tribunal".

STOJAKOVIC - Austria (N° 30003/02)
Judgment 9.11.2006 [Section I]

(see above "Applicability").

INDEPENDENT AND IMPARTIAL TRIBUNAL
Appointment to a key post in the Ministry responsible for mines of a member of the *Conseil d'Etat* who had taken part in proceedings involving questions of mining law: *violation*.

SACILOR-LORMINES - France (N° 65411/01)
Judgment 9.11.2006 [Section III]

Facts: The applicant, the Société des Mines de Sacilor-Lormines, is a limited company (*société anonyme*) which has been in voluntary liquidation since March 2000. It held many iron-ore mining concessions in Lorraine. Because it was no longer profitable to mine iron-ore in Lorraine, in the face of worldwide competition, it decided in 1991 to halt all production. The closure of the various pits was staggered until 1993. With a view to the complete cessation of its activity, the applicant company initiated the appropriate procedures for the abandonment/surrender of its concessions. The abandonment procedure, for the purpose of closing disused mines and ensuring their safety, entailed the implementation of an order whereby the prefect for the particular area stipulated the abandonment operations to be carried out. It was completed when the authorities had taken note of the fulfilment of those requirements. The surrender procedure terminated the concession with the result that its holder was no longer bound by the special mining rules and regulations and was released from the presumption of liability in respect of any damage occurring above ground. In this connection, numerous regulatory measures were imposed upon the applicant company, which challenged them all in the administrative courts. The company also lodged numerous appeals to obtain the annulment of the refusals by the Minister responsible for mining (the Minister for the Economy, Finance and Industry) to accept its surrender of a number of concessions, requesting that the Minister be required to allow it to surrender them and seeking compensation for the damage it had sustained as a result of those refusals. In 1997 the company lodged a number of administrative appeals with the Minister for the Economy, Finance and Industry requesting him to withdraw two orders imposing on it certain obligations for the monitoring and securing of mining sites where there was a risk of subsidence, and to grant it the reimbursement of the amounts it had incurred in implementing the provisions of those orders. On 29 September 1997 the *Conseil d'Etat* gave an opinion concerning "operations to ensure the safety and rehabilitation of mining sites subsequent to closure", in response to an application from the Minister, in connection with the pending proceedings, asking the

Conseil to determine certain questions of mining law following the entry into force of new legislation in that field. A few weeks later the applicant company lodged applications with the *Conseil d'Etat* for the annulment of the above-mentioned orders and the corresponding decisions of the Minister whereby he had refused to withdraw the orders. On 19 May 2000, following a deliberation on 26 April 2000, the *Conseil d'Etat*, sitting with a different bench to that which had given the opinion, delivered a judgment which partly annulled the impugned decisions. Subsequently, the applicant further applied for the annulment of another order but that appeal was dismissed by the *Conseil d'Etat* on 5 April 2002. Moreover, by a decree of 26 May 2000, the President of France appointed a member of the *Conseil d'Etat* who had participated in the deliberation of 26 April 2000 to the position of Secretary General of the Ministry of the Economy, Finance and Industry.

Law: As to the independence and impartiality of the *Conseil d'Etat*, whilst the Court did not wish to pass judgment, in general terms, on the conditions of appointment and career development of members of that court, it was called upon to assess whether the Judicial Division had the required "appearance of independence", particularly in the light of the fact that one of its members who had participated in the deliberation of 26 April 2000 had been appointed as Secretary General of the Ministry responsible for mining policy. Whilst the appointment itself had post-dated that deliberation, the Government had indicated that it had been under discussion since April 2000. The member in question could not therefore appear neutral *vis-à-vis* the applicant company, given the absence of guarantees against possible external influence, since his appointment had already been envisaged at the time he was serving as a judge in April 2000. Accordingly, the applicant company had been founded in having objective doubts, *ex post facto*, as to the independence and impartiality of the *Conseil d'Etat* bench to which the member in question had belonged.
Conclusion: violation (four votes to three).

As to the participation of the *Conseil d'Etat* in the development of mining policy, through its opinions, the question in this case was whether the opinion given by the Advisory Division on 29 September 1997 had constituted a sort of preliminary judgment in relation to the judgments of the Judicial Division delivered on 19 May 2000 and 5 April 2002. In this connection, none of the members who sat on the Judicial Division's benches had participated in the adoption of the opinion. Moreover, whilst there was certainly a connection between the legal issues contained in the opinion and those to be settled in the dispute submitted by the applicant, the opinion and subsequent appeal proceedings could not be regarded as forming part of the "same case" or "same decision".
Conclusion: no violation (unanimously).

The Court reiterated its finding in the *Kress* and *Martinie* cases that the participation, whether "active" or "passive", of the Government commissioner (*commissaire du gouvernement*) at the deliberations of the bench of the *Conseil d'Etat* entailed a breach of Article 6(1).
Conclusion: violation (unanimously).

The two sets of impugned proceedings had lasted, respectively, for four years, nine months and three days, and for three years, six months and seventeen days. Having regard to the circumstances of the case, it considered that such periods were excessive and did not meet the "reasonable time" requirement.
Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Overlap of the *Conseil d'Etat*'s consultative and judicial functions in the context of the same proceedings involving questions of mining law: *no violation*.

SACILOR-LORMINES - France (N° 65411/01)
Judgment 9.11.2006 [Section III]

(see above).

Article 6(1) [criminal]

APPLICABILITY
Proceedings for imposition of tax surcharge: *Article 6(1) applicable*.

JUSSILA - Finland (N° 73053/01)
Judgment 23.11.2006 [GC]

Facts: A tax office imposed tax surcharges on the applicant amounting to 10% of his re-assessed tax liability. The surcharges totalled 1,836 Finnish Marks at the time, equivalent to about EUR 300 and were based on the fact that his VAT declarations in 1994-1995 had been incomplete. He appealed to the first-instance administrative court, requesting an oral hearing where a tax inspector and an expert could be heard as witnesses. The administrative court invited the two to submit written observations and eventually found an oral hearing manifestly unnecessary because both parties had submitted all the necessary information in writing. The applicant was denied leave to appeal.

Law: Article 6(1) – *Applicability* – Although the tax surcharges in the case were part of the fiscal regime, they were imposed by a rule whose purpose was deterrent and punitive. The offence was therefore "criminal" within the meaning of Article 6.
Conclusion: Article 6 applicable (by 13 votes to four).

Compliance: The applicant's purpose in requesting a hearing was to challenge the reliability and accuracy of the report on the tax inspection by cross-examining the tax inspector and obtaining supporting testimony from his own expert since, in his view, the tax inspector had misinterpreted the requirements laid down by the relevant legislation and given an inaccurate account of his financial position. His reasons for requesting a hearing therefore concerned in large part the validity of the tax assessment, which as such fell outside the scope of Article 6, although there was the additional question of whether the applicant's book-keeping had been so deficient so as to justify a surcharge. The Administrative Court, which took the measure of inviting written observations from the tax inspector and after that a statement from an expert chosen by the applicant, found in the circumstances that an oral hearing was manifestly unnecessary, as the information provided by the applicant himself formed a sufficient factual basis for the consideration of the case.
The Court did not doubt that checking and ensuring that the taxpayer had given an accurate account of his or her affairs and that supporting documents had been properly produced might often be more efficiently dealt with in writing than in oral argument. Nor was it persuaded by the applicant's argument that any issues of credibility arose in the proceedings which required oral presentation of evidence or cross-examination of witnesses. It found force in the Government's argument that any issues of fact and law could be adequately addressed in, and decided on the basis of, written submissions. The Court further observed that the applicant was not denied the possibility of requesting an oral hearing, although it was for the courts to decide whether a hearing was necessary. The Administrative Court gave such consideration with reasons. The Court also noted the minor sum of money at stake. Since the applicant was given ample opportunity to put forward his case in writing and to comment on the submissions of the tax authority, the requirements of fairness were complied with and did not, in the particular circumstances of the case, necessitate an oral hearing.

Conclusion: no violation of Article 6(1) (14 votes to three).

For further details, see Press Release no. 721.

ACCESS TO COURT
Lack of clear procedure and court's failure to rule on admissibility of an appeal: *violation*.

HAJIYEV - Azerbaijan (N° 5548/03)
Judgment 16.11.2006 [Section I]

Facts: In 1995-1996, the Supreme Court convicted the applicant for several wartime-related offences. Under the criminal procedure applicable at that time, those judgments were final and not subject to appeal. Some years later, a new Code of Criminal Procedure was adopted. A transitional law provided for the possibility of lodging appeals against final judgments delivered under the old procedure, of which the applicant availed himself. In reply to his inquiries a clerk of the court of appeal stated that his case would be examined shortly. However, two years later, the same clerk informed the applicant that the court of appeal could not deal with his case and advised him to appeal to the Supreme Court. The applicant was subsequently pardoned and released from prison.

Law: The applicant's right to have his case re-examined under the new rules of criminal procedure was protected by the fundamental guarantees contained in Article 6. The transitional law provided for a right to have a case re-examined by "the appellate court or the Supreme Court". Given the ambiguity of that wording and the absence of a clear domestic judicial interpretation of the relevant provisions, as well as the existence of at least three domestic precedents where a court of appeal had re-examined a case, it had been reasonable for the applicant to believe that it was for the court of appeal to examine his appeal as well. Moreover, under domestic law, it was for the court of appeal itself to determine the issue of the appeal's admissibility within 15 days of its receipt by a formal and binding judicial decision, and not by a letter of its clerk. However, for more than two years after lodging his appeal, the applicant had not been afforded sufficient safeguards to prevent a misunderstanding of the procedure made available to him under the Transitional Law and, instead, had been led to believe that his case would be examined by the court of appeal. It was for the court of appeal to take steps to ensure that the applicant enjoyed the right to which he had been entitled under the Transitional Law. In such circumstances, he could not be required to apply to the Supreme Court. The Court concluded, therefore, that the applicant had suffered a restriction in his right of access to a court.
Conclusion: violation (unanimously).

Article 41 – EUR 3,000 in respect of non-pecuniary damage.

ORAL HEARING
Tax surcharge imposed without an oral hearing: *no violation*.

JUSSILA - Finland (N° 73053/01)
Judgment 23.11.2006 [GC]

(see above "Applicability").

FAIR HEARING
Loss of victim status following supervisory review as a result of which the applicant was notified of the appeal hearing and his conviction set aside: *no violation*.

ZAYTSEV - Russia (N° 22644/02)
Judgment 16.11.2006 [Section I]

Facts: In 2001 a town court convicted the applicant, a school teacher, of ill-treating his pupils and sentenced him to 18 months' suspended imprisonment. He appealed unsuccessfully against the judgment. He had not been present at the appeal hearing and alleged that he had not been notified thereof. In 2005 the Presidium of the regional court, having examined the case under the supervisory review procedure, quashed the appeal court's judgment and remitted the case on appeal. It found that the examination of the applicant's appeal in his absence had violated his defence rights. Subsequently, the regional court set aside the judgment of 2001 and terminated the criminal proceedings against the applicant as the statutory time-limits had expired. The applicant had been notified of the hearing, but did not appear.

Law: The Presidium of the regional court quashed the applicant's final conviction on the ground that the examination of his appeal in his absence, without his having been duly notified of the hearing, had violated his right to a defence. Furthermore, the Presidium remitted the applicant's case for a new appeal examination and this time the applicant was duly notified of the appeal hearing. The applicant, therefore, ceased to be a victim of this alleged violation of his rights under Article 6. The Court also found no indication of any infringement of the applicant's defence rights or of the principle of equality of arms as his original conviction was eventually set aside.
Conclusion: no violation (unanimously).

ARTICLE 8

PRIVATE LIFE
Refusal of retrial to challenge paternity finding because scientific progress (DNA test) was not a valid ground for such a challenge: *violation*.

TAVLI - Turkey (No 11449/02)
Judgment 9.11.2006 [Section III]

Facts: Soon after his wife gave birth, the applicant had doubts about the child's paternity and filed an action for rejection of paternity. His claim was dismissed, the court relying, in particular, on the results of a blood test which concluded that he could be the child's father, and on the fact that the child was born in wedlock. When DNA testing became more widespread, the applicant had a test carried out which concluded that he could not be her father. Relying on the findings of the DNA test, the applicant requested annulment of the judicial decision and a retrial. Even in the absence of any doubts as to the accuracy of the test, the court dismissed the applicant's request for a retrial. It held that in order to have a retrial, the newly obtained evidence must have been existent at the time of the original proceedings and must have been inaccessible due to *force majeure*. Scientific progress could not be considered as *force majeure*.

Law: The Government did not give any reason why it should be "necessary in a democratic society" to refuse the applicant's request to have a retrial, irrespective of the technological difficulty of conducting DNA testing in 1982, when he first filed the action for rejection of paternity. Just as the applicant has a legitimate right to have at least the opportunity to deny paternity of a child who, according to scientific evidence, is not his own, the child also has an interest in knowing the identity of her biological father. The fact that the applicant was prevented from disclaiming paternity because scientific progress was not considered to be valid grounds for a retrial under the Code of Civil Procedure is not proportionate to the

legitimate aims pursued. Domestic courts should interpret the existing legislation in light of scientific progress and the social repercussions that follow.
Conclusion: violation (unanimously).

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

See also *Mizzi v. Malta* (no. 26111/02, 12 January 2006) in Information Note no. 82.

PRIVATE AND FAMILY LIFE
Lack of prior environmental study and failure to suspend operation of a plant located close to dwellings and generating toxic emissions: *violation*.

GIACOMELLI - Italy (N° 59909/00)
Judgment 2.11.2006 [Section III]

Facts: The applicant has lived since 1950 in a house near a plant for the storage and treatment of "special waste" classified as either hazardous or non-hazardous. The plant began operating in 1982. The applicant brought several sets of proceedings for judicial review of the operating licences awarded by the regional council in respect of the plant. In the course of environmental-impact assessment procedures the Ministry of the Environment found in 2000 and 2001 that there was a health risk for those living near the plant and that its operation was incompatible with environmental regulations. Other competent authorities to which the matter was subsequently referred reached similar conclusions. In December 2002 the district council temporarily rehoused the applicant's family pending the outcome of the judicial dispute with the firm operating the plant; the case is still before the courts. In 2003, on an application by the applicant, the regional administrative court held that the decision to renew the plant's operating licence without having carried out any environmental-impact assessment was unlawful and should be set aside. It also ordered the suspension of the plant's operation. However, its decision was not implemented. In 2004 the Ministry of the Environment gave an opinion in favour of the plant's continued operation provided that it complied with the requirements laid down by the regional council to improve the conditions for operating and monitoring it.

Law: Not until fourteen years after the plant had begun operating and seven years after it had commenced its activities involving the detoxification of industrial waste had it been asked to undergo an environmental-impact assessment, as required by law. The State authorities had therefore failed to comply with the relevant domestic legislation and, moreover, had refused to enforce judicial decisions in which the activities in issue had been found to be unlawful. Accordingly, the procedural machinery provided for in domestic law for the protection of individual rights, in particular the obligation to conduct an environmental-impact assessment prior to any project with potentially harmful environmental consequences and the possibility for any citizens concerned to participate in the licensing procedure and to submit their own observations to the judicial authorities and, where appropriate, obtain an order for the suspension of a dangerous activity, had been deprived of useful effect in the present case for a very long period. Even supposing that, after 2004, the necessary steps had been taken to protect the applicant's rights, the fact remained that for several years her right to respect for her home had been seriously impaired by the dangerous activities carried out at the plant built 30 metres away from her house. The State had therefore not succeeded in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life.
Conclusion: violation (unanimously).

Article 41 – EUR 12,000 for non-pecuniary damage.

For further details, see press release no. 655.

PRIVATE AND FAMILY LIFE
Refusal to register forename not deemed to conform to domestic practice: *admissible*.

JOHANSSON - Finland (N° 10163/02)
Decision 7.11.2006 [Section IV]

In 1999 a son was born to the applicants whose name choice "Axl Mick" was refused by the Population Registration Authority as it did not comply with the Finnish name practice. They appealed in vain, arguing that the name "Axl" was common in Denmark and Norway and was likewise used in Australia and the United States. It was pronounceable in the Finnish language and was not incompatible with the Finnish name practice any more than the name "Alf". Furthermore, there were at least three persons with that name registered in the Finnish population information system and at any rate it was not excluded that the applicants might move abroad. A state representative supported their appeal arguing that as nowadays due to international contacts and cooperation, registration of a name could not be rejected on the sole basis that it was contrary to the domestic name practice. The Advisory Committee on Names deemed the proposed name incompatible with the Finnish name practice. In rejecting the appeal a county administrative court relied on the Names Act, according to which a name could, although being incompatible with domestic name practice, be accepted if a person on the basis of nationality, family relations or some other special circumstance had a connection with a foreign State and the proposed forename accorded with the name practice of that State. The name could also be accepted for other valid reasons but the arguments presented by the applicants had been insufficient. The Supreme Administrative Court upheld the decision.
The applicants complain under Articles 8 and 14 of the Convention that the refusal to register the forename in question violated their right to respect for their private and family life and amounted to discrimination, given that other persons with the same forename have been registered in Finland.

PRIVATE AND FAMILY LIFE
Husbands undergo gender reassignment surgery following their marriage but are barred by law from obtaining full gender recognition since they wish to remain married: *inadmissible*.

R. and F. - United Kingdom (N° 35748/05)
PARRY - United Kingdom (N° 42971/05)
Decisions 28.11.2006 [Section IV]

The applicant couples were married in 1998. The husbands later underwent gender reassignment surgery and now wish to be considered female. The respective couples wish to continue to live as married couples. By the provisions of the Gender Recognition Act 2004, were the husbands single, it would be possible for them to obtain what would be a new birth certificate showing them to be female. In order to obtain this, they would first have to obtain a full Gender Recognition Certificate. It is a condition for issuing a full gender recognition certificate that the recipient not be married. A married applicant who otherwise satisfies the competent panel of the relevant criteria can only be issued with an interim certificate which can be used as grounds for a divorce; upon divorce, an applicant can then apply to have that certificate translated into a full certificate, an essentially automatic process.
The applicant husbands complained principally under Article 8 that they would be forced to divorce their wives in order to obtain proper recognition of their new gender status. They also complained under Article 12 of a violation of their right to marry. The Parry case differed from R. and F. in that it concerned English/Welsh law as opposed to Scots law and in that applicants Parry have (grown-up) children. The Parry couple also have deep religious convictions which include a deep conviction as to the sanctity of marriage. In the R. and F. case the husband F. accepted that it would be possible for her to enter into a civil partnership with R. under the new Civil Partnerships Act 2004. She contended however that such a civil partnership is qualitatively different to a marriage; that it would not prevent the couple having to incur at least some of the costs and trauma of divorce; and that in any event, although such a partnership would offer them the majority of the legal protection offered by a marriage, the protection given is not identical, in particular with regard to their property rights in the event that the partnership does not last.

Inadmissible under Article 8: It fell to be examined by the Court whether the respondent State had failed to comply with a positive obligation to ensure the rights of the applicant husbands through the means chosen to give effect legal recognition to gender re-assignment. The requirement that the applicant husbands divorce flows from the position in domestic law that only persons of the opposite gender may marry; same-sex marriages are not permitted. Were the applicant couples to divorce they could nonetheless continue their relationship in all its current essentials and also give it a legal status akin, if not identical to marriage, through a civil partnership which carries with it almost all the same legal rights and obligations. In conclusion, the effects of the system had not been shown to be disproportionate and a fair balance had been struck in the circumstances.

Inadmissible under Article 12: The applicant couples were lawfully married under domestic law. In seeking to comply with the Court's Grand Chamber judgment in *Christine Goodwin v. the United Kingdom* (no. 28957/95, ECHR 2002-VI) in which it had been found that the biological criteria governing the capacity to marry imposed an effective bar on transsexuals' exercise of their right to marry, the legislature had now provided a mechanism whereby a transsexual can obtain recognition in law of the change and thus be able, for the future, to marry a person of the new opposite gender. The legislature was aware of the fact that there were a small number of transsexuals in subsisting marriages but deliberately had made no provision for those marriages to continue in the event that one partner made use of the gender recognition procedure. In domestic law marriage is only permitted between persons of opposite gender, whether such gender derives from attribution at birth or from a gender recognition procedure. Article 12 of the Convention similarly enshrines the traditional concept of marriage as being between a man and a woman. While it is true that there are a number of Contracting States which have extended marriage to same-sex partners, this reflects their own vision of the role of marriage in their societies and does not flow from an interpretation of the fundamental right as laid down by the Contracting States in 1950. The Contracting State could not be required to make allowances for the small number of marriages where both partners wish to continue notwithstanding the change in gender of one of them. It was of some relevance to the proportionality of the effects of the gender recognition regime that the civil partnership provisions allowed such couples to achieve many of the protections and benefits afforded to couples of married status.

HOME
Lack of prior environmental study and failure to suspend operation of a plant located close to dwellings and generating toxic emissions: *violation*.

GIACOMELLI - Italy (N° 59909/00)
Judgment 2.11.2006 [Section III]

(see above “Private and family life”).

HOME
Search and seizure in Chechnya by agents of the Russian State without any authorisation or safeguards: *violation*.

IMAKAYEVA - Russia (N° 7615/02)
Judgment 9.11.2006 [Section I]

Facts: The applicant alleged that her son disappeared after being detained by servicemen in December 2000. She has had no news of her son since. The eye-witnesses described the abductors as “military personnel” who had used military vehicles and declared that the abduction had occurred in the immediate vicinity of a military roadblock. The applicant and her husband began applying to prosecutors for news of their son. They also visited detention centres and prisons in Chechnya and in the Northern Caucasus. In January 2001 the criminal investigation commenced in respect of the suspected kidnapping of the son.

In July 2002 the applicant was granted victim status. In October 2005, the investigation established that, in December 2000, he had been stopped by a group of armed persons. His subsequent whereabouts could not be established.
In June 2002, about 20 servicemen in military camouflage uniforms came and searched the applicant's house without a warrant, confiscated a number of items and forced her husband to leave with them. The applicant and 30 other witnesses submitted details of some of the servicemen who had conducted the operation and noted the registration numbers of the military vehicles involved. They stressed that, on the same night, four other men from the same village had been detained by the same group. They later saw one of those vehicles at the district military commander's office. The applicant has had no news of her husband since. In July 2002 the investigation established that he had not been detained by a law-enforcement agency. In July 2004 the investigation was closed on the ground that no abduction had been committed and that her husband had been lawfully detained by military servicemen on suspicion of involvement in one of the bandit groups active in the district. He had been released subsequently; therefore his further absence from his place of residence had not been connected to his detention. The applicant's victim status was withdrawn as she had suffered no pecuniary or non-pecuniary damage. A new criminal investigation was opened in November 2004 and was adjourned in February 2005.

Law: Article 8 – No search warrant was produced to the applicant during the search of her house and no details were given of what was being sought after. Furthermore, it appeared that no such warrant had been drawn up at all. The Government were unable to submit any details about the reasons for the search or give any details about the items seized at the house, allegedly because they had been destroyed. The Government's reference to the Suppression of Terrorism Act could not replace an individual authorisation of a search, delimiting its object and scope, and drawn up in accordance with the relevant legal provisions. The provisions of that Act were not to be construed so as to create an exemption to any kind of limitations of personal rights for an indefinite period of time and without clear boundaries to the security forces' actions. The application of those provisions in the applicant's case was even more doubtful, given the Government's failure to indicate what kind of counter-terrorist operation had taken place in June 2002, which agency had conducted it, its purpose, etc. Moreover, for over two years after the event, various state authorities denied that such an operation had taken place at all. The Court was again struck by the lack of accountability or any acceptance of direct responsibility by the officials involved in the events. In sum, the search and seizure implemented without any authorisation or safeguards, were not "in accordance with the law".
Conclusion: violation (unanimously).

Article 38(1) – The Court on several occasions requested the Government to submit copies of the investigation files opened into the disappearances of the applicant's relatives. The evidence contained in both files was regarded by the Court as crucial for the establishment of the facts. Nevertheless, the Government refused to produce any documents or to disclose any details of the investigation, referring to the Suppression of Terrorism Act and arguing that the case-file contained state secrets and that its disclosure would be in violation of the Code of Criminal Procedure. The Court found those reasons insufficient. Referring to the importance of a respondent Government's cooperation in Convention proceedings and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court found that the Government had fallen short of their obligations under Article 38(1).
Conclusion: violation (unanimously).

The Court also found that there had been a violation of Articles 2, 3 and 5, as well as of Article 13 (in connection with Articles 2 and 3).

Article 41 – EUR 20,000 in respect of pecuniary damage and EUR 70,000 for non-pecuniary damage.

For further details, see Press Release no. 676.

See also *Luluyev v. Russia*, no. 69480/01, judgment of 9 November 2006, Press Release no. 675 and under Article 2 "Use of force".

ARTICLE 9

FREEDOM OF RELIGION
Missionary considered a threat to national security and refused re-entry to the country: *admissible*.

NOLAN and K. - Russia (N° 2512/04)
Decision 30.11.2006 [Section I]

The first applicant is a missionary of the Unification Church founded by Rev. Moon. The second applicant is his minor son. They are both U.S. citizens. The first applicant spent nearly eight years as a missionary in Russia (holding a valid visa) before being refused re-entry to the country on secret orders of the Federal Security Service as he was considered a "threat to national security". He claimed, and it was confirmed by the respondent Government, that he never engaged in any activities other than religious preaching. On his return to Russia from a trip to abroad he was kept overnight in an airport transit area before being able to leave the country. The refused re-entry led to his ten-month separation from his son, of whom he had sole custody.

Article 9 – According to the Government, the sole reason for the applicant's exclusion was his activities as a coordinator of the Unification Church's groups in Southern Russia which activity affected private, family and other legitimate interests of others. To the applicant, his exclusion from the country sought to repress the exercise of his rights under Article 9 and to stifle the spreading of his religion.

Article 14 (in conjunction with Article 9) – The applicant complains that he was singled out for exclusion as a foreign missionary allegedly posing a threat to Russia's spiritual heritage.

Article 8 – Both applicants allege a breach of their right to respect for their family life on account of their forced ten-month separation from one another.

Article 5 – According to the applicant, he was detained overnight at the Sheremetyevo Airport in Moscow for at least eight hours. The Government deny that he was detained because his stay in the transit zone was not considered "detention" in the meaning of domestic law.

Article 1 of Protocol No. 7 – The applicant complains that his exclusion from Russia was carried out in manifest disregard for the procedural guarantees of Article 1 of Protocol No. 7. The Government deny that this provision is applicable. In their view, the applicant was not "lawfully resident" in Russia because he was on his way back from another country.

Admissible with regard to the first applicant's exclusion from Russia; the alleged discrimination against him on the grounds of his religious affiliation; his overnight detention in the transit zone of the Moscow airport; the applicants' separation from each other; and the alleged failure of the Russian authorities to respect the procedural guarantees required in cases of expulsion of aliens.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for criticising a court's judgment: *violation*.

KOBENTER and STANDARD VERLAGS GmbH - Austria (N° 60899/00)
Judgment 2.11.2006 [Section I]

Facts: Following a private prosecution, a regional court found that certain passages in a magazine article criticising homosexuals had constituted the offence of insult. The judgment also contained a passage

which stated that homosexuality included the animal kingdom, giving examples of same-sex practices among different animals. The applicant journalist published several articles in a national daily newspaper, where he stated in essence that the judgment had not significantly differed from "the traditions of medieval witch trials" and that it had lent "support to a homophobe's venomous hate campaign". Subsequently, the judge removed the impugned passage from the judgment. He also received an official warning. Upon a prosecution filed by the judge, the regional court convicted the applicant journalist of defamation and imposed a fine on him, suspended for one year. It also ordered the publisher of the daily to pay compensation to the judge, and to publish the judgment. The court found that the journalist's statement had not only been a value judgment, but had also insinuated that the judge had grossly violated fundamental procedural rights, such as the principles of impartiality and adversarial proceedings, like in medieval witch trials. The applicants appealed unsuccessfully.

Law: The impugned statements had been value judgments based on facts. They made it sufficiently clear that the criticism concerned the judgment and not the alleged deficiencies by the judge in conducting the proceedings. Moreover, the outcome of the disciplinary proceedings against the judge in question proved that he had not discharged his duties in a manner fitting for a judge. In the circumstances of the case, the applicants' interest in disseminating information on the subject-matter, admittedly formulated in a provocative and exaggerated tone, outweighed the judge's interest in protecting his reputation and the standing of the judiciary in general. The applicants had complied with their duties and responsibilities as a public "watch-dog" and the criticism made had not amounted to an unjustified or destructive attack against the judge concerned or the judiciary as such. Thus, the reasons adduced by the domestic courts had not been "relevant and sufficient" to justify the interference with the applicants' right to freedom of expression.
Conclusion: violation (unanimously).

Article 41 – EUR 5,000 in respect of non-pecuniary damage, as well as some EUR 150 to the first applicant and EUR 10,000 to the second applicant in respect of pecuniary damage.

FREEDOM OF EXPRESSION
Issue of magazine withdrawn from sale and its further distribution prohibited as it had disclosed documents classified as secret in the context of a parliamentary inquiry: *no violation*.

LEEMPOEL & S.A. ED. CINÉ REVUE - Belgium (N° 64772/01)
Judgment 9.11.2006 [Section I]

Facts: The House of Representatives set up a parliamentary commission of inquiry to examine the handling by the police and the judiciary of an abduction case. Ms. D., an investigating judge, gave evidence to the commission, which asked her to hand over some notes about the investigation that she had brought with her. The file was made available to the members of the commission of inquiry, on the condition that they would not take it away or make copies of it.
However, the weekly magazine *Ciné Télé Revue* published an article containing lengthy extracts from the preparatory file that the judge had handed over to the commission of inquiry. On the same day, on an application by Judge D., the urgent-applications judge of the Court of First Instance ordered the editor to take all necessary steps to remove every copy of the magazine from sales outlets within three hours after notification of the decision, on pain of a fine, and prohibited him from subsequently distributing any copy featuring the same cover and article. The urgent-applications judge, on an appeal by the editor and the publishing company (the applicants), upheld the order and extended it to the company itself, holding that the documents that had been published were subject to the rules on confidentiality of parliamentary inquiries and that their publication appeared to have breached the rights of the defence and interfered with the judge's right to respect for her private life. The Court of Appeal upheld the order, but in respect of the editor alone. In addition, the Court of Cassation dismissed an appeal by the applicants on points of law. Lastly, Judge D., having obtained a bailiff's report to the effect that copies of the magazine were to be found in a number of bookshops, secured an attachment against a bank account of the publishing company. The Court of First Instance, finding that there was no evidence of actual sale or of failure to

inform newsagents of the magazine's withdrawal, ordered the discharge of the attachment measure and the payment by Judge D. of damages to the applicant company.

Law: The applicants' conviction had constituted interference with the exercise of their right to freedom of expression, that interference having been prescribed by law and pursuing the legitimate aim of protecting the reputation or rights of others. The withdrawal from circulation of the offending magazine had been justified and necessary in a democratic society because of the interference with Judge D.'s defence rights and with her right to respect for her private life, but also because the published documents had been protected by the confidentiality of the parliamentary inquiry.
It had not been unreasonable or arbitrary to consider that Judge D.'s defence rights might be affected, having regard, in particular, to the far-reaching powers of the commission of inquiry and to the possible repercussions for the position of the person appearing before it as a result of his or her testimony.
Moreover, the offending article had dealt with a widely discussed matter of public interest. However, the article could not be regarded as having served the public interest, since its content had partly been related to the judge's preparation of her testimony and also because all the commission's hearings had been broadcast live, such that the public at large had been fully informed.
Lastly, as to interference with private life, the Court found that the article in question had contained criticism that was especially directed against the judge's character. In particular, it had included a copy of correspondence which was private, in the strictest sense, and the use of the file handed over to the commission of inquiry together with the comments made in the article had revealed the very essence of her "system of defence".
In those circumstances, the article in question and its circulation could not be regarded as having contributed to any debate of general interest to society, and the grounds given by the Belgian courts to justify the applicants' conviction were relevant and sufficient. The impugned interference had thus been proportionate to the aim pursued and necessary in a democratic society.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Conviction of a politician for libel of a civil servant: *violation*.

MAMÈRE - France (N° 12697/03)
Judgment 7.11.2006 [Section III]

Facts: The applicant, a former journalist and television newsreader, is now a mayor, a member of parliament and a leading member of the ecologist party, "Les Verts". In October 1999 the applicant took part in an infotainment programme on French television, during which another guest broached the subject of the Chernobyl nuclear accident. The applicant then referred to a Mr Pellerin, the then director of the Central Service for Protection against Ionising Radiation (the "SCPRI", an organisation which at that time was responsible for monitoring the level of contamination on French territory and alerting its supervising ministries if any problems arose), describing him as a sinister character "who kept on telling us that France was so strong – the Asterix complex – that the Chernobyl cloud had not crossed our borders". Mr Pellerin brought proceedings in the Paris Criminal Court against the applicant, the national television company "France 2" and its publication director, Marc Tessier, for public defamation of a civil servant, an offence under the Freedom of the Press Act. In 2000 the court found Mr Tessier and the applicant guilty and ordered them to pay a fine and damages to Mr Pellerin. In 2001 the Paris Court of Appeal upheld the conviction. It found that Mr Mamère's comments were defamatory as they had impugned Mr Pellerin's "honour and reputation" by accusing him of having on several occasions "knowingly supplied, in his capacity as a specialist on radioactivity issues, erroneous or simply untrue information about such a serious problem as the Chernobyl disaster, which was of potential consequence for the health of the French population". In 2002 the Court of Cassation dismissed an appeal on points of law by the applicant, Mr Tessier and "France 2", considering that the Court of Appeal had rightly refused to accept that the applicants had acted in good faith.

Law: The applicant's conviction for complicity in public defamation of a civil servant had constituted an interference with his right to freedom of expression that had been prescribed by law and had pursued the legitimate aim of the protection of the reputation of others. The case was one in which Article 10 required a high level of protection of the right to freedom of expression: firstly, the applicant's comments had concerned topics of general concern, namely protection of the environment and public health, and secondly, he had undoubtedly been speaking in his capacity as an elected representative committed to ecological issues, such that his comments were to be regarded as political or "militant" expression. The authorities' margin of appreciation in deciding on the necessity of the impugned measure had thus been particularly limited. In addition, the Court reiterated that anyone who was prosecuted on account of comments on a matter of general concern should have the opportunity to absolve themselves of liability by showing that they had acted in good faith and, in the case of factual allegations, by proving the veracity of the comments. In the present case the offending comments had consisted both of value judgments and of factual allegations, so the applicant should have been afforded both of those opportunities. As regards the factual allegations, since the acts criticised by the applicant had occurred more than ten years earlier, the 1881 Act barred him from proving that his comments were true. Although, in general, the Court could see the logic of such a time bar, it considered that where historical or scientific events were concerned it might, on the contrary, be expected that over the course of time the debate would be enriched by new information that could improve people's understanding of reality. This was clearly the case, in any event, when it came to the effects of the Chernobyl accident on the environment and public health and to the manner in which the authorities in general and the SCPRI in particular had handled the crisis. Furthermore, the Court was not persuaded by the Court of Appeal's reasons for finding that the applicant had lacked good faith, since they had been based entirely on the immoderate nature of his comments. According to the Court's case-law, by contrast, those taking part in a public debate on a matter of general concern were entitled to make somewhat immoderate statements. In the present case, the applicant's comments had admittedly been sarcastic but had remained within the limits of acceptable exaggeration or provocation and the Court did not regard them as manifestly insulting, especially as the offending statements had to be placed in the context of an exchange of views during a television programme that was concerned more with entertainment than with news. Lastly, the Court also considered the fact that the person criticised was a public official. However, at the time when the applicant had made the comments found to be defamatory, the SCPRI no longer existed and Mr Pellerin, then aged 76, was no longer in active employment. Furthermore, the question of Mr Pellerin's personal and "institutional" liability was an integral part of the debate on a matter of general concern, since as director of the SCPRI he had had access to the measurements being taken and had on several occasions made use of the media to inform the public of the level of contamination, or rather, might one say, the lack of it, on French soil. Criticism of Mr Pellerin in his capacity as former director of the SCPRI could not legitimately justify particular severity in the handling of the applicant's case. In those circumstances, and having regard to the considerable importance of the public debate in which the offending comments had been uttered, Mr Mamère's conviction of defamation could not be regarded as proportionate and hence as "necessary in a democratic society".
Conclusion: violation (unanimously).

FREEDOM OF EXPRESSION
One-year suspension of right to broadcast, following repeated radio programmes deemed to be contrary to principles of national unity and territorial integrity and likely to incite violence, hatred and racial discrimination: *inadmissible*.

MEDYA FM REHA RADYO VE İLETİŞİM HİZMETLERİ A.Ş. - Turkey (N° 32842/02)
Decision 14.11.2006 [Section II]

The applicant is a Turkish limited company which broadcasts radio programmes. In 1998 a decision was taken by the broadcasting regulatory authority (Radio and Television Supreme Council) to suspend its authorisation to broadcast on account of comments made during a programme that undermined the existence and independence of the Turkish Republic, as well as the principles of State and national unity and the indivisibility of the nation. The Supreme Administrative Court set aside the decision, which had

never been enforced. However, the applicant company again broadcast comments that showed disrespect for the above-mentioned principles and it was issued with a warning by the broadcasting regulatory authority. Subsequently, after the applicant company had broadcast comments considered capable of inciting people to violence, terrorism or racial discrimination, or of provoking feelings of hatred, the regulatory authority decided on two occasions to suspend its right to broadcast for a 30-day period, and finally imposed a ban on broadcasting for 365 days – the maximum penalty, in view of the reiteration of its offending conduct.

Inadmissible: The suspension of the applicant company's right to broadcast radio programmes had constituted interference with its right to freedom of expression. The interference had been prescribed by law and had pursued legitimate aims within the meaning of Article 10(2). As to whether it had been necessary in a democratic society, in view of the nature of the comments broadcast by the applicant the grounds given by the authorities to justify the penalty had been "relevant and sufficient". Lastly, the interference had been proportionate to the legitimate aims pursued, as dissuasive penalties might prove necessary when misconduct reached such a degree as that observed in this case and became intolerable in that it constituted a negation of the founding principles of a pluralistic democracy: *manifestly ill-founded*.

ARTICLE 11

FREEDOM OF ASSOCIATION
Compulsory transfer of civil servant on account of his trade union activities: *violation*.

METİN TURAN - Turkey (N° 20868/02)
Judgment 14.11.2006 [Section II]

Facts: The applicant, a civil servant, had been elected to the board of a public-sector trade union. The Governor of the region under the state of emergency penalised him for having participated in actions staged by the Federation of public-sector trade unions. The Governor considered that the applicant's presence in that region had consequently become dangerous and had the effect of undermining public order. The applicant was accordingly relocated.

Law: Article 11 – The applicant's status, in principle, had implied the possibility of his being transferred to another department or another town in accordance with the requirements of the public service. The applicant had been able to participate in trade-union activities after his relocation. However, the decision to transfer him had been taken on account of his union membership and had thus constituted interference by the national authorities with the applicant's right to engage in trade-union activities. Such a decision, relocating the applicant to a town in a different region because of his membership of a legal trade union, was not necessary in a democratic society.
Conclusion: violation (six votes to one).

Article 13 – There had been no remedy under Turkish law before a domestic court by which to dispute the decision taken by the Governor of the region under the state of emergency to relocate the applicant to a different region.
Conclusion: violation (unanimously).

Article 41 – EUR 2,500 for non-pecuniary damage.

FREEDOM OF ASSOCIATION
Refusal to recognise legal personality of civil service trade union already active for several years: *violation*.

DEMİR and BAYKARA - Turkey (N° 34503/97)
Judgment 21.11.2006 [Section II]

Facts: Three years after it was founded, a trade union for civil servants entered into a collective agreement regulating all aspects of working conditions in the offices of a municipal council. A representative of the union sued the council on the ground that it had defaulted on its obligations under that agreement. The court found that the applicable law at the time the union was founded did not permit civil servants to set up unions, and that the relevant Convention of the International Labour Organisation (ILO), ratified by Turkey, could not be relied upon in the absence of domestic implementing legislation. Accordingly, the union set up five years earlier had never enjoyed legal personality and had not been entitled to enter into collective agreements, as it had done over two years before in the case at issue.

Law: *Right of civil servants in a municipal council to form a union*: In the absence of any concrete evidence to show that the activities of the applicants' union over the five-year period had constituted a threat to society or to the State, the refusal to accord it legal personality had entailed a violation of Article 11.

Cancellation of a collective agreement entered into two years earlier and applied since then: For two years the collective agreement had governed all working relations within the municipality. For the union it had thus been the principal or even the only means by which the union was able to promote and defend the interests of its members. Accordingly, the cancellation of that agreement, which had been in force and applied for two years in relations between the local authority and the union, had constituted interference with the freedom of association of the applicants, who were the chairperson and a member of that union. At the time, the applicants had acted in good faith in choosing to enter into a collective agreement, as Turkey had already ratified ILO Convention no. 98, which afforded the right to bargain collectively and to enter into collective agreements. The domestic court had considered that it could not apply those provisions as the legislature had not yet provided for the implementation of Convention no. 98. The Court found that the argument based on an omission in the law – caused by a delay on the part of the legislature – was not sufficient in itself for it to be persuaded that the cancellation of a collective agreement, which had been applied for the past two years, fulfilled the conditions in which freedom of association might be restricted. In declaring null and void, with retrospective effect, a collective bargaining agreement after it had been in force and applied for almost three years, the State had failed to fulfil its obligation to secure enjoyment of the rights protected under Article 11.
Conclusion: violation (unanimously)

Article 41 – EUR 500 for pecuniary damage and EUR 20,000 for non-pecuniary damage.

See also *Tüm Haber Sen andt Çınar v. Turkey* (no. 28602/95, judgment of 21 February 2006) in Information Note no. 83.

For further details see press release no. 717.

INTERESTS OF MEMBERS
Collective agreement already in force for two years declared null and void by court order: *violation*.

DEMİR and BAYKARA - Turkey (N° 34503/97)
Judgment 21.11.2006 [Section II]

(see above).

ARTICLE 12

RIGHT TO MARRY
MEN AND WOMEN
Husbands undergo gender reassignment surgery following their marriage but are barred by law from obtaining full gender recognition since they wish to remain married: *inadmissible*.

R. and F. - United Kingdom (N° 35748/05)
PARRY - United Kingdom (N° 42971/05)
Decisions 28.11.2006 [Section IV]

(see Article 8 "Private and family life").

ARTICLE 13

EFFECTIVE REMEDY
No remedy whereby transfer of civil servant by governor of state-of-emergency region could be challenged: *violation*.

METİN TURAN - Turkey (N° 20868/02)
Judgment 14.11.2006 [Section II]

(see Article 11 above).

ARTICLE 14

DISCRIMINATION (Article 2)
Alleged lack of protection against domestic violence against women: *communicated*.

OPUZ - Turkey (N° 33401/02)
Section II

(see Article 2 above).

DISCRIMINATION (Article 8)
Refusal to register forename even though the same name had been accepted in other cases: *admissible*.

JOHANSSON - Finland (N° 10163/02)
Decision 7.11.2006 [Section IV]

(see Article 8 "Private and family life" above).

DISCRIMINATION (Article 9)
Missionary considered a threat to national security and refused re-entry to the country: *admissible*.

NOLAN and K. - Russia (N° 2512/04)
Decision 30.11.2006 [Section I]

(see Article 9 above).

DISCRIMINATION (Article 1 of Protocol No. 1)
Decision to refuse a former member of the armed forces further entitlement to a benefit awarded to individuals who had belonged to other branches of the armed forces: *inadmissible*.

CHROUST - Czech Republic (N° 4295/03)
Decision (20.11.2006) [Section V]

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

ARTICLE 34

LOCUS STANDI
Father complaining before the Court about criminal proceedings against his son who had died just after the end of the domestic proceedings: *inadmissible*.

DİREKÇİ - Turkey (N° 47826/99)
Decision 3.10.2006 [Section II]

The applicant's son died one month after the end of the criminal proceedings against him. More than four months after his death, his father seized the Court, complaining about the unfairness of the proceedings brought against his son (Article 6) and alleging that his son's criminal conviction had constituted a violation of his son's freedom of peaceful assembly (Article 11).

Inadmissible: Criminal proceedings were initiated against the applicant's son and these proceedings concerned him alone. Therefore the applicant was not personally affected by the alleged unfairness of the proceedings brought against his son or by the allegedly unjustified interference with his son's freedom of peaceful assembly. There exists no general interest in the present case which necessitates proceeding with the consideration of these complaints: *incompatible ratione personae*.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Incompatibility with the Convention of a domestic decision given in the context of a compensatory remedy available to victims of excessively lengthy proceedings: *violation*.

SUKOBLJEVIC - Croatia/Croatie (N° 5129/03)
Judgment 2.11.2006 [Section I]

(see Article 6(1) [civil] above).

EFFECTIVE DOMESTIC REMEDY (Georgia)
Constitutional complaint not an appropriate remedy for an applicant financially barred from initiating enforcement proceedings: *preliminary objection dismissed*.

APOSTOL - Georgia (N° 40765/02)
Judgment 28.11.2006 [Section II]

(see Article 6(1) [civil] above).

ARTICLE 37

Article 37(1)(c)

CONTINUED EXAMINATION NOT JUSTIFIED
Some applicants had received payment in full of "frozen" foreign currency deposits, and domestic proceedings in Croatia are still open to a further applicant: *struck out*.

KOVAČIĆ and Others - Slovenia (N° 44574/98, 45133/98 and 48316/99)
Judgment 6.11.2006 [Section III]

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

ARTICLE 38

FURNISH ALL NECESSARY FACILITIES
Government's repeated failure to submit documents requested by the Court: *failure to comply with obligations under Article 38(1)*.

IMAKAYEVA - Russia (N° 7615/02)
Judgment 9.11.2006 [Section I]

(see Article 8 "Home" above).

ARTICLE 1 OF PROTOCOL No. 1

DEPRIVATION OF PROPERTY
Expropriation in breach of national legislation and compensation manifestly inadequate and disproportionate in relation to market value of expropriated land: *admissible*.

VISTIŅŠ and PEREPJOLKINS - Latvia (N° 71243/01)
Decision 30.11.2006 [Section III]

In 1994 the applicants acquired, by way of a gift, the ownership of land on an island which had been unlawfully expropriated by the Soviet Union after 1940 and returned to the heirs of the rightful owners in 1990. Pursuant to a regulation confirmed by statute, the applicants' land was incorporated into the territory of the neighbouring port and became subject, in consideration of an annual indemnity, to an easement for the benefit of the public limited company responsible for the port's management. They applied to the State Land Registry's property valuation department to establish the current valuation of their respective plots of land and the information was duly provided. Subsequently the Autonomous Commercial Port authorities likewise requested the valuation department to calculate, in accordance with the general law on

expropriation, the amount that would be payable to the applicants by way of compensation in the event of their land being expropriated. The valuation department issued two certificates, one for each of the applicants, to the effect that the compensation payable to the applicants would be insignificant in relation to the official valuation of the land. The council of ministers subsequently ordered the expropriation of all the land in question in favour of the State. That measure was confirmed by a law providing that the owners would receive compensation, which would be deemed to have been paid once the corresponding amounts had been deposited in the applicants' current accounts. The Bank for mortgages and real estate opened an account in the name of each of the applicants and then officially certified that the amounts had been paid into the two accounts. After payment, the Land Registration Court ordered that ownership of the expropriated land be registered in the name of the State.

Furthermore, the second applicant brought two sets of proceedings seeking to recover outstanding rent for use of his land. In a judgment, upheld by the Court of Cassation, the Regional Court ordered the port authorities to pay him a considerable sum for having used his land. In addition, the Civil Division of the Supreme Court partly granted his application for payment of outstanding rent and of an indemnity for the easement imposed on his property. The Supreme Court Senate upheld the judgment of the Civil Division. After similar proceedings, the Civil Division ordered the Autonomous Port to pay the first applicant compensation for the overdue rent.

Lastly, the applicants brought proceedings in the Regional Court against the Ministry of Transport, claiming that the registration of the State's title to the land should be annulled and that their own title to the expropriated land should be re-registered at the Land Registry. They alleged that the Ministry of Transport should, in accordance with the general law on expropriation, have initiated negotiations with them with a view to reaching a friendly settlement as to the amount of the compensation, and if those talks had failed it should then have requested the appropriate court to rule on the dispute. The applicants further complained that they were dissatisfied with the amounts paid by way of compensation and claimed that they had been deprived of their right to bring a complaint in that connection before a court. They submitted that the expropriation in general and the conveyance of title in particular had been carried out in breach of the general law on expropriation, and that it had moreover entailed a violation of Article 1 of Protocol No. 1 of the Convention. The Regional Court dismissed the applicants' claim, finding that the special law of 30 October 1997 was applicable to the case and that it released the authorities from following the procedure prescribed by the general law on expropriation. The applicants appealed to the Civil Division of the Supreme Court, pointing out that they were not opposed to the expropriation as such, provided the statutory formalities were complied with and compensation was paid in a reasonable amount. The Civil Division, concurring in essence with the findings and grounds set out in the judgment of the court below, dismissed the appeal. The applicants lodged a cassation appeal with the Supreme Court Senate. In their appeal, they stated that the direct and immediate basis of their claim was the fact that they had been unable to obtain a decision fixing the amount of compensation through fair judicial proceedings, as provided for in the general law on expropriation. They moreover pointed out that they could not themselves bring a complaint to that effect before the court, as only the State authorities had such a right under the law. The Senate dismissed their appeal.

Admissible under Article 1 of Protocol No. 1 (protection of property) considered separately (alleged inadequacy of expropriation compensation awarded unilaterally by the State without judicial scrutiny) and under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (alleged difference in treatment based on the means of acquisition of the property, as land acquired by way of a gift and returned to its rightful owner after the restoration of Latvia's independence was, in the applicants' submission, subject to more unfavourable conditions of expropriation).

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility to build on land designated for expropriation at some undetermined date, without any compensation: *violation*.

SKIBIŃSCY - Poland (N° 52589/99)
Judgment 14.11.2006 [Section IV]

Facts: The applicants owned a number of plots of land. In 1979 a local land development plan was adopted which provided for construction of a health centre on the land. However, the plan was not implemented and the land was subsequently reassigned for other purposes. In 1991 and 1992 the applicants received initial approval to build individual houses on their land. However, in 1994 changes were made to the 1979 development plan, providing for a major road to be built in the vicinity of their plots. However, it was not envisaged to provide financing for the construction until at least 2010. The applicants' subsequent requests to obtain definitive construction permits were refused. The 1979 local development plan expired in December 2003 and no new plan was adopted thereafter. One of the applicants was subsequently granted building permission in April 2004. The other one had died in the meantime.

Law: There were no reasonable grounds on which to believe that the 1979 plan would be realised in the foreseeable future. As a result, the *de facto* blocking of any construction on the applicants' property did not serve any immediate or medium-term purpose in the interest of the community. The applicants were threatened with expropriation at an undetermined point in time. This state of affairs – having lasted at least 10 years – disclosed a lack of sufficient diligence in weighing the interests of the owners against the planning needs of the municipality. Nor did they have any effective entitlement to compensation throughout this period. The Local Planning Act 2003 did not provide for any compensation for damage suffered due to land development plans adopted before its entry into force. The difficulties in enacting a comprehensive legal framework in the area of urban planning constituted part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy. However, those difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved did not exempt the Member States from the obligations stemming from the Convention. Therefore, a fair balance had not been struck between the competing general and individual interests and the applicants had had to bear an excessive individual burden.
Conclusion: violation (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Some applicants had received payment in full of "frozen" foreign currency deposits, and domestic proceedings in Croatia are still open to a further applicant: *struck out*.

KOVAČIĆ and Others - Slovenia (N° 44574/98, 45133/98 and 48316/99)
Judgment 6.11.2006 [Section III]

Facts: Before the dissolution of the Socialist Federal Republic of Yugoslavia ("the SFRY") in 1991, the applicants or their relatives all deposited hard foreign currencies in savings accounts with the office of a Slovenian bank (*Ljubljanska banka*) in Zagreb (Croatia). Funds in hard foreign currencies deposited with commercial banks in the SFRY were in general transferred to the National Bank of Yugoslavia in Belgrade in accordance with the legislation applicable at the time. Accounts in hard foreign currency were guaranteed by the SFRY. Owing to the monetary crisis, withdrawal of hard foreign currency from such so-called "old savings accounts" was progressively restricted by legislation enacted during the 1980s and the early 1990s. Since then the applicants or their relatives had generally been unable to gain access to the money in their accounts.
Since Slovenia and Croatia became independent in 1991, Croatia has taken the view that it is either the Ljubljana Bank or the Slovenian State which should meet the liabilities owed to customers of the Croatian branch. However, Slovenia considers that those liabilities should be divided under the succession arrangements among the five States formed from the dissolved SFRY. The total amount of savings in

strong foreign currencies deposited with the Croatian branch of the Slovenian bank has been estimated at approximately EUR 150,000,000 with accrued interest, and 140,000 investors appear to be involved.
In 2001 the SFRY successor States signed an Agreement on Succession Issues which entered into force in 2004. In 2003, after a change of legislation in Croatia, 42 individuals, including two of the three applicants in this case (Mr Kovačić and Mr Mrkonjić), lodged requests for the seizure and sale of real estate owned by the Ljubljana Bank in that country. In the course of those proceedings, the assets of the Zagreb main branch were liquidated. As a result, each of these two applicants was awarded the equivalent of some EUR 25,000 plus interest and costs for the enforcement proceedings. In 2005 they received full payment of their foreign-currency deposits.
All applicants complained that they had not been able to withdraw the foreign currency they had deposited before the dissolution of the SFRY. They claimed that the Ljubljana Bank or Slovenia, as a successor State which had assumed the SFRY's obligations for foreign-currency savings on the break-up of Yugoslavia, should repay them the money deposited with accrued interest. Mr Kovačić also complained under Article 14 of the Convention that he had been discriminated against on the grounds of nationality, in that Slovenian account holders at the Zagreb branch had been allowed to withdraw their savings.

Law: It had become clear in the course of the Court proceedings that Mr Kovačić and Mr Mrkonjić had received payment in full of their foreign currency deposits; in their cases, therefore, the matter in question had been resolved. As to Ms Golubović, the Court considered that in cases in which liability for a former State's debt was disputed by the successor States, a claimant could reasonably be expected to seek redress where other claimants had been successful. For reasons which remained unexplained, this applicant (and her heir) had taken no action in Croatia, although she would have been likely to have been successful had she done so. In any event, it was still open to her heir to bring such proceedings. In view of those circumstances and given its conclusion concerning the other two applicants, the Court considered that it was no longer justified to continue the examination of Ms Golubović's application. Furthermore, the Court was satisfied that respect for human rights as defined in the Convention and its Protocols did not require otherwise.
Conclusion: struck out (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Decision, with *ex nunc* effect, to refuse the applicant further entitlement to a benefit paid to former members of the armed forces: *inadmissible*.

CHROUST - Czech Republic (N° 4295/03)
Decision 20.11.2006 [Section V]

From 1972 onwards the applicant worked for a number of bodies under the authority of the armed forces, in particular the Federal Security Service (disbanded in 1992) and later, from 1 January 1993 to 30 April 1994, the Czech Republic's Security Information Service (SIS). After leaving that last post he applied for a service allowance. The department of social security, having regard to the SIS Act (Law no. 527/1992) and to the applicant's service record for the 23 years that he had served in the armed forces, decided to grant him the allowance. The director of the SIS subsequently informed the applicant, on two occasions, that the amount of the allowance had been reassessed in his favour. In 1996, however, the director notified him that the reassessment had not been justified and requested the applicant to reimburse the overpayment. In 2000 the director decided, with prospective effect, that the applicant was not entitled to receive the service allowance. He observed that the 1994 decision had been taken *ultra vires*, because the matter fell within the purview of the SIS director. Accordingly, he himself took a new decision and considered that the applicant had not fulfilled the length-of-service requirement, because under the SIS Act only the applicant's period of service after 16 February 1990 could be taken into account. The applicant appealed, claiming that his entitlement to receive the allowance in question had been acknowledged by previous acts of the SIS Director and that the period to be taken into account had to include his service between 1972 and 1990. The SIS Director dismissed the applicant's appeal and confirmed the previous decision, noting that his predecessor's acts were purely informative and could not

be regarded as formal decisions. After giving his interpretation of Law no. 527/1992, he considered in this case that only the applicant's post-1990 service could be taken into account.
The applicant brought an action before Prague City Court (*Městský soud*) seeking a review of the administrative decisions of 2000 and 2001. He complained that he had been deprived of a welfare-type allowance which had been granted to him by a final decision that could be presumed to have been correct (giving rise to an estoppel *per rem judicatam*) and disputed the selective and discriminatory interpretation of Law no. 527/1992 that had been given in the impugned decisions. On that issue he claimed that other categories of servicemen assigned to similar duties enjoyed different treatment since they received the allowance in question. The applicant further lodged a constitutional appeal against the same decisions, arguing that they were contrary to the principles of equality and legal certainty and to the rule-of-law principles whereby public authority could be exercised only within the bounds of the law and the validity of administrative acts could be presumed. The City Court ordered the discontinuance of the proceedings, finding that the courts had no jurisdiction to review the decisions of the SIS. The Second Division of the Constitutional Court dismissed the applicant's appeal as being manifestly ill-founded, finding that the 1994 decision was null and void as it had been taken *ultra vires*.
In 2001 the applicant submitted to the Interior Ministry's social security office a fresh application for an allowance in respect of his period of service in the armed forces up to 31 December 1992, prior to his service in the SIS. The application was referred to the SIS, whose director informed the applicant that he was not entitled to the allowance because his employment relationship had not ended on 31 December 1992 in conditions that allowed him to claim such an entitlement. Given that no such entitlement had existed, the obligation to pay the allowance could not have been transferred to the SIS and there was no need to rule on the matter. The applicant, considering that his application had not been properly dealt with, brought a judicial action to challenge the failure of the SIS to act. He mentioned that there were three other people in the same situation as himself and that, in one case (that of V.M.), the Constitutional Court had found a violation of the Constitution. His action was dismissed by the Prague City Court, which considered that there was no need to order the SIS to give a new decision. The court also pointed out that Law no. 527/1992 only took into account, for the calculation of the length of service, the period served in institutions that upheld the principles of democratic government. As to the difference between the applicant's situation and that of V.M., the court found that the Constitutional Court had not examined whether their respective claims to the allowance were legitimate, but had only considered whether or not the decision of the Interior Ministry was null and void, having regard to the presumption of validity attaching to administrative acts. The applicant appealed on points of law against the judgment of the City Court and those proceedings were still pending on 27 October 2005, when the Government filed their observations.

Inadmissible under Article 6(1): As to the refusal to grant judicial review of the decisions given in the case by the SIS director, the applicant had lodged his constitutional appeal on 15 March 2001, the day after he had brought proceedings in the City Court and therefore well before that court's decision of 11 March 2002 in which it found that it had no jurisdiction to review decisions of the SIS. Accordingly, the applicant had only directed his appeal against the SIS director's decisions of 2000 and 2001 and had not complained about the lack of judicial review. If he had intended to complain to the European Court of Human Rights about the lack of judicial review by a domestic court, he should first have given the Czech Constitutional Court the opportunity to redress the alleged breach in accordance with the purpose of Article 35 of the Convention. As he had not done so, the Constitutional Court could not be criticised for failing to examine that question *proprio motu*: *non-exhaustion of domestic remedies*.

Inadmissible under Article 1 of Protocol No. 1: It was of little consequence that the applicant had acquired his possession by taking advantage of an erroneous decision in his favour, since, in respect of privileges afforded by law, the Convention applied when such privileges gave rise to a legitimate expectation of acquiring certain possessions. Between 1994 and 2000 the applicant had had the legitimate expectation of receiving what was owed to him based on the 1994 decision. He had therefore had a “possession”, within the meaning of Article 1 of Protocol No. 1, and the deprivation thereof by the decisions of 2000 and 2001 had constituted interference with his right to the peaceful enjoyment of his possessions. Moreover, that right had been at issue, albeit as an underlying factor, in the proceedings before the Czech Constitutional Court, and the complaint under Article 1 of Protocol No. 1 had thus been raised, at least in substance,

before that court. On the merits, with regard to the lawfulness of the interference, in such matters it was for the national authorities to interpret the relevant legislation and no arbitrariness could be detected in the interpretation by the domestic authorities of the SIS Act (Law no. 527/1992), according to which the legislature had intended that the period to be taken into account for the granting of the allowance should correspond, not to the entire length of service within bodies under the authority of the Interior Ministry, but to service within only some of those bodies. Accordingly, the impugned interference was consistent with domestic law and pursued an aim in the public interest, namely to ensure compliance with the law. As to the proportionality of the interference, it first had to be noted that the applicant had not been obliged to reimburse the amounts he had unduly received between 1994 and 2000. Accordingly, the solution adopted was not disproportionate and the respondent State had struck a fair balance between the interests concerned: *manifestly ill-founded*.

Inadmissible under Article 14 in conjunction with Article 1 of Protocol No. 1: In so far as the applicant had complained of being discriminated against in comparison with other former members of the armed forces, the Court considered plausible the argument of the Government that there were distinctions between the different categories of servicemen. Moreover, in the case of V.M., which had been invoked by the applicant, it was to be noted that the Czech Constitutional Court had not ruled on whether V.M. had been entitled to the allowance in question. Consequently, having regard to the margin of appreciation afforded to States and in view of the legitimate aim pursued, the difference in treatment complained of in this case could not be regarded as unreasonable or as having created a disproportionate burden for the applicant: *manifestly ill-founded*.

CONTROL OF THE USE OF PROPERTY

Extension of lease agreed with former landlord, with no rent paid for several years, as a consequence of the failure by the new owner to comply with formalities for termination of lease: *violation*.

RADOVICI and STĂNESCU - Romania (N^{os} 68479/01, 71351/01 and 71352/01)
Judgment 2.11.2006 [Section III]

Facts: The applicants are the owners of blocks of flats which were returned to them in 1997 after a period of nationalisation. Some of the tenants, who had signed leases with the State before the property was returned, refused to sign fresh leases with the new owners. The applicants tried to have them evicted. After an initial set of proceedings, their claim was dismissed because they had failed to comply with the formalities governing the drawing-up of lease agreements, as laid down in Emergency Government Order no. 40 of 8 April 1999 concerning the protection of tenants and the fixing of rents for housing. That failure meant that the previous lease agreements with the State were automatically prolonged, without affording them any realistic prospect of being paid rent. After a second set of proceedings, the applicants succeeded in having the tenants evicted. However, they had not been receiving any rent up to that time.

Law: Simply because they had failed to comply with the formal conditions imposed by the emergency provisions concerning residential leases, the applicants had been unable, for a number of years, to charge any rent to the occupants of their flats or to enjoy any contractual relations with them. Whilst the emergency measures pursued the aim, in the public interest, of protecting tenants during the housing shortage inherited from the communist regime, and although the system thus introduced could not be criticised *per se*, having regard in particular to the wide margin of appreciation afforded to States in such matters, some of the emergency provisions had been deficient and imprecise to the detriment of the applicants, and there was nothing to indicate that the tenants had deserved particular protection. As owners of their flats, the applicants had been penalised, for simply failing to comply with a formality in drawing up a lease agreement, by the obligation to keep the tenants in their property for five years, without being able to sign a lease agreement with them and without any realistic prospect of receiving rent. The provisions at issue, as interpreted by the courts, had placed them under an individual and excessive burden.
Conclusion: violation (unanimously).

Article 41 – EUR 23,000 was awarded in respect of the various damage sustained.

See also *Hutten-Czapska v. Poland* [GC], no. 35014/97, 19 June 2006, in Information Note no. 87.

ARTICLE 1 OF PROTOCOL No. 7

EXPULSION OF ALIEN
Missionary considered a threat to national security and refused re-entry to the country: *admissible*.

NOLAN and K. - Russia (N° 2512/04)
Decision 30.11.2006 [Section I]

(see Article 9 above).

Other judgments delivered in November

Matko v. Slovenia (Nº 43393/98), 2 November 2006 [Section III]
Kalpachka v. Bulgaria (Nº 49163/99), 2 November 2006 [Section V]
Radoslav Popov v. Bulgaria (Nº 58971/00), 2 November 2006 [Section V]
Di Pietro v. Italy (Nº 73575/01), 2 November 2006 [Section III]
Milazzo v. Italy (Nº 77156/01), 2 November 2006 [Section III]
Zorc v. Slovenia (Nº 2792/02), 2 November 2006 [Section III]
Olenik v. Slovenia (Nº 4225/02), 2 November 2006 [Section III]
Mihaescu v. Romania (Nº 5060/02), 2 November 2006 [Section III]
Vladimir Nikitin v. Russia (Nº 15969/02), 2 November 2006 [Section I]
Komarova v. Russia (Nº 19126/02), 2 November 2006 [Section I]
Matica v. Romania (Nº 19567/02), 2 November 2006 [Section III]
Standard Verlags GmbH and Krawagna-Pfeifer v. Austria (Nº 19710/02), 2 November 2006 [Section I]
Volokhy v. Ukraine (Nº 23543/02), 2 November 2006 [Section V]
Kazartsev v. Russia (Nº 26410/02), 2 November 2006 [Section I]
Standard Verlags GmbH v. Austria (Nº 13071/03), 2 November 2006 [Section I]
Perrella v. Italy (no. 2) (Nº 15348/03), 2 November 2006 [Section III]
Markoski v. the former Yugoslav Republic of Macedonia (Nº 22928/03), 2 November 2006 [Section V]
Serifis v. Greece (Nº 27695/03), 2 November 2006 [Section I]
Kozlica v. Croatia (Nº 29182/03), 2 November 2006 [Section I]
Matthias and Others v. Italy (Nº 35174/03), 2 November 2006 [Section III]
Tytar v. Russia (Nº 21779/04), 2 November 2006 [Section I]
Kudinova v. Russia (Nº 44374/04), 2 November 2006 [Section I]

Sekułowicz v. Poland (Nº 64249/01), 7 November 2006 [Section IV]
Šmál v. Slovakia (Nº 69208/01), 7 November 2006 [Section IV]
Romejko v. Poland (Nº 74209/01), 7 November 2006 [Section IV]
Łukjaniuk v. Poland (Nº 15072/02), 7 November 2006 [Section IV]
Molander v. Finland (Nº 10615/03), 7 November 2006 [Section IV]
Ajzert v. Hungary (Nº 18328/03), 7 November 2006 [Section II]
Hass v. Poland (Nº 2782/04), 7 November 2006 [Section IV]
Holomiov v. Moldova (Nº 30649/05), 7 November 2006 [Section IV]

Vehbi Ünal v. Turkey (Nº 48264/99), 9 November 2006 [Section III]
Tanko Todorov v. Bulgaria (Nº 51562/99), 9 November 2006 [Section V]
Düzgören v. Turkey (Nº 56827/00), 9 November 2006 [Section III]
Petan v. Slovenia (Nº 66819/01), 9 November 2006 [Section III]
Kavak v. Turkey (Nº 69790/01), 9 November 2006 [Section III]
Krone Verlags GmbH v. Austria (Nº 72331/01), 9 November 2006 [Section III]
Varacha v. Slovenia (Nº 9303/02), 9 November 2006 [Section III]
Negrich v. Ukraine (Nº 22252/02), 9 November 2006 [Section V]
Ungureanu v. Romania (Nº 23354/02), 9 November 2006 [Section III]
Suciu Arama v. Romania (Nº 25603/02), 9 November 2006 [Section III]
Melinte v. Romania (Nº 43247/02), 9 November 2006 [Section III]
Vorona v. Ukraine (Nº 44372/02), 9 November 2006 [Section V]
Volokitin v. Russia (Nº 374/03), 9 November 2006 [Section I]
Tengerakis v. Cyprus (Nº 35698/03), 9 November 2006 [Section I]
Bagriy and Krivanich v. Ukraine (Nº 12023/04), 9 November 2006 [Section V]
Fyodorov v. Ukraine (Nº 43121/04), 9 November 2006 [Section V]

Vozár v. Slovakia (Nº 54826/00), 14 November 2006 [Section IV]
Tsfayo v. the United Kingdom (Nº 60860/00), 14 November 2006 [Section IV]
Hobbs and Others v. the United Kingdom (Nº 63684/00, Nº 63475/00, Nº 63484/00 and Nº 63468/00), 14 November 2006 [Section IV]
Assad v. France (Nº 66500/01), 14 November 2006 [Section II]
Braga v. Moldova (Nº 74154/01), 14 November 2006 [Section IV]
Drabicki v. Poland (Nº 15464/02), 14 November 2006 [Section IV]
Jurevičius v. Lithuania (Nº 30165/02), 14 November 2006 [Section II]
Osuch v. Poland (Nº 31246/02), 14 November 2006 [Section IV]
Gregório de Andrade v. Portugal (Nº 41537/02), 14 November 2006 [Section II]
Louis v. France (Nº 44301/02), 14 November 2006 [Section II]
Ong v. France (Nº 348/03), 14 November 2006 [Section II]
Melnic v. Moldova (Nº 6923/03), 14 November 2006 [Section IV]
Tuncay and Others v. Turkey (Nº 11898/03, Nº 11899/03, Nº 18900/03, Nº 18901/03, Nº 18902/03, Nº 18903/03, Nº 18904/03, Nº 18907/03, Nº 18908/03, Nº 18909/03, Nº 18910/03, Nº 18912/03 and Nº 18913/03), 14 November 2006 [Section II]

Karov v. Bulgaria (Nº 45964/99), 16 November 2006 [Section V]
Klimentyev v. Russia (Nº 46503/99), 16 November 2006 [Section V]
Spasov v. Bulgaria (Nº 51796/99), 16 November 2006 [Section V]
Huylu v. Turkey (Nº 52955/99), 16 November 2006 [Section I]
Boneva v. Bulgaria (Nº 53820/00), 16 November 2006 [Section V]
Dima v. Romania (Nº 58472/00), 16 November 2006 [Section I]
Kondrashova v. Russia (Nº 75473/01), 16 November 2006 [Section I]
Dragne and Others v. Romania (Nº 78047/01), 16 November 2006 [Section III]
Davidescu v. Romania (Nº 2252/02), 16 November 2006 [Section III]
Čiapas v. Lithuania (Nº 4902/02), 16 November 2006 [Section III]
Guta v. Romania (Nº 35229/02), 16 November 2006 [Section III]
Mužević v. Croatia (Nº 39299/02), 16 November 2006 [Section I]
Vaivada v. Lithuania (Nº 66004/01 and Nº 36996/02), 16 November 2006 [Section III]
Trapani Lombardo and Others v. Italy (Nº 25106/03), 16 November 2006 [Section III]
Rita Ippoliti v. Italy (Nº 162/04), 16 November 2006 [Section III]
Tsalkitzis v. Greece (Nº 11801/04), 16 November 2006 [Section I]
Immobiliare Podere Trieste S.R.L. v. Italy (Nº 19041/04), 16 November 2006 [Section I]

Roda and Bonfatti v. Italy (Nº 10427/02), 21 November 2006 [Section II]

Oleksy v. Poland (Nº 64284/01), 28 November 2006 [Section IV]
Desserprit v. France (Nº 76977/01), 28 November 2006 [Section II]
Flandin v. France (Nº 77773/01), 28 November 2006 [Section II]
Golik v. Poland (Nº 13893/02), 28 November 2006 [Section IV]
Buta v. Poland (Nº 18368/02), 28 November 2006 [Section IV]
Wróblewksa v. Poland (Nº 22346/02), 28 November 2006 [Section IV]
Trzciałkowski v. Poland (Nº 26918/02), 28 November 2006 [Section IV]
Poulain de Saint Pere v. France (Nº 38718/02), 28 November 2006 [Section II]

Tochev v. Bulgaria (Nº 58925/00), 30 November 2006 [Section V]
Igors Dmitrijevs v. Latvia (Nº 61638/00), 30 November 2006 [Section III]
Lesar v. Slovania (Nº 66824/01), 30 November 2006 [Section III]
Grecu v. Romania (Nº 75101/01), 30 November 2006 [Section III]
Vladut v. Romania (Nº 6350/02), 30 November 2006 [Section III]
Seregina v. Russia (Nº 12793/02), 30 November 2006 [Section III]
V.S. v. Ukraine (Nº 13400/02), 30 November 2006 [Section V]
Kračun v. Slovenia (Nº 18831/02), 30 November 2006 [Section III]
Štavbe v. Slovenia (Nº 20526/02), 30 November 2006 [Section III]

Krasnoshapka v. Ukraine (Nº 23786/02), 30 November 2006 [Section V]
Karnaushenko v. Ukraine (Nº 23853/02), 30 November 2006 [Section V]
Korda v. Slovenia (Nº 25195/02), 30 November 2006 [Section III]
MZT Learnica A.D. v. the former Yugoslav Republic of Macedonia (Nº 26124/02), 30 November 2006 [Section V]
Rotaru and Cristian v. Romania (Nº 29683/02), 30 November 2006 [Section III]
Kolyada v. Russia (Nº 31276/02), 30 November 2006 [Section I]
Ananyev v. Ukraine (Nº 32374/02), 30 November 2006 [Section V]
Gaischeg v. Slovenia (Nº 32958/02), 30 November 2006 [Section III]
Shitikov v. Russia (Nº 10833/03), 30 November 2006 [Section I]
Veraart v. Netherlands (Nº 10807/04), 30 November 2006 [Section III]
Sillaïdis v. Greece (Nº 28743/04), 30 November 2006 [Section I]
Diakoumakos v. Greece (Nº 28749/04), 30 November 2006 [Section I]
Duma v. Ukraine (Nº 39422/04), 30 November 2006 [Section V]
Len v. Ukraine (Nº 43065/04), 30 November 2006 [Section V]
Goncharov and Others v. Ukraine (Nº 43090/04, Nº 43096/04, Nº 43101/04 and Nº 43106/04), 30 November 2006 [Section V]
Prokhorov v. Ukraine (Nº 43138/04), 30 November 2006 [Section V]

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. 88):

Mamic - Slovenia (no. 2) (N° 75778/01)
Judgment 27.7.2006 [Section III]

Vidic - Slovenia (N° 54836/00)
Janes Carratù - Italy (N° 68585/01)
Schützenhofer - Slovenia (N° 1419/02)
Imširovič - Slovenia (N° 16484/02)
Prljanović - Slovenia (N° 22172/02)
Capozzi - Italy (N° 3528/03)
Stingaciu and Tudor - Romania (N° 21351/03)
Judgments 3.8.2006 [Section III]

H.M. - Turkey (N° 34494/97)
Hüseyin Esen - Turkey (N° 49048/99)
Eskelinen and Others - Finland (N° 43803/98)
D.A. and B.Y. - Turkey (N° 45736/99)
Mahmut Yilmaz and Others - Turkey (N° 47278/99)
Stornaiuolo and Others - Italy (N° 52980/99)
Mustafa Türkoğlu - Turquie (N° 58922/00)
Sitarski - Poland (N° 71068/01)
Dağ - Turkey (N° 74939/01)
Cabała - Poland (N° 23042/02)
Ermicev - Moldova (N° 42288/02)
Cegłowski - Poland (N° 3489/03)
Judgments 8.8.2006 [Section IV]

Gerogiannakis - Greece (N° 30173/03)
Judgment 10.8.2006 [Section I]

Yanakiev - Bulgaria (N° 40476/98)
Padalov - Bulgaria (N° 54784/00)
Dobrev - Bulgaria (N° 55389/00)
Toshev - Bulgaria (N° 56308/00)
Babichkin - Bulgaria (N° 56793/00)
Yordanov - Bulgaria (N° 56856/00)
Nalbant - Turkey (N° 61914/00)
Acun and Yumak - Turkey (N° 67112/01)
Kır and Others - Turkey (N° 67145/01)
Erin - Turkey (N° 71342/01)
Schwarzenberger - Germany (N° 75737/01)
Kukharchuk - Ukraine (N° 10437/02)
Yavorskaya - Ukraine (N° 20745/02)
Lyashko - Ukraine (N° 21040/02)
Gubenko - Ukraine (N° 22924/02)
Andrusenko and Others - Ukraine (N° 41073/02)

Grisha - Ukraine (Nº 1535/03)
Kretinin - Ukraine (Nº 10515/03)
Karpenko - Ukraine (Nº 10559/03)
Kirilo - Ukraine (Nº 19037/03)
Aistov - Ukraine (Nº 1743/04)
Cheenysheva - Ukraine (Nº 22591/04)
Mizina - Ukraine (Nº 28181/04)
Judgments 10.8.2006 [Section V]

Rišková - Slovakia (Nº 58174/00)
Nierojewska - Poland (Nº 77835/01)
Majchrzak - Poland (Nº 1524/02)
Chyb - Poland (Nº 20838/02)
Barrow - the United Kingdom (Nº 42735/02)
Judgments 22.8.2006 [Section IV]

Statistical information[1]

Judgments delivered	**November**	**2006**
Grand Chamber	1	29(30)
Section I	31(32)	237(241)
Section II	15(27)	324(349)
Section III	40(43)	404(424)
Section IV	20(23)	250(270)
Section V	25(28)	113(122)
former Sections	1(3)	16(18)
Total	**133(157)**	**1373(1454)**

Judgments delivered in November 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	31(32)	0	0	0	31(32)
Section II	15(27)	0	0	0	15(27)
Section III	40(43)	0	0	0	40(43)
Section IV	20(23)	0	0	0	20(23)
Section V	25(28)	0	0	0	25(28)
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	1(3)	0	0	0	1(3)
former Section IV	0	0	0	0	0
Total	**133(157)**	**0**	**0**	**0**	**133(157)**

Judgments delivered in 2006					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	24(25)	3	0	2	29(30)
Section I	231(235)	4	2	0	237(241)
Section II	315(340)	4	3	2	324(349)
Section III	391(397)	10	1	2(16)	404(424)
Section IV	239(258)	7(8)	0	4	250(270)
Section V	113(122)	0	0	0	113(122)
former Section I	0	0	0	1	1
former Section II	12	0	0	0	12
former Section III	1(3)	0	0	0	1(3)
former Section IV	2	0	0	0	2
Total	**1328(1394)**	**28(29)**	**6**	**11(25)**	**1373(1454)**

[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	2006
I. Applications declared admissible			
Grand Chamber		0	0
Section I		4	127(133)
Section II		0	30(31)
Section III		7	29(32)
Section IV		3	43(45)
Section V		0	17(19)
Total		**15**	**246(260)**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	3	51
	- Committee	511	5589
Section II	- Chamber	16	86(90)
	- Committee	424	4306
Section III	- Chamber	13	700(722)
	- Committee	322	4465
Section IV	- Chamber	10	140(141)
	- Committee	753	6819
Section V	- Chamber	11(12)	65(66)
	- Committee	352	3109
Total		**2415(2416)**	**25330(25358)**
III. Applications struck off			
Grand Chamber		0	1
Section I	- Chamber	14	88
	- Committee	4	46
Section II	- Chamber	10(12)	100(102)
	- Committee	10	86
Section III	- Chamber	13	68(85)
	- Committee	21	79
Section IV	- Chamber	9	67(68)
	- Committee	19	110
Section V	- Chamber	8(9)	71(72)
	- Committee	2	36
Total		**110(113)**	**752(773)**
Total number of decisions[1]		**2540(2544)**	**26328(26391)**

[1] Not including partial decisions.

Applications communicated	November	2006
Section I	88	669
Section II	65	632(641)
Section III	96	849
Section IV	51	489
Section V	65	420
Total number of applications communicated	**365**	**3059(3068)**

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1 :	Abolition of the death penalty

Protocol No. 7

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