CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 35
on the case-law of the Court
October 2001

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

Statistical information[1]

		October	2001
I. Judgments delivered			
Grand Chamber		0	18(20)
Chamber I		20	273(287)
Chamber II		45	172
Chamber III		45(48)	140(152)
Chamber IV		74	142(149)
Total		**184(187)**	**745(780)**
II. Applications declared admissible			
Section I		5(6)	97(106)
Section II		49	211(213)
Section III		9	200(206)
Section IV		13	142(144)
Total		**76(77)**	**650(669)**
III. Applications declared inadmissible			
Section I	- Chamber	4	72
	- Committee	121	1149
Section II	- Chamber	7	80(81)
	- Committee	453	1492
Section III	- Chamber	13(14)	89(90)
	- Committee	181	1896(1897)
Section IV	- Chamber	15	87(98)
	- Committee	302	1635(1713)
Total		**1096(1097)**	**6500(6592)**
IV. Applications struck off			
Section I	- Chamber	0	29
	- Committee	6	28
Section II	- Chamber	1	37(219)
	- Committee	8	29
Section III	- Chamber	3	16
	- Committee	4	34
Section IV	- Chamber	2	8(10)
	- Committee	3	12
Total		**27**	**193(377)**
Total number of decisions[2] / Nombre total de décisions[2]		**1199(1201)**	**7343(7638)**
V. Applications communicated			
Section I		34	316(330)
Section II		35(39)	233(238)
Section III		41	185(190)
Section IV		23	231(235)
Total number of applications communicated		**133(137)**	**965(993)**

[1] The statistical information is provisional.
[2] Not including partial decisions.

Judgments delivered in October 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	14	6	0	0	20
Section II	31	14	0	0	45
Section III	42(45)	2	0	1[1]	45(48)
Section IV	67	6	1	0	74
Total	**154(157)**	**28**	**1**	**1**	**184(187)**

[1] Revision

Judgments delivered in January - October 2001					
	Merits	Friendly settlements/	Struck out	Other	Total
Grand Chamber	16(18)	0	1	1[1]	18(20)
Section I	211(214)	59(69)	2	1(2)[1]	273(287)
Section II	119	52	0	1[2]	172
Section III	127(137)	9	2	2(4)[3]	140(152)
Section IV	124(130)	17(18)	1	0	142(149)
Total	**597(618)**[4]	**137(148)**	**6**	**5(8)**	**745(780)**

[1] Just satisfaction.
[2] Revision.
[3] One judgment concerned just satisfaction and one concerned revision.
[4] Of the 581 judgments on merits delivered by Sections, 21 were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Killing of politician of Kurdish origin by unidentified perpetrators: *communicated*.

AYDIN and others - Turkey (N° 46231/99)
[Section I]

The applicants are the wife, mother and brother of Vedat Aydın, a well-know political figure of Kurdish origin, once president of the Diyarbakır branch of the People's Labour Party (HEP). In July 1991, he was found dead after having allegedly been abducted and tortured by a counter-guerrilla group on the orders of State agents in south-east Turkey. In July 1991, his wife was called twice by the police to give statements. In the Susurluk report, drafted at the Prime Minister's request and concerning State involvement in political killings, it was stated that the National Intelligence Service had established that Vedat Aydın had been killed by members of a counter-guerrilla group organised by the State. In February 1998, the applicants sent the Chief Prosecutor at the Elazığ State Security Court, through the Ankara Chief Prosecutor, a letter in which they asked the prosecutor to investigate the allegations of the Susurluk report and to inform them about the outcome of the investigation. Having received no answer, they sent another, similar letter in October 1998. In November 1998, the prosecutor of the Malatya State Security Court informed them that the investigation file was now in his hands and that the investigation into the murder was still in progress. It was the first time that the applicants had been informed that an investigation was being carried out. In January 1999, they asked the prosecutor at the Malatya State Security Court to provide copies of the documents in the investigation file in order to submit them to the Court. The Chief Prosecutor of the Malatya State Security Court only authorised the release of the original statement of complaints submitted by the wife of the deceased to the authorities and post-mortem related reports, other documents being considered as confidential.
Communicated under Articles 2, 3, 5, 6, 8, 9, 11, 14 and 35(1) (exhaustion of domestic remedies, six-month period).

POSITIVE OBLIGATIONS
Refusal to refund the full cost of expensive medicine indispensable to the applicant, suffering from sclerosis and of modest means: *communicated*.

NITECKI - Poland (N° 65653/01)
[Section III]

The applicant, who suffers from sclerosis, was prescribed an expensive medicine as part of his treatment for his terminal illness. The medicine was only refunded up to 70% of its cost by the Health Insurance Fund. The applicant asked the local Health Insurance Fund to reimburse the full cost, claiming that he did not have sufficient means to bear the remaining 30% of its price. The Fund refused, arguing that there was no legal possibility of refunding the full price of the medicine. The District Social Services rejected the applicant's application for a full refund. The Ministry of Health and Social Security informed him that the medicine was refunded only up to 70% despite the high cost it represented for patients. The applicant's degree of invalidity was increased from second to first degree. He lodged an appeal against the decision of the Ministry with the Supreme Court but was informed that no appeal was available against such decisions.
Communicated under Article 2.

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment in prison and effectiveness of the investigation: *no violation/violation*.

INDELICATO - Italy (N° 31143/96)
*Judgment 18.10.2001 [Section II]

Facts: The applicant was arrested and imprisoned in 1992 in the course of an investigation into drug-trafficking activities by the Mafia. After being convicted and sentenced at first instance he was acquitted of drug trafficking in 1998. In 1995 he was sentenced to four years and six months' imprisonment for membership of a Mafia-type organisation; that decision was upheld on appeal in 1996. He was transferred to Pianosa Prison in July 1992 and detained in the "Agrippa" high-security wing, where he was subject to a special regime until September 1997. He alleged that he had been ill-treated there: the warders had beaten him on several occasions, sometimes using truncheons, and subjected him to abuse, harassment and various forms of physical and psychological ill-treatment, with the result that he had, among other things, lost four teeth. Those allegations were set out in a complaint which the applicant's wife lodged with the public prosecutor in September 1992, accusing the governor and warders of Pianosa Prison of ill-treatment, assault and verbal abuse. In 1994 the photographs of 262 warders who had worked at the prison were shown to the applicant, who recognised two of them as having been responsible for the ill-treatment of which he complained. The warders in question were committed for trial before the Livorno magistrate. In a judgment delivered in 1999 the magistrate convicted the two warders of abuse of authority over arrested or detained persons. He took it as established that between July and September 1992 the defendants had subjected the applicant to ill-treatment – for which there had been no justification on disciplinary grounds – by insulting him, punching him, beating him with truncheons and harassing him. In February 2000 the Florence Court of Appeal, on an appeal by the two warders, reclassified the offence, quashed the judgment appealed against and forwarded the file to the public prosecutor, before whom proceedings are still pending. In a report covering the year 1992 Amnesty International indicated that some fifty prisoners detained under the special regime had made allegations of ill-treatment; attention was also drawn to acts of ill-treatment in the "Agrippa" special wing in a 1992 report by the Livorno judge responsible for the execution of sentences.
Law: Article 3 – The applicant had not produced to the Court any medical certificate confirming the injuries sustained as a result of the blows he had allegedly received. The report by the judge responsible for the execution of sentences admittedly referred to acts of ill-treatment in the "Agrippa" wing, but since it did not contain any information about the applicant's own situation it could not be regarded as decisive by the Court; the same was true of the Amnesty International report. Furthermore, the conviction in 1999 of the two warders implicated by the applicant had subsequently been quashed. Consequently, the facts complained of by the applicant had not been established "beyond reasonable doubt".
Conclusion: no violation (unanimously).
Article 3 – The applicant's allegations of ill-treatment gave rise to plausible suspicion that he had been subjected to questionable treatment while in prison. Such treatment had also been reported by other prisoners and condemned by the State authorities. However, the trial of the two warders had not begun until five years and eight months after the criminal complaint had been lodged, and attempts to identify the suspects had been confined to displaying the photographs of 262 warders a long time after the alleged events. Furthermore, the proceedings were still pending following the reclassification of the offence. Regard being had to the very lengthy delay in conducting the first investigation, the negligent approach to the identification

of the suspects, and the length of both the first investigation and the second one, which was still in progress, the Italian authorities had not adopted the positive measures made necessary by the existence of an arguable complaint.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 70,000,000 Italian lire in respect of non-pecuniary damage.

INHUMAN TREATMENT
Alleged ill-treatment in police custody and effectiveness of investigation: *communicated*.

BALOGH - Hungary (N° 47940/99)
[Section II]

On 9 August 1995, the applicant, of Rom origin, was arrested on suspicion of theft. He alleges that during an interrogation by police officers the same day, he was repeatedly slapped across the face and left ear and punched in the stomach. On 11 August, he consulted a doctor who advised him to go to the ear, nose and throat department of the local hospital. On 14 August, after it had been diagnosed that he had traumatic perforation of the left tympanic membrane, he was operated on in order to have his eardrum reconstructed. The perforation of his eardrum was mentioned in two subsequent medical reports of 28 August and 29 September. Meanwhile, the applicant brought charges of ill-treatment before the Investigation Office. In November 1995, the appointed forensic medical-expert reported that the time of the occurrence of the applicant's trauma could not be determined precisely, so that it could not be established whether it had happened before, during or after the interrogation. The Office discontinued the criminal proceedings against the police officers who had interrogated the applicant, due to lack of evidence. In January 1996, upon the applicant's request, the District Public Prosecutor's Office ordered that the investigations and criminal proceedings be resumed. In March 1996, the investigations were discontinued once more on the grounds that there was no direct witness of the incident and that the forensic report did not establish the exact time of the trauma. In April 1998, the applicant entrusted his case to the Legal Defence Bureau for National and Ethnic Minorities (NEKI). NEKI obtained a further expert medical opinion, according to which traumatic perforation of the eardrum had resulted from slaps on the ear; the expert therefore considered the applicant's version of facts to be plausible. NEKI subsequently lodged a complaint against the decision of March 1996. However, in August 1998, the County Public Prosecutor's Office dismissed the complaint and discontinued the proceedings.
Communicated under Article 3.

INHUMAN TREATMENT
Ill-treatment during arrest and during detention at a sobering-up centre: *admissible*.

H.D. - Poland (N° 33310/96)
Decision 7.6.2001 [Section IV]
(See Article 5(1)(e), below).

EXTRADITION
Extradition to the United States of a person allegedly risking being subjected to "death row syndrome" and liable to be sentenced to life imprisonment without remission: *inadmissible*.

EINHORN - France (N° 71555/01)
Decision 16.10.2001 [Section III]

The applicant, an American citizen, was arrested in the State of Pennsylvania after the mummified body of his girlfriend was discovered at his home. While an investigation against him was under way he left the United States. In 1993 he was convicted *in absentia* by an American court and sentenced to life imprisonment. Appeals by his lawyer were dismissed. In 1997, after the applicant was arrested in France, the United States Government submitted a request for his extradition, which was refused on the ground that he would be unable to obtain a retrial in the United States if he was extradited. By a statute which came into force in January 1998 the Pennsylvania legislature made a change to the relevant procedure so that persons convicted *in absentia* could, in certain cases, be granted a retrial. The United States Government consequently submitted a further extradition request, stating that the applicant would be granted a new trial if he requested one and that the death penalty would not be sought, imposed or carried out. The Indictment Division of the Bordeaux Court of Appeal ruled in favour of the applicant's extradition, on condition that he was granted a new and fair trial, if he so requested, and that he was not given the death penalty. In a decree of July 2000 the French Prime Minister granted the extradition on those terms. The applicant applied to the Prime Minister to reconsider his decision; when that application was dismissed, he applied to the *Conseil d'Etat*. He submitted, in particular, that his extradition would contravene Article 3 of the Convention in that he would be likely to have to serve an irreducible life sentence without any genuine prospect of remission or parole; in addition, as the victim's body had been found after the death penalty had been restored in Pennsylvania, there was a risk that he might be sentenced to death and thus be exposed to the "death-row phenomenon". In a judgment of July 2001 the *Conseil d'Etat* dismissed the application. It held, in particular, that the extradition of a person who faced life imprisonment without any possibility of early release was not contrary to Article 3. It then referred to the assurances given by the American Government in support of their extradition request of July 1998, to the undertaking given on two occasions by the District Attorney of Philadelphia County that the death penalty would not be sought, and to her formal declaration that the death penalty could not be imposed in the State of Pennsylvania if it had not been sought. It concluded that sufficient guarantees had been offered in respect of the applicant's extradition. The applicant subsequently attempted to commit suicide, but the French Government produced to the Court a medical certificate attesting that his state of health was compatible with his transfer to the United States. The Court lifted the interim measure it had indicated to the French Government under Rule 39 in July 2001, and the applicant was extradited to the United States.
Inadmissible under Article 3: The American authorities had given assurances that the statute restoring the death penalty in Pennsylvania, which had been enacted after the alleged offence had been committed, would not be applied retrospectively, and had provided sufficient guarantees that the death penalty would not be sought, imposed or carried out by the court in which the applicant was retried. Those assurances were such as to remove the danger of the applicant's being sentenced to death in Pennsylvania; he was therefore not exposed to a serious risk of treatment or punishment (the "death-row phenomenon") prohibited under Article 3. Furthermore, if the applicant was sentenced to life imprisonment after a new trial, the Governor of Pennsylvania could – subject to certain conditions – commute the life sentence to another one of a duration which afforded the possibility of parole. Although that possibility was limited, it did not appear that if the applicant was sentenced to life imprisonment, it would be impossible for him to obtain parole: manifestly ill-founded.

Inadmissible under Article 6: An issue might exceptionally be raised under Article 6 of the Convention by an extradition decision in circumstances where the fugitive had suffered or risked suffering a "flagrant denial of justice" in the requesting country. In the instant case, the extradition of the applicant to the United States would be likely to raise an issue under that provision if there were "substantial grounds" for believing that he would be unable to obtain a retrial in that country and would be imprisoned there in order to serve the sentence imposed on him *in absentia*. The statute of January 1998 allowed him in principle to be retried in Pennsylvania for the offence of which he had been convicted *in absentia*. Admittedly, the applicant had produced to the Court a large number of affidavits which had reached the conclusion that the statute in question was contrary to the constitutional principles of that State and that the court which, pursuant to the statute, was supposed to retry him would be unable to do so. However, in the absence of a finding by the competent courts in Pennsylvania, the documents produced did not prove that the statute was unconstitutional; it could not be inferred from them that there were "substantial grounds for believing" that the applicant would be unable to obtain a retrial in Pennsylvania or that the denial of justice he feared was flagrant. It had not been for France to determine whether the statute was constitutional before granting the extradition. France had fulfilled its obligations under Article 6 in that it had been entitled, in all good faith, to infer from the undertakings given by the appropriate American authorities that, on returning to Pennsylvania, the applicant would not have to serve the sentence that had been imposed on him *in absentia*. The applicant further complained that the jurors at a retrial in the United States would have been exposed to an extremely hostile media campaign. Where extradition proceedings were concerned, applicants were required to prove the "flagrant" nature of the denial of justice which they feared; in the instant case, however, the applicant had not adduced any evidence to show that, having regard to the relevant American rules of procedure, there were "substantial grounds for believing" that his trial would take place in conditions that contravened Article 6: manifestly ill-founded.
[This decision clarifies the principles laid down in the Soering v. the United Kingdom judgment regarding the compatibility of an extradition decision with Article 6 (right to a fair trial).]

EXPULSION
Threatened expulsion to Iran: *struck out of the list*.

KALANTARI - Germany (N° 51342/99)
*Judgment 11.10.2001 [Section IV]

Facts: The applicant, an Iranian national, fled Iran and entered Germany where he applied for the status of political refugee. The Federal Office for Refugees rejected his application. That rejection was upheld by the Administrative Court and then by the Administrative Court of Appeal. A new application made by the applicant was rejected by the Federal Office for Refugees and, on the ground that the applicant had failed to show that he would be at risk of political persecution if he returned to his country, the Administrative Court dismissed his application to have the expulsion order stayed. The Federal Constitutional Court did not allow the appeal. The trial on the merits is still pending in the Administrative Court, but since it has no suspensive effect, the applicant could be expelled to Iran at any moment. He fled to France, where he is probably in hiding. In January 2000 the Fourth Section decided to apply Rule 39 of the Rules of Court and asked the parties for more information, in particular about the persecution suffered by the applicant's family. The Government informed the Court that they were not in a position to furnish the information requested. The applicant's sister, however, provided further information and produced documents on the persecution suffered by her family. The United Nations Commission on Human Rights' Special Rapporteur on Torture sent the Court an extract from a public report which mentioned an appeal he had made in August 1999 against the applicant's expulsion, on account of the risk of torture he

would face in Iran. In a letter of June 2001 the Government informed the Court that on 15 June 2001 the Federal Office for Refugees had annulled its decision of August 1998 on the ground that there was a legal obstacle to the applicant's extradition. As a result, the applicant will not be extradited to Iran.
Law: Article 3 – Having regard to the Federal Office for Refugees' decision of 15 June 2001, there was no longer any justification for continuing the examination of the application. There were no grounds relating to respect for human rights as defined in the Convention and the Protocols thereto that made it necessary to continue examining the application.
Conclusion: struck out of the list (unanimously).
Rule 44(3) of the Rules of Court – The Court awarded 16,000 German marks for costs and expenses.

ARTICLE 5

Article 5(1)(c)

REASONABLE SUSPICION
Arrest by police officer following briefing by his superior officers based on information from informants: *no violation*.

O'HARA - United Kingdom (Nº 37555/97)
*Judgment 16.10.2001 [Section III]

Facts: Following a murder in Northern Ireland in 1985, four reliable informants told the police independently that the applicant was a member of the Provisional IRA and was implicated in the murder. Detective Constable S., who had been briefed to that effect by his superior officer, arrested the applicant under S. 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. The applicant was released without charge after being detained for 6 days and 13 hours. He brought a civil action against the police, claiming, *inter alia*, assault, seizure of documents, false imprisonment and unlawful arrest. The applicant's counsel concentrated on the first two issues, but also maintained that the arresting officer had not had sufficient grounds for suspicion to justify an arrest. In that respect, the court held that the officer's suspicion had been reasonably based on the information given to him by his superior officer at the briefing. The applicant's appeals to the Court of Appeal and the House of Lords were dismissed.
Law: Article 5(1)(c) – Terrorism poses particular problems, as the police may be called upon to arrest a suspected terrorist on the basis of information which is reliable but cannot be disclosed without jeopardising the informant. While States cannot be required to establish the reasonableness of suspicion by disclosing confidential sources, the notion of "reasonableness" cannot be stretched to the point where the safeguard of Article 5(1)(c) is impaired. The State must therefore furnish at least some facts or information capable of satisfying the Court that there was reasonable suspicion. In the present case, the standard of suspicion set by domestic law was that of honest suspicion on reasonable grounds, unlike in previous cases in which only an honest suspicion was required. The applicant's claim that his arrest was not justified by reasonable suspicion was examined at three levels and evidence was given by the arresting officer, whom the applicant was able to cross-examine. This in itself provided a significant safeguard against arbitrary arrest. Moreover, the applicant's counsel did not inquire further as to what information had been given at the briefing and no steps were taken to have other officers called to give evidence. Thus, although very little evidence as to the background was produced, this was the consequence of the applicant concentrating on his claims of assault. Furthermore, while the applicant disputed that the information was received or that it could be regarded as reliable, no challenge was made in the proceedings to the good faith of the

officers involved in the arrest. There may be a fine line between cases in which suspicion is not sufficiently founded on objective facts and those in which it is, and whether the requisite standard is satisfied will depend on the particular circumstances. In the present case, there is no basis to reject the Government's submission that the suspicion was based on information passed on at a police briefing from informers who had identified the applicant as being suspected of involvement in a specific terrorist offence. In the circumstances, the approach of the domestic courts – that the judge was entitled to infer reasonable suspicion from the sparse material available – was not incompatible with the standard imposed by Article 5(1)(c). Finally, if the briefing officer or any other superior officer had deliberately passed on misleading or inaccurate information to the arresting officer, the police authorities would have been liable for wrongful arrest or false imprisonment. Thus, the approach of the domestic courts did not remove the accountability of the police or confer any impunity with regard to arrests conducted on the basis of confidential information. The suspicion against the applicant reached the required level, as it was based on specific information of his involvement and the purpose of the deprivation of liberty was to confirm or dispel that suspicion.
Conclusion: no violation (6 votes to 1).
Article 5(3) – The Government had not disputed that the applicant was held for 6 days and 13 hours before being released and that this was not in compliance with requirement to bring an arrested person promptly before a judge or other officer.
Conclusion: violation (unanimously).
Article 5(5) – (a) As there had been no violation of Article 5(1), no issue arose under Article 5(5) in relation to that complaint.
Conclusion: no violation (unanimously).
(b) With regard to the finding of a violation of Article 5(3), it was not disputed that, as the detention was in accordance with domestic law, no enforceable right to compensation existed. In that respect, therefore, there had been a breach.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction. It made an award in respect of costs and expenses.

Article 5(1)(e)

ALCOHOLICS
Detention in sobering-up centre: *inadmissible*.

H.D. - Poland (N° 33310/96)
Decision 7.6.2001 [Section IV]

The applicant, who suffers from diabetes, was arrested by policemen on a train, where she claimed she had fallen into a hypoglycaemic coma. The policemen, believing she was drunk, attempted to take her to the railway police station. She apparently resisted arrest and alleges that she was beaten and kicked. She was then taken to a sobering-up centre, where she was examined by a doctor who found her to be intoxicated. She maintained that she was refused insulin at the centre and was tied to a bed. A test showed alcohol in her blood. She was released after 15½ hours. She was examined the following day by a forensic expert who reported six serious bruises which could have been caused by kicks. At her request, criminal proceedings were instituted against the policemen. During the proceedings, she admitted to having acted aggressively when woken up by the policemen on the train. These proceedings were discontinued, the prosecutor finding that no offence had been committed. The Regional Prosecutor ordered further investigations, but the proceedings were discontinued once more, the District Prosecutor considering that if the policemen had struck the applicant on the legs with truncheons, this had been lawful.

Admissible under Article 3: It cannot be said that in cases where the national law provides for several parallel remedies in the sphere of both civil and criminal law, the person concerned, after having made a sustained but eventually unsuccessful attempt to obtain redress through one such remedy must necessarily try all other means. Therefore, after the prosecutor had discontinued the investigation instituted at the applicant's request, she was not required to bring a private prosecution against the policemen. Moreover, in cases where an individual has an arguable claim under Article 3, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for ill-treatment. Thus the applicant, by asking the authorities to institute criminal proceedings into her allegations of ill-treatment discharged her duty under Article 35(1) to afford the State an opportunity to redress the matter through its own legal system.
Inadmissible under Article 5(1)(e): The applicant was detained under section 40 of the 1982 Law dealing with the fight against alcoholism. The provision in question laid down two conditions to justify detention: first, that the person concerned be intoxicated and, second, that his or her behaviour be offensive or that his or her condition be such as to endanger his or her own or other persons' life or health. In the instant case, before being detained the applicant was examined by a doctor who confirmed that she was intoxicated and recommended that she be kept in the sobering-up centre for ten hours. Furthermore, in the course of the criminal proceedings, the applicant never denied that after having been woken up by the policemen she had behaved aggressively. Several policemen and two doctors from the centre described her behaviour in similar terms, notably "aggressive" and "offensive". Therefore, the applicant's detention was covered by section 40 of the 1982 law and nothing suggested that the authorities acted arbitrarily in taking the applicant to the sobering-up centre. Having regard to her condition and to the circumstances in which she was detained, her detention could not be considered unnecessary: manifestly ill-founded.

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICR
Applicant brought before District Prosecutor after arrest: *admissible*.

KAWKA - Poland (N° 33885/96)
Decision 23.10.2001 [Section IV]

The applicant was arrested and brought before a District Prosecutor, who charged him with robbery and ordered his detention on remand. He was later indicted on the charge of robbery and eventually convicted and sentenced to imprisonment.
Admissible under Article 5(3).

LENGTH OF PRE-TRIAL DETENTION
Detention on remand lasting more than four years: *admissible*.

KALASHNIKOV - Russia (Nº 47095/99)
Decision 18.9.2001 [Section IV]
(See Article 8, below).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning a sickness allowance: *communicated*.

JEFTIĆ - Croatia (N° 57576/00)
[Section IV]

In 1989, the applicant had an accident while at work. He has been on sick leave for most of the time since his accident. In 1991, he left Croatia for Bosnia-Herzegovina. In January 1992, the company for which he worked informed him that they had terminated his employment contract in September 1991, the Croatian Health Insurance Fund having refused to pay his sickness allowance. In January 1992, the applicant unsuccessfully applied for a sickness allowance. The Croatian Health Insurance Fund held that it could not accept medical certificates from Bosnia-Herzegovina since, pursuant to Croatian law, the applicant had to present himself in person before a commission of medical experts in Croatia in order to have his sick leave prolonged. In March 1992, the applicant appealed against this refusal to the Appellate Commission of the Croatian Health Insurance Fund. In November 1997 and February 1999, he lodged requests with the Appellate Commission asking that the proceedings be speeded up but received no reply. In June 1999, the applicant instituted administrative proceedings asking the Administrative Court to decide on the matter. In December 1999, he requested the Administrative Court to speed up the proceedings but received no answer. The proceedings are still pending before the Administrative Court.
Communicated under Articles 6(1) and 13.

APPLICABILITY
Applicability of Article 6 to proceedings concerning an interim court order.

MARKASS CAR HIRE Ltd - Cyprus (N° 51591/99)
Decision 23.10.2001 [Section III]

The applicant company was the owner and hire-purchaser of a fleet of vehicles. Company K. instituted proceedings to seek damages from the applicant following the alleged breach of an agreement between the two companies whereby the applicant had rented 127 cars to company K. and had not given them all. Company K. further sought a decision preventing the applicant company from interfering with its activities insofar as they related to the allegedly breached agreement and ordering the applicant to hand over the vehicles which were still in its possession. In March 1998, while the applicant was gathering the missing vehicles, company K. obtained, in the framework of new proceedings before the District Court and on an *ex parte* basis, an interim decision according to which the applicant was to hand over the said vehicles to company K. The applicant lodged an appeal against this decision. The parties having reached no settlement, the District Court fixed a hearing for July 1998. The hearing started on time but was adjourned a number of times. In April 1999, as a result of the repeated adjournments, the applicant filed an application for certiorari and prohibition with the Supreme Court, which rejected it. The applicant appealed against this decision. Following a request by the applicant to have these proceedings speeded up, the president of the District

Court assigned the case to a new court in June 1999. Meanwhile, company K. applied for an order of imprisonment of the managers of the applicant company for contempt of the interim order of March 1998. In September 1999, the District Court decided that the hearing relating the interim order of March 1998 should precede that of the last mentioned proceedings initiated by company K. The hearing started in September 1999 but was adjourned several times. The hearing was resumed in February 2000. In May 2000, the District Court held that the interim order was no longer in force and declared it null and void.
Admissible under Article 6(1): As regards the applicability of this provision to proceedings relating to injunctions or interim orders, the European Commission of Human Rights held in a number of cases that such proceedings did not determine civil rights or obligations. More recently, the Court held that Article 6 did not apply to proceedings concerning an interim order for designation of an expert adopted prior to the proceedings on the merits. However, in the present case the interim order of March 1998 partly coincided with the principal action and, unless reversed by the appeal court within a short time, it would affect the legal rights of the parties to the agreement in question. The interim measure was drastic in that it concerned almost the whole of the company's fleet of vehicles. The combined effect of the measure and its duration caused irreversible prejudice to the applicant company's interests and deprived to a substantial extent the outcome of the proceedings of its significance. Thus, the interim measure partly determined the rights of the parties in relation to the final claim against the applicant company in the initial proceedings instituted by company K. and thereby acquired the character of a dispute over a civil right and obligation to which Article 6 was applicable.

APPLICABILITY
Extradition proceedings: Article 6 not applicable.

A.B. - Poland (N° 33878/96)
Decision 18.10.2001 [Section IV]
(see Article 8, below).

APPLICABILITY
Arbitration proceedings concerning a claim to 49% of the shares in a limited company: *Article 6 applicable*.

SOVTRANSAVTO HOLDING - Ukraine (Nº 48553/99)
Decision 27.9.2001 [Section IV]
(see below).

APPLICABILITY
Proceedings relating to a request for a transfer of a notary's office: *Article 6 applicable*.

DESMOTS - France (N° 41358/98)
Decision 23.10.2001 [Section III]

The applicant, a notary (*notaire*), applied to move his office to another area. After various bodies, including the Commission on the Location of Notaries' Offices, had expressed their opposition to such a move, the Minister of Justice refused the application. The applicant applied to the Administrative Court to have that decision set aside. When his application was dismissed, he appealed to the *Conseil d'Etat*, which quashed the court's judgment, holding that decisions on the relocation of solicitors' offices fell within its own jurisdiction and were not subject to appeal. The *Conseil d'Etat* then dealt with the merits of the case itself and dismissed the application.

Admissible under Article 6(1) (reasonable time): objection of incompatibility *ratione materiae* – under domestic law, the relocation of notaries' offices fell within the Minister of Justice's sphere of competence; the commission responsible for issuing an opinion on the location of such offices had to carry out an overall examination, taking into account various factors, including those which had been relevant in this case: the office's financial position and the balance between offices in the sector concerned. On this occasion the Minister had followed the commission's opinion, although he was under no obligation to do so. The *Conseil d'Etat*'s subsequent review of the application to set the decision aside had afforded the possibility of a judicial assessment of the points of law and fact raised by the applicant in contesting the Minister's decision against him. The right to obtain the relocation of a notary's office could therefore be said, at least on arguable grounds, to be recognised under domestic law. The fact that the Minister had some discretion in examining the application did not make that "right" any less "arguable". Having regard to its undeniable pecuniary consequences, the right in question was a "civil" right within the meaning of Article 6(1) of the Convention, which provision was applicable: admissible.

APPLICABILITY
Denial of access to the civil service, allegedly on discriminatory grounds: *Article 6 applicable*.

DEVLIN - United Kingdom (Nº 29545/95)
*Judgment 30.10.2001 [Section III]
(See below).

ACCESS TO COURT
Scope of jurisdiction of Supreme Administrative Court: *no violation*.

POTOCKA - Poland (Nº 33776/96)
*Judgment 4.10.2001 [Section IV]

Facts: In 1947, an application was made on behalf of Józef Potocki for temporary ownership of two plots of land which had been expropriated in 1945. Under the relevant provision, the authorities could grant such temporary ownership if it was established that the property had not been designated for public use and temporary ownership would not be incompatible with such use. The application remained unanswered. In 1990, the applicants inherited the estate of Józef Potocki and lodged a request for restitution of the plots. The administrative authorities refused to return the plots to the applicants or to grant them the right to perpetual use, pointing out that the palace built on the plots had been largely destroyed during the war and had been rebuilt at State expense. The applicants ultimately appealed to the Supreme Administrative Court, which rejected the appeal in 1995. With regard to the application for temporary ownership, the court held that it could not review the application for temporary use, lodged in 1947, since it was not competent to deal with appeals against administrative decisions where the proceedings had been instituted before 1 September 1980. With regard to the applicants' request for restitution and the right to perpetual use, the court considered that the authorities had failed to show why restitution would be incompatible with public use but nevertheless held that the decision of the administrative authorities had been lawful.
Law: Article 6(1) (temporal limitation on the Supreme Administrative Court's jurisdiction) – The Supreme Administrative Court Act, which had come into force on 1 September 1980, provided unequivocally that judicial review was not available where administrative proceedings had been instituted before that date. The legislation was enacted prior to the date on which Poland's acceptance of the right of individual petition came into effect and it was that legislation which deprived the applicants of their right of access to a court. The subsequent decision of the Supreme Administrative Court merely highlighted the

impossibility of judicial review. This part of the case thus fell outside the Court's jurisdiction *ratione temporis*.
Conclusion: no violation (unanimously).
Article 6(1) (scope of jurisdiction) – The scope of the Supreme Administrative Court's jurisdiction was limited to an assessment of the lawfulness of the administrative decision but was not confined to assessing whether the decision was compatible with substantive law, since the court was empowered to set aside a decision if it was established that procedural requirements of fairness had not been met. The court examined whether the administrative authorities had complied with their procedural obligations and, while it found that the authorities had fallen short of their obligations, its reasoning showed that it had in fact examined the expediency aspect of the case. The court had stated that the decision was in any event lawful. The court's reasoning showed that it had considered all the applicants' submissions on their merits, without having to decline jurisdiction in replying to them or in ascertaining the relevant facts. The scope of review was thus sufficient to comply with Article 6 § 1.
Conclusion: no violation (unanimously).

ACCESS TO COURT
Exclusion of further appeal in proceedings relating to access to children born of out of wedlock: *violation*.

SOMMERFELD - Germany (Nº 31871/96)
HOFFMANN - Germany (Nº 34045/96)
*Judgments 11.10.2001 [Section IV]
(See Article 8, below).

ACCESS TO COURT
Issuing of national security certificate precluding operation of legislation on non-discrimination in employment: *violation*.

DEVLIN - United Kingdom (Nº 29545/95)
*Judgment 30.10.2001 [Section III]

Facts: After passing a test and attending an interview, the applicant was told that he was being recommended for appointment to a low-grade post in the Northern Ireland Civil Service, subject to pre-appointment enquiries. He was later informed that he had been unsuccessful. No reasons were given, but the applicant believes it was because he is a Catholic. He applied to the Fair Employment Tribunal, but the Secretary of State issued a certificate to the effect that the refusal of employment was on national security grounds, as a result of which the Fair Employment legislation did not apply. An application for judicial review was dismissed.
Law: Article 6(1) – The post for which the applicant had applied did not involve wielding a portion of the State's sovereign power and there is therefore no reason to exclude the dispute from the scope of this provision. He may claim to have had a civil right not to be discriminated against in the employment sphere and Article 6 applies. There was no independent scrutiny of the facts which led to the certificate being issued by the Secretary of State and there were no other available mechanisms of complaint. There was therefore a disproportionate restriction on the applicant's right of access to court.
Conclusion: violation (unanimously).

ACCESS TO COURT
Suspension of civil proceedings pending the outcome of concurrent criminal proceedings on a related issue, the latter still pending after more than six years: *communicated*.

DJONGOZOV - Bulgaria (N° 45950/99)
[Section IV]

In December 1994, a local newspaper published an article containing offensive allegations against the applicant, as former chairman of the local commission in charge of the liquidation of co-operatives. He was said to be of unsound mind and was referred to as a wretch. In March 1995, following the applicant's request and the prosecutor's order, criminal proceedings were instituted against the editor of the newspaper for criminal libel. The applicant concurrently initiated civil proceedings in the District Court, claiming compensation for libel. The court suspended the civil proceedings pending the outcome of the criminal proceedings, in accordance with the Code of Civil Procedure. The applicant unsuccessfully appealed against this decision. In August 2001, he still had no information about the outcome of the criminal proceedings and the civil proceedings appeared still to be suspended.
Communicated under Article 6(1) and 13.

ACCESS TO COURT
Law staying all proceedings on damages for terrorist acts until new legislation on the matter is enacted: *admissible*.

KUTIĆ - Croatia (N° 48778/99)
Decision 4.10.2001 [Section IV]

In 1991, the applicants' house was destroyed after an explosion. In November 1994, they filed with the Municipal Court an action for damages against the Republic of Croatia. In January 1996, the Parliament introduced a change in the Civil Procedure Act to the effect that all proceedings concerning actions for damages resulting from terrorist acts were to be stayed pending the enactment of new legislation settling the matter and no damages could be sought until then. Accordingly, in April 1998, the Municipal Court adopted a decision staying the proceedings concerning the applicants' claim. No appeal was lodged against this decision. In parallel, in December 1994, the applicants had lodged a claim for damages against the Republic of Croatia, following the destruction of various other buildings of theirs following another explosion. In July 2000, the Municipal Court stayed these proceedings too. No appeal was lodged against this decision either. In 1996, another person seeking damages following a terrorist act lodged a constitutional complaint challenging the law which provided for the stay of all proceedings relating to claims for damages after terrorist acts. The Constitutional Court has not yet decided on the issue.
Admissible under Article 6(1) (access to court, length of proceedings).

ACCESS TO COURT
Refusal of the authorities to enforce a final court decision: *communicated*.

KALOGEROPOULOU and 256 others - Germany and Greece (N° 59021/00)
[Section II]

The application was lodged by 257 Greek nationals, who are relatives of victims of the 1944 massacre in Distomo by the Nazi occupying forces. In a decision of October 1997 the Livadia Court of First Instance allowed an action brought by the applicants for payment of various sums by Germany in compensation for the pecuniary and non-pecuniary damage they had suffered. An appeal on points of law by Germany was dismissed in a judgment of May 2000;

consequently, the decision of October 1997 became final. In May 2000 the applicants initiated the procedure laid down in the Code of Civil Procedure for recovering the sums they were owed: they sent the German authorities a copy of the decision allowing their claim, together with an order to pay the sums due. However, Germany did not comply with the decision in question. The applicants consequently applied to the Greek Minister of Justice for prior consent to enforce the decision against the German State; pursuant to Article 923 of the Code of Civil Procedure, the Minister's consent was required in order to enforce a decision against a foreign State. The Minister did not give his consent. The applicants nevertheless instituted enforcement proceedings. The German Government lodged an objection, together with an application for the proceedings to be stayed. In September 2000 the Athens Court of First Instance stayed the enforcement proceedings. In July 2001 that court dismissed the objection that had been lodged, holding, *inter alia*, that Article 923 of the Code of Civil Procedure was contrary to Article 6(1) of the Convention. In July 2001 the German Government appealed against that decision and lodged a further application for the proceedings to be stayed. In July 2001 the President of the Athens Court of First Instance stayed the enforcement proceedings pending the hearing on appeal, which was scheduled for 19 September 2001.
Communicated under Article 6(1) and Article 1 of Protocol No. 1.

FAIR HEARING
Refusal of Supreme Court to submit a preliminary question to the European Court of Justice: *inadmissible*.

CANELA SANTIAGO - Spain (N° 60350/00)
Decision 4.10.2001 [Section IV]

The applicant is a customs agent. Since 1 January 1993, pursuant to European Community legislation, goods exported from Spain to other member States of the European Union or imported from those States to Spain have no longer had to pass through Spanish State customs. The applicant considered that the entry into force of the provisions in question had caused him substantial pecuniary damage, as there had been a significant decline in his customs-clearance business; he consequently brought an action for damages in the administrative courts. He requested the Supreme Court to stay its decision on the merits and, on the basis of Article 177 of the EEC Treaty, to refer a question concerning the interpretation of Council Regulation (EEC) No. 3904/92 of 17 December 1992 on measures to adapt the profession of customs agent to the internal market to the Court of Justice of the European Communities for a preliminary ruling. In a judgment of July 1999 the Supreme Court rejected his request to refer the question for a preliminary ruling and, dealing with the merits of the case, dismissed his application. It drew attention to the Court of Justice's case-law concerning the referral of questions for a preliminary ruling under Article 177 of the EEC Treaty, and, in particular, to the fact that the obligation to refer a question was not an absolute one if there was no doubt as to what the reply would be. In the instant case the Supreme Court held, in a reasoned decision, that the applicant's questions did not directly concern the interpretation of Council Regulation No. 3904/92 but fell within its own jurisdiction. In February 2000 the Constitutional Court dismissed as ill-founded an *amparo* appeal by the applicant.
Inadmissible under Article 6(1): In its judgment the Supreme Court had set out its reasons for holding that the applicant's questions had not directly concerned the interpretation of Council Regulation No. 3904/92 but had fallen within its own jurisdiction. Accordingly, its refusal to refer a question to the Court of Justice for a preliminary ruling could not be regarded as arbitrary: manifestly ill-founded.

PUBLIC HEARING
Absence of public hearing in arbitration proceedings: *admissible*.

SOVTRANSAVTO HOLDING - Ukraine (Nº 48553/99)
Decision 27.9.2001 [Section IV]
(see below).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Alleged pressure by Executive on court with a view to influencing the outcome of the proceedings: *admissible*.

SOVTRANSAVTO HOLDING - Ukraine (Nº 48553/99)
Decision 27.9.2001 [Section IV]

Between 1993 and 1997 the applicant, a Russian limited company, held 49% of the shares in Sovtransavto–Lugansk, a Ukrainian public limited company. In January 1996 a general meeting of Sovtransavto-Lugansk's shareholders decided to vary the company's articles of association, turning it into a private limited company. The Lugansk Executive Council, the only public body empowered to ratify the decisions of limited companies, having scrutinised their compliance with the law and their articles of association, ratified that decision. In December 1996, August 1997 and October 1997 Sovtransavto-Lugansk's managing director increased the company's share capital, each time by one third. These decisions were likewise ratified by the Executive Council. As a result, the board of directors was able to assume sole control of Sovtransavto-Lugansk and its assets and the proportion of the capital held by the applicant company was reduced to 20.7%. In June 1997 the applicant company brought arbitration proceedings against Sovtransavto-Lugansk and the Executive Council, submitting that the changes to the articles of association and the decisions to ratify them had contravened the legislation in force. Complaints by the applicant company were dismissed by the Lugansk Region Arbitration Tribunal and its President. It accordingly applied to a bench of the Ukrainian Supreme Arbitration Tribunal seeking revision under the "supervisory review" procedure. The Supreme Arbitration Tribunal quashed both decisions and remitted the case for retrial at first instance. In January 1998, after receiving a letter from the directors of Sovtransavto-Lugansk, the President of Ukraine urged the President of the Supreme Arbitration Tribunal to defend "national interests", which in the present case were stated to be identical to the interests of Sovtransavto-Lugansk. In February 1998 a general meeting of Sovtransavto-Lugansk's shareholders adopted new articles of association, with the approval of the Executive Council. In April 1998 the Securities Exchange Commission, a public body responsible for supervising limited companies, reported its finding that the resolution adopted by Sovtransavto-Lugansk's shareholders in January 1996 and the decisions subsequently adopted by its board had been unlawful. In May 1998, at the request of a member of parliament, the President of Ukraine again urged the President of the Supreme Arbitration Tribunal to defend "national interests" in the case. The arbitrator appointed by the arbitration tribunal to conduct the proceedings refused to try the case, complaining publicly of pressure brought to bear by Sovtransavto-Lugansk and the Executive Council. In June 1998 the applicant company lodged a further application with the arbitration tribunal complaining that the decisions to increase Sovtransavto-Lugansk's share capital and vary the articles of association and the ratification of those decisions had been unlawful. The arbitration tribunal dismissed the applicant company's complaint against the decision of January 1996 to vary the articles of association and the ratification of that decision, using, according to the applicant company, a stereotypical form of words. Its further application was also dismissed. Subsequent appeals, particularly appeals under the "supervisory review" procedure to the president of the first-instance arbitration tribunal and to a bench of the Supreme Arbitration Tribunal, were unsuccessful. In June 1999 a general meeting of Sovtransavto-Lugansk's

shareholders decided, without the participation of the applicant company's representatives, to wind up the company. In May 2000 the President of the Supreme Arbitration Tribunal refused a request by the president of the first-instance arbitration tribunal for the cases to be remitted to another court in order to "guarantee the objectivity and impartiality of the proceedings". In a judgment of April 2001 the first-instance arbitration tribunal allowed the applicant company's claims in part, in so far as it ordered the company which had succeeded Sovtransavto-Lugansk to return to the applicant part of the assets it owned at the material time. It held that the decisions in 1996 and 1997 to increase the company's share capital and vary its articles of association had been unlawful and that the compensation the applicant company had received following the winding-up of Sovtransavto-Lugansk had not been in proportion with the percentage of the latter company's share capital held by the applicant when Sovtransavto-Lugansk's articles of association were ratified in 1996. Execution of the above judgment was stayed in May 2001 because the defendant company had lodged an appeal. The domestic proceedings are still pending.

Admissible under Articles 6(1) (independent and impartial tribunal, fair trial, public proceedings and reasonable time), Article 1 of Protocol No. 1 and Article 14.

Government's preliminary objections – (a) (competence *ratione temporis*): the question whether, and if so to what extent, the Court could take account of events that had occurred before 11 September 1997, when the Convention came into force in respect of Ukraine, as the background to the matters referred to the Court, was to be joined to the merits.

(b) (applicability of Article 6): since a share in a limited company has economic value it can be considered a possession. Since the applicant company possessed 49% of Sovtransavto-Lugansk's shares it had influence under Ukrainian legislation and Sovtransavto-Lugansk's articles of association over the company's activity, notably on account of its voting power at the general meeting of shareholders; its shares therefore had economic value and could accordingly be considered "possessions" within the meaning of Article 1 of Protocol No. 1, so that Article 6(1) was applicable to the arbitration proceedings: objection dismissed.

(c) (victim status): no decision had recognised or made good any violation by the State of the applicant company's rights under the Convention. With regard in particular to the complaint concerning the applicant company's right of property, the arbitration tribunal's judgment of April 2001 had admittedly recognised the fact that the compensation received by the applicant company following the winding-up of Sovtransavto-Lugansk had not been proportionate, and the tribunal had ordered the restitution to it of part of its assets, but execution of that judgment had been stayed on account of an appeal by the defendant company and the complaints lodged by the applicant company at the start of the proceedings complained of had been unsuccessful. The consequences of the allegedly unlawful acts had therefore not been entirely effaced: objection dismissed.

(d) (six-month rule): the applications for revision lodged by the applicant company under the "supervisory review" procedure with the president of the first-instance arbitration tribunal and a bench of the Supreme Arbitration Tribunal were remedies which had to be used for the purposes of Article 35(1). The "final decision" had therefore been given within the six-month period: objection dismissed.

(e) (non-exhaustion): the applicant company had exhausted the remedies available under Ukrainian law to secure redress for the complaints it had submitted and the Government had not indicated any remedies that it had not used. Moreover, on the date when the application was lodged the final decision in the arbitration proceedings had been given and the applicant company had done everything that could reasonably have been expected of it to exhaust domestic remedies: objection dismissed.

Article 6(1) [criminal]

ACCESS TO COURT
Exclusion of cassation appeal following conviction *in absentia* in Netherlands Antilles: *no violation*.

ELIAZER - Netherlands (Nº 38055/97)
*Judgment 16.10.2001 [Section I]

Facts: The applicant, charged with possession of drugs, was acquitted by the First Instance Court of the Netherlands Antilles after adversarial proceedings. The prosecution appealed to the Joint Court of Justice of the Netherlands Antilles and Aruba. The applicant failed to appear and the appeal was examined *in absentia*, although the applicant's lawyer attended the hearing and conducted his defence. The court quashed the acquittal and convicted the applicant, who then lodged a cassation appeal to the Supreme Court. The Cassation Regulation for the Netherlands Antilles and Aruba provides that no such appeal lies against a conviction *in absentia*, although an objection may be lodged and, if the accused then appears before the trial court, a full retrial is held and a cassation appeal lies against the resulting judgment. The Supreme Court regarded the applicant's appeal as an objection and remitted the case to the Joint Court of Justice for a determination of the objection.
Law: Article 6(1) and (3)(c) – Unlike in the cases of Poitrimol, Omar and Khalfaoui, the applicant was under no obligation to surrender into custody as a precondition to objection proceedings taking place; it was his choice not to appear because of the risk of being arrested. Moreover, unlike in those cases, a cassation appeal would have become open to him once he appeared in objection proceedings. Against that background, the State's interest in ensuring that as many cases as possible are tried in the presence of the accused before allowing access to cassation proceedings outweighed the accused's concern to avoid the risk of being arrested. In reaching that conclusion, account was taken of the entirety of the proceedings, in particular the fact that the applicant's lawyer had been heard in the appeal proceedings before the Joint Court of Justice and the fact that it was open to the applicant to secure access to the Supreme Court by lodging an objection which would have led to a retrial. Such a system, which sought to balance the interests involved, could not be said to be unfair and the Supreme Court's decision could not be considered a disproportionate limitation on the applicant's right of access to court.
Conclusion: no violation (5 votes to 2).
Article 14 in cojunction with Article 6 – In the light of the foregoing, the situation of a person convicted *in absentia* was not comparable to that of a person convicted following adversarial proceedings.
Conclusion: no violation (5 votes to 2).

ACCESS TO COURT
Inadmissibility of cassation appeal on account of failure to lodge it within five days of the contested judgment: *communicated*.

LAPEYRE - France (N° 54161/00)
[Section IV]

The applicant, who was convicted of a traffic offence (speeding) at first instance, appealed and applied to be tried *in absentia*, as is permitted under domestic law. His counsel attended the hearing in the Court of Appeal; after the hearing the court withdrew to deliberate and delivery of the judgment was scheduled for 22 September 1997. On that date the judgment

was read out in the absence of the applicant and his counsel. The Court of Appeal increased the penalty, ordering, among other things, the suspension of the applicant's driving licence for three months. The judgment was allegedly not served on the applicant. He appealed on points of law in November 1997 and in December the Principal Public Prosecutor at the Court of Appeal sought the enforcement of the Court of Appeal's judgment; the applicant was consequently required to surrender his driving licence to the gendarmerie. In his appeal on points of law he argued that the hasty enforcement of the Court of Appeal's judgment – before the Court of Cassation had even heard his appeal – had contravened Article 569 of the Code of Criminal Procedure, which laid down the principle that appeals on points of law have a suspensive effect. He added that the prosecuting authorities should not have been entitled to seek the enforcement of a judgment that was not final, seeing that the Court of Appeal's judgment had not been accompanied by an order making it immediately enforceable. In December 1998 the Court of Cassation declared the applicant's appeal inadmissible on the ground that it had not been lodged within five days of the delivery of the judgment, as required by Article 568 of the Code of Criminal Procedure.
Communicated under Articles 6(1) and 13.

ACCESS TO COURT
Enforcement of suspension of driving licence while cassation appeal pending, despite lack of order for interim enforcement: *communicated*.

LAPEYRE - France (N° 54161/00)
[Section IV]
(see above)

FAIR HEARING
Refusal of Court of Assize to order counter-expertise requested by applicant following expert's unfavourable change of position: *violation*.

G.B. - France (N° 44069/98)
*Judgment 2.10.2001 [Section III]

Facts: The applicant was charged with rape and sexual assault of minors aged fifteen. A medical and psychological report was submitted during the investigation. The applicant was committed for trial at an assize court. At the start of the hearing in the Assize Court the Advocate-General stated that he wished to file a number of documents concerning events that had occurred when the accused had been a minor, as evidence of his character. Counsel for the applicant objected and sought an adjournment of the hearing in order to file pleadings. After an adjournment of thirty-five minutes he filed pleadings to the effect that the documents should be excluded from the evidence. The Assize Court rejected his submissions and copies of the new documents were accordingly added to the file. On the evening of the first day of the trial one of the experts who had drawn up the report ordered during the investigation gave evidence, summarising the report. The presiding judge then ordered an adjournment of fifteen minutes, during which the expert inspected the documents that had just been produced by the prosecution. When the examination of the expert resumed, the latter allegedly changed his opinion by stating, among other things, that the applicant was a "paedophile and that psychotherapy was necessary, but would be ineffective for the time being". The following day counsel for the applicant contested the expert's oral submissions and requested a second expert opinion. The Assize Court deferred its decision on that request until its inquiry into the facts had been completed. It duly rejected the request, holding that both parties had been able to discuss the documents that had just been filed and that after the documents in question had been brought to the expert's attention, the applicant and his counsel had had the opportunity to request any explanations or clarifications that might have been helpful, in accordance with

the rights of the defence. The applicant was convicted and sentenced to eighteen years' imprisonment for raping his fifteen-year-old niece and sexually assaulting a fifteen-year-old girl and his own nephews. He appealed on points of law, alleging a violation of his right to a fair trial in that his counsel had only had half a day to inspect the documents which the prosecution had added to the file for the hearing in the Assize Court, and in that the Assize Court had refused to order a second expert opinion. The Court of Cassation dismissed his appeal in its entirety.

Law: Article 6(1) and (3)(b) – (a) As regards the time available to the applicant's lawyer for preparing his case after the prosecution had produced new evidence to the Assize Court, the documents in question had been produced entirely lawfully and had been communicated to the defence and discussed in the presence of both parties; the principle of equality of arms had therefore not been infringed. In addition, the applicant's submission that his lawyer had only had half a day to study the new documents was contradicted by the order in which the hearings had been held in the Assize Court. The applicant had therefore had adequate time and facilities for the preparation of his defence.

(b) As regards, firstly, the time available to the expert for inspecting the new documents in the file and, secondly, the Assize Court's refusal to order a second expert opinion, the expert had been one of two people who had drawn up the psychiatric report ordered during the investigation. While the report had not been favourable to the applicant, it had at least been balanced in tone. In the applicant's submission the expert, after examining the new evidence produced by the prosecution relating, among other things, to the applicant's sexual conduct when he had been a minor, had expressed a different opinion in the Assize Court, one that had been extremely hostile to him and had totally contradicted the report drawn up three and a half years earlier. Although it was impossible to ascertain the precise content of the psychiatric expert's oral evidence, the respondent Government had not disputed the applicant's allegations. In principle, neither the expression of a change in opinion by an expert in court nor a court's refusal to order a second expert opinion was inherently unfair. In the instant case, a second opinion had been requested after the expert, having quickly perused the new evidence, had changed his opinion in the course of a hearing to one that was extremely unfavourable to the applicant. Although it was difficult to speculate as to the influence that an expert opinion might have on the jury's assessment, it was highly likely that such a sudden change had had the effect of conferring particular weight on the opinion. In the final analysis, the expert's about-turn, coupled with the refusal to allow the request for a second opinion, had infringed the right to a fair trial and the rights of the defence.

Conclusion: violation (unanimously).

Article 41 – The Court did not find it unreasonable to regard the applicant as having suffered a loss of real opportunities. Furthermore, the finding of a violation was not sufficient to make good the non-pecuniary damage suffered. It awarded 90,000 French francs on those grounds.

FAIR HEARING

Extradition of applicant to the United States, where he had been convicted *in absentia*, following adoption of a US law allowing for the possibility of retrial: *inadmissible*.

EINHORN - France (N° 71555/01)
Decision 16.10.2001 [Section III]
(see Article 3, above).

FAIR HEARING
Effect of press campaign on judges trying criminal charges against a politician: *admissible*.

CRAXI - Italy (no. 2) (N° 34896/97)
Decision 11.10.2001 [Section II]
(see Article 6(3)(b), below).

FAIR HEARING
Extradition of applicant to the United States, where he claims the members of the jury which will retry him have been subjected to a virulent media campaign: *inadmissible*.

EINHORN - France (N° 71555/01)
Decision 16.10.2001 [Section III]
(see Article 3, above).

REASONABLE TIME
Charges against the applicant left open for nine years without any trial taking place or the proceedings being discontinued: *communicated*.

WITHEY - United Kingdom (N° 59493/00)
[Section II]

In August 1992, the applicant, who had already been convicted a number of times, *inter alia,* of gross indecency, was arrested on suspicion of indecent assault of two young children following a statement given to the police by Ms E. He was remanded in custody for four weeks before being granted bail. Just before the case came up for trial before the Crown Court, Ms E. declared that she would not give evidence against the applicant. On 18 January 1993 Ms E. made another statement in which she told how she had decided not to give evidence after having receiving a Christmas card from the applicant, the content of which had made her fear possible retaliation. She reaffirmed her initial statement incriminating the applicant. On 19 January 1993, when the case was re-listed for trial, the judge ordered, without opposition from the applicant's counsel, that the charges against him be left open on his file. The proceedings against the applicant were thus stayed. In April 1993 and January 1998, he unsuccessfully asked for the case to be reopened. In August 1998, the Crown Court decided not to give the applicant leave to remove the stay on the proceedings. The judge held that the situation was the result of the applicant's own conduct since he had intimidated Ms E. and his counsel had consented to the charges being left open on his file. Furthermore, the judge considered that, given his conduct and previous convictions, it was understandable that the prosecution had not wished to offer evidence and the applicant consented to the matter remaining open on his file. Finally, the judge, exercising his discretion, decided not to remove the stay on the proceedings. In November 1998, the applicant applied for leave for judicial review for an order of *certiorari* to quash the Crown Court's decision. Leave was granted but the High Court dismissed the application, holding that it did not have jurisdiction to consider it. The applicant died in early 2001 but his wife is continuing the application on his behalf.
Communicated under Article 6(1).

IMPARTIAL TRIBUNAL
Failure of judges holding political views opposed to those of accused to deal with an application for a reduction of sentence in a judgment with allegedly dubious reasoning: *communicated*.

M.D.U. - Italie (N° 58540/00)
[Section II]

In 1996 the applicant was elected a member of parliament from the *Forza Italia* party's lists. After being convicted at first instance of tax offences, sentenced to three years' imprisonment and ordered to pay a fine of 8,000,000 lire, he appealed. The Court of Appeal increased the penalty to three years and twenty-five days' imprisonment and a fine of 8,085,000 lire, and imposed an ancillary penalty of disqualification from holding public office for two years. The applicant lodged an appeal on points of law, seeking, *inter alia*, an amnesty and, in the last two lines of his memorial, to have the penalty reduced. He subsequently applied, on the basis of a law of January 1999, to have the penalty amended to two years and three months' imprisonment and a fine of 6,000,000 lire; at the same time he withdrew all the grounds of his appeal on points of law, with the exception of those concerning the penalty and the existence of mitigating circumstances. The applicant was elected a member of the European Parliament. About two weeks before the delivery of the judgment he withdrew the application he had lodged on the basis of the January 1999 law and asked the Court of Cassation to rule on the merits of his appeal. In a judgment of October 1999, however, the Court of Cassation set the penalty at two years and three months' imprisonment and a fine of 6,000,000 lire. It further held that the ancillary penalty imposed by the courts below still applied. It did not rule on the request made by the applicant, in the grounds of his appeal, to have the penalty reduced. As a result of the judgment, the applicant's name was removed from the electoral roll so that he was unable to vote in the April 2000 regional elections. The division of the Court of Cassation that had dealt with the case had sat as a bench of five judges, including X, who had drafted the statement of reasons given in the judgment, Y, and Z, the presiding judge. The applicant lodged a complaint against X for failure to carry out administrative measures and abuse of public office. He complained that in a similar case the Court of Cassation had delivered a different judgment, drafted by the same judge, in which the ancillary penalty had been reduced, and that the judge in question had made a false statement in maintaining that the applicant had not sought to have the penalty reduced by the Court of Cassation. Z, for his part, gave evidence acknowledging that he had accidentally overlooked the request made by the applicant to have the penalty reduced, which had been made in the last two lines of the appeal, but added that the applicant was entitled to submit a similar request during the enforcement proceedings. In February 2000 the public prosecutor's office recommended that no further action be taken on the complaint, since no offence had been committed; the outcome of the proceedings is unknown. In the enforcement proceedings the ancillary penalty imposed on the applicant was lifted, albeit after the regional elections, in which he was consequently unable to take part. In his application he argued that the political opinions of X and Y were incompatible with his party's ideology: the first had been elected as a member of parliament from the Communist Party's list, while the second belonged to an association of left-wing judges, and both had publicly spoken in favour of putting their opinions into practice in their professional duties. The applicant also alleged that X had given an excessively long statement of reasons for the Court of Cassation's judgment, even though the judgment had merely imposed a penalty that had been agreed to by the parties, and that the bench had failed to consider his request to have the penalty reduced, Z having acknowledged that he had overlooked it.
Communicated under Article 6(1).

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Refusal of Court of Assize to order counter-expertise requested by applicant following expert's unfavourable change of position: *violation*.

G.B. - France (N° 44069/98)
*Judgment 2.10.2001 [Section III]
(see Article 6(1) [criminal], above).

ADEQUATE TIME AND FACILITIES
Hearings held close together in multiple and complex criminal proceedings conducted simultaneously and with particular speed: *admissible*.

CRAXI - Italy (no. 2) (N° 34896/97)
Decision 11.10.2001 [Section II]

The applicant was Secretary of the Italian Socialist Party between 1976 and 1993 and Prime Minister between 1983 and 1987. He died in January 2000, after his application had been lodged, but his heirs stated that they wished to pursue the application. Numerous sets of criminal proceedings were brought against the applicant in connection with the "Clean Hands" investigation in Italy. They received widespread media coverage. The present application concerns one of the sets of criminal proceedings brought against him for corruption in the Eni-Sai affair. During the investigation some of the applicant's co-defendants were questioned. In January 1994 the applicant and nine other people were committed for trial in the Milan District Court. The court ruled that the applicant, who in the meantime had settled in Tunisia, was unlawfully absent. Between April and December 1994 fifty-five other hearings took place. At the hearings the court granted leave for certain statements incriminating the applicant to be read out, the statements having been obtained by the public prosecutor's office during the investigation from one of the co-defendants, who had committed suicide four days after giving evidence. As the applicant's other co-defendants had exercised their right to remain silent, the court granted leave for the statements they had made during the preliminary investigation to be read out. The statements, which incriminated the applicant, were added to the case file and used by the court in determining the merits of the charge against him. In a judgment of December 1994 the Milan District Court convicted the applicant *in absentia* and sentenced him to five years and six months' imprisonment. The applicant appealed and subsequently applied to have the case referred to another appellate court. In February 1996 the Milan Court of Appeal stayed the proceedings in respect of the applicant and severed them from those in respect of the other defendants pending a decision on his application to have the case referred to a different court. In April 1996 the Court of Cassation declared that application inadmissible; the applicant consequently challenged the Court of Appeal on the ground that it had already formed an opinion as to his guilt. The challenge was declared inadmissible as being out of time. In the meantime the Milan Court of Appeal had upheld the main thrust of the judgment at first instance in respect of the other defendants. In a judgment of May 1996 the Court of Appeal upheld the judgment at first instance in respect of the applicant. He appealed on points of law, contesting the use of statements made either during the preliminary investigations or in related proceedings by witnesses whom he had not had the opportunity to cross-examine. In March 1997 the Court of Cassation dismissed the applicant's appeal on points of law, noting, in particular, that his conviction had been based on incriminating statements made by four of the co-defendants. Between October 1993 and December 1994 more than one hundred hearings were arranged in

the various sets of criminal proceedings brought simultaneously against the applicant. Between January and July 1994 his lawyers prepared for hearings in five sets of proceedings; preliminary hearings were arranged in four separate cases between May and June 1994, with the case file running to thousands of pages.
Admissible under Article 6(1), (2) and (3). The Government's preliminary objection (failure to exhaust domestic remedies): since he had not been entitled to apply directly to the Constitutional Court for a review of the constitutionality of a law, the applicant had not been required, in order to exhaust domestic remedies in respect of his complaint that incriminating statements made during the preliminary investigations had been used as evidence against him, to challenge the constitutionality of the Article of the Code of Criminal Procedure that had allowed the statements made by his fellow defendants to be read out in court: objection dismissed.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Deferral of access to lawyer: *no violation*.

BRENNAN - United Kingdom (Nº 39846/98)
*Judgment 16.10.2001 [Section III]

Facts: The applicant was arrested in Northern Ireland in the early morning of 21 October 1990 under counter-terrorism legislation. Access to a lawyer was deferred for 24 hours. The applicant's lawyer, who was informed of the deferral, did not attend until 12.10 p.m. on 23 October. In the meantime, but after expiry of the deferral of access to a lawyer, the applicant had made a number of admissions. The first interview with the lawyer took place within the sight and hearing of a police officer. The lawyer was not allowed to attend any of the police interviews, which were not recorded. At his trial, the applicant challenged the admissibility of the statements which he had made to the police, alleging that they had been obtained by coercion. In the course of a *voir dire* the applicant gave a detailed account of the alleged ill-treatment, which was denied by the police. The judge rejected the allegations and convicted the applicant of various offences, including murder. The disputed admissions were the only evidence. The applicant's appeal was rejected.
Law: Article 6(1) and (3)(c) (access to lawyer) – After the expiry of the initial 24-hour deferral the applicant was no longer being denied access to a lawyer and the fact that his lawyer only arrived a day later was not attributable to any measure imposed by the authorities. Moreover, the applicant had not made any admissions during the period when access to a lawyer was being denied. In the circumstances, the denial of access could not be regarded as infringing his rights.
Conclusion: no violation (unanimously).
Article 6(1) and (3)(c) (police interviews) – In assessing the fairness of admitting the applicant's confessions in evidence, it was necessary to have regard to the safeguards which existed. Firstly, the circumstances in which the confessions were obtained were subjected to strict scrutiny in the *voir dire*. Secondly, the applicant was represented by experienced counsel at the trial and on appeal. Thirdly, the trial judge had heard the applicant and the police officers and was satisfied as to the reliability of the evidence and the fairness of admitting it. The applicant did not complain that there was any arbitrariness on the part of the courts or that there was inadequate inquiry into the circumstances in which the confessions were obtained. Moreover, while both the recording of interviews and the attendance of a lawyer provide safeguards against police misconduct, they are not indispensable preconditions of fairness. The adversarial procedure conducted before the trial court was

capable of bringing to light any oppressive conduct by the police and in the circumstances the lack of additional safeguards had not been shown to have rendered the applicant's trial unfair.
Conclusion: no violation (unanimously).
Article 6(1) and (3)(c) (police supervision of interviews) – An accused's right to communicate with his lawyer out of the hearing of third persons is part of the basic requirements of a fair trial and follows from Article 6(3)(c); if a lawyer were unable to confer with his client and receive confidential instructions without surveillance, his assistance would lose much of its usefulness. Indeed, the importance of such confidentiality is illustrated by various international provisions. The right of access to a lawyer may be subject to restrictions for good cause and the question is whether the restriction has, in the light of the proceedings as a whole, deprived the accused of a fair trial. In that respect, while an applicant need not prove that the restriction had a prejudicial effect on the course of the trial, he must be able to claim to have been directly affected by the restriction in the exercise of his defence rights. In the present case, the restriction served the purpose of preventing information being passed on to suspects still at large, but there was no allegation that the lawyer was in fact likely to collaborate in such an attempt. At most, it appeared that the presence of the police officer would have had some effect in inhibiting any improper communication of information. While there was no reason to doubt the good faith of the police, there was no compelling reason for the imposition of the restriction. As to the proportionality of the restriction, although the police officer was present at only one interview, it was the first occasion on which the applicant had been able to seek advice from his lawyer and the presence of the police officer would inevitably have prevented the applicant from speaking frankly about matters of potential significance to the case against him. It was immaterial that it had not been shown that there were particular matters which the applicant and his lawyer were stopped from discussing. It was indisputable that the applicant was in need of legal advice at the time and that his responses in subsequent interviews, which were to take place in the absence of his lawyer, would continue to be of potential relevance to his trial and could irretrievably prejudice his defence. The presence of the police officer within hearing therefore infringed the applicant's right to an effective exercise of his defence rights.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

DEFENCE THROUGH LEGAL ASSISTANCE
Use in evidence of confessions made to police in absence of lawyer: *no violation*.

BRENNAN - United Kingdom (Nº 39846/98)
*Judgment 16.10.2001 [Section III]
(See above).

DEFENCE THROUGH LEGAL ASSISTANCE
Police supervision of detainee's consultation with lawyer: *violation*.

BRENNAN - United Kingdom (Nº 39846/98)
*Judgment 16.10.2001 [Section III]
(See above).

DEFENCE THROUGH LEGAL ASSISTANCE /
Failure of court-appointed lawyer to inform accused of notification of the judgment convicting him and of the time limit for lodging an *amparo* appeal: *inadmissible*.

ALVAREZ SANCHEZ - Spain (N° 50720/99)
Decision 23.10.2001 [Section IV]

The applicant was found guilty of murder, with the aggravating factor of having committed previous similar offences, and was sentenced to fifteen years' imprisonment. Represented by a barrister (*abogado*) and a solicitor (*procurador*) who were officially assigned, the applicant appealed on points of law to the Supreme Court. That court partly quashed the judgment appealed against by reducing the sentence to twelve years and one day. The judgment was served on the applicant's legal representative – the officially assigned solicitor – who did not, however, inform the applicant of the Supreme Court's judgment and did not lodge an *amparo* appeal with the Constitutional Court within the statutory time-period. The applicant's conviction was declared final by the first-instance court. The applicant subsequently found out from his fellow inmates that the Supreme Court had given judgment. He wrote to the Constitutional Court, stating that the Supreme Court's judgment had not been served on him and that he wished to appeal, and asked for his officially assigned barrister to represent him in the appeal proceedings. Very shortly afterwards he submitted a memorial containing his appeal, which he had written himself. He received a copy of the judgment appealed against; subsequently, the two representatives assigned at the Constitutional Court's request formally lodged an *amparo* appeal, more than a year and a half after the judgment in question had been served on the applicant's legal representative. The appeal was declared inadmissible as being out of time: the Constitutional Court held that the twenty days allowed by law for lodging an *amparo* appeal had begun to run on the date on which the impugned judgment had been served on the applicant's legal representative. The applicant alleged that he had had no effective access to the remedy of an *amparo* appeal to the Constitutional Court, on account of shortcomings on the part of his legal representatives.
Inadmissible under Article 6(1) and (3)(c): Holding a State responsible for the inadequate manner in which an officially assigned solicitor, whose task was to represent rather than to defend an accused, dealt with a case would suggest that the State was at the same time empowered to supervise and regulate the solicitor's conduct if necessary. Such supervision would be incompatible with the independence of the solicitors' professional body *vis-à-vis* the State. In addition, problems might be created as regards equality of arms in judicial proceedings if a court were to point an officially assigned solicitor in a particular direction by suggesting that he lodge an *amparo* appeal with the Constitutional Court. In the instant case the applicant had been assisted throughout the proceedings by officially assigned representatives who had obtained a reduction in his sentence on appeal. The purpose of the appeal to the Constitutional Court on which his complaints were based had been to secure a review not of the merits of his conviction or of the length of the sentence imposed on him but of whether his fundamental rights had been respected. The point in issue, therefore, was not the lack of effectiveness of the applicant's defence in a court with jurisdiction to try the merits of the case, but his access to a court with the specific function of protecting fundamental rights. The applicant's complaints that his officially assigned solicitor had, through negligence, infringed his right to effective legal assistance did not directly and immediately engage the State's responsibility. Having regard to the foregoing and to the differences between the instant case and the Artico, Daud and Kamasinski cases in terms of the seriousness of the problems raised by the shortcomings of officially assigned legal representatives and the question whether the effective enjoyment of the applicant's defence rights had been secured, the Court concluded that the complaints were manifestly ill-founded.

EXAMINATION OF WITNESSES
Use at trial of statements made by witnesses in prison abroad: *no violation*.

SOLAKOV - Former Yugoslav Republic of Macedonia (Nº 47023/99)
*Judgment 31.10.2001 [Section II]

Facts: Criminal proceedings were brought against the applicant on suspicion of smuggling drugs into the United States. The Ministry of Justice requested the authorities of the United States for assistance in the hearing of witnesses in the United States and the investigating judge provided a list of the names of the witnesses to be heard and the questions to be put. On 28 November 1997 the applicant's lawyer was summoned to attend a hearing to be held in the United States one week later. However, the lawyer was refused a visa because he had failed to furnish all the necessary documents. He did not renew his application and on 2 December the applicant withdrew his power attorney and appointed a new lawyer. This lawyer was summoned to attend the hearing in the United States, scheduled for 8 December. On 4 December the applicant stated that he had left it to his lawyer to decide whether or not to attend the hearing, while indicating that he had sufficient funds to pay for the trip. Five witnesses were heard in the United States by the investigating judge. The applicant's lawyer did not attend. The witnesses, who were heard separately under oath, stated that the applicant had set up a drug trafficking network. At the applicant's trial, the statements of the witnesses were read out, on the ground that it would be extremely difficult to secure the attendance of the witnesses in person. The court refused to hear two other witnesses proposed by the applicant. The applicant was convicted and sentenced to 10 years' imprisonment. His appeal was dismissed but on the prosecution's appeal the sentence was increased to 13 years' imprisonment. The applicant's further appeal on points of law was unsuccessful.
Law: Article 6(1) and (3)(d) – There was no indication that either the applicant or his second lawyer expressed any intention of attending the hearing of the witnesses in the United States. The applicant stated that he had left it to his lawyer to decide whether or not to attend but the lawyer did not apply for a visa and did not request a postponement of the hearing on the ground that there was insufficient time to obtain one. Moreover, the applicant did not complain during the trial and appeal proceedings that he had been unable to examine the witnesses due to lack of time or information and did not expressly ask for them to be summoned. While their statements played an important role in the applicant's conviction, it did not appear that he had contested their content and he had not expressly asked for any questions to be put to the witnesses. The courts made a thorough and careful analysis of the statements and took into account different relevant factors when assessing the credibility of the witnesses and the weight to be given to their statements. Furthermore, other evidence corroborating the statements was examined. With regard to the refusal to summon the additional witnesses, the applicant had the opportunity to request that they be summoned during the preliminary investigation or at the start of the trial but did not do so until later. Since the addresses of the witnesses, who lived abroad, were unknown, it would have been difficult to summon them and, having regard to the reasons invoked by the applicant for hearing them, the refusal was not as such contrary to Article 6(3)(d).
Conclusion: no violation (unanimously).

EXAMINATION OF WITNESSES
Use in evidence of statements obtained during the preliminary investigation from co-accused who subsequently relied on the right to remain silent and from a co-accused who committed suicide before the committal for trial: *admissible*.

CRAXI - Italy (no. 2) (N° 34896/97)
Decision 11.10.2001 [Section II]
(see Article 6(3)(b), above).

ARTICLE 8

PRIVATE LIFE
Airport noise: *violation*.

HATTON and others - United Kingdom (Nº 36022/97)
*Judgment 2.10.2001 [Section III]

Facts: The applicants live or used to live in the vicinity of Heathrow airport. They complain that from 1993 the level of noise from aircraft taking off and landing during the night increased substantially, as a result of which they and their families experienced considerable sleep disturbance. Prior to 1993, night flights at Heathrow had been regulated by a limitation on the number of take-offs and landings. However, a study published in 1992 in the context of a government review of restrictions on night flights had found that very few people were at risk of substantial sleep disturbance. The Government had then published a Consultation Paper, in response to which a considerable number of responses from airlines and trade associations with an interest in air travel had emphasised the economic importance of night flights. From 1993, a quota system was introduced with the stated aim of decreasing noise at three London airports, including Heathrow. Under the scheme, each type of aircraft was assigned a "quota count" depending on its noise level and aircraft movements had to be kept below a permitted threshold between 11.30 p.m. and 6 a.m. In a supplement to a further Consultation Paper published in 1995, it was stated that the scheme allowed more noise than had been experienced in 1988, contrary to Government policy. The scheme was nevertheless kept in force and in judicial review proceedings brought by several local authorities the Court of Appeal considered that adequate reasons and sufficient justification had been given for the conclusion that it was reasonable, on balance, to run the risk of diminishing to some degree local people's ability to sleep at night, because of the other countervailing considerations. The House of Lords refused leave to appeal.
Law: Article 8 – It was not possible to make a sensible comparison between the situation of the applicants in the present case and that of the applicants in previous cases concerning noise from airports because, firstly, the present applicants complained specifically about night noise and, secondly, they complained largely about the increase in noise since 1993. The outcome of previous cases was thus not relevant to the present case.
As the airport and the aircraft using it were not owned or operated by the Government or any government agency, there had been no "interference" by a public authority with the applicants' private or family life and their complaints fell to be analysed in terms of the State's positive duty to take reasonable and appropriate measures to secure their rights. The applicable principles regarding justification were broadly similar: a fair balance had to be struck between the competing interests of the individual and of the community as a whole, the State enjoyed a certain margin of appreciation and the aims mentioned in Article 8 § 2 might be of a certain relevance. In striking the balance, States had to have regard to the whole range

of material considerations and in the particularly sensitive field of environmental protection mere reference to the economic well-being of the country was not sufficient to outweigh the rights of others. States were required to minimise, as far as possible, the interference with Article 8 rights, by trying to find alternative solutions and by generally seeking to achieve their aims in the least onerous way as regards human rights. In order to do that, a proper and complete investigation and study with the aim of finding the best possible solution striking the right balance should precede the relevant project. When the 1993 scheme was being introduced and in the period whilst it was under judicial challenge, the Government had had a certain amount of information as to the economic interest in night flights, but they did not appear to have carried out any research of their own as to the reality or extent of that economic interest. Whilst it was likely that night flights contributed to a certain extent to the national economy as a whole, the importance of that contribution had never been assessed critically, whether by the Government directly or by independent research on their behalf. As to the impact of the increased night flights on the applicants, only limited research had been carried out into the nature of sleep disturbance and prevention when the 1993 scheme was put in place; in particular, the 1992 study had not dealt with sleep prevention as opposed to sleep disturbance. The modest steps which had been taken with a view to improving the night noise climate were not capable of constituting "the measures necessary" to protect the applicants' position. Despite its margin of appreciation, the State had failed to strike a fair balance between the economic well-being of the country and the applicants' effective enjoyment of their right to respect for their homes and their private and family lives.
Conclusion: violation (5 votes to 2).
Article 13 – It was clear that the scope of review by the domestic courts was limited to the classic English public law concepts, such as irrationality, unlawfulness and patent unreasonableness, and did not allow consideration of whether the increase in night flights under the 1993 scheme represented a justifiable limitation on the right to respect for the private and family lives or the homes of those who lived in the vicinity of Heathrow airport. In these circumstances, the scope of review was not sufficient to comply with Article 13.
Conclusion: violation (unanimously).
Article 41 – The Court awarded each of the applicants £4,000 (GBP) in respect of non-pecuniary damage. It also made an award in respect of costs.

PRIVATE LIFE
Delay in returning child's body to parents: *violation*.

PANNULLO and FORTE - France (N° 37794/97)
*Judgment 30.10.2001 [Section III]

Facts: The daughter of the applicants, who are both Italian nationals, died when she was rushed to hospital shortly after undergoing a post-operative check-up. The applicants lodged a complaint with the Nanterre public prosecutor, and in July 1996 an inquiry into the causes of her death was opened. The investigating judge ordered an autopsy, which was carried out on 9 July 1996, and in September 1996 ordered a further expert opinion, a task which was assigned to Professor L. From the date of the autopsy onwards the applicants sent letters to various authorities, including the Italian Consulate General in Paris, with the aim of securing the return of their daughter's body. The Italian Consul General approached the investigating judge on a number of occasions. He then contacted the public prosecutor, who sought an explanation from Professor L. In a written reply Professor L. stated that it would have been possible to return the body on 9 July 1996, that the investigating judge had been immediately notified of that possibility and that the Institute of Forensic Medicine had already contacted the judge several times. The public prosecutor requested the judge to order the return of the body. In February 1997 the judge issued the burial certificate, more than seven months after the girl's death. The expert report was submitted two months later and in September 1997 it was decided to take no further action on the complaint as there was no evidence to suggest

that a criminal offence had been committed. The applicants argued that the French authorities' delay in returning their daughter's body to them had infringed their right to respect for their private and family life.
Law: Article 8 – The interference had been prescribed by law and had pursued the legitimate aim of preventing criminal offences. The requirements of the investigation had made it necessary for the French authorities to remain in possession of the applicants' daughter's body for the time needed to carry out the autopsy, in other words until 9 July 1996. That had not been the case for the subsequent period, as was confirmed by Professor L.'s letter. Regardless of whether the delay had been attributable, as the Government had indicated, to the experts or to the judge's "poor understanding of the medical evidence", the interference in the instant case had been disproportionate to the aim pursued.
Article 41 – The Court decided to make an award for pecuniary damage in respect of the travel and subsistence expenses incurred during the applicants' stay in France, and awarded them 100,000 French francs each for non-pecuniary damage.

PRIVATE LIFE
Refusal by courts to order reimbursement of costs of sex change: *admissible*.

VAN KÜCK - Germany (N° 35968/97)
Decision 18.10.2001 [Section IV]

The applicant, a male to female transsexual, brought an action against the health insurance company to which she was affiliated and claimed reimbursement of the pharmaceutical expenses of her hormone treatment. She also requested a declaratory judgment to the effect that the defendant company would be liable to reimburse 50% of the expenses of the gender reassignment operations and further hormone treatment. In the light of medical evidence, the Regional Court dismissed the applicant's claims, considering notably that hormone treatment and gender reassignment could not be deemed a necessary medical treatment in her case. She unsuccessfully appealed against this decision to the Court of Appeal which found that she had caused her disease deliberately. The court relied on medical evidence gathered during proceedings concerning her forenames and drew the conclusion that the applicant had decided to become a woman as a result of her feeling of inferiority towards other men and had forced this evolution by taking female hormones without a prescription. The Federal Constitutional Court refused to admit the applicant's constitutional complaint.
Admissible under Articles 6(1), 8 and 14.

PRIVATE LIFE
Publication in the press of a "wanted" notice containing a photograph of the applicant and his daughter: *inadmissible*.

A.B. - Poland (N° 33878/96)
Decision 18.10.2001 [Section IV]
(see below).

FAMILY LIFE
Refusal to grant natural fathers right of access to children born out of wedlock: *violation/no violation*.

SAHIN - Germany (Nº 30943/96)
SOMMERFELD - Germany (Nº 31871/96)
HOFFMANN - Germany (Nº 34045/96)
*Judgments 11.10.2001 [Section IV]

These cases concern the refusal of the courts to grant the applicants a right of access to their respective children, born out of wedlock. Under the law applicable at the time (S. 1711 of the Civil Code), natural fathers could only be granted a right of access if the court considered that it was in the child's best interests. The cases thus raised the same issue as in the Elsholz v. Germany judgment. Furthermore, at the relevant time, the right to challenge a first appeal decision was excluded in such proceedings.
Law: Article 8 – In each case, the Court considered that there had been an interference with the right to respect for family life and accepted that the interference was in accordance with the law and pursued legitimate aims. Moreover, it accepted that the reasons given by the domestic courts for their decisions were "relevant". The remaining question was, therefore, whether the applicants had been sufficiently involved in the decision-making process. In the Sahin case, the Court concluded, by 5 votes to 2, that there had been a violation, on the basis that the failure of the domestic courts to hear the child, then five years old, revealed "an insufficient involvement of the applicant in the access proceedings". In that respect, it considered that the courts should not have been satisfied with the vague statements of an expert about the risks inherent in questioning the child. In the Sommerfeld case, the Court also concluded, by 5 votes to 2, that there had been a violation, on the ground that although the child had been heard, the domestic courts should not have been satisfied with hearing only the child's wishes without obtaining the expert psychologist's opinion evaluating these wishes. This failure similarly revealed an insufficient involvement of the applicant in the decision-making process. Finally, in the Hoffmann case, the Court concluded, by 5 votes to 2, that there had been no violation, since the domestic courts had had regard to reports concerning contacts between the applicant and his child, one of these being based on meetings between them, and the applicant had had an opportunity to comment on the reports.
Article 14 in conjunction with Article 8 – In the Elsholz case, the Court had found it unnecessary to examine whether S. 1711 of the Civil Code made an unjustified distinction between fathers of children born out of wedlock and divorced fathers, since the application of the provision in that case did not appear to have led to a different approach. In the present cases, however, the Court considered that the domestic courts' approach reflected the underlying legislation which placed natural fathers in a less favourable position than divorced fathers, since they had no right of access and the mother's refusal of access could only be overridden by a court when access was in the interest of the child. Since the courts did not regard contacts between a child and the natural father as *prima facie* in the child's interest and the mother's negative attitude and the inevitable tensions between the parents were decisive for the refusal of access, the applicants were treated less favourably than divorced fathers. In each case, the Court consequently concluded, by 5 votes to 2, that there had been a violation.
Article 6(1) – In the Sommerfeld and Hoffmann cases, the Court concluded, by 5 votes to 2, that the exclusion, in the case of access proceedings brought by a natural father, of the general right of appeal against a first appeal refusal, constituted a violation of the right of access to court.

FAMILY LIFE
Delay in returning child's body to parents: *violation*.

PANNULLO and FORTE - France (N° 37794/97)
*Judgment 30.10.2001 [Section III]
(see above).

FAMILY LIFE
Restriction on family visits of person placed in detention on remand: *inadmissible*.

KALASHNIKOV - Russia (Nº 47095/99)
Decision 18.9.2001 [Section IV]

The applicant, president of a commercial bank, was charged with embezzlement and placed in detention on remand in June 1995. The examination of the case by the City Court started in November 1996, but was adjourned in May 1997. In February 1998, the applicant was informed that the City Court would not resume consideration of his case before July 1998, given the complexity of the case and the workload of the court. The applicant made numerous unsuccessful requests for release, complaining both of the length of his pre-trial detention and the poor conditions of the detention. In August 1999, the City Court found him guilty on one count and acquitted him on two others. He was sentenced to 5 years and 6 months' imprisonment, the term of which had started running from his placement in detention in June 1995. However, in a separate ruling, the court sent part of the indictment back to the prosecutor for further investigation. The applicant lodged two extraordinary appeals against the City Court's judgment of August 1999 with the Supreme Court which rejected them both. In September 1999, the proceedings concerning the remainder of the charges were terminated as the acts committed by the applicant did not constitute a criminal offence. A new charge was brought against him in September 1999, but he was acquitted of it in March 2000. In June 2000, he was released from prison following an amnesty. As regards the conditions of his detention, the applicant alleges that he was kept in a cell of 17 square meters, with 8 beds, where up to 24 inmates were held. Due to the poor hygiene of the cell, he caught skin diseases and fungal infections. The toilet facilities were in a corner of the cell in such a way that they offered no privacy. He further contended that he could take a walk outside the cell one hour per day and he had access to a shower with hot water only twice a month. Moreover, during the preliminary investigation, the applicant was denied family visits in custody.
Admissible under Articles 3, 5(3) and 6(1).
Inadmissible under Article 8: The Court could only examine this complaint insofar as it concerned facts having occurred after the entry into force of the Convention in respect of Russia on 5 May 1998. The applicant was allowed regular meetings with his family, although subject to certain restrictions as to their nature, frequency and duration which constituted an interference with his respect for family life. The interference was prescribed by law and pursued the legitimate aim of the prevention of disorder and crime. The applicant was detained on remand on grounds of the gravity of the charges against him and the danger of his obstructing the conduct of the investigations. The aim of preventing disorder or crime may justify wider measures of interference in a case of a person held on remand since in such a case there is often a risk of collusion. In the instant case, the restrictions on the number and duration of family visits within the limits set by domestic law was proportionate to the legitimate aim pursued. As to the situation of conjugal visits, movements of reform are taking place in several European countries to improve conditions of imprisonment by facilitating such visits. However, the Court considered that the refusal of conjugal visits could for the present time be regarded as justified for the prevention of disorder and crime: manifestly ill-founded.

FAMILY LIFE
Removal of father's parental authority and conduct of proceedings to enforce decision ordering return of child to ex-wife: *communicated*.

A.B. - Poland (N° 33878/96)
Decision 18.10.2001 [Section IV]

In 1993, after the applicant and his wife had separated, the Canadian judicial authorities awarded sole custody of the couple's daughter to the mother and granted the applicant supervised access. The applicant, a Polish national, left Canada in 1994 and the divorce was granted by the Canadian courts in May 1995. When his daughter came to visit her maternal grandparents in September 1995 the applicant abducted her at Warsaw Airport. The Canadian authorities demanded the return of the child and proceedings were instituted in accordance with the Hague Convention on the Civil Aspects of International Child Abduction. In a decision of September 1995 the Warsaw District Court ordered the applicant to return the child to her mother immediately; that decision was upheld in March 1996, and on several occasions between 1996 and 1998 formal notice to hand over the child was accordingly served on the applicant by a bailiff. In 1996 the Warsaw Regional Court acknowledged the decree of divorce granted by the Canadian court as being valid within Polish territory. In 1997 the Warsaw District Court deprived the applicant of parental responsibility; that decision was upheld on appeal in 1998. An appeal on points of law by the applicant was allowed by the Supreme Court, which quashed the decisions in issue and referred the case to a lower court for a fresh examination. Meanwhile, in June 1998, the applicant had been detained pending trial for refusing to comply with the order to hand over the child. However, in the light of the Supreme Court's decision, he was released and the proceedings brought against him were discontinued. In November 1998 the district prosecutor had a "wanted" notice published in two daily newspapers, together with a photograph of the applicant and his daughter. In 1999 the Warsaw Regional Court quashed the decision to deprive the applicant of parental responsibility and remitted the case to the District Court for a fresh hearing. The District Court ordered an expert psychological assessment of the child and asked the expert to indicate which of the parents was the more suitable to look after her. The expert concluded that the father was the more suitable, and at the same time information describing the mother's activities as a member of a sect with occult tendencies was received from external sources. In 2000 the District Court stayed execution of the decision ordering the applicant to hand over the child. In May 1999 the Canadian Embassy in Warsaw had written to the Polish authorities to request the extradition of the applicant for failure to comply with the Canadian court's decision on the exercise of parental responsibility. In 2000 the extradition was refused on the ground that Poland could not extradite one of its own nationals. In April 2000 the District Court deprived the applicant of parental responsibility, noting that it had not been able to interview the child or to have her examined by an approved psychologist, in spite of the assurances that had been given to the applicant and the child, and that it had also been unable to consider the evidence relating to the mother's activities in the sect, since that evidence had been received from external sources about which it had no information. An appeal by the applicant was dismissed on the ground that he had abused his parental responsibility and had refused to reply to the court's proposals in spite of the assurances it had given. In August 2000 the Ombudsman applied to the relevant District Court to stay execution of the decision it had delivered in September 1995; in particular, he argued that the child, who was aged twelve, could by now state her own opinion. In September 2000 the applicant applied to the District Court to vary its decision to deprive him of parental responsibility. The court ordered the Ombudsman to indicate where the child lived, and the Ombudsman did so. The president of the court then ordered the application to be restored to the list of cases, indicating that the court for the district where the child lived had jurisdiction to try the case. The Ombudsman appealed but without success. In February 2001 the District Court ordered the applicant's

arrest. The applicant's representative took steps to obtain official notification of the order, in order to be able to lodge an appeal. His efforts have apparently been to no avail.
Inadmissible under Articles 5(1)(c) and 6(1) (extradition proceedings).
Inadmissible under Article 8: dissemination of a "wanted" notice in the press amounted to an interference with the right to privacy. The interference in the instant case had pursued the legitimate aim of protecting the child's interests and had been justified by the failure of the various methods employed to make the father hand over his daughter. The measure had therefore been necessary in a democratic society: manifestly ill-founded.
Communicated under Articles 6(1) and 8.

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Conviction of pharmacists for refusing, on religious grounds, to sell the contraceptive pill: *inadmissible*.

PICHON and SAJOUS - France (N° 49853/99)
Decision 4.10.2001 [Section III]

The applicants, who are both pharmacists, refused to dispense lawfully prescribed contraceptive products to three women on the same occasion. They were found guilty of refusing to sell medically prescribed contraceptive products. The Police Court held that ethical or religious principles could not serve as a valid reason for refusing to sell a contraceptive product. The Court of Appeal upheld the decision on an appeal by the applicants, holding that the grounds for the applicants' refusal had related not to the fact that they were physically unable to meet their customers' requests because the pharmacy did not stock the product in question, but rather to their religious beliefs, which, under the applicable legislation, could not serve as a valid reason for refusing to sell a product. The applicants appealed on points of law, relying on Article 9 of the Convention, which, they argued, guaranteed their freedom to manifest their religion. They inferred from that provision that pharmacists were entitled not to stock contraceptive products whose use ran counter to their religious beliefs. The Court of Cassation dismissed the appeal.
Inadmissible under Article 9 of the Convention: the contraceptive pill was legally available for sale and, by law, could only be sold on prescription in pharmacies; accordingly, the applicants could not rely on their religious beliefs or impose them on others to justify refusing to sell that product, and there were many ways in which they could manifest their beliefs outside the professional sphere: manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of elected local representative belonging to minority for fomenting ethnic intolerance: *inadmissible*.

OSMANI and others - Former Yugoslav Republic of Macedonia (N° 50841/99)
Decision 11.10.2001 [Section II]

The applicant was elected mayor of Gostivar. Following a decision of the local council of the municipality, the flags of the Republics of Albania and Turkey were flown together with the Macedonian flag in front of the town hall. The Constitutional Court ordered the local

authorities to remove the Albanian and Turkish flags from the front of the town hall and declared the decision unconstitutional. A few days later, the applicant held a meeting and called citizens of Albanian ethnic origin to ensure that the Albanian flag would not be removed. The speech contained the following passages: "we will sacrifice our lives but not the flag"; "our territories in Macedonia are ours, this should be acknowledged once and for all and on these territories our flag will always be flown"; "the [Government's] black hand wishes to cover with blood our national flag but they have first to think thoroughly as we will give a slap for a slap". Inter-community tensions arose when citizens of Macedonian ethnic origin tried to remove the Albanian flag. The applicant organised armed shifts to protect the Albanian flag and set up crisis headquarters. Inter-ethnic tensions intensified. The applicant was suspended from his public function and subsequently found guilty of the following offences: (i) stirring-up national, racial and religious hatred, disagreement and intolerance by a public official, (ii) organising resistance against a lawful decision or activity of a state organ and, (iii) non-execution of a Constitutional Court decision by a public official. He was initially sentenced to thirteen years and eight months' imprisonment, the sentence being later reduced to seven years. The Constitutional Court dismissed his complaint that his right to freedom of expression had been infringed. He was eventually granted an amnesty and dispensed from serving the rest of his prison sentence. Overall, he spent one year and three months in prison.

Inadmissible under Articles 10 and 11: The applicant's amnesty did not convey the idea that his conviction had been unlawful or that it had had no adverse effects on him. In particular, there was no indication that the authorities acknowledged any violation of the Convention. Therefore, the amnesty granted to the applicant did not deprive him of his status of victim.

As to the availability of effective domestic remedies, the applicant did not complain about the lack of compensation for his conviction but about the conviction itself. Following the amnesty, he could only request the reopening of criminal proceedings on the basis of new facts or evidence. As he was no longer able to challenge effectively his conviction before domestic courts, it could not be considered that any effective domestic remedy was available to the applicant.

The applicant's conviction constituted an interference with the exercise of his freedom of peaceful assembly which was prescribed by law and pursued the legitimate aims of prevention of disorder and crime, national security and public safety as well as protection of freedoms and rights of others. While freedom of peaceful assembly, in the same manner as freedom of expression, is important for everyone, it is especially so for elected representatives of the people. In the instant case, special attention was to be given to the content of the applicant's speech and its context as well as to the assembly which the applicant convened, with a view to determining whether they can be considered as inciting to violence. The assembly was convened following the display of the flags of the Republics of Albania and Turkey and after the Constitutional Court's interim order had been served on the local council and the applicant. Some parts of the latter's speech delivered at the assembly and addressed to citizens of Albanian origin encouraged the use of violence. Besides, the applicant, who was a well-respected figure among the Albanian community, convened the assembly and delivered his speech in full knowledge of the Constitutional Court's decision and the risk that it would cause public riots, disorder and clashes with the police. He nonetheless organised armed night shifts to watch over the flags, set up crisis headquarters, etc. It also transpired from the documents in the case-file that the applicant implemented the unconstitutional and unlawful decision of the Gostivar local council to put the flag of the Republic of Albania in front of the Town Hall, that he breached his duty as a mayor to enforce the Constitutional Court's order and that he was actively involved in planning and setting up crisis headquarters and armed shifts to protect the flag of the Republic of Albania. Overall, the applicant's speech and his acts as well as the meeting which he organised undoubtedly played a substantial part in the occurrence of the violent events of May and July 1997. According to the Constitutional Court's decision, the applicant directly called citizens of Albanian origin to resist the implementation of a final court decision, thereby encouraging inter-ethnic tensions and creating a general feeling of insecurity among the population. In view of these elements, the

criminal law measures taken by the domestic courts answered a pressing social need and sufficient reasons were given by the domestic authorities to justify the applicant's conviction. As to whether the measures were proportionate, the applicant was not charged immediately after his speech but only after its consequences were felt. Moreover, his conviction was not only based on his having convened an assembly and made the impugned speech but also relied on the enforcement of the local council's decision to display the flags in breach of the Constitutional Court's decision and the failure to inform the Government of the local council's decision. Moreover, the applicant benefited from an amnesty after having served one year and three months of his sentence, which was initially quite severe. The time he spent in prison could not be considered disproportionate: manifestly ill-founded.

FREEDOM OF EXPRESSION
Award of damages against a newspaper for defamation of cosmetic surgeon: *no violation*.

VERDENS GANG and AASE - Norway (N° 45710/99)
Decision 16.10.2001 [Section III]

The applicants are a daily newspaper and one of its journalists. The second applicant wrote an article on Ms J., who suffered from bulimia, about a consultation she had had with Dr D., a cosmetic surgeon. During the consultation, Ms J. voluntarily concealed from Dr D. her illness. After examining her, Dr. D. accepted to perform liposuction on her. However, she changed her mind shortly before the operation and cancelled it. She asked the applicant newspaper whether any information concerning Dr D had been archived. She spoke to the second applicant and told her that she was not pleased that Dr D. had not realised that she suffered from bulimia and had not refused to perform the operation. The second applicant proposed to write an article to relate the alleged incident. Ms J. having accepted, she interviewed two medical specialists to have their opinion on the matter, without disclosing Dr D.'s identity. She then called the latter on the telephone to inform him about the article she was writing and asked him his opinion on Ms J.'s account of the consultation. He told her that he was bound by his duty of confidentiality and thus could not make any specific comments on the consultation. His comments accordingly remained of a general nature. A couple of days after the telephone call, Dr D. tried to get in touch with the second applicant, Ms J. having released him from his duty of confidentiality. However, the second applicant could not be reached and her article was already in the process of being printed. It was published the next day with a front-page bold title "Bulimia victim to be liposuctioned". It was based on the information provided by Ms J. and contained general comments from the medical specialists. On the front page as well as in the article itself, it read, *inter alia,* that despite the fact that Ms J. suffered from bulimia, Dr D. had "nevertheless" made no reservations to perform liposuction on her. It was also said in a short article next to this one that several former patients had initiated legal actions against him. Following the publication of the newspaper, Dr D. instituted defamation proceedings against the applicants. The City Court found in his favour and awarded him damages. The court found that the article only relied on the circumstances as presented by Ms J., who suffered from psychological problems, and that the accuracy of her account had not been verified. Moreover, the second applicant had failed to wait for Dr D. to be released from his duty of confidentiality to ask for his comments. As to the existence of legal actions of former patients against Dr D., the information proved to be incorrect and biased. The applicants unsuccessfully lodged an appeal with the High Court which upheld the first instance decision. The court noted that the article gave the impression that Dr D. had accepted to perform liposuction on Ms J. although he was aware that she suffered from bulimia. This conduct was open to severe criticisms and such criticisms were endorsed in the article not only by Ms J. and the medical specialists but also by the newspaper itself as some critical statements were not presented as having been made by either Ms J. or the specialists. The court found it beyond doubt that the allegations had damaged Dr D.'s reputation. The applicants were refused leave to appeal against the High Court's decision.

Inadmissible under Article 10: This provision does not guarantee unrestricted freedom of expression even with respect to press coverage of matters of serious public concern: such freedom is subject to the proviso that journalists act in good faith in order to provide accurate and reliable information. In the instant case, the impugned article had to be considered as a whole with particular regard for the words used in its disputed passages, the context in which it was published as well as the manner in which it was drafted. A central argument in the applicants' submissions was that the High Court's conclusions were based on an erroneous or excessively narrow interpretation of the controversial statements of the article, namely by inferring from the word "nevertheless" that Dr D. had been accused of having been ready to perform liposuction while being aware that Ms J. suffered from bulimia. Even assuming that the article could be construed in different ways, the interpretation given by the High Court was likely to be the one which readers would generally adopt. The article in suggesting that Dr D. had adopted a conduct contrary to the ethics of his profession could engender his professional and personal disrepute. The accusation of reckless conduct was reinforced by the publication in the same issue of critical comments of specialised doctors and of another short article in the same issue in which it was reported that several legal actions had been instituted by former patients against Dr D. The domestic courts found that this last article was factually incorrect and biased. The accusation in the main article could hardly have been counter-balanced by the publication of Dr D.'s general comments. Furthermore, contrary to what the applicants alleged, the applicant newspaper did more than merely reproduce the accounts and views of others. One of the impugned statements was not indicated as having been made by Ms J. or anyone else and had thus to be imputed to the applicant newspaper itself. In addition, sufficient steps were not taken by the applicants to fulfil their obligation to verify the veracity of Ms J.'s allegations. No material was adduced either to cast doubt on the findings of the domestic courts which established that the controversial statements were not based on factual evidence. Finally, the comments made by the medical specialists were based on Ms J.'s account of the event and did not corroborate the accusation that Dr D. was aware of her illness. The applicant newspaper did not wait for Dr D. to be released from professional secrecy before publishing the article. In the light of all these elements, the interests of Dr D. in protecting his professional reputation were not counter-balanced by any important public interest in the freedom of press to impart information of legitimate public concern. In finding that the interest in protecting the plaintiff's reputation outweighed the applicants' freedom of expression, the High Court's decision was based on reasons which could reasonably be regarded as relevant and sufficient. In conclusion, the interference with the applicants' freedom of expression was not disproportionate to the legitimate aim sought: manifestly ill-founded.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Restrictions on public meetings of association: *violation*.

STANKOV and THE UNITED MACEDONIAN ORGANISATION ILINDEN - Bulgaria (Nº 29221/95 and Nº 29225/95)
*Judgment 2.10.2001 [Section I]

Facts: The second applicant is an association founded in 1990, its aims being to unite all Macedonians in Bulgaria and to secure the recognition of the Macedonian minority in Bulgaria. The first applicant was chairman of a branch of the association at the relevant time. The association's application for registration was refused by the Regional Court and its appeal was rejected by the Supreme Court, on the ground that the aims of the association were directed against the unity of the nation and thus contrary to the Constitution. In 1994 and 1995, the association requested authorisation to hold a meeting at a particular location in

commemoration of a historical event. Permission was refused without any reasons being given and the association's appeals were dismissed by the District Court, on the ground that such a meeting would endanger public order. A similar request was refused in 1997, on the ground that the association was not a "legitimate organisation" and an appeal was rejected by the District Court, which found that the association was not duly registered and that it was unclear who had organised the event, resulting in a lack of clarity which endangered public order. In 1995 and 1997, the association also requested permission to hold a meeting at the grave of a historical figure. In 1995, permission was refused on the ground that the association was not duly registered. Supporters of the association were nevertheless allowed to visit the grave and lay a wreath but they were not permitted to take placards, banners or musical instruments or to make speeches. In 1997, permission was again refused and the association's appeal was not examined because the association was not registered. The Government submitted material which they maintained showed the separatist aims of the association and indicated that some of its members were armed.

Law: Government's preliminary objections – The provision of Article 34 § 4 *in fine*, allowing the Court to declare an application inadmissible at any stage of the proceedings, did not mean that a State could raise an admissibility question at any stage of the proceedings if it could have been raised earlier or reiterate one which had been rejected. In cases falling under Article 5 § 3 *in fine* of Protocol No. 11, whereby applications which the Commission had declared admissible but not completed its examination of fell to be dealt with by the Court as "admissible cases", questions of admissibility would only be reopened if there were special circumstances. In the present case, the Government essentially reiterated objections which had been rejected by the Commission, which had dealt with the arguments in detail and had given full reasons, and there were no new elements which would justify a re-examination of the admissibility issues.

Article 11 – The notion of "peaceful assembly" does not cover a demonstration where the organisers and participants have violent intentions, but since in the present case those involved in the organisation of the prohibited meetings did not have such intentions, Article 11 was applicable. Moreover, there had undoubtedly been an interference with both applicants' freedom of assembly. While the reasons given for the prohibitions varied and the lack of registration, to which reference was made, could not in itself serve under domestic law as a ground for a prohibition, the authorities also referred to a danger to public order, which was a ground provided for by domestic law. The interference could thus be regarded as "prescribed by law". Having regard to all the material, it could be accepted that the interference was intended to safeguard one or more of the interests invoked by the Government (protection of national security and territorial integrity, protection of the rights and freedoms of others, public order, prevention of disorder and crime). As to the necessity of the interference, Article 11 had to be considered in the light of Article 10, the protection of opinions and the freedom to express them being one of the objectives of freedom of assembly and association. Such a link was particularly relevant where, as in the present case, the authorities' intervention was, at least in part, in reaction to views held or statements made. Moreover, freedom of assembly protects a demonstration that may give offence to persons opposed to the ideas or claims it seeks to promote. The inhabitants of a region are entitled to form associations in order to promote the region's special characteristics and the fact that an association asserts a minority consciousness cannot in itself justify an interference with its Article 11 rights. An organisation's programme may conceal objectives different from those proclaimed and in that respect it is necessary to compare the content of the programme with the organisation's actions, an essential factor being whether there has been any call for the use of violence or the rejection of democratic principles. However, an automatic reliance on the fact that an organisation has been refused registration as anti-constitutional cannot suffice to justify a practice of systematic bans on peaceful assemblies and it was therefore necessary in the present case to scrutinise the grounds invoked to justify the interference. Firstly, if there had been preparation for armed action the Government would have been able to adduce more convincing evidence in that respect. Secondly, there was no evidence of any serious disturbances having been caused by the applicants: reference was made only to a

hypothetical danger, and the risk of minor incidents did not call for a ban on the meetings. Thirdly, while it was not unreasonable for the authorities to suspect that certain of the association's leaders or related groups harboured separatist views, so that it could be anticipated that separatist slogans would be broadcast during the meetings, the demand for fundamental constitutional and territorial changes cannot automatically justify a prohibition on freedom of assembly, as such demands do not automatically amount to a threat to the country's territorial integrity or national security. Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it. Consequently, the probability that separatist declarations would be made at the meetings could not justify a ban. In so far as the Government claimed that there were indications that the association's aims would be pursued in a violent manner, the refusal of registration made no reference to this and most of the association's declarations expressly rejected violence. There was thus no indication that the meetings were likely to become a platform for the propagation of violence and rejection of democracy with a potentially damaging impact warranting their prohibition. Moreover, the fact that what was at issue touched on national symbols and national identity could not be seen in itself as calling for a wider margin of appreciation; the authorities have to display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular. Finally, with regard to the significance of the interference, it was apparent that the time and place of the meetings were crucial to the applicants. The authorities had resorted to measures aimed at preventing the dissemination of the applicants' views in circumstances where there was no real risk of violent action, incitement to violence or any other form of rejection of democratic principles. They had thus overstepped their margin of appreciation and the measures banning the meetings were not necessary in a democratic society.
Conclusion: violation (6 votes to 1).
Article 41 – The Court awarded the applicants 40,000 French francs (FRF) in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

FREEDOM OF PEACEFUL ASSEMBLY
Conviction of elected local representative belonging to minority for fomenting ethnic intolerance: *inadmissible*.

OSMANI and others - Former Yugoslav Republic of Macedonia (N° 50841/99)
Decision 11.10.2001 [Section II]
(see Article 10, above).

ARTICLE 13

EFFECTIVE REMEDY
Winding-up procedure lasting more than four years, during which no action was open to individual creditors to seek payment of debts or contest the action of liquidators: *violation*.

SAGGIO - Italy (N° 41879/98)
*Judgment 25.10.2001 [Section II]
(see Article 1 of Protocol No. 1, below).

EFFECTIVE REMEDY
Existence in Croatia of effective remedy regarding length of proceedings: *communicated*.

JEFTIĆ - Croatia (N° 57576/00)
[Section IV]
(See Article 6(1) [civil], above).

ARTICLE 14

DISCRIMINATION (Article 8)
Different treatment of natural fathers and divorced fathers with regard to access rights: *violation*.

SAHIN - Germany (Nº 30943/96)
SOMMERFELD - Germany (Nº 31871/96)
HOFFMANN - Germany (Nº 34045/96)
*Judgments 11.10.2001 [Section IV]
(See Article 8, above).

DISCRIMINATION (Article 1 of Protocol No. 1)
Retired servicemen of former Yugoslav Army deprived of right to buy at reduced price flats occupied by them, on the ground that they were not owned by the Yugoslav Army before the independence of the Former Yugoslav Republic of Macedonia: *admissible*.

VESELINSKI - Former Yugoslav Republic of Macedonia (N° 45658/99)
DJIDROVSKI - Former Yugoslav Republic of Macedonia (N° 46447/99)
Decisions 11.10.2001 [Section II]
(See Article 1 of Protocol No. 1, below).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Italy)
Length of pending civil proceedings: effectiveness of the remedy based on Articles 3 and 6 of the Pinto law (application introduced *before* entry into force of the law).

DI COLA and others - Italie (N° 44897/98)
Decision 11.10.2001 [Section II]

The first applicant was the owner of land which had been earmarked for expropriation with a view to building residences. In 1981 an order was issued, under an expedited procedure, for occupation of part of the land for a maximum of three years with a view to expropriation in the public interest. In 1984, after the authorities had taken physical possession of the land, the order for occupation of the land was extended for a further two years. A decision to increase the surface area available for occupation was subsequently revoked. In 1989 the first applicant brought an action for damages against the municipality which had ordered the

occupation of the land under the expedited procedure. She complained that her land had been unlawfully occupied and that the building work had been completed even though the land had not been formally expropriated and no compensation had been paid. Following the first applicant's death in May 2000 the other applicants became parties to the domestic proceedings, which are still pending at first instance.
Inadmissible under Article 6(1) (reasonable time): the applicants were entitled to rely on the transitional provision laid down in section 6 of Law no. 89 of 24 March 2001 (the "Pinto Law"). The "Pinto Law" made available a domestic remedy whereby individuals could seek a finding of a breach of the "reasonable time" principle and obtain just satisfaction where appropriate, with the Italian courts applying the principles established in the Court's case-law. That remedy was capable of providing redress in respect of the applicants' complaint and offered reasonable prospects of success. Admittedly, the application had been lodged before the "Pinto Law" came into force on 18 April 2001. However, various aspects of the case warranted departing from the general principle that the requirement of exhausting domestic remedies had to be assessed with respect to the point at which an application was lodged. In particular, the transitional provision laid down in section 6 of the "Pinto Law" referred explicitly to applications that had already been lodged with the Court and was therefore designed to bring within the jurisdiction of the Italian courts any application pending before the Court which had not yet been declared admissible. As a result, applicants had a genuine possibility of obtaining redress at domestic level in respect of their complaint. Consequently, since the applicants in the instant case had not applied to the Court of Appeal under sections 3 and 6 of the "Pinto Law", they had failed to exhaust domestic remedies within the meaning of Article 35(1) of the Convention: non-exhaustion.
Communicated under Article 1 of Protocol No. 1.

EFFECTIVE DOMESTIC REMEDY (Italy)
Appeal to Constitutional Court to contest the constitutionality of a law.

CRAXI - Italy (no. 2) (N° 34896/97)
Decision 11.10.2001 [Section II]
(see Article 6(3)(b), above).

SIX MONTH PERIOD
Final decision in bankruptcy proceedings and notification to the bankrupt.

SLOTS - Denmark (N° 39646/98)
Decision 4.10.2001 [Section II]

The applicant complained about the length of bankruptcy proceedings instituted against him in May 1982. Two official receivers were appointed to examine the applicant's estate in bankruptcy and to settle the accounts. By a decision of June 1985, the competent court approved the accounts produced by the receivers, including the fees to be paid to them, and the principle of distribution to the creditors. A few questions were temporarily left open regarding accounts which the receivers had not been able to recover. The applicant appealed only against the part of the decision concerning the receivers' fees. In November 1988, the Supreme Court upheld the first instance decision as regards the receivers' fees. On 21 May 1992, the court dealing with the bankruptcy approved the additional accounts presented by the receivers as well as an additional statement of distribution. On 27 May 1992, the Danish Official Gazette stated that the bankruptcy proceedings had been closed with the last court decision of 21 May 1992. In June 1992, the applicant appealed against this decision, contesting the principle of distribution adopted. On 14 September 1995, the High Court dismissed his appeal, holding that the principle of distribution had become final with the court decision of June 1985 and that he was precluded from appealing against it at that stage. In

September 1996 and November 1997, the applicant requested the official receivers to inform him when the closure of the estate bankruptcy was to take place but received no answer.
Inadmissible under Article 6(1): After 14 September 1995, no dispute remained to be settled, no further accounts to be approved, no more distribution to creditors to take place, and no further deferred questions or parts of the estate. The applicant contended that the proceedings continued after this date with the enforcement proceedings. He relied on the fact that he had not received after 14 September 1995 any notification from the official receivers to informing him that the bankruptcy proceedings were closed and that no final list of distribution had been sent to him. As to the list of distribution, no provision of domestic law requires that the official receivers should send one to the person declared bankrupt after its approval by the relevant court, and the applicant should have been familiar with such a list. The court decision of 21 May 1992, by which the bankruptcy proceedings were closed, was notified in the Official Gazette, in accordance with domestic law, and the applicant was informed of the decision of the High Court of 14 September 1995 dismissing his appeal. Moreover, no disposition in domestic law provides for a special notification from the official receivers informing him of the closure of the bankruptcy proceedings. Thus, it was considered that the proceedings in issue ended on 14 September 1995, and consequently that the applicant's application of 6 September 1996 was lodged out of time.

CONTINUING SITUATION
Application lodged 8 years after killing by unidentified perpetrators: *communicated*.

AYDIN and others - Turkey (N° 46231/99)
[Section I]
(see Article 2, above).

Article 35(3)

RATIONE TEMPORIS
Legislation defining the jurisdiction of the Supreme Administrative Court: *no violation*.

POTOCKA - Poland (Nº 33776/96)
*Judgment 4.10.2001 [Section IV]
(see Article 6(1), above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 32):

HALIM AKÇA - Turkey (Nº 19640/92)
MEHMET AKÇAY - Turkey (Nº 19641/92)
AHMET AKKAYA - Turkey (Nº 19642/92)
IBRAHIM AKKAYA - Turkey (Nº 19643/92)
MUSTAFA AKKAYA - Turkey (Nº 19644/92)

HÜSEYIN BALCI - Turkey (Nº 19645/92)
MACIT BALCI - Turkey (Nº 19646/92)
BILGE BALTEKIN - Turkey (Nº 19647/92)
HALIL BAŞAR - Turkey (Nº 19648/92)
TALIP BAŞAR - Turkey (Nº 19649/92)
AHMET BILGIN - Turkey (Nº 19650/92)
MAHMUT BILGIN - Turkey (Nº 19651/92)
MEHMET BILGIN - Turkey (Nº 19652/92)
YUSUF BILGIÇ - Turkey (Nº 19653/92)
FETHIYE DINÇ - Turkey (Nº 19654/92)
ÜNZILE DOKEL - Turkey (Nº 19655/92)
SAADETTIN EGRIKALE - Turkey (Nº 19656/92)
NAŞIDE EROL - Turkey (Nº 19657/92)
RECEP EROL - Turkey (Nº 19658/92)
SEFER EROL - Turkey (Nº 19659/92)
Judgments 3.7.2001 [Section I]

ROMO - France (Nº 40402/98)
Judgment 3.7.2001 [Section III]

GIANNANGELI - Italy (Nº 41094/98)
P.G.F. - Italy (N° 45269/99)
Judgments 5.7.2001 [Section II]

ERDEM - Germany (Nº 38321/97)
Judgment 5.7.2001 [Section IV]

KÜÇÜK - Turkey (Nº 26398/95)
Judgment 10.7.2001 [Section I]

LAMANNA - Austria (Nº 28923/95)
PRICE - United Kingdom (Nº 33394/96)
VERSINI - France (Nº 40096/98)
TRICARD - France (Nº 40472/98)
CHARLES - France (Nº 41145/98)
Judgments 10.7.2001 [Section III]

FELDEK - Slovakia (Nº 29032/95)
Judgment 12.7.2001 [Section II]

IRFAN BILGIN - Turkey (Nº 25659/94)
M.T. and others - Turkey (Nº 34502/97)
A.T. and others - Turkey (Nº 37040/97)
E.A. and others - Turkey (Nº 38379/97)
Judgments 17.7.2001 [Section I]

ASSOCIATION EKIN - France (Nº 39288/98)
Judgment 17.7.2001 [Section III]

PELLEGRINI - Italy (Nº 30882/96)
Judgment 20.7.2001 [Section II]

RUTTEN - Netherlands (Nº 32605/96)
Judgment 24.7.2001 [Section I]

HIRST - United Kingdom (Nº 40787/98)
VALAŠINAS - Lithuania (Nº 44558/98)
Judgments 24.7.2001 [Section III]

F.R. and others - Italy (Nº 45267/99)
MARTINEZ - Italy (Nº 41893/98)
Judgments 26.7.2001 [Section II]

JEDAMSKI - Poland (Nº 29691/96)
KREPS - Poland (Nº 34097/96)
DI GIOVINE - Italy (Nº 39920/98)
HORVAT - Croatia (Nº 51585/99)
Judgments 26.7.2001 [Section IV]

MALVE - France (Nº 46051/99)
MORTIER - France (Nº 42195/98)
ZANNOUTI - France (Nº 42211/98)
Judgments 31.7.2001 [Section III]

Article 44(2)(c)

On 25 October 2001 the Panel of the Grand Chamber rejected request for referrral of the following judgment, which has consequently become final:

AKMAN - Turkey (Nº 37453/97)
Judgment 26.6.2001 [Section I]

(Summary of Section judgment)

The applicant's son was shot dead by security forces who came to search his house. The applicant maintains that his son was unarmed, whereas the Government claim that the security forces responded to firing and that there was a loaded Kalashnikov beside the applicant's son.
Following unsuccessful friendly settlement negotiations, the Government submitted a unilateral declaration in the following terms:

- "1. The Government regrets the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of Murat Akman's death notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.
- 2. It is accepted that the use of excessive or disproportionate force resulting in death constitutes a violation of Article 2 of the Convention and the Government undertakes to issue appropriate instructions and adopt all necessary measures to ensure that the right to life - including the obligation to carry out effective investigations - is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application as well as more effective investigations.
- 3. I declare that the Government of the Republic of Turkey offers to pay *ex gratia* to the applicant the amount of 85.000 GBP. This sum, which also covers legal expenses connected with the case, shall be paid in pounds sterling to a bank account named by the applicant. The sum shall be payable, free of any taxes that may be applicable, within three months from the date of striking out decision of the Court pursuant to Article 37 of the

European Convention on Human Rights. This payment will constitute the final settlement of the case.

- 4. The Government considers that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place."

The applicant requested the Court to reject the Government's initiative and to proceed with its decision to take evidence with a view to establishing the facts. He stressed that the declaration omitted any reference to the unlawful nature of the killing of his son and failed to highlight that his son was unarmed. The Court, having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed, considered that it was no longer justified to continue the examination of the application. It was satisfied that respect for human rights did not require it to continue the examination of the application, which it consequently struck out of the list.

ARTICLE 57

RESERVATION
Latvian reservation precluding the application of Article 1 of Protocol No. 1 to national laws on restitution of real property: *reservation valid*.

KOZLOVA and SMIRNOVA - Latvia (N° 57381/00)
Decision 23.10.2001 [Section II]

In 1931 the Latvian State sold a certain O.A.R. a plot of land with a house. When he died, the property passed to his daughter, who went into exile in 1944. In 1948 the applicants' father and another person were granted the right to use the land. They subsequently bought the house. In 1968 the municipality's executive council divided the house into two parts, which were registered as two separate dwellings. Ownership of one of the two dwellings was granted to the heirs of the applicants' father, who had died that year. In 1969 the applicants inherited equal portions of their father's estate. After Latvia had gained its independence, the Supreme Council passed a law in 1991 on the return of real estate to its legitimate owners. O.A.R.'s grandson, A.R., consequently regained property rights over the land that had formerly belonged to O.A.R. Since the decision to restore his property rights did not cover the buildings erected on the land, A.R. applied to the Riga Regional Court in April 1998 to set aside all the previous decisions concerning the house and to acknowledge him as the rightful owner. The Regional Court found in his favour; however, on an appeal by the applicants, the Civil Division of the Supreme Court dismissed his application. Following an appeal on points of law by A.R., the Senate of the Supreme Court quashed that judgment and remitted the case to the Civil Division of the Supreme Court, which allowed A.R.'s application. An appeal on points of law by the applicants was dismissed.
Inadmissible under Article 1 of Protocol No. 1: the reservation entered by the Latvian Government in their instrument of ratification stated that Article 1 of Protocol No. 1 did not apply to, *inter alia*, the Law on the Return of Real Estate to its Legitimate Owners. Since the Latvian courts' application of that law was contested by the applicants, it was necessary to examine whether the reservation complied with Article 57 of the Convention. The wording of Latvia's reservation did not attain the degree of generality prohibited by Article 57(1) of the Convention: the reservation covered a strictly limited number of laws which, when considered together, formed a coherent system of legal provisions, and both the aims and the substance of the laws in question reflected the Government's concerns as expressed in the introduction to

the reservation. Lastly, as the Commission had already found, a reservation entered under Article 57 of the Convention could apply to more than one piece of legislation. The reservation also satisfied the requirement of Article 57(2): the title of each law cited in the reservation was followed by a reference to the Official Gazette, so that anyone could identify precisely which laws were concerned and obtain information on them, and the annex to the reservation briefly outlined the main aim and scope of each of the laws. Furthermore, Latvia's reservation was worded in similar terms to the reservation which Estonia had entered in respect of the same Article of the Convention and which had been declared valid by the Commission and the new Court. Consequently, the reservation complied with Article 57 of the Convention. Since the Latvian courts had based their decisions on the relevant provisions of the Law on the Return of Real Estate, the reservation was applicable in the instant case: incompatible *ratione materiae*.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Failure of authorities to make full payment in compliance with court judgment: *violation*.

SCIORTINO - Italy (Nº 30127/96)
*Judgment 18.10.2001 [Section II]

Facts: The applicant obtained an order from the Audit Court in 1993 for payment of additional pension rights. He then instituted compliance proceedings and in 1997 the authorities were ordered to comply with the judgment within 60 days. Part payment was made in May 1998 and a further payment was made in June 1999. However, the applicant claims that a large amount is still outstanding. This is not disputed by the Government.
Law: Article 1 of Protocol No. 1 – The fact that the authorities still owe the applicant sums to which he is entitlted by virtue of a final court decision constitutes an unjustified interference with his right to peaceful enjoyment of his possessions.
Article 41 – The Court awarded the applicant the amount which he is owed by the authorities and also made awards in respect of non-pecuniary damage and costs.

PEACEFUL ENJOYMENT OF POSSESSIONS
Delay in payment of debt due to lack of financial means of debtor rather than length of winding-up procedure: *no violation*.

SAGGIO - Italy (N° 41879/98)
*Judgment 25.10.2001 [Section II]

Facts: The applicant was employed by the F. company until July 1995, when he resigned because he had not been paid since January 1995. In June 1995 the courts declared that F. was unable to discharge its debts. In a decree of June 1995 the Minister for Industry placed F. in "extraordinary liquidation", authorised it to continue operating for two years and appointed two liquidators. The applicant was notified and was told that no enforcement proceedings could be brought against the company while it was in extraordinary liquidation and that none of its creditors would be paid until the liquidators distributed its assets. On an unspecified date the applicant was paid part of the sum owed to him by the company. However, on account of the company's considerable debts, the liquidators stated in a memorandum that they could not foresee whether the applicant would be entitled to a share in its assets when they came to be distributed. In February 2001 the extraordinary liquidation proceedings were still pending before the liquidators.

Law: Article 1 of Protocol No. 1 – Future income constituted a "possession" within the meaning of this provision if it had already been earned or where an enforceable claim to it existed. In the instant case, since the debtor company had itself acknowledged the applicant's right to payment of a sum of money, the applicant had a claim to a possession within the meaning of the provision. The institution of extraordinary liquidation proceedings had amounted to control of the use of property. The procedure had been designed to ensure the fair administration of the assets of the company after it had gone into liquidation, with a view to affording equal protection to all its creditors. The interference in question had therefore pursued legitimate aims that were consistent with the general interest, namely the proper administration of justice and the protection of the rights of others. As to whether the interference had been proportionate, a system of temporarily suspending payment of the debts of a commercial company that was in financial difficulty but had been authorised to continue production in the national interest was, in principle, not open to criticism in itself, having regard, in particular, to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carried the risk of imposing on creditors an excessive burden in terms of their ability to recover their property and consequently had to provide certain procedural safeguards so as to ensure that the operation of the system and its impact on individuals' property rights were neither arbitrary nor unforeseeable. However, the Italian system at the material time had suffered from a degree of inflexibility. Not until the liquidators filed the final statement of affairs and the plan for the distribution of assets had creditors been able to bring proceedings in the civil courts to contest the sums that had been awarded to them. It had been impossible for them to apply to the courts individually once the extraordinary liquidation proceedings had begun or to monitor the work of the liquidators. It remained to be determined whether, in view of F.'s financial position and the particular circumstances of the case, the length of the extraordinary proceedings had infringed the applicant's property rights. The main reason for the delay in the payment of the sum owed to the applicant had not been the length or nature of the liquidation proceedings but rather the debtor company's lack of financial resources and the applicant's difficulty in recovering the money he was owed; the State could not be held liable for those circumstances. Accordingly, the State had not failed to strike the necessary balance between the protection of the right of individuals to the peaceful enjoyment of their possessions and the requirements of the general interest.

Conclusion: no violation (five votes to two).

Article 6(1) – The essence of the applicant's complaint was the fact that until the final statement of affairs had been filed it was impossible to apply to a national court to obtain payment of sums due or to challenge measures taken by the liquidator. This complaint warranted examination under Article 13 in view of the more general obligation on States under that Article to provide an effective judicial remedy in respect of a violation of the Convention.

Conclusion: no need to examine (unanimously).

Article 13 – For approximately four years and two months after the extraordinary liquidation proceedings had been instituted, the applicant had been unable to apply to any authority to assert his right to recover the sums owed to him or to challenge the measures taken by the liquidator; nor had he had any other effective means of obtaining an examination of the matter. The rules that had governed extraordinary liquidation proceedings until the end of August 1999, together with the length of time taken to inspect the statement of affairs, had constituted an unjustified interference with the applicant's right to an effective remedy.

Conclusion: violation (unanimously).

Article 41 – The Court awarded 10,000,000 Italian lire for non-pecuniary damage and a specified sum for costs and expenses.

PEACEFUL ENJOYMENT OF POSSESSIONS
Retired servicemen of former Yugoslav Army deprived of right to buy at reduced price flats occupied by them, on the ground that they were not owned by the Yugoslav Army before the independence of the Former Yugoslav Republic of Macedonia: *admissible*.

VESELINSKI - Former Yugoslav Republic of Macedonia (N° 45658/99)
DJIDROVSKI - Former Yugoslav Republic of Macedonia (N° 46447/99)
Decisions 11.10.2001 [Section II]

In former Yugoslavia, the army received contributions from the servicemen's salaries which were used for the construction of apartments of which servicemen could be tenants. According to the 1990 Law on Housing of Army Servicemen, army servicemen, including retired servicemen, could purchase apartments which they occupied with a reduction corresponding to the amount of the contributions paid for the implementation of the housing policy of the army. According to this law, the price difference was to be covered by the army. The same purchase conditions applied whether the apartments belonged to the army or not. In 1991, the Former Yugoslav Republic of Macedonia declared its independence and adopted a Constitution, pursuant to which laws of former Yugoslavia remained in force, except for those regulating the organisation and competence of the federal organs of former Yugoslavia. In February 1992, the Macedonian Government concluded an agreement with the Yugoslav Ministry of Defence for the settlement of claims and obligations in respect of real property. Following the agreement, the Macedonian Government took over all obligations of the Yugoslav Army as regards apartments belonging to the latter. In June 1996, however, the Constitutional Court abrogated the 1990 Law on Housing of Army Servicemen. As to the applicants, they were both retired servicemen of the Yugoslav army. When moving to Skopje, they had the flats which they had rented until then from the army exchanged for flats in Skopje. Unlike their previous flats, the flats which they obtained and in which they carried on living after retirement were not owned by the army but by the Socialist Republic of Macedonia. Between 1992 and 1994, they asked to purchase their respective flats in accordance with the 1990 Law on Housing of Army Servicemen, i.e. at a reduced price, which applied to flats whether owned by the army or not. They contended that the Macedonian Ministry of Defence was under duty to cover the price difference pursuant to 1990 law. The Government argued that, according to Government decisions, the 1990 law was not applicable to flats that had not previously belonged to the Yugoslav Army. In 1995, the applicants successfully instituted proceedings before the Municipal Court. Following the Government's appeals against these decisions, the Appellate Court upheld the first instance decisions. However, in 1997, upon the Government's appeal on points of law, the Supreme Court quashed the decisions of the lower courts and dismissed the applicants' requests. It found that the 1990 Law on Housing of Army Servicemen governed the relations and status of the former Yugoslav army and its housing fund, both of which had ceased to exist. The court also held, *inter alia*, that as the Former Yugoslav Republic of Macedonia was not the legal successor of the former Yugoslav Army, it was under no obligation to cover for the price difference. The Supreme Court made no reference to the decision of the Constitutional Court abrogating the 1990 law.
Admissible under Articles 1 of Protocol N° 1 and 14.

PEACEFUL ENJOYMENT OF POSSESSIONS
Retroactive amendment of legal requirements for eligibility for disability pension: *communicated*.

ASMUNDSSON - Iceland (N° 60669/99)
[Section I]

The applicant worked as a seaman from 1969 until 1978, when he had a serious accident while working on a trawler. His disability was assessed at 100%, which made him eligible for a disability pension from the Seamen's Pension Fund. The assessment was made on the basis of criteria set by the Act N° 49/1974, in particular that he was unable, after the accident, to carry out the work in respect of which he had contributed to the fund. The aforementioned Act was later amended in such a way that the criteria for eligibility were significantly changed. The assessment was not to be based on the inability to perform the same work but any work at all. The Seamen's Pension Fund applied the new criteria not only to persons who claimed disability pensions but also to those who had started receiving one before the entry into force of the amended Act. A new assessment of the applicant's disability was made, according to which he did not satisfy the requirements of the amended Act. As a consequence, the fund stopped paying him his pension as of July 1997. The applicant, who had received the disability pension for the last 20 years, unsuccessfully contested the fund's decision before the District Court. He then lodged an appeal in the Supreme Court which upheld the first instance decision.
Communicated under Articles 1 of Protocol N° 1 and 14.

PEACEFUL ENJOYMENT OF POSSESSIONS
Impoundment of aircraft leased by Turkish airline company from Yugoslav airline company during UN economic embargo against the Federal Republic of Yugoslavia: *admissible*.

BOSPHORUS HAVA YOLLARI TURIZM VE TICARET ANONIM SERKETI - Ireland (N° 45036/98)
Decision 13.9.2001 [Section IV]

The applicant company, a Turkish airline company, leased two aircraft from a Yugoslav airline company. The applicant company delivered one of the aircraft to an Irish maintenance company for overhaul and maintenance work. The Minister for Transport ordered that the aircraft be impounded pursuant to a domestic regulation implementing an EC Council Regulation which followed a United Nations' Resolution providing for sanctions against the Federal Republic of Yugoslavia. Following judicial review proceedings initiated by the applicant, the High Court quashed the Minister's decision. On the Minister's appeal, the Supreme Court referred a question to the European Court of Justice to determine whether the Council Regulation applied to the circumstances. The European Court of Justice found that the Council Regulation was applicable and consequently the Supreme Court allowed the Minister's appeal. The lease having by then expired and the sanctions against the Federal Republic of Yugoslavia having in the meantime ceased, the aircraft was given back directly to the Yugoslav airline company.
Admissible under Article 1 of Protocol N° 1, with issues joined to the merits under Articles 1 (responsibility of State) and 35(3) (abuse of the right of petition).

PEACEFUL ENJOYMENT OF POSSESSIONS
Appointment of provisional liquidator at Secretary of State's request for reasons later being declared unfounded, and consequences on business of companies concerned: *communicated*.

TRAVEL TIME (UK) Ltd., EMBASSY ENTREPRISES UK Ltd., HARMONY HOLIDAYS Ltd. and/et MARLBOROUGH PROMOTIONS Ltd. - United Kingdomi (N° 57824/00)
[Section II]

The Secretary of State for Trade and Industry issued petitions to wind up the applicant companies on the basis of fraud and deceit. The Secretary of State then applied to the High Court for the appointment of a provisional liquidator. The application was granted in the absence of the applicants, without any requirement for the Secretary of State to take an undertaking in damages whereby, should the application prove subsequently to have been unfounded, damages could be payable for losses suffered by the applicants. The Secretary of State's petitions to wind up the applicants were finally dismissed and the provisional liquidator was discharged. As there was no obligation on the Secretary of State to provide compensation for losses caused by the appointment of a provisional liquidator at his request, an application for judicial review could not afford compensation. Therefore, the applicants decided not to lodge an application for judicial review. The applicants alleged that the effect of the appointment and subsequent continuation in office of the provisional liquidator was to destroy the applicants' goodwill and to devastate their businesses, leading them all to liquidation.
Communicated under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-enforcement of a final judgment ordering the State to pay sums to the applciants: *communicated*.

KALOGEROPOULOU and 256 others - Germany and Greece (N° 59021/00)
[Section II]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Urgent occupation and construction on land without any formal expropriation or compensation: *communicated*.

DI COLA and others - Italy (N° 44897/98)
[Section II]
(see Article 35(1), above).

Other judgments delivered in October

Articles 3 and 13

SAKI - Turkey (Nº 29359/95)
Judgment 30.10.2001 [Section I]

The case concerns alleged ill-treatment in custody – friendly settlement.

Articles 3, 5 and 13

AKBAY - Turkey (Nº 32598/96)
Judgment 2.10.2001 [Section I]

The case concerns alleged ill-treatment in custody, the lawfulness of the applicant's detention and the absence of a review of the lawfulness of the detention – friendly settlement.

Article 5(3) and (4), and Article 6

IŁŁOWECKI - Poland (Nº 27504/95)
*Judgment 4.10.2001 [Section IV]

The case concerns the length of detention on remand, the length of time taken to decide on requests for release and the length of criminal proceedings – violation.

Article 6(1)

DUYONOV - United Kingdom (Nº 36670/97)
Judgment 2.10.2001 [Section III]

The case concerns the unavailability of legal aid in Gibraltar for an appeal to the Privy Council – friendly settlement.

RODRIGUEZ VALIN - Spain (Nº 47792/99)
*Judgment 11.10.2001 [Section IV]

The case concerns the inadmissibility of an *amparo* appeal on the ground that, although posted by the appellant on the day of expiry of the 20-day time limit, it had arrived at the Constitutional Court only the following day – no violation.

MARINAKOS - Greece (Nº 49282/99)
Judgment 4.10.2001 [Section II]

The case concerns the failure of the authorities to comply with a judgment of the Audit Court – friendly settlement.

BEJER - Poland (Nº 38328/97)
*Judgment 4.10.2001 [Section IV]

PAREGE - France (Nº 40868/98)
*Judgment 9.10.2001 [Section III]

H.T. - Germany (Nº 38073/97)
DIAZ APARICIO - Spain (Nº 49468/99)
*Judgments 11.10.2001 [Section IV]

E.H. - Greece (Nº 42079/98)
*Judgment 25.10.2001 [Section II]

PIRES - Portugal (Nº 43654/98)
*Judgment 25.10.2001 [Section IV]

SOUSA MIRANDA - Portugal (Nº 43658/98)
*Judgment 30.10.2001 [Section IV]

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

MIANOWICZ - Germany (Nº 42505/98)
*Judgment 18.10.2001 [Section IV]

The case concerns the length of proceedings in the labour courts – violation.

KOUNOUNIS - Cyprus (Nº 37943/97)
Judgment 2.10.2001 [Section III]

COSTA - Portugal (Nº 44135/98)
BARATA DIAS - Portugal (Nº 44296/98)
JÁCOME ALLIER - Portugal (Nº 44616/98)
BRANQUINHO LUÍS - Portugal (Nº 45348/99)
Judgments 4.10.2001 [Section IV]

TIBURZI - Greece (Nº 49222/99)
Judgment 25.10.2001 [Section II]

COELHO ALVES - Portugal (Nº 46248/99)
THEMUDO BARATA - Portugal (no. 2) (Nº 46773/99)
Judgments 25.10.2001 [Section IV]

115 cases against Italy
*Judgments 23.10.2001 and 25.10.2001
(see list in appendix)

These cases concern the length of civil proceedings – friendly settlement.

KULAKOVA - Latvia (Nº 50108/99)
Judgment 18.10.2001 [Section II]

The case concerns the length of criminal proceedings which the applicant joined as a civil party – friendly settlement.

ERDEMLI - Turkey (Nº 29495/95)
Judgment 30.10.2001 [Section I]

The case concerns the denial of access to a lawyer during questioning by the police, the prosecutor and the magistrate – friendly settlement.

I.M. - Grèce/Greece (Nº 49281/99)
Judgment 4.10.2001 [Section II]

DUNAN - France (Nº 49342/99)
IVARS - France (Nº 49350/99)
GUELFUCCI - France (Nº 49352/99)
Judgments 30.10.2001 [Section I]

These cases concern the length of criminal proceeding – friendly settlement.

SCHWEIGHOFER and others - Austria
(Nº35673/97, Nº 35674/97, Nº 6082/97 and Nº 37579/97)
*Judgment 9.10.2001 [Section III]

BÜRKEV - Turkey (Nº 26480/95)
KANBUR - Turkey (Nº 28291/95)
BAŞPINAR - Turkey (Nº 29280/95)
HASAN YAĞIZ - Turkey (Nº 31834/96)
ADIYAMAN - Turkey (Nº 31880/96)
GENÇ - Turkey (Nº 31891/96)
PEKDAŞ - Turkey (Nº 31960/96)
AKÇAM - Turkey (Nº 32964/96)
KESKIN - Turkey (Nº 32987/96)
KARADEMIR - Turkey (Nº 32990/96)
AKYAZI - Turkey (Nº 33362/96)
İNAN - Turkey (Nº 39428/98)
*Judgments 30.10.2001 [Section I]

These cases concern the length of criminal proceedings – violation.

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

BARONE - Italy (Nº 30968/96)
IMMOBILIARE ANBA - Italy (Nº 31916/96)
MICUCCI - Italy (Nº 31922/96)
SERLENGA - Italy (Nº 31927/96)
PINI and BINI - Italy (Nº 31929/96)
GIROLAMI ZURLA - Italy (Nº 32404/96)
CASTELLO - Italy (Nº 32645/96)
TENTORI MONTALTO - Italy (Nº 32648/96)
SIT s.r.l. - Italy (Nº 32650/96)
MUSIANI DAGNINI - Italy (Nº 33831/96)
Judgments 4.10.2001 [Section II]

The cases concern the prolonged non-enforcement of eviction orders and the absence of any possibility of court review of prefectoral decisions staggering the granting of police assistance – friendly settlement.

Revision

TRIPODI - Italy (Nº 40946/98)
*Judgment 23.10.2001 [Section III]

Revision of judgment of 25.1.2000.

APPENDIX

115 judgments concerning Italy

Scannella v. Italy (Nº 44489/98), 23 October 2001 [Section III]
Gusso and Grasso v. Italy (Nº 44502/98), 23 October 2001 [Section III]
Squillante v. Italy (Nº 44503/98), 23 October 2001 [Section III]
G.C. and C.C. v. Italy (Nº 44510/98), 23 October 2001 [Section III]
Greco v. Italy (Nº 44512/98), 23 October 2001 [Section III]
Iezzi and Cerritelli v. Italy (Nº 44514/98), 23 October 2001 [Section III]
V.L. v. Italy (Nº 44515/98), 23 October 2001 [Section III]
Carrone v. Italy (Nº 44516/98), 23 October 2001 [Section III]
Ragas v. Italy (Nº 44524/98), 23 October 2001 [Section III]
R.P. and others v. Italy (Nº 44526/98), 23 October 2001 [Section III]
Pezzutto v. Italy (Nº 44529/98), 23 October 2001 [Section III]
Colacrai v. Italy (Nº 44532/98), 23 October 2001 [Section III]
G.D.I. v. Italy (Nº 44533/98), 23 October 2001 [Section III]
Aresu v. Italy (Nº 44628/98), 23 October 2001 [Section III]
Tartaglia v. Italy (Nº 48402/99), 23 October 2001 [Section III]
Minici v. Italy (Nº 48403/99), 23 October 2001 [Section III]
Dragonetti v. Italy (Nº 48404/99), 23 October 2001 [Section III]
Catillo v. Italy (Nº 48405/99), 23 October 2001 [Section III]
Stefanucci v. Italy (Nº 48406/98), 23 October 2001 [Section III]
Calò v. Italy (Nº 48408/99), 23 October 2001 [Section III]
Reino v. Italy (Nº 48409/99), 23 October 2001 [Section III]
Tozzi v. Italy (Nº 48410/99), 23 October 2001 [Section III]
Ar.M. v. Italy (Nº 48412/99), 23 October 2001 [Section III]
Morese v. Italy (no. 2) (Nº 48413/99), 23 October 2001 [Section III]
Carlucci v. Italy (Nº 48414/99), 23 October 2001 [Section III]
Siena v. Italy (Nº 48415/99), 23 October 2001 [Section III]
Corcelli v. Italy (Nº 48416/99), 23 October 2001 [Section III]
Molè v. Italy (Nº 48417/99), 23 October 2001 [Section III]
Cesaro v. Italy (Nº 48417/99), 23 October 2001 [Section III]
Buonocore v. Italy (Nº 48419/99), 23 October 2001 [Section III]
Pisano v. Italy (Nº 48420/99), 23 October 2001 [Section III]
Altomonte v. Italy (Nº 48421/99), 23 October 2001 [Section III]
E.I. v. Italy (Nº 48422/99), 23 October 2001 [Section III]
Campana v. Italy (Nº 48423/99), 23 October 2001 [Section III]
Massimo v. Italy (no. 1) (Nº 44343/98), 25 October 2001 [Section II]
Rinaudo and others v. Italy (Nº 44345/98), 25 October 2001 [Section II]
Venturini v. Italy (Nº 44346/98), 25 October 2001 [Section II]
Massimo v. Italy (no. 2) (Nº 44352/98), 25 October 2001 [Section II]
Centineo v. Italy (Nº 44377/98), 25 October 2001 [Section II]
Finessi v. Italy (Nº 44379/98), 25 October 2001 [Section II]
Raffa v. Italy (Nº 44381/98), 25 October 2001 [Section II]
Alicino v. Italy (Nº 44383/98), 25 October 2001 [Section II]
Valvo and Branca v. Italy (Nº 44384/98), 25 October 2001 [Section II]
Scarfone v. Italy (Nº 44389/98), 25 October 2001 [Section II]
Servodidio v. Italy (Nº 44402/98), 25 October 2001 [Section II]
Guerrera v. Italy (no. 1) (Nº 44403/98), 25 October 2001 [Section II]
Rizzo v. Italy (Nº 44409/98), 25 October 2001 [Section II]
Quattrone v. Italy (Nº 44412/98), 25 October 2001 [Section II]

Di Sisto v. Italy (Nº 44414/98), 25 October 2001 [Section II]
Napolitano v. Italy (Nº 44415/98), 25 October 2001 [Section II]
Viola v. Italy (Nº 44416/98), 25 October 2001 [Section II]
I.P.E.A. S.r.l. v. Italy (Nº 44418/98), 25 October 2001 [Section IV]
Galasso v. Italy (Nº 44421/98), 25 October 2001 [Section IV]
Guerrera v. Italy (no. 2) (Nº 44423/98), 25 October 2001 [Section II]
Follo v. Italy (Nº 44424/98), 25 October 2001 [Section II]
Mel Sud S.r.l. v. Italy (Nº 44438/98), 25 October 2001 [Section II]
G.C. v. Italy (Nº 44441/98), 25 October 2001 [Section II]
Pastore v. Italy (Nº 44444/98), 25 October 2001 [Section II]
Di Girolamo and others v. Italy (Nº 44446/98), 25 October 2001 [Section IV]
Castrogiovanni v. Italy (Nº 44448/98), 25 October 2001 [Section II]
Porcelli v. Italy (Nº 44454/98), 25 October 2001 [Section IV]
De Simine v. Italy (Nº 44455/98), 25 October 2001 [Section II]
Atzori v. Italy (Nº 44456/98), 25 October 2001 [Section IV]
Bartolini v. Italy (Nº 44458/98), 25 October 2001 [Section IV]
Vairano v. Italy (Nº 44459/98), 25 October 2001 [Section II]
Condominio Città di Prato v. Italy (Nº 44460/98), 25 October 2001 [Section IV]
Paolelli v. Italy (no. 2) (Nº 44463/98), 25 October 2001 [Section IV]
Seminara v. Italy (Nº 44467/98), 25 October 2001 [Section II]
Ascolinio v. Italy (Nº 44469/98), 25 October 2001 [Section IV]
Troiani v. Italy (Nº 44478/98), 25 October 2001 [Section IV]
Rosetti and Ciucci & C. v. Italy (Nº 44479/98), 25 October 2001 [Section IV]
E.G. v. Italy (Nº 44480/98), 25 October 2001 [Section IV]
Spera v. Italy (Nº 44487/98), 25 October 2001 [Section IV]
Siper S.r.l. v. Italy (Nº 44493/98), 25 October 2001 [Section IV]
Di Francesco v. Italy (Nº 44495/98), 25 October 2001 [Section IV]
Masala v. Italy (Nº 44496/98), 25 October 2001 [Section IV]
Galgani and de Matteis v. Italy (no. 2) (Nº 44497/98), 25 October 2001 [Section IV]
Mantini v. Italy (no. 2) (Nº 44498/98), 25 October 2001 [Section IV]
Pomante Pappalepore v. Italy (Nº 44499/98), 25 October 2001 [Section IV]
Il Messaggero S.a.s. v. Italy (no. 6) (Nº 44501/98), 25 October 2001 [Section IV]
O.B. v. Italy (Nº 44506/98), 25 October 2001 [Section IV]
Musti and Iarossi v. Italy (Nº 44507/98), 25 October 2001 [Section IV]
Il Messaggero S.a.s. v. Italy (no. 7) (Nº 44508/98), 25 October 2001 [Section IV]
D'Ammassa and Frezza v. Italy (Nº 44513/98), 25 October 2001 [Section IV]
Stefanini v. Italy (Nº 44518/98), 25 October 2001 [Section IV]
G.F. and others v. Italy (Nº 44522/98), 25 October 2001 [Section IV]
Fi.C. and F.G. v. Italy (Nº 44523/98), 25 October 2001 [Section IV]
Ferrari v. Italy (no. 2) (Nº 44525/98), 25 October 2001 [Section IV]
Iacovelli v. Italy (Nº 44530/98), 25 October 2001 [Section IV]
Rongoni v. Italy (Nº 44531/98), 25 October 2001 [Section IV]
Venturini v. Italy (no. 2) (Nº 44535/98), 25 October 2001 [Section IV]
An.M. and S.I. v. Italy (Nº 49353/99), 25 October 2001 [Section IV]
Morelli and Levantesi v. Italy (Nº 49354/99), 25 October 2001 [Section IV]
Di Fabio v. Italy (Nº 49355/99), 25 October 2001 [Section IV]
Valenti v. Italy (Nº 49356/99), 25 October 2001 [Section IV]
Rizio v. Italy (Nº 49357/99), 25 October 2001 [Section IV]
Bini v. Italy (Nº 49358/99), 25 October 2001 [Section IV]
Iannetti v. Italy (Nº 49359/99), 25 October 2001 [Section IV]
Salvi v. Italy (Nº 49360/99), 25 October 2001 [Section IV]
Rosa v. Italy (Nº 49361/99), 25 October 2001 [Section IV]
Baldi v. Italy (Nº 49362/99), 25 October 2001 [Section IV]
Marinelli v. Italy (Nº 49364/99), 25 October 2001 [Section IV]
Mari v. Italy (no. 2) (Nº 49365/99), 25 October 2001 [Section IV]

De Santis v. Italy (no. 1) (Nº 49366/99), 25 October 2001 [Section IV]
De Santis v. Italy (no. 2) (Nº 49367/99), 25 October 2001 [Section IV]
Savanna and La Selva v. Italy (Nº 49368/99), 25 October 2001 [Section IV]
Baroni and Michinelli v. Italy (Nº 49369/99), 25 October 2001 [Section IV]
Marcantoni v. Italy (Nº 49370/99), 25 October 2001 [Section IV]
Alfonsetti v. Italy (Nº 49371/99), 25 October 2001 [Section IV]
De Pilla v. Italy (Nº 49372/99), 25 October 2001 [Section IV]
Franco v. Italy (Nº 49373/99), 25 October 2001 [Section IV]
Chinnici v. Italy (Nº 49374/99), 25 October 2001 [Section IV]
Consalvo v. Italy (Nº 49375/99), 25 October 2001 [Section IV]
Lilla Santilli v. Italy (Nº 49376/99), 25 October 2001 [Section IV]
Barnaba v. Italy (Nº 49377/99), 25 October 2001 [Section IV]

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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