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

INFORMATION NOTE No. 46
on the case-law of the Court
October 2002

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

Statistical information[1]

Judgments delivered	October	2002
Grand Chamber	2	10(12)
Section I	15(16)	261(264)
Section II	11	123(131)
Section III	22(24)	154(161)
Section IV	13(21)	116(135)
Sections in former compositions	0	37(38)
Total	**63(74)**	**701(741)**

Judgments delivered in October 2002					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	1	0	2
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	3(4)	8	1	3[2]	15(16)
Section II	8	3	0	0	11
Section III	15	7(9)	0	0	22(24)
Section IV	11(19)	0	1	1[2]	13(21)
Total	**38(47)**	**18(20)**	**3**	**4**	**63(74)**

Judgments delivered in 2002					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	8(10)	0	1	1[3]	10(12)
former Section I	10	1	0	1[3]	12
former Section II	0	0	0	3[3]	3
former Section III	11	1	0	0	12
former Section IV	8(9)	1	1	0	10(11)
Section I	205(208)	50	2	4[4]	261(264)
Section II	104(110)	16(18)	3	0	123(131)
Section III	108(110)	44(46)	2(5)	0	154(161)
Section IV	102(121)	11	2	1[2]	116(135)
Total	**556(589)**	**124(128)**	**11(14)**	**10**	**701(741)**

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

[* = Judgment not final]

Decisions adopted		October	2002
I. Applications declared admissible			
Grand Chamber		0	3(4)
Section I		25(26)	197(206)
Section II		5	87(90)
Section III		9(10)	88(89)
Section IV		13	90(93)
Total		**52(54)**	**465(482)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	7	297(336)
	- Committee	593	3316
Section II	- Chamber	6(7)	83(113)
	- Committee	795	3932
Section III	- Chamber	22	72(78)
	- Committee	234	2274
Section IV	- Chamber	16(23)	115(128)
	- Committee	554	2870
Total		**2227(2235)**	**12960(13048)**
III. Applications struck off			
Section I	- Chamber	5	78(101)
	- Committee	3	67
Section II	- Chamber	1	19(20)
	- Committee	6	44
Section III	- Chamber	5	101(106)
	- Committee	3	15
Section IV	- Chamber	5	20(22)
	- Committee	3	21
Total		**31**	**365(396)**
Total number of decisions[1]		**2310(2320)**	**13790(13926)**

1. Not including partial decisions.

Applications communicated	October	2002
Section I	49(50)	337(345)
Section II	24(25)	234(239)
Section III	59	300(303)
Section IV	69	317(350)
Total number of applications communicated	**201(203)**	**1188(1237)**

ARTICLE 2

Article 2(1)

POSITIVE OBLIGATIONS
Murder committed by convicts on prison leave or under semi-custodial regime: *no violation*.

MASTROMATTEO - Italy (Nº 37703/97)
Judgment 24.10.2002 [Grand Chamber]

Facts: The applicant's son was shot dead when three bank robbers tried to take control of his car. Two of the men were serving prison sentences for violent offences. One had been granted a short period of prison leave and had absconded a few days before the murder; the other had been granted a semi-custodial regime which allowed him to work outside prison but required him to return there in the evening. The two men were convicted of the murder of the applicant's son and given long prison sentences. They were also ordered to pay the applicant damages in an amount to be determined by the civil courts. However, the applicant did not bring proceedings in the civil courts, considering that the perpetrators would in any event be unable to pay damages.
Law: Article 2 (obligation to protect life) – At issue in the case was the State's obligation to afford general protection to society against the potential acts of persons serving a prison sentence for violent crime and the determination of the scope of that obligation. The Court recognised the legitimate aim of a policy of progressive social reintegration of convicted prisoners and the merit of measures permitting such reintegration, even when it related to persons convicted of violent crimes. It considered that the Italian system, which contained a number of safeguards in connection with the assessment of whether a prisoner should be granted prison leave, provided sufficient protective measures for society and that, accordingly, there was nothing to suggest that the system had to be called into question under Article 2. It remained to be seen whether the adoption and implementation of the decisions granting prison leave and semi-custodial treatment disclosed a breach of the duty of care required by Article 2. In that respect, the fact that the murder would not have taken place if the perpetrators had been in prison did not suffice to engage the responsibility of the State; it had to be shown that the death of the applicant's son resulted from a failure on the part of the authorities to do all that could reasonable be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge. In that connection, the respective decisions had been taken on the basis of reports which had given a positive assessment of the behaviour and reintegration of the two prisoners and there was nothing in the material before the national authorities to alert them to the fact that their release would pose a real and immediate threat to life, still less that it would lead to the tragic death of the applicant's son as a result of the chance sequence of events which occurred. Consequently, it had not been established that the measures had given rise to any failure on the part of the judicial authorities to protect the life of the applicant's son.
Conclusion: no violation (unanimously).
Article 2 (procedural obligations) – A procedural obligation arose to determine the circumstances of the death and an adequate investigation was carried out, resulting in the conviction of the perpetrators and an order that they pay compensation. In these circumstances, the State had satisfied the obligation to guarantee a criminal investigation. As to whether the procedural obligations under Article 2 extended to requiring a remedy by which a claim could be lodged against the State, two remedies were available to the applicant: an action against the State and an action against the judges responsible for the execution of

sentences. While these remedies required proof of fault, Article 2 does not impose on States an obligation to provide compensation on the basis of strict liability and the fact that the liability of judges depended on proof of malice or gross negligence was not such as to render the procedural protection afforded by domestic law ineffective. This was the more so in the present case, since the effectiveness of the remedies could not be assessed, as the applicant had not used them. The procedural requirements of Article 2 had therefore been satisfied.
Conclusion: no violation (16 votes to 1).

LIFE
Voluntary termination of pregnancy in spite of father's opposition: *inadmissible*.

BOSO - Italy (N° 50490/99)
Decision 5.9.2002 [Section I]

The applicant's wife, who was pregnant, decided to have an abortion despite her husband's opposition. The applicant brought proceedings against her to obtain compensation for infringement of his rights as a potential father and of the unborn child's right to life. He challenged the constitutionality of the applicable legislation in that it left the decision as to an abortion entirely up to the mother and failed to take account of the father's wishes. The applicant, who was also relying on the right to found a family, had his case dismissed at all levels of jurisdiction.
Inadmissible under Article 2: As a potential father, the applicant could, following his wife's abortion, have claimed to be a "victim" of the law on the termination of pregnancy as it had been applied. Even supposing that, under certain circumstances, the foetus could be considered as holding rights protected by Article 2, in the instant case the abortion took place in conformity with the applicable legislation. According to this legislation, an abortion could be carried out in order to protect the woman's health. Such a provision struck a fair balance between the need to ensure protection of the foetus and the woman's interests. Having regard to the conditions laid down for a voluntary termination of pregnancy and the specific circumstances of the case, the respondent state had not exceeded its discretion in this very sensitive area: manifestly ill-founded.
Inadmissible under Article 8: The potential father's right to respect for his private and family life did not include the right to be consulted or the right to apply to a court regarding his wife's decision to have an abortion. Any interpretation of a potential father's rights under Article 8 of the Convention, when the mother intended to have an abortion, should above all take account of the mother's rights because the pregnancy and its continuation or termination were of most direct concern to her. In the instant case, the abortion had been carried out in accordance with the applicable legislation and therefore had pursued the aim of protecting the mother's health. Accordingly, any interference with the right protected under Article 8 which might be presumed in the circumstances of the case was justified as being necessary for the protection of the rights of others: manifestly ill-founded.
Inadmissible under Article 12: Interference with family life which was justified under Article 8 could not at the same time constitute a violation of Article 12: manifestly ill-founded.

EXPULSION
Threatened expulsion to Iraq, where there is an alleged risk of execution: *admissible*.

MÜSLİM - Turkey (N° 53566/99)
Decision 1.10.2002 [Section IV]

The applicant is an Iraqi citizen. One of his brothers had died during the Gulf war and was thought to have been executed for attempted desertion. The applicant himself was being sought by Iraqi secret service agents following the issue of an arrest warrant against him and decided to leave Iraq. He entered Turkey legally and applied to the Office of the United Nations High Commissioner (UNHCR) for refugee status. At the same time, he applied to the Turkish administrative authorities for political asylum. His application to UNHCR having been dismissed, he lodged an appeal. Meanwhile, however, the Turkish authorities had granted him a temporary residence permit. He then learned that his mother was being subjected to harassment in Iraq to force her to reveal his whereabouts, that his cousin had been executed following a summary trial in which he had also been implicated, and his other brother had also been murdered in Iraq. His appeal against the UNHCR decision having been dismissed, the applicant requested a review of his case in the light of the new circumstances relating to the death of his cousin and brother. Nevertheless, his case was finally dismissed. At the same time, the Turkish authorities refused to grant him political asylum and issued a deportation order. The applicant lodged an appeal, whereupon, after his application had been submitted to the Court, his residence permit was provisionally renewed. In March 2000, the Turkish Government informed the Court that, since he held a valid passport, the applicant was free to leave Turkey and even if his appeal against the deportation order was dismissed, he would not be forced to return to his country of origin and would remain free to go to the country of his choice. The applicant made a number of unsuccessful visa applications to various countries. The Turkish Government said that it had instructed the competent authorities to renew the residence permit every six months until the Court gave its decision on the application. The applicant's residence permit was renewed and was still valid on the date of the Court's decision. In January 2002, the applicant made a further application to the Ministry of the Interior, reiterating that his life would be in danger in Iraq and that he was likely to be hanged if he returned there. On the basis of all the information and documents available to him at the time, he asked for permission to reside in Turkey or, failing that, to be sent to a country other than Iraq. On the date of the Court's decision, no official decision had been taken to deport him.
Admissible under Articles 2, 3 and 13: Objection of failure to exhaust domestic remedies: the applicant's asylum application was still pending and it could be seen that he had done everything in his power to have his case settled at domestic level. He could not be criticised for having submitted his application before a possible second deportation order was issued against him or for not having instituted the administrative proceedings referred to by the government, as these would have largely served the same purpose as the proceedings already brought and, moreover, would not have offered better prospects of success. The government had been unable to give a single example of an asylum-seeker whose application had been finally dismissed by the United Nations agencies and who, despite that, had secured the annulment of a second deportation order issued against him by the Turkish administrative authorities. In addition, the latter had specified that they had suspended consideration of the applicant's case on their own initiative until the proceedings before the Court were completed. The objection should therefore be dismissed.

ARTICLE 3

POSITIVE OBLIGATIONS
Alleged failure of social services to protect children from sexual abuse: *no violation*.

D.P. and J.C. - United Kingdom (Nº 38719/97)
Judgment 10.10.2002 [Section I]

Facts: The applicants were regularly subjected to sexual abuse over a number of years by their stepfather, who was sentenced to 9 years' imprisonment in 1994. The applicants complain that the social services, despite being closely involved with their family from 1967 on, failed to recognise that they were being abused and to take action to protect them. The second applicant brought a civil action against the local authority but his claim was struck out as disclosing no cause of action, on the basis of a House of Lords judgment which had in the meantime established that no duty of care was owed by a local authority in the exercise of its statutory duties with regard to child care.
Law: Article 3 – The records of the social services contained no suspicion of sexual abuse and the applicants accepted that they had not made any unequivocal complaint at the time. Consequently, it had not been shown that the social services knew about the abuse. While there had been sporadic reports of violence, these could not be regarded as revealing a clear pattern of victimisation or abuse. The Court was not persuaded that there were any particular aspects of the turbulent and volatile family situation which should have led the social services to suspect sexual abuse and in these circumstances the social services could not be criticised for failing to instigate an investigation. Moreover, convincing reasons, which were not apparent at that time, would have been required before the social services would have been justified in taking the applicants into permanent care. In sum, the authorities could not be regarded as having failed in any positive obligation to take effective steps to protect the applicants from abuse.
Conclusion: no violation (unanimously).
Article 8 – The Court had found under Article 3 that the social services were not aware, and were not in a position that they ought to have been aware, that the applicants were being abused. In so far as the social services were aware that the family situation was difficult, they took appropriate steps when necessary. The authorities had not, therefore, failed in any positive obligation to protect the applicants' physical or moral integrity.
Conclusion: no violation (unanimously).
Article 6(1) – When the second applicant lodged his civil claim, there was no previous court decision indicating that liability existed in respect of damage caused negligently by a local authority in carrying out its child protection duties. Thus, at that stage there was a serious and genuine dispute about the existence of a right and in such circumstances he had, on at least arguable grounds, a claim under domestic law. Article 6 was therefore applicable. The Court had already found in the similar case of *Z. and others* that the House of Lords' conclusion that no duty of care existed could not be regarded as an exclusionary rule or immunity depriving the applicants of access to court. It was not enough to bring Article 6 into play that the non-existence of a cause of action might be described as having the same effect as an immunity, in the sense of not enabling the applicant to sue for a given category of harm. Furthermore, the striking out procedure to identify and dispose of cases which did not raise arguable causes of action at law was not incompatible with Article 6. In the present case, the second applicant had the opportunity to have his claims examined by a court in the light of the applicable principles of domestic law concerning the tort of negligence. The fact that his claims were struck out as disclosing no cause of action did not disclose any restriction on access to court.
Conclusion: no violation (unanimously).

Article 13 – The fact that violations of Article 3 and 8 had not been established did not mean that the applicants' complaints fell outside the scope of Article 13. While the Court was not persuaded that the materials before it disclosed a situation where the local authorities knew of, or had reason to suspect, sexual abuse, an effective domestic enquiry would have offered more prospect of establishing the facts and throwing light on the conduct reasonably to be expected from the social services. The applicants therefore had arguable claims for the purposes of Article 13. Since they did not have available an appropriate means of obtaining a determination of their allegations or the possibility of obtaining compensation, they were not afforded an effective remedy.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicants 5,000 € each in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

INHUMAN OR DEGRADING TREATMENT
Death sentence commuted to life imprisonment after 8 years; conditions of detention: *admissible*.

IORGOV - Bulgaria (Nº 40653/98)
Decision 3.10.2002 [Section I]

Facts: The applicant was convicted in May 1990 of a series of extremely serious crimes, including the murder of three children. He was sentenced to death. His appeal was dismissed, and his subsequent petition to the Supreme Court for review was rejected. On 20 July 1990, the Bulgarian Parliament decided to defer all death sentences until the issue of capital punishment was resolved; on 10 December 1998, Parliament voted to abolish the death penalty. The applicant's sentence was commuted to life imprisonment without eligibility for parole. The applicant submits that until the death penalty was abolished, he lived in constant fear of being executed. As for the conditions of his detention, he was initially held in solitary confinement in 1990, before being placed, that same year, in a cell with two or three other detainees. In June 1995, he was moved to a single cell, where he was detained alone until at least the end of 1998. The applicant alleges that the conditions in which he was detained were extremely poor: a floor space of $8m^2$; poor natural light; extremes of temperature in summer and winter; weak artificial light which was, moreover, left on all night; absence of proper sanitary facilities. During his detention, the applicant complained of various physical ailments and underwent an operation in 1997. He filed numerous complaints with the different authorities during this time, most of which had no effect. The Committee for the Prevention of Torture has inspected similar facilities in another prison in Bulgaria and found them and the regime for prisoners in the same category as the applicant to be unacceptable.
Admissible under Articles 3 and 13. The Government's argument that there was a failure to exhaust domestic remedies was unfounded, since the applicant had made numerous complaints to the prison authorities. The other argument advanced by the Government, that the applicant misrepresented the actual conditions of detention and therefore had abused the right to petition, was similarly unfounded.
Inadmissible under Article 6. The applicant complained of the unfairness of his trial. In relation to proceedings prior to the entry into force of the Convention in respect of Bulgaria, the complaint was incompatible *ratione temporis*; as for the remainder of the proceedings, the complaints were out of time.

INHUMAN OR DEGRADING TREATMENT
Uncertain as to fate of person sentenced to death for 8 years between suspension of capital punishment and its abolition; conditions of detention: *admissible*.

G.B. - Bulgaria (Nº 42346/98)
Decision 3.10.2002 [Section I]

Facts: The applicant was convicted in 1973 of murdering his first wife. He served 11 years of a 20 year sentence. He was convicted in 1989 of murdering his second wife and sentenced to death. His appeal was dismissed, and his subsequent petition to the Supreme Court for review was rejected. On 20 July 1990, the Bulgarian Parliament decided to defer all death sentences until the issue of capital punishment was resolved. In the years that followed, the issue of capital punishment was debated on numerous occasions in Parliament, with a number of parliamentarians advocating the resumption of executions. On 10 December 1998, Parliament voted to abolish the death penalty. The applicant's sentence was commuted to life imprisonment without eligibility for parole. He was mainly kept in solitary confinement during these years. He alleges that the conditions in which he was detained were extremely poor: no sanitation facilities; no table or chair; poor natural light and ventilation; inadequate heating; inadequate artificial light; no electrical sockets. Considered a high risk prisoner, the applicant was not permitted to work, even in his cell. During his detention, the applicant was treated by medical doctors, dentists and psychiatrists. The Committee for the Prevention of Torture has inspected similar facilities in another prison in Bulgaria and found them and the regime for prisoners to be unacceptable. In addition to complaining about the conditions of his detention, the applicant complains that he suffered the "death row phenomenon".
Admissible under Articles 3 and 13. The Government's argument that domestic remedies had not been exhausted was unfounded – the complaints, which concerned a specific situation arising out of Parliament's decision to suspend executions, could not be rejected for failure by the applicant to submit requests to the prosecution authorities or to institute civil proceedings. The Government's argument that the application was an abuse of the right to petition because it misrepresented the actual conditions of detention was similarly unfounded.

INHUMAN TREATMENT
Conditions of detention on remand: *admissible*.

ABSANDZE - Georgia (N° 57861/00)
Decision 15.10.2002 [Section II]

The applicant held ministerial office under the regime which ended with the 1992 civil war. In exile in Russia since then, he was arrested in 1998 by the Russian police following a request from the Georgian judicial authorities to bring criminal proceedings against him for treason and the murder of five Russian soldiers in Georgia. Having been extradited to Georgia, the applicant was detained on remand and was also charged with having organised and financed the assassination attempt against the Georgian President Mr E. Shevardnadze in 1998 and with misappropriating public funds. The applicant maintained that, after being extradited and before being tried, he was often described in public as a terrorist and bandit by various senior representatives of the Georgian authorities of the time, including representatives of the prosecuting authorities. He specifically mentioned the Principal State Prosecutor, the President of the Georgian Parliament and the Georgian President's press attaché. His detention on remand was extended up to 10 October 1998 by decisions of the court of the city of Tbilisi and the Supreme Court. No further decision to extend the period of detention was taken after that date. The applicant remained in custody. He had several physical ailments and was still suffering from the after-effects of bullet wounds. On 15 September 2000, the applicant's legal representative asked the Court to intervene to have

him released on the grounds that his conditions of detention were inhuman and degrading and that his state of health would rapidly deteriorate. The Court decided not to apply Article 39. The applicant's trial took place before the criminal division of the Supreme Court. The applicant escaped from the prison hospital to which he had been transferred after experiencing heart problems. He was captured two weeks after his escape and returned to prison. At the trial, the applicant's lawyer submitted that his client had been unlawfully detained since 10 October 1998. The prosecutor replied that it could not be said that the applicant had been unlawfully detained because, from 5 October 1998 to 5 May 1999, he had been acquainting himself with the case against him and, subsequently, having been indicted, he had been brought before the Supreme Court. From that time on, according to domestic law, the accused's detention on remand should be the responsibility of the trial court, not the state prosecutor's department. In the course of the proceedings, following a partial retraction by the state prosecution department, the Supreme Court ordered the termination of the prosecution in respect of some of the charges against the applicant. As a result, the applicant was tried only for misappropriation of public funds and for having organised and financed the assassination attempt against the head of state in 1998. In August 2001, the Supreme Court, ruling at first instance, found the applicant guilty and sentenced him to 17 years' imprisonment. The applicant appealed on a point of law and the case was referred to the High Chamber of the Supreme Court. The Chamber acquitted the applicant in respect of his conviction for organising and financing the 1998 assassination attempt and upheld the six-year prison sentence imposed for misappropriation of public funds. A few months later, the President of Georgia issued a pardon and the applicant was released.
Admissible under Article 3: The government argued that the applicant could have applied to the prison authorities to improve his conditions of detention. However, that remedy had not become available until 1 January 2000. On that date, the applicant had been in custody for approximately two years and his present complaint related mainly to his detention between March 1998 and February 2000. With regard to the period after 1 January 2000, the question arose of the effectiveness of the remedy referred to by the government. This question called for detailed examination.
Admissible under Article 5(1)(c) and 5(3).
Admissible under Article 5(4): Under Georgian law, supervision of the lawfulness of detention on remand by the trial court was neither automatic nor systematic, but a detainee was free at any time to ask the court hearing the case as to the merits to review the lawfulness of his or her detention and apply to be released. Since the Convention's entry into force in respect of Georgia on 20 May 1999, the applicant had had the right to have the lawfulness of his detention reviewed at least three times by the division of the Supreme Court which had heard his case on the merits, once by the court of first instance of Krtsanissi, which had considered the question of his detention on remand after his escape, and once by the court of appeal of Tbilisi, which had upheld the detention order in respect of the applicant after his capture. The applicant raised the issue of the effectiveness of these remedies.
Inadmissible under Article 6(1) (independent tribunal): The judges of the Supreme Court were elected by the parliament on a proposal from the head of state, but it could not be inferred from this that the latter gave these judges instructions in the area of their judicial responsibilities. The irremoveability of judges during their term of office, which lasted for ten years, must be regarded as a corollary of their independence and, hence, as one of the requirements of Article 6(1). In the instant case, the institutional independence of the judges of the Supreme Court could not be called into question. Regarding the allegation that the executive had put pressure on the judges of the Supreme Court, it consisted solely of a statement by the applicant's legal representative to the effect that the judges who had heard her client's case were all "pocket judges" of the President of the Republic. There was no evidence in the file to suggest that the judges in question had been under the control of the President of the Republic or had been subjected to pressure in the performance of their duties: manifestly ill-founded.
Admissible under Article 6(2).

INHUMAN TREATMENT
Alleged ill-treatment on arrest and effectiveness of criminal investigation into police conduct, opened in 1998 still not concluded: *communicated*.

SULEJMANOV - Former Yugoslav Republic of Macedonia (Nº 69875/01)
[Section III]

Facts: The applicant is a citizen of the respondent State and is of Roma ethnic origin. He claims that he was the victim of police brutality in the following circumstances. In March 1998, he and his friend were stopped by police investigating the theft of sheep. The applicant claims that he and his friend were violently assaulted by the police. They received several further beatings, in one of which the sheep owner participated, and were verbally abused on account of their ethnic origin. They were tied to a bench in a police station for a night and denied water. Upon his release the next day, the applicant sought medical aid. Lacking sufficient means, he assumed the identity of his cousin, who possessed a medical identity card. The medical examination revealed a broken arm. The applicant took civil action against the State. His suit was dismissed on the basis of police testimony that the applicant's injuries had not been inflicted by the police, but by the owner of the sheep. The applicant also lodged a complaint with the public prosecutor against an unidentified police officer. In 1999, the applicant's lawyer sought information on several occasions on the progress of the complaint. The criminal investigation is still pending. This prevents the applicant from taking over the prosecution himself, as provided for in domestic law.
Communicated under Articles 3, 13 and 14.

EXPULSION
Threatened deportation to Algeria, where there would allegedly be a risk of ill-treatment; mental health problems allegedly provoked by fear of deportation: *inadmissible*.

AMMARI - Sweden (Nº 60959/00)
Decision 22.10.2002 [Section IV]

Facts: The applicant is an Algerian national. He arrived in Sweden at the end of May 2000 and states that he intended to apply for asylum. Before doing so, he was arrested, in June 2000 after assaulting a Moroccan national. He presented a false French passport to the police, before finally revealing his true identity and requesting asylum. He was found guilty of assault and use of a false document and was sentenced to two months' imprisonment. Subsequently, he was detained by order of the National Migration Board. In his asylum application, the applicant claimed that his life had been threatened in Algeria by the GIA (*Groupe islamique armé*) since 1996 and that the GIA had forced him to work for them. The Algerian police looked for the applicant towards the end of 1999. The applicant first travelled to Algiers and then to Europe, ending up in Sweden. His parents have stated that since his departure both the police and the GIA have been looking for him. The National Migration Board rejected his application for asylum. It found that the delay in seeking asylum following his arrival in Sweden and the giving of a false name to the police were not consistent with his allegations of persecution. Furthermore, it considered that the general situation in Algeria was no longer a reason in its own right to grant asylum. The applicant's claim was further weakened by the fact that he could have left his home much earlier if there had been a genuine threat to his life. This decision was upheld on appeal on 14 September 2000. The applicant remained in detention. On 12 September, he tried to hurt himself. He tried again on 14 September, on which date he was transferred to a detention centre at Kronoberg that was adequately equipped to receive him. The next day he was examined by a psychiatrist from the Centre for Torture and Trauma Survivors, who recommended his transfer to a psychiatric

ward for further examination. The applicant made a new application for asylum on 19 September to the Aliens Appeals Board, making reference to his mental state. The Board decided not to suspend execution of the expulsion order. The following day, the County Administrative Court rejected the applicant's appeal against the Board's refusal to release him. However, following the Court's indication on the same date, the applicant was released and taken to hospital. He was examined again by the psychiatrist, who considered that he did not show all the signs of post-traumatic stress. His earlier behaviour was attributable to great fear of expulsion, based on his previous experience. The applicant's second application for asylum is still pending.
Inadmissible under Article 3: The Government argued that the applicant had not exhausted domestic remedies as his second application, which contained new grounds that had yet to be considered by the relevant national authorities, was still pending. The Court rejected this argument since the Appeals Board's decision of 19 September 2000 not to suspend execution of the deportation order constituted a preliminary assessment of the merits of his second application, lodged the same day. Moreover, there was still no decision on the second application and, according to the Government, none was likely as long as the application under the Convention remained pending before the Court. The applicant's main reason for seeking asylum (fear of torture or inhuman or degrading treatment if he returned) had, in any event, already been examined and rejected. As for the applicant's claim that he would be in danger is he was sent back to Algeria, the Court noted that he had not submitted any evidence of a real risk. Furthermore, he did not have a significant role in the GIA and thus would not be of particular interest to that organisation or the Algerian authorities. He could, apparently, qualify for immunity under Algerian law. The application therefore did not reveal substantial grounds for believing the existence of a real risk of treatment contrary to Article 3. As for his mental health status, the Court recalled that should his actual deportation provoke serious mental health problems, Swedish law would only permit it to go ahead if the chief physician responsible gave approval. Finally, the applicant complained that his detention at Kronoberg for six days was incompatible with Article 3 given his mental state. The Court found that his transfer there was on the recommendation of a physician and that he was given further, specialist examination there. Within a short time, he was released and admitted to a psychiatric ward: manifestly ill-founded.

ARTICLE 5

Article 5(1)(c)

LAWFUL DETENTION
Repeated arrest and detention in connection with prosecution for fraud: *inadmissible*.

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Decision 3.10.2002 [Section III]

Facts: The applicants are twin sisters in respect of whom criminal proceedings were opened on suspicion of fraud in February 1993. This marked the beginning of a procedure that involved several courts (district court, Moscow City Court, Constitutional Court) and culminated in the annulment of their conviction and an order for their release in April 2002. The case of the first applicant was submitted to the United Nations Human Rights Committee in June 1996, where it is currently pending.
Between 1995 and 2002, the applicants were repeatedly arrested and detained. The first applicant was remanded in custody for periods totalling more than three years; the second applicant was detained for less time, having gone into hiding for almost two years. At different stages, the proceedings against the applicants were separated and then rejoined. The

proceedings against the second applicant were discontinued in 1995, but were resumed in March 1997 at the motion of the district court, which, on the same occasion, remitted the case against the first applicant to the prosecution authorities for further investigation. In October 1999, the prosecution returned the file on the applicants to the district court. In January 2000, the Constitutional Court upheld the second applicant's claim that Article 256 of the Code of Criminal Procedure was unconstitutional because it breached the separation of powers, in that the criminal courts could effectively perform the functions of a prosecutor. On foot of this ruling, Moscow City Court quashed a series of decisions regarding the second applicant. However, proceedings against the second applicant were reinstituted in March 2000. In the following months, several hearings before the district court were cancelled due to the non-attendance of the applicants, who were rearrested in March 2001. Proceedings were stayed in July 2001 at the request of the prosecution so that a psychiatric examination of the applicants could be performed. The applicants were convicted of fraud in January 2002 and sentenced to eight years' and six years' imprisonment respectively. In April 2002, Moscow City Court quashed the convictions, closed the proceedings and discharged the applicants from serving their sentences, on the basis of the statute of limitations. The applicants rely on numerous provisions of the Convention regarding their detention on remand.
The first applicant was required to surrender her identity document to the district court in August 1995. In the absence of this document, she claims she was subject to considerable inconvenience in many areas of her life (employment, medical assistance, installation of a phone line, registration of intended marriage, etc.). She alleges that she was fined by police in March 1999 for failure to produce an identity document when asked to do so by a patrol.
Government's objections to admissibility: The Government objected that the Court had regard to the circumstances surrounding the first applicant's arrest, as she had not raised the issue herself. The Court held that it was competent to review all of the circumstances in the light of all of the requirements of the Convention, and to take account of additional documents submitted by the applicants. The Government further contended that the first applicant's complaint should be rejected as it was under examination by the UN Human Rights Committee. The Court found that this complaint concerned her arrest in August 1995. Her application under the Convention rested on a much wider factual basis and so was not substantially the same as her complaint to the Human Rights Committee.
Inadmissible under Article 5(1)(c): In relation to the events that took place subsequent to the entry into force of the Convention in respect of Russia on 5 May 1998, the Court considered that the applicants' detention was based on a reasonable suspicion of their having committed a criminal offence and was necessary to prevent them fleeing from justice. There was nothing in the reasoning of the domestic authorities that could be viewed as arbitrary or unreasonable or lacking a factual basis.
Inadmissible under Article 6(2) and Article 4 of Protocol No. 7: In relation to the former, the Court found no indication that the trial court made any presumption about the second applicant's guilt. As for the latter provision, it was inapplicable since the prosecutor's decision to discontinue proceedings against the second applicant did not constitute a final decision for the purpose of this provision.
Admissible under Article 5(3), Article 6(1) (length of proceedings) and Article 8 (first applicant's identity document).

LAWFUL DETENTION
Detention overnight in police station on several occasions for alleged drunkenness and rowdy behaviour: *admissible*.

HAFSTEINSDÓTTIR - Iceland (Nº 40905/98)
Decision 22.10.2002 [Section IV]

Facts: The applicant was detained overnight by police on six occasions between 1988 and 1992. On each occasion, the reason for the arrest recorded by the police was the applicant's

advanced state of intoxication and her agitated, unruly and threatening behaviour. The applicant denies that she was drunk on these occasions or that her behaviour breached the peace or interrupted the work of the police. She further denies that she is or was an alcoholic and has obtained a medical certificate to that effect. In addition to the above incidents, the Government referred to other incidents in which the applicant was said to have caused damage inside a police station and to have harassed a police officer and a member of his family. No action was taken against the applicant in relation to these facts. The applicant requested the Prosecutor General to investigate her complaints against certain police officers arising out of certain of the periods of detention. The Prosecutor General declined to do so. Her criminal complaint was similarly rejected by the Director of Public Prosecutions. The applicant also instituted civil proceedings against the State for unlawful arrest and detention as well as police harassment. The Supreme Court eventually found in favour of the State, finding that the police evidence as to her state and behaviour had not been refuted and that, accordingly, her arrest and detention were lawful on each occasion.
Admissible under Article 5(1).
Inadmissible under Article 5(5): There was nothing to indicate that there was no right to compensation in Icelandic law where a person has been deprived of their liberty in breach of Article 5.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Effectiveness of court remedies in having the lawfulness of detention on remand reviewed: *admissible*.

ABSANDZE - Georgia (N° 57861/00)
Decision 15.10.2002 [Section II]
(see Article 3, above).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Non-notification of third party with interest in outcome of proceedings: *no violation*.

CAÑETE DE GOÑI - Spain (N° 55782/00)
Judgment 15.10.2002 [Section IV]

Facts: The applicant, a history and geography teacher, obtained a post as a certified teacher after passing a competitive examination which had been intended to cover 2,014 posts. Hundreds of unsuccessful candidates took proceedings to have the competitive examination declared null and void. Each application was published in the Official Gazette of the province. The affair was reported in the regional and national press. The case was referred to the regional ombudsman, who gave an opinion. The teachers' unions adopted a position and the dispute gave rise to a debate in parliament. The proceedings ended with the competitive examination being declared null and void and the High Court of Justice ordered a

reassessment of the candidates' performance in the competitive examination. The applicant failed in the reassessment procedure. Her appointment was declared null and void by order. The applicant lodged an *amparo* application against this order and against the judgment of the High Court of Justice. She relied on Section 64 of the Administrative Courts Act, which provided that persons with an interest in the subject matter of administrative proceedings to which they were not parties should be summoned personally to appear. She argued that the court hearing the appeals against the competitive examination following which she had been appointed should have served notice on her and summoned her to appear. The Constitutional Court dismissed the applicant's case. It reiterated the three criteria applied by its case-law in cases where third parties with an interest in administrative proceedings were not summoned personally to appear. While the applicant satisfied the first two criteria required by the case-law in order for the failure to summon personally to appear to constitute a violation of the Constitution, that was not the case with the third criterion, which required the plaintiff to have been the victim of a material breach of his or her defence rights. In this connection, the Constitutional Court noted that the applications to have the competitive examination declared null and void had been widely covered in the media and had had a significant impact among the teaching profession and teachers trade unions. The applicant had thus learned of the administrative appeals against the competition from extra-judicial sources. Her failure to participate in these proceedings could not, therefore, be attributed to a lack of diligence on the part of the court hearing the case. Accordingly, the failure to issue a personal summons to appear did not infringe the constitutional right to judicial protection.
Law: Article 6(1) – It could be seen from the grounds of the Constitutional Court's decision that, after carefully examining the different elements of the case, the highest Spanish court had made a well-reasoned finding that, given the circumstances of the case and, in particular, its media coverage and the memoranda sent by the government informing the teachers' trade unions about the appeals against the competitive examination, the applicant had learned of the proceedings from extra-judicial sources, so that her failure to appear before the court hearing the case was due to a lack of diligence on her own part. In short, the court had held that if the applicant had shown the necessary diligence, she would have been able to participate in the proceedings. Indeed, interested third parties who had not been summoned personally to appear and who had learned about the appeals from extra-judicial sources had availed themselves of the possibility of applying to participate in the proceedings, and their applications had been accepted. The Constitutional Court had based its dismissal of the *amparo* application on its established case-law concerning the conditions under which, in administrative law, a failure to summon to appear constituted a violation of the right of access to a court. This case-law which had been published and was accessible, supplemented the wording of Section 64 of the Administrative Courts Act. It was sufficiently clear to allow the applicant, aided, if necessary, by enlightened advice, to decide on her course of action. The Court could understand the pragmatic approach adopted by the Constitutional Court regarding service of judicial process where, as in the instant case, a court was faced with numerous applications concerning the same administrative proceedings affecting a large number of people. In short, the interpretation which had been made of the relevant domestic law was neither arbitrary nor likely to affect the substance of the applicant's right of access to a court.
Conclusion: no violation (5 votes to 2).

ACCESS TO COURT
Striking out of civil claim as disclosing no cause of action: *no violation*.

D.P. and J.C. - United Kingdom (Nº 38719/97)
Judgment 10.10.2002 [Section I]
(see Article 3, above).

FAIR HEARING
Lack of legal aid to defend lengthy and complicated libel action: *communicated.*

STEEL and MORRIS - United Kingdom (Nº 68416/01)
Decision 22.10.2002 [Section IV]

Facts: The applicants were sued for defamation by the MacDonalds corporation for their part in the publication of a leaflet by an organisation called London Greenpeace in 1986 that was extremely critical of many aspects of its business (food quality, employment relations, advertising policy, impact on environment and economy in developing countries, etc.). Between 1989 and 1991, MacDonalds hired private investigators to discover who was responsible for the publication. Libel proceedings were instituted against the applicants in 1990. The applicants sought legal aid, but their request was rejected, legal aid not being available in the United Kingdom for defamation cases. Some funds were raised for the applicants to conduct their defence. In addition, they benefited from *pro bono* legal advice on a number of occasions. Before the trial began, in 1994, MacDonalds issued a press release and two further documents in which it alleged that the applicants had published a leaflet containing statements that they knew to be untrue. The applicants counter-claimed for damages for libel. The trial was the longest (civil or criminal) in English legal history, with 313 days in court, 20,000 pages of transcript, 40,000 pages of documentary evidence and 130 witnesses heard. The applicants claim that their lack of funds severely hampered their defence in many ways. In addition to having to represent themselves most of the time, they were also at a great disadvantage regarding such important matters as note-taking, photocopying, finding expert witnesses and paying their costs, etc. The trial judge found against the applicants on most grounds and awarded a total of GBP 60,000 to MacDonalds. He further ruled that although MacDonalds had libelled the applicants, this was protected by qualified privilege. MacDonalds did not seek costs. The applicants appealed to the Court of Appeal, which allowed the appeal on several points and reduced the award of damages. The applicants sought to appeal further, but leave to do so was refused by both the Court of Appeal and the House of Lords.
Communicated under Article 6(1) and Article 10.
Inadmissible under Article 8: It was not clear how the State could be held responsible for a private company making use of private investigators. Moreover, the investigations were not carried out on private property, but in places to which the public had free access: manifestly ill-founded.
Inadmissible under Article 11: The applicants claimed that they were held responsible for the publication simply by virtue of their association with London Greenpeace, without any clear evidence of actual participation in the publication. This was, however, a question of fact, and therefore one for the domestic courts. In this case, the trial judge had found, having heard all the evidence, that the applicants were directly involved in the publication: manifestly ill-founded.
Inadmissible under Article 13: The applicants claimed that prior to the entry into force of the Human Rights Act 1998 they had no effective remedy in national law in relation to their claims under the Convention. However, Article 13 cannot be interpreted as requiring a remedy against the state of domestic law, since this would amount to a requirement to incorporate the Convention: manifestly ill-founded.

ADVERSARIAL PROCEDURE
Lack of opportunity to see and comment on other party's submissions: *inadmissible.*

STECK-RISCH - Liechtenstein (Nº 63151/00)
Decision 10.10.2002 [Section III]

Facts: The five applicants are brothers and sisters who are joint owners of two adjacent plots of land, inherited from their father in 1983. In 1972, the municipality provisionally designated the plots as non-building land. Previously, there had been no designation. The applicants' father's subsequent appeal was dismissed by the municipal council in 1980. The following year, the area zoning plan was approved by the Government. The applicants sought to have their land redesignated as building land in 1994, but to no avail. In 1997, they sought substantial compensation from the Governemnt for what they considered was a *de facto* expropriation of their land. Their request was refused by the Government, which referred to the constant case law of the Swiss Federal Court to the effect that the designation of land that was not previously subject to an area zoning plan as non-building did not warrant compensation unless there were special circumstances. The Government considered that no such circumstances were present, nor did the applicants have a legitimate expectation as to the designation of their property as building land prior to the approval of the area zoning plan. The applicants appealed the matter to the Administrative Court in June 1998. They argued that the Government's decision rested on elements that had not been established through adversarial proceedings. They also contested certain factual issues. The municipality subsequently filed comments on the applicants' appeal, which were not served on the applicants. The Administrative Court dismissed the appeal in June 1999. It recalled that there was no right to a public hearing in administrative proceedings. An oral hearing was not indispensable. The applicants had had the opportunity to make detailed submissions and argue their case. This decision was appealed by the applicants to the Constitutional Court. They claimed that the principle of equality of arms had been violated since they had not had the opportunity to respond to the new submissions made to the Administrative Court by the municipality. The Constitutional Court notified the applicants of the composition of the panel that would hear the case in private. They objected to the inclusion of one judge on the grounds that he and the judge who had presided in their appeal to the Administrative Court were partners in a law firm. The objection was not sustained. The Constitutional Court dismissed the applicant's case. It found that while the applicants should have had the opportunity to comment on the submissions made by the municipality to the Administrative Court, that court had not in fact relied on those submissions and no prejudice flowed from the procedural flaw. Since the procedure as a whole had been adversarial, the applicants' procedural rights were not impaired. As for the applicants' fears of bias on the part of one judge, the Constitutional Court referred to the limited human resources of the public sector in Liechtenstein, stated that mere acquaintance between the judges of different courts was not grounds for disqualification under the relevant legislation and considered that the fears expressed were not objectively justified.
Communicated under Article 6(1) (impartiality of the Constitutional Court, lack of oral hearing and fairness of the procedure before the Administrative Court).
Inadmissible under Article 1 of Protocol No. 1: As the designation of the applicants' land occurred while it still belonged to their father, the applicants could not and did not complain about the designation of the property itself. They claimed instead that they should be compensated because of the designation. However, there was nothing to show that they had a legitimate expectation of compensation, let alone an enforceable claim. The complaint was therefore incompatible *ratione materiae*.

ORAL HEARING
Lack of oral hearing in administrative proceedings: *inadmissible.*

STECK-RISCH - Liechtenstein (Nº 63151/00)
Decision 10.10.2002 [Section III]
(see above).

IMPARTIAL TRIBUNAL
Alleged lack of impartiality of judge: *inadmissible.*

STECK-RISCH - Liechtenstein (No. 63151/00)
Decision 10.10.2002 [Section III]
(see above).

Article 6(1) [criminal]

FAIR TRIAL
Drawing of adverse inferences by a jury from accused's failure to reply to police questions: *violation*.

BECKLES - United Kingdom (Nº 44652/98)
Judgment 8.10.2002 [Section IV]

Facts: The applicant was arrested in connection with the attempted murder of M., who had been thrown from a fourth-floor window. After having been cautioned by the police that his failure to mention something later relied on in court could harm his defence, the applicant stated: "I can tell you everything, he jumped." He was advised to wait until he was interviewed at the police station. However, after consulting his solicitor the applicant declined to answer any further questions. At the trial, the judge in his summing up told the jury that adverse inferences could be drawn from the applicant's failure to mention during police interviews points relating to his presence at the time of the incident. The applicant was convicted and sentenced to 15 years' imprisonment. His appeal, on the ground that the judge had misdirected the jury as to the drawing of adverse inferences, was dismissed.
Law: Article 6(1) – Prior to receiving legal advice, the applicant had shown his readiness to account for his presence at the time of the incident, but was told by the police not to say anything at that point. At his trial, he explained his failure to reply to police questioning on the basis of the legal advice he had received. The trial judge emphasised to the jury that there was no independent evidence of what the solicitor had said, failing to refer to the fact that the applicant had been prepared to provide details and that he had initially manifested his willingness to co-operate with the police. The applicant did not waiver from his original explanation as to what had happened and did not seek at any stage to rely on new facts or circumstances which he might have been expected to mention had he chosen to answer police questions. These matters went to the plausibility of his explanation and, as a matter of fairness, should have been included in the direction to the jury. However, the trial judge failed to give appropriate weight to the applicant's explanation for his silence and left the jury at liberty to draw adverse inferences from that silence, even if it was satisfied as to the plausibility of his explanation. The jury should have been reminded of all the relevant background considerations and directed that if it was satisfied that the applicant's silence could not sensibly be attributed to his having no answer or none that would be stand up to

police questioning adverse inferences should not be drawn. However, the jury's discretion on this question was not confined in a manner compatible with the exercise of the right to remain silent.
Conclusion: violation (unanimously)
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage. It made an award in respect of costs and expenses.

FAIR HEARING
Alleged incitement of offence by *agents provocateurs*: *admissible*.

LEWIS - United Kingdom (Nº 40461/98)
Decision 10.9.2002 [Section IV]

Facts: The applicant was arrested by police in possession of counterfeit currency. The situation was brought about by two undercover police officers in association with several other individuals whom the applicant suspects of being police informers. The police officers covertly recorded conversations with the applicant prior to the arrest. The recordings showed that while the applicant was not an unwilling participant in the venture, a certain degree of pressure was exerted on him to obtain counterfeit banknotes of a higher face value. The applicant maintained that he had been entrapped and sought to have criminal proceedings stayed. He also sought disclosure of information and documents with a view to establishing whether the other individuals involved were in fact police informers. Before giving his ruling, the judge considered, in the absence of defence counsel, an application by the prosecution to avoid disclosing certain material evidence on grounds of public interest immunity. This application was granted. The judge subsequently rejected the defence application to stay proceedings and refused to order further disclosure. The defence then sought to have the evidence of the undercover police officers excluded under Section 78 of the Police and Criminal Evidence Act 1984. It was apparent, however, that public interest immunity would seriously impede cross-examination. The defendant then changed his plea to guilty. He was sentenced to four and half years' imprisonment. He did not appeal against his conviction, having been advised by counsel that he had no prospects of success.
Admissible under Article 6(1): As to the Government's argument that the applicant had failed to exhaust domestic remedies, at the time of his conviction the circumstances in which an appeal lay following a plea of guilty were very narrow, in accordance with the case law of the Court of Appeal. While the position had changed with the enactment of the Human Rights Act 1998, the Government had failed to show that at the material time there was a remedy under English law that offered the applicant reasonable prospects of success.

EDWARDS - United Kingdom (Nº 39647/98)
Decision 10.9.2002 [Section IV]

The applicant was arrested by police in a van from which a briefcase containing 4.83 kg of heroin was retrieved. The situation was brought about by an undercover police officer and several other individuals whom the applicant suspects of being either undercover officers or police informers. According to the applicant, he believed that the transaction in which he participated concerned jewellery, not drugs. Moreover, he was the only party to the transaction who was arrested and charged. Prior to the trial, the prosecution made an *ex parte* application to withhold material evidence. This was granted on the basis that the material would not help the defence and there were genuine public interest grounds for withholding it. The trial judge subsequently reconsidered his ruling, with the benefit of a document prepared by the defence and oral submissions by defence counsel, but did not modify it. At the Strasbourg hearing, the Government revealed for the first time that part of the material withheld was information that the applicant had previously been involved in the supply of

heroin. This is denied by the applicant. The defence sought unsuccessfully to exclude the evidence of the undercover police officer on the grounds that the applicant had been entrapped. The undercover officer was the only participant in the offence to give evidence at the trial. The applicant maintains that the defence was impeded by the non-disclosure of the undercover officer's identity. He appealed against his conviction to the Court of Appeal, which found that the trial judge had correctly refused disclosure, and that the material at issue was in fact harmful to the defence.
Admissible under Article 6(1).

FAIR HEARING
Non-disclosure of evidence and refusal to allow certain witnesses be called or identified on grounds of public interest immunity: *admissible.*

LEWIS - United Kingdom (Nº 40461/98)
EDWARDS - United Kingdom (Nº 39647/98)
Decisions 10.9.2002 [Section IV]
(see above).

FAIR HEARING
Replacement of Assize Court judge during trial: *communicated.*

GRAVIANO - Italy (N° 10075/02)
Decision 24.10.2002 [Section I]

The applicant was committed for trial before an assize court for murder and membership of a mafia-type organisation. In the course of the proceedings the assize court questioned various witnesses for the prosecution, including a number of "repentant" mafia members. The court also questioned certain officially appointed experts. Subsequently, one of the two professional judges forming the assize court together with the jury members was replaced by an alternate judge. All the records of examinations of witnesses and other procedural steps carried out before the judge was replaced were added to the file of the new trial court. The applicant's objection to this was dismissed. The assize court also dismissed the applicant's request for the witnesses to be called again. The assize court sentenced the applicant to life imprisonment. It based its decision on statements by prosecution witnesses, which were deemed to be precise, credible and corroborated by other elements, such as statements by other witnesses and by experts. The assize court of appeal upheld the first-instance decision. The Court of Cassation dismissed the applicant's appeal.
Communicated under Article 6(1).

INDEPENDENT TRIBUNAL
Independence of Supreme Court judges: *inadmissible.*

ABSANDZE - Georgia (N° 57861/00)
Decision 15.10.2002 [Section II]
(see Article 3, above).

Article 6(2)

PRESUMPTION OF INNOCENCE
Revocation of suspension of prison sentence prior to final determination of subsequent criminal charge: *violation*.

BÖHMER - Germany (Nº 37568/97)
Judgment 3.10.2002 [Section III]

Facts: In 1991, the applicant was sentenced to two years' imprisonment, suspended on probation for four years. Following a further conviction in 1993, the probationary period was extended by two years. In 1995, two separate penal orders were issued against the applicant in respect of further offences. He objected to the first and criminal proceedings were consequently instituted before the District Court. He failed to object to the second penal order, which became final, but he subsequently requested a re-trial. While these proceedings were pending, the Regional Court revoked the suspension of the sentence imposed in 1991, on the ground that the applicant had committed further offences during the probationary period. The applicant appealed but the Court of Appeal, after taking evidence itself, concluded that the strict conditions were met for revoking a suspension of sentence on the basis of the commission of a further offence, even prior to final conviction. It considered that it was not necessary to await the outcome of the pending criminal proceedings.
Law: Article 6(1) and (2) – The prison sentence was lawfully imposed in 1991 and, following revocation of the suspension, the applicant's detention would have to be regarded as lawful detention after conviction under Article 5(1)(a). Thus, the decision did not as such violate Article 6(2). However, the Court of Appeal held that new offences had been committed and that these constituted justification for revoking the suspension, even prior to any final conviction. Consequently, its reasoning was not limited to assessing the applicant's personality or describing a state of suspicion; rather, it had assumed the role of the trial court and had unequivocally decided that the applicant was guilty of committing further offences during the probationary period. The presumption of innocence excludes a finding of guilt outside the criminal proceedings before the competent trial court, irrespective of the procedural safeguards in any parallel proceedings and notwithstanding general considerations of expediency.
Conclusion: violation (unanimously).

PRESUMPTION OF INNOCENCE
Statements made by the President of the Republic, the President of Parliament and various public authorities prior to the applicant's conviction: *admissible*.

ABSANDZE - Georgia (N° 57861/00)
Decision 15.10.2002 [Section II]
(see Article 3, above).

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Failure of court-appointed lawyer to comply with formality in submitting appeal to Supreme Court: *violation*.

<u>CZEKALLA - Portugal</u> (N° 38830/97)
Judgment 10.10.2002 [Section III]

Facts: The applicant, a German national, was arrested in Portugal in the course of an anti-drug trafficking operation. He was committed for trial on charges of drug trafficking with aggravating circumstances and conspiracy. During the trial, the applicant dismissed his lawyer and had another lawyer officially appointed to replace him. The court found the applicant guilty of the offence of drug trafficking with aggravating circumstances, but not that of conspiracy. The applicant was sentenced to 15 years' imprisonment. He appealed in person against the conviction, but his appeal was dismissed without any consideration of the merits on the ground that it had not been drafted in Portuguese. The officially assigned lawyer lodged an appeal on the applicant's behalf. One month later, the applicant gave powers of attorney to a lawyer whom he himself had chosen, thus terminating the officially assigned lawyer's appointment. The Supreme Court declared the appeal lodged by the officially assigned lawyer inadmissible for failure to state the grounds of appeal adequately. The appeal had failed to comply with the requirements of the Code of Criminal Procedure because it had not set out a summary of the grounds of appeal and had failed to state how the provisions allegedly breached should be construed and applied. The applicant's sentence was subsequently increased. The applicant lodged a complaint against the officially assigned lawyer, arguing that, contrary to his instructions, she had lodged an appeal with the Supreme Court which did not satisfy the procedural requirements. The Bar Council brought disciplinary proceedings against the lawyer, and a disciplinary penalty was reportedly imposed on her.
Law: Article 6(1) and 3(c) – The appointment of a lawyer did not by itself ensure the effectiveness of the legal assistance to be provided to an accused. Accordingly, a state could not be held responsible for every shortcoming on the part of an officially assigned lawyer. It followed from the Bar's independence vis-à-vis the state that responsibility for the conduct of the defence lay essentially with the accused and his or her lawyer, whether the lawyer was appointed under legal aid arrangements or paid by the client. Article 6(3)(c) did not require the competent national authorities to intervene unless the inadequacy of the officially assigned lawyer appeared obvious or was brought sufficiently to their attention by some other means. In contrast to the *Daud* case, the applicant's officially assigned lawyer had not failed to assist him, but, in assisting him, had failed to comply with the procedural requirements under the applicable domestic law. Deficiencies or errors in the presentation of the defendant's case by an officially assigned lawyer did not engage the state's responsibility. The position was different, however, where the failure by negligence to comply with a procedural requirement deprived the defendant of a particular remedy and the situation was not rectified by a higher court. The applicant was a foreign national who had no knowledge of the language in which the proceedings had been conducted and faced charges that could result in a lengthy prison sentence, as had been the case. Under these circumstances, it was found that the applicant had not had the benefit of a practical and effective defence, as would have been required under Article 6(3)(c), in his appeal to the Supreme Court. Admittedly, the applicant had not drawn the attention of the competent courts to the possible inadequacies of his defence before changing lawyers. The decisive point, however, was the failure by his officially assigned lawyer to comply with a procedural requirement in lodging the appeal with the Supreme Court. This had been a "manifest shortcoming" requiring positive steps to be

taken by the competent authorities. The Supreme Court could thus have asked the officially assigned lawyer to enlarge on or revise the statement of grounds of appeal rather than declare the appeal inadmissible. A simple request by the court to rectify a procedural error would not have affected the fundamental principle of the independence of the Bar. In the same way, it could not be assumed that a situation of this kind would inevitably have infringed the principle of equality of arms. Rather, it would be a manifestation of the judge's powers to direct the proceedings in the interests of the proper administration of justice. Indeed, Portuguese legislation relating to civil proceedings allowed judges to make such a request, and there had never been any question of any loss of independence on the part of the Bar or any violation of the principle of equality of arms. Furthermore, it appeared that a decision like the one criticised would no longer be possible, given a recent decision by the Constitutional Court. The circumstances of the case had imposed a positive obligation on the competent court to ensure practical and effective respect for the applicant's defence rights. Since that had not been the case, there had been an infringement of the requirements of paragraphs 1 and 3(c), taken together, of Article 6.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the sum of 3,000€ in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 8

PRIVATE LIFE
Retention of identity card by court during lengthy criminal proceedings: *admissible.*

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Decision 3.10.2002 [Section III]
(see Article 5(1)(c) above).

PRIVATE LIFE
Use of private investigators to infiltrate campaigning group to gather evidence for defamation trial: *inadmissible*.

STEEL and MORRIS - United Kingdom (Nº 68416/01)
Decision 22.10.2002 [Section IV]
(see Article 6(1) [civil], above)

PRIVATE LIFE
Homosexuals prevented from giving blood : *strike out of the list*.

TOSTO - Italy (N° 49821/99)
CRESCIMONE - Italy (N° 49824/99)
FARANDA - Italy (N° 51467/99)
Decisions 15.10.2002 [Section IV]

Each of the applicants having expressed the wish to give blood, they were given a form listing the cases in which a person could be excluded from giving blood, in view of the risk of passing on infectious diseases such as AIDS or hepatitis, in accordance with a decree issued by the Ministry of Health in 1991. Being in a homosexual relationship was listed as one of the grounds for permanent exclusion. Being homosexuals, the applicants were unable to give

blood. They complained of a violation of Articles 8 and 14 of the Convention on the grounds of their permanent exclusion from giving blood, based exclusively on their sexual orientation.
Articles 8 and 14: Following the replacement of the 1991 ministerial decree by the decree of 26 January 2001, the applicants can now give blood. Since the entry into force of the new rules, the Italian authorities have therefore eliminated the legal obstacle which prevented the applicants from giving blood. Although they have not given the Court any precise indication regarding the continuation of the examination of their applications, the Court considers that it is no longer justified to continue the examination of the applications, in accordance with Article 37(1)(c) of the Convention.

PRIVATE AND FAMILY LIFE
Impossibility for father of unborn child to intervene in his wife's decision to have an abortion: *inadmissible*.

BOSO - Italy (N° 50490/99)
Decision 5.9.2002 [Section I]
(see Article 2, above).

CORRESPONDENCE
Powers of Federal Information Service in the field of surveillance, recording, use of telecommunications and transmission of information: *communicated*.

WEBER and SARAVIA - Germany (Nº 54934/00)
[Section III]

The first applicant, a German national, is a journalist working for several German and foreign media organisations. She does research in fields covered by the work of the German Federal Intelligence Agency, including arms, war preparations, drug and arms trafficking, money laundering, etc. In the course of her research, she regularly visits various foreign countries. The second applicant is a Uruguayan national employed by the city of Montevideo. He said that he took messages for the first applicant when she was on mission, both on his own telephone line and on hers. He then forwarded these messages to the applicant at the various places where she was staying. The applicants lodged an appeal with the Federal Constitutional Court against the German Crime Prevention Act of 28 October 1994, which had amended the law restricting secrecy of correspondence, mail and telecommunications. The Constitutional Court held certain provisions of the act to be incompatible or only partly compatible with the principles set forth in the Basic Law and called on parliament to rectify the situation. A new version of the Act came into force in June 2001.
Communicated under Articles 8, 10 and 13.

ARTICLE 10

FREEDOM OF EXPRESSION
Imposition of fine as disciplinary penalty for breaching prohibition on advertising by medical practitioners: *violation*.

STAMBUK - Germany (Nº 37928/97)
Judgment 17.10.2002 [Section III]

Facts: The applicant, an ophthalmologist, was fined 1,000 marks for disregarding the prohibition on advertising by medical practitioners. A newspaper article about his operating technique using lasers had been published together with a photograph of him in his consulting rooms. It was stated that he had treated more than 400 patients, with a 100% success rate. The disciplinary tribunal considered that the article and photograph had the character of an advertisement and did not merely convey objective information.
Law: Article 10 – The interference was prescribed by law and had the legitimate aims of protecting health and the rights of others. As to its necessity, the general professional responsibilities of medical practitioners may explain restrictions on advertising but the rules of conduct in relation to the press are to be balanced against the legitimate interest of the public in receiving information and the role of the press is an important factor in this respect. The reasons given by the domestic courts were relevant but it was necessary to examine their sufficiency. The article informed the public about a matter of general medical interest and on the whole presented a balanced explanation of the operating technique. The domestic courts did not find the applicant's statements to be incorrect or genuinely misleading as to the necessity or advisability of the operation and the statement on the success rate clearly referred to the applicant's own experience in the past, which was an important element in the presentation of a new technique. Moreover, the use of a photograph of the applicant in his professional setting could not be regarded as prohibited and non-objective information or misleading advertising. The article may have had the effect of giving publicity to the applicant and his practice, but this effect was of a secondary nature. In the circumstances, the courts' strict interpretation of the prohibition on advertising was not consonant with freedom of expression. In the context of a liberal profession and having regard to the range of possible penalties, the imposition of a fine, even at the lower end of the scale, was not a negligible punishment. The interference therefore did not achieve a fair balance between the interests at stake, namely the protection of health and the interests of other medical practitioners and the applicant's right to freedom of expression and the vital role of the press.
Conclusion: violation (unanimously).
Article 41 – The applicant's claim in respect of costs, being framed in general terms and without supporting documentation, was rejected.

FREEDOM OF EXPRESSION
Conviction for insulting court: *admissible*.

SKAŁKA - Poland (Nº 43425/98)
Decision 3.10.2002 [Section III]

Facts: The applicant was convicted in 1993 of aggravated theft and sentenced to a term of imprisonment. While serving his sentence, he wrote to the Penitentiary Division of the Katowice Regional Court. The reply he received failed to satisfy him, and he wrote to the President of the Regional Court. In this letter, the applicant used very strong language to refer

to the members of the court and the judge who had replied to his first letter. The applicant was charged under Article 237 of the Criminal Code with insulting a State authority. He claimed in his defence that his letter had not referred to the Regional Court as a whole, but just to one judge, whose identity he did refer to in the letter, and that his remarks concerned the judge in his private capacity only. The District Court rejected these arguments, finding that the applicant had had the firm intention of insulting the Regional Court as a judicial authority. While the applicant had a constitutional right to criticise the authorities, the contents of the letter went beyond acceptable criticism and aimed to lower the public esteem of the court. The applicant was sentenced to 8 months' imprisonment. Sentence and conviction were upheld on appeal.
Admissible under Article 10: The Government unsuccessfully argued that there was failure to exhaust domestic remedies, since the applicant failed to refer to the right to freedom of expression before the domestic courts. However, this issue was in fact taken into consideration by the court at first instance and the Supreme Court.

FREEDOM OF EXPRESSION
Award of damages for libel: *communicated*.

STEEL and MORRIS - United Kingdom (Nº68416/01)
Decision 22.10.2002 [Section IV]
(see Article 6(1) [civil], above).

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of criminal investigation into allegations of police brutality, still pending after four years: *communicated.*

SULEJMANOV - Former Yugoslav Republic of Macedonia (Nº 69875/01)
[Section III]
(see Article 3, above).

ARTICLE 14

DISCRIMINATION (Article 8)
Homosexuals prevented from giving blood : *strike out of the list*.

TOSTO - Italy (N° 49821/99)
CRESCIMONE - Italy (N° 49824/99)
FARANDA - Italy (N° 51467/99)
Decisions 15.10.2002 [Section IV]
(see Article 8, above).

ARTICLE 30

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER
Imposition of disciplinary sanction on judge on account of previous membership of Freemasons: *relinquishment of jurisdiction*.

MAESTRI - Italy (Nº 39748/98)
[Section I]

Disciplinary proceedings were brought against the applicant, a judge, on the grounds of his past membership of the *Grande Oriente d'Italia di Palazzo Giustiniani* freemason's lodge. The Judicial Service Commission finally gave him a warning. The Court of Cassation dismissed his appeal.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Slovakia)
Introduction of possibility of complaining to the Constitutional Court about the excessive length of proceedings.

ANDRÁŠIK and others - Slovakia (Nº 59784/00, 60237/00, 60242/00, 60679/00, 60680/00, 69563/01 and 60226/00)
Decision 22.10.2002 [Section IV]

The applicants were convicted in 1982 in connection with the rape and murder of a student. Prison sentences of between four and twenty four years were imposed. The convictions were upheld by the Supreme Court of the Slovak Republic in 1983. In 1990, the Supreme Court of the Czech and Slovak Federal Republic quashed the convictions on the motion of the General Prosecutor and ordered a re-trial. The proceedings are still pending.
Inadmissible under Article 6(1) – The Court has previously found that a claim for compensation under the State Liability Act 1969 does not offer reasonable prospects of success and therefore need not be exhausted. However, since 1 January 2002 it has been possible for individuals to complain to the Constitutional Court under Article 127 of the Constitution that their fundamental rights have been violated. Where such a complaint is upheld, the Constitutional Court can order the relevant authority to take the necessary action and, if appropriate, to refrain from further violation. It may also grant adequate financial compensation for non-pecuniary damage. The Court was satisfied that this remedy was effective both in law and, with reference to certain recent decisions, in practice. Although the remedy was introduced subsequent to the lodging of the applications and the assessment of whether domestic remedies have been exhausted is normally determined with reference to the date on which the application was lodged, that rule is subject to exceptions which might be justified by the particular circumstances of each case. The situation in Slovakia, against which there were several hundred pending applications concerning the "reasonable time" requirement, was similar in substance to that in Italy and Croatia, in respect of which the Court had held that applicants should have recourse to remedies introduced after they had lodged their applications. The possibility of lodging a complaint under Article 127 of the

Constitution was open to the applicants in the present case, since the proceedings were still pending. Taking into account the subsidiary character of the Convention mechanism, the applicants were required to make use of that remedy: non-exhaustion of domestic remedies.

EFFECTIVE DOMESTIC REMEDY (Spain)
Effectiveness of claim to Ministry of Justice for compensation for defective functioning of courts, with regard to length of civil proceedings.

FERNANDEZ-MOLINA GONZALEZ and 370 other applications - Spain (N° 64359/01 and 370 other applications)
Decision 8.10.2002 [Section IV]
(see Article 1 of Protocol No. 1, below).

SIX MONTH PERIOD
Determination of starting point when an application covers several complaints.

FERNANDEZ-MOLINA GONZALEZ and 370 other applications - Spain (N° 64359/01 and 370 other applications)
Decision 8.10.2002 [Section IV]
(see Article 1 of Protocol No. 1, below).

Article 35(2)

SAME AS MATTER SUBMITTED TO OTHER PROCEDURE
Previous application to UN Human Rights Committee.

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SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Decision 3.10.2002 [Section III]
(see Article 5(1)(c) above).

ARTICLE 37

Article 37(1)(b)

MATTER RESOLVED
Acquittal after re-trial: *struck out*.

PISANO - Italy (Nº 36732/97)
Judgment 24.10.2002 [Grand Chamber]

Facts: The applicant was convicted of murdering his wife. The courts refused his requests to hear a witness who he claimed could provide an alibi.
In its judgment of 27 July 2000, the Second Section concluded, by five votes to two, that there had been no violation of Article 6(1) and (3)(d) of the Convention. The applicant's request for referral of the case to the Grand Chamber was accepted by the Panel. The applicant subsequently informed the Court that a request for revision had been granted and

that, following a new trial at which the witness had been heard, he had been acquitted. The Court of Cassation later confirmed the acquittal.
Law: The Court rejected the Government's request to reverse the Panel's decision to refer the case to the Grand Chamber, considering that under Article 43 it had no other possibility than to examine the case. The Court also rejected the Government's argument that the application should be declared inadmissible for non-exhaustion of domestic remedies, recalling that an extraordinary remedy such as a revision request is not a remedy which has to be exhausted for the purposes of Article 35(1). Moreover, the Court rejected the Government's argument that the applicant could no longer claim to be a victim, since there had been no acknowledgement of a violation by the national authorities. However, it considered that the matter had been resolved within the meaning of Article 37(1)(b), as the applicant's conviction had been quashed and the witness on his behalf had been heard. Furthermore, he can claim compensation for his conviction and in the circumstances such compensation equates to the reparation to which he would have been entitled if a violation of Article 6 had been found. It was therefore appropriate to strike the application out of the list.

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. 44):

S.N. - Sweden (Nº 34209/96)
Judgment 2.7.2002 [Section I (former composition)]

WILSON & THE NATIONAL UNION OF JOURNALISTS, PALMER, WYETH & THE NATIONAL UNION OF RAIL, MARITIME & TRANSPORT WORKERS, DOOLAN and others - United Kingdom (Nº 30668/96, Nº 30671/96 and Nº 30678/96)
MOTAIS DE NARBONNE - France (Nº 48161/99)
GÖKTAN - France (N° 33402/96)
PETRESCU and BUDESCU - Romania (Nº 33912/96)
Judgments 2.7.2002 [Section II]

DACEWICZ - Poland (Nº 34611/97)
HAŁKA and others - Poland (Nº 71891/01)
Judgments 2.7.2002 [Section IV]

DEL FEDERICO - Italy (Nº 35991/97)
CASADEI - Italy (Nº 37249/97)
FALCONE - Italy (Nº 37263/97)
BARATTELLI - Italy (Nº 38576/97)
SPINELLO - Italy (Nº 40231/98)
BOLDRIN - Italy (Nº 41863/98)
Andrea CORSI - Italy (Nº 42210/98)
PASCAZI - Italy (Nº 42287/98)
TUMBARELLO and TITONE - Italy (Nº 42291/98 and Nº 42382/98)
Biagio CARBONE - Italy (Nº 42600/98)
Di VUONO - Italy (Nº 42619/98)

ROCCI - Italy (Nº 43915/98)
MUCCIACCIARO - Italy (Nº 44173/98)
Judgments 4.7.2002 [Section I]

NOUHAUD and others - France (Nº 33424/96)
SEHER KARATAŞ - Turkey (Nº 33179/96)
CRETU - Romania (Nº 32925/96)
FALCOIANU - Romania (Nº 32943/96)
BĂLĂNESCU - Romania (Nº 35831/97)
BASACOPOL - Romania (Nº 34992/97)
DELLI PAOLI - Italy (Nº 44337/98)
GAUDENZE - Italy (Nº 44340/98)
CANNONE - Italy (Nº 44341/98)
CARAPELLA and others - Italy (Nº 44347/98)
NAZZARO and others - Italy (Nº 44348/98)
FRAGNITO - Italy (Nº 44349/98)
CECERE - Italy (Nº 44350/98)
PACE and others - Italy (Nº 44351/98)
Judgments 9.7.2002 [Section II]

ALITHIA PUBLISHING COMPANY - Cyprus (Nº 53594/99)
Judgment 11.7.2002 [Section III]

CAPITANIO - Italy (Nº 28724/95)
OSU - Italy (Nº 36534/97)
AMROLLAHI - Denmark (Nº 56811/00)
Judgments 11.7.2002 [Section I]

KALASHNIKOV - Russia (Nº 47095/99)
STRATEGIES ET COMMUNICATIONS and DUMOULIN - Belgium (Nº 37370/97)
Judgments 15.7.2002 [Section III (former composition)]

ÜLKÜ EKINCI - Turkey (Nº 27602/95)
CIOBANU - Romania (Nº 29053/95)
OPREA and others - Romania (Nº 33358/96)
P., C. and S. - United Kingdom (Nº 56547/00)
Judgments 16.7.2002 [Section II]

ARMSTRONG - United Kingdom (Nº 48521/99)
DAVIES - United Kingdom (Nº 42007/98)
Judgments 16.7.2002 [Section IV]

DENLI - Turkey (Nº 68117/01)
Judgment 23.7.2002 [Section III]

TASKIN - Germany (N° 56132/00)
Judgment 23.7.2002 [Section IV]

PAPON - France (N° 54210/00)
Judgment 25.7.2002 [Section I]

ROSA MARQUES and others - Portugal (Nº 48187/99)
Judgment 25.7.2002 [Section III]

PEROTE PELLON - Spain (N° 45238/99)
Judgment 25.7.2002 [Section IV (former composition)]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS

Dispute as to the date from which applicants, awarded compensation, are entitled to interest: *inadmissible*.

FERNANDEZ-MOLINA GONZALEZ and 370 other applications - Spain (N° 64359/01 and 370 other applications)
Decision 8.10.2002 [Section IV]

In May 1981, the applicants and over 20,000 other persons were victims of very serious food poisoning which gave rise to a condition known as "toxic syndrome" following the consumption of adulterated rapeseed oil. In June 1981, a criminal investigation was commenced for a presumed offence against public health. The various actions brought for the same reasons were joined in the *Audiencia Nacional*, which divided the cases into two separate sets of criminal proceedings. One set of proceedings was directed against the private individuals and firms involved in the distribution of the oil. In May 1989, the *Audiencia Nacional* delivered a judgment sentencing these individuals and firms to terms of imprisonment and to pay compensation to the victims, as parties bearing principal or subsidiary civil liability. The court specified that the compensation would be paid to the beneficiaries and increased by annual interest equivalent to the statutory interest plus two percentage points, as from the adoption of the judgment until it was fully paid. In April 1992, the Court of Appeal upheld the main substance of the judgment. However, the parties responsible proved to be insolvent, with the result that the judgment was not enforced in this respect and the victims therefore did not receive any money. Proceedings were brought against the civil servants and public authorities involved in the food poisoning scandal, ending with a decision by the Supreme Court in September 1997 sentencing two civil servants to terms of imprisonment and to pay twice the amount of the compensation awarded in the judgment of May 1989, the other civil servants being acquitted. The state was sentenced, as a party bearing subsidiary civil liability, to pay the sums awarded in the judgment of May 1989. The sums in question were to be paid by the state after being assessed individually. In the course of the enforcement procedure, the *Audiencia Nacional* declared the convicted civil servants insolvent and ordered the continuation of the procedure in respect of the state. In February 1989, the court decided to begin enforcement. As the standard request for payment of compensation drawn up by the *Audiencia Nacional* did not allow for the possibility of claiming default interest, the association "Anasto-Leganes" – which is chaired by the first applicant – set up to secure full compensation for all the losses sustained by the victims of toxic syndrome, applied for payment of default interest calculated from the May 1989 judgment up to the date of effective payment of compensation. The application, which was joined with the first application for enforcement of the judgment, namely that of the first applicant, was dismissed insofar as it concerned default interest calculated from the time of the 1989 judgment. The compensation payable to him was assessed by the court at 17,360,000 pesetas. The appeal against this decision was dismissed. In July 1999, the court issued a payment order against the administration for the sum of 17,360,000 pesetas. The first applicant and the other applicants then lodged *amparo* appeals with the Constitutional Court based on Article 24 of the Constitution, the principle of non-discrimination and the right to a fair trial, but their appeals were dismissed by decisions delivered between 2000 and 2001. In August 2000, only a quarter of those affected by toxic syndrome had received compensation.

Inadmissible under Article 1 of Protocol No. 1 and Article 14: The government pleaded non-compliance with the time limit of six months, arguing that this period ran from the decision of the *Audiencia Nacional* in 1989, and not from that of the Constitutional Court, because the right to enjoyment of possessions was not protected by the *amparo* remedy. In the instant case, however, the complaints based on the right to fair treatment and the prohibition of discrimination, which were central to the applications submitted to the Court, must form the subject of an *amparo* appeal before they could be submitted to the Court. In addition, the complaint based on Article 14 could only be raised in conjunction with other rights guaranteed under the Convention. To claim that the applicants should have applied to the Court on two different dates in order to take account of this feature of domestic law, when they were not actually relying on Article 1 of Protocol No. 1 in isolation, would involve a much too formalistic interpretation of the six-month time limit. It was more in keeping with the spirit and purpose of the Convention to take an overall view of the complaints raised by the applicants in order to determine the *dies a quo*. The objection was therefore dismissed.
The dispute concerned the date from which the default interest to which the applicants were entitled should be calculated. The applicants' right to receive compensation from the state, as a party bearing subsidiary civil liability for the damage sustained as a result of the food poisoning, had been finally established by the 1997 Supreme Court Decision. Once recognised, this right to compensation could be regarded as a possession within the meaning of Article 1 of Protocol No. 1. This right was to give rise to payment during the enforcement procedure conducted by the *Audiencia Nacional*. According to national legislation, the compensation specified in the decisions on the merits was to be assessed on an individual basis in the subsequent enforcement procedure, in the course of which each victim was to claim what was due to him or her individually, indicating in particular his or her state of health, to enable the court to determine in which category he or she should be placed, the compensation being dependent on the damage sustained. This application of domestic legislation by the domestic courts was considered reasonable and showed no discrimination. In short, accepting payment of interest from the time of the judgment delivered by the *Audiencia Nacional* in May 1989 in the first set of proceedings, in which the state had not been a party and had therefore not been convicted, would mean criticising the administration for delay in fulfilling a non-existent obligation: manifestly ill-founded.
Inadmissible under Article 6(1) (reasonable time): The government stressed that the complaint based on length of proceedings had never been raised, either explicitly or in substance, in any of the applicants' various domestic remedies. The fact that, in the context of the *amparo* appeal to the Constitutional Court, the applicants had relied generally on Article 24 of the Constitution without substantiating the complaint based on excessive length of proceedings, was not sufficient grounds for considering that the complaint had at least been raised in substance. Furthermore, Article 292 et seq of the Judicature Act offered the possibility, once the proceedings had been concluded, to apply to the Ministry of Justice for compensation for abnormal functioning of the justice system. Unreasonable length of proceedings was regarded as a case of abnormal functioning of the justice system. In addition, the minister's decision could be appealed against before the administrative courts. Accordingly, this legal channel was sufficiently accessible and effective for citizens seeking justice and therefore constituted a remedy to which recourse should be had. The objection was therefore allowed.

DEPRIVATION OF PROPERTY
Virtual extinction of claim against debtor as a result of debt adjustment: *admissible*.

BÄCK - Finland (Nº 37598/97)
Decision 22.10.2002 [Section IV]

Facts: In 1988 and 1989 the applicant and another person became guarantors of a bank loan taken out by N., who subsequently failed to meet his commitments to the bank. The applicant was then required to pay the bank about EUR 19,000. In 1995, N. applied for debt adjustment in accordance with the 1993 Act on the Adjustment of the Debts of a Private Individual. The applicant opposed N.'s request, arguing that it would deprive him of his property, i.e. his claim against N. In the alternative, he sought postponement of the adjustment. In April 1996, N. was employed and the District Court granted debt adjustment on the basis of a five-year payment schedule. The applicant's claim against N. was reduced to about EUR 360. The District Court considered that the applicant's claim could not be considered a property right, since a guarantee always involves a precarious element. Postponement of the entry into force of the payment schedule was not possible. The applicant appealed, invoking the Convention and arguing that he agreed to be N.'s guarantor before the relevant legislation was enacted. He also claimed that he was the victim of discrimination, since creditor banks could, in similar circumstances, receive compensation from the State.
Admissible under Article 1 of Protocol No. 1.
Inadmissible under Article 14. The applicant claimed that banks received State subsidies when their debtors were granted debt adjustment. However, since such subsidies were paid as part of an overall political strategy to combat the recession, the applicant and the banks were not in a comparable situation for the purposes of Article 14 of the Convention: manifestly ill-founded.

CONTROL OF THE USE OF PROPERTY
Absence of compensation for designation of land as non-building land: *inadmissible.*

STECK-RISCH - Liechtenstein (Nº 63151/00)
Decision 10.10.2002 [Section III]
(see under Article 6(1) above).

ARTICLE 4 OF PROTOCOL NO. 7

NE BIS IN IDEM
Resumption of criminal proceedings several years after discontinuation: *inadmissible*.

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Decision 3.10.2002 [Section III]
(see Article 5(1)(c) above).

Other judgments delivered in October 2002

Articles 2 and 3

N.Ö. - Turkey (Nº 33234/96)
Judgment 17.10.2002 [Section I]

death of applicant's husband in custody in 1993 as a result of ill-treatment – friendly settlement (*ex gratia* payment of 100,000 € and statement of regret by the Government).

Article 3

SÜLEYMAN KAPLAN - Turkey (Nº 38578/97)
Judgment 10.10.2002 [Section III]

alleged ill-treatment in custody in 1995 – friendly settlement (*ex gratia* payment of 28,000 € and statement of regret by the Government).

Articles 3 and 6(1)

ALGÜR - Turkey (Nº 32574/96)
Judgment 22.10.2002 [Section IV]

ill-treatment in police custody and independence and impartiality of State Security Court – violation.

Article 5(3) and (4)

SATIK, ÇAMLI and MARAŞLI - Turkey (Nº 24737/94, Nº 24739/94, Nº 24740/94 and Nº 24741/94)
Judgment 22.10.2002 [Section IV]

failure to bring detainees promptly before a judge and absence of review of lawfulness of detention – violation.

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

GÜNDOĞAN - Turkey (Nº 31877/96)
Judgment 10.10.2002 [Section III]

failure to bring detainee promptly before a judge, absence of possibility to challenge lawfulness of detention and absence of right to compensation in respect of unlawful detention – violation.

Articles 5(3) and 6(1) and (3)(c)

PINSON - France (Nº 39668/98)
Judgment 17.10.2002 [Section I]

length of detention on remand, length of criminal proceedings and access to lawyer during police custody – striking out (absence of intention to pursue application).

Article 6(1)

THERAUBE - France (Nº 44565/98)
Judgment 10.10.2002 [Section II]

length of administrative proceedings and participation of the *commissaire du gouvernment* in the deliberations of the *Conseil d'Etat* – violation (cf. *Kress v. France* judgment of 7 June 2001).

SAWICKA - Poland (Nº 37645/97)
Judgment 1.10.2002 [Section IV]

FOLEY - United Kingdom (Nº 39197/98)
Judgment 22.10.2002 [Section II]

W.Z. - Poland (Nº 65660/01)
Judgment 24.10.2002 [Section III]

KONCEPT-CONSELHO EM COMUNICACÃO E SENSIBILIZAÇÃO DE PÚBLICOS, Lda. - Portugal (Nº 49279/99)
Judgment 31.10.2002 [Section III]

length of civil proceedings – violation.

GÖÇER - Netherlands (Nº 51392/99)
Judgment 3.10.2002 [Section III]

length of proceedings relating to disability benefits – violation.

SOMJEE - United Kingdom (Nº 42116/98)
Judgment 15.10.2002 [Section IV]

THIEME - Germany (Nº 38365/97)
Judgment 17.10.2002 [Section III]

length of proceedings relating to employment – violation.

G.L. - Italy (Nº 54283/00)
Judgment 3.10.2002 [Section III]

length of proceedings in the Audit Court – no violation.

BÓDINÉ BENCZE - Hungary (Nº 42373/97)
KÓSA - Hungary (Nº 43352/98)
Judgments 1.10.2002 [Section II]

LONGOTRAN TRANSPORTES INTERNACIONAIS Lda - Portugal
(Nº 50843/99, Nº 51193/99 and 51194/99)
MORAIS SARMENTO - Portugal (Nº 53793/00)
AGOSTINHO - Portugal (Nº 54073/00)
SARAIVA E LEI - Portugal (Nº 54449/00)
JANEVA - Former Yugoslav Republic of Macedonia (Nº 58185/00)
Judgments 3.10.2002 [Section III]

ÖCAL - Turkey (Nº 30944/96)
Judgment 10.10.2002 [Section III]

length of civil proceedings – friendly settlement.

FENTATI - France (Nº 45172/99)
Judgment 22.10.2002 [Section II]

length of proceedings relating to employment – friendly settlement.

GUCCI - Italy (Nº 52975/99)
Judgment 1.10.2002 [Section IV]

SCACCIANEMICI - Italy (Nº 51090/99)
GATTONE and others - Italy (Nº 51103/99)
SIMONE and PONTILLO - Italy (Nº 52831/99)
Judgments 3.10.2002 [Section I]

length of civil proceedings – revision of the judgment.

VIEZIEZ - France (Nº 52116/99)
OTTOMANI - France (Nº 49857/99)
Judgments 15.10.2002 [Section II]

GIL LEAL PEREIRA - Portugal (Nº 48956/99)
Judgment 31.10.2002 [Section III]

length of criminal proceedings – violation.

Articles 6(1) and 10

KARAKOÇ and others - Turkey (Nº 27692/95, Nº 28498/95 and Nº 28138/95)
Judgment 15.10.2002 [Section IV]

convictions for making separatist propaganda, and independence and impartiality of State Security Court, including participation of judges having previously ordered detention on remand – violation.

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

BARAGAN - Romania (Nº 33627/96)
Judgment 1.10.2002 [Section II]

CURUTIU - Romania (Nº 29769/96)
MATEESCU - Romania (Nº 30698/96)
Judgments 22.10.2002 [Section II]

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

GIANOTTI - Italy (Nº 39690/98)
CALVAGNO - Italy (Nº 41624/98)
ROSALBA PUGLIESE - Italy (Nº 43986/98)
Judgments 3.10.2002 [Section I]

F. and F. - Italy (Nº 31928/96)
BIFFONI - Italy (Nº 46079/99)
SARTORELLI - Italy (Nº 47895/99)
Judgments 24.10.2002 [Section I]

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

Artice 6(2)

VOSTIC - Austria (Nº 38549/97)
Judgment 17.10.2002 [Section I]

refusal, on ground of continuing suspicion, of compensation for detention on remand – violation (cf. *Sekanina* judgment of 25 August 1993, and *Rushiti* judgment of 21 March 2000).

Article 6(3)(c)

KUCERA - Austria (Nº 40072/98)
Judgment 3.10.2002 [Section III]

failure to ensure presence of appellant at hearing of appeal against sentence – no violation (cf. *Cooke* judgment of 8 February 2000).

Article 8

PERKINS and R. - United Kingdom (Nº 43208/98 and Nº 44875/98)
BECK, COPP and BAZELEY - United Kingdom
(Nº 48535/99, Nº 48536/99 and Nº 48537/99)
Judgments 22.10.2002 [Section IV]

dismissal of homosexuals from the armed forces following investigation into private life – violation (cf. *Smith and Grady* judgment of 27 September 1999, ECHR 1999-VI).

YILDIZ - Austria (Nº 37295/97)
Judgment 31.10.2002 [Section III]

expulsion of foreigner following convictions, resulting in separation from wife and child – violation.

MESSINA - Italy (no. 3) (Nº 33993/96)
Judgment 24.10.2002 [Section I]

control of prisoner's correspondence with the European Commission of Human Rights – violation.

Articles 8 and 13

TAYLOR-SABORI - United Kingdom (Nº 47114/99)
Judgment 22.10.2002 [Section II]

absence of legal basis for interception by the police of pager messages sent via a private communications system and lack of effective remedy – violation.

Article 9

AGGA - Greece (no. 2) (Nº 50776/99 and Nº 52912/99)
Judgment 17.10.2002 [Section I]

conviction of Muslim religious leader for usurping functions of a minister of a "known religion" – violation (cf. *Serif v. Greece* judgment of 14 December 1999).

Article 10

AYŞE ÖZTÜRK - Turkey (Nº 24914/94)
Judgment 15.10.2002 [Section II]

seizure of review and conviction of publisher for incitement to hatred and hostility and making separatist propaganda – violation.

Article 14

RICE - United Kingdom (Nº 65905/01)
Judgment 1.10.2002 [Section IV]

unavailability of widows' allowances to widower – friendly settlement (cf. *Willis* judgment of 11 June 2002).

Article 1 of Protocol No. 1

AGATONE - Italy (Nº 36255/97)
Judgment 1.10.2002 [Section IV]

refusal of authorities to issue completion certificate for property – struck out.

TERAZZI s.a.s. - Italy (Nº 27265/95)
Judgment 17.10.2002 [Section IV]

prolonged building prohibition due to inactivity of local authority – violation.

ÇELEBI - Turkey (Nº 20139/92)
İNCE - Turkey (Nº 20143/92)
Judgments 10.10.2002 [Section III]

delays in payment of compensation for expropriation – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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