CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 79
on the case-law of the Court
October 2005

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

CONTENTS

ARTICLE 2

LIFE
Negligent and inadequate medical assistance whilst in custody allegedly resulting in death: *admissible*.

TARARIYEVA - Russia (N° 4353/03)
Decision 11.10.2005 [Section IV]

The applicant's son, who suffered from an acute ulcer condition, was sentenced to six years imprisonment in a correctional colony for having caused grievous bodily injury. In the initial stages of his imprisonment he received outpatient treatment for his condition, and then in the correctional colony, although allegedly without appropriate medical supervision. On 20 August 2002, the applicant's son complained to the medical department of the colony about acute pain. In view of the seriousness of his condition, he was transferred to a hospital, and surgery was performed the same day. The applicant maintained she had visited her son at the hospital and seen him shackled with handcuffs to the bed. Moreover, despite having been diagnosed with a sutures breakdown in the duodenum and thus unfit for transportation, two days after the operation the applicant's son was discharged and transported - allegedly in a standard issue prison van and not by a "special car" as claimed by the Government - to Institution no. 5 which was 120 km away. Further surgery was performed on him shortly after arrival at this Institution. The applicant's son died on 4 September 2002 from acute anaemia (blood loss) provoked by massive gastrointestinal haemorrhage. An investigation into the death was carried out but the applicant maintained it had been neither complete nor adequate. Medical experts established that defects in medical assistance administered to the applicant's son had cumulatively resulted in his death, and charges were brought against the doctors involved for negligent manslaughter and incompetent performance of professional duties. The case against the head of the surgery unit of the hospital went to trial, but he was acquitted for lack of evidence. Proceedings against the doctors of Institution no. 5 were abandoned for lack of evidence of a criminal offence.
Admissible under Articles 2, 3 and 13.

ARTICLE 3

INHUMAN TREATMENT
Conditions of detention in police station: *violation.*

FEDOTOV – Russia (N° 5140/02)
Judgment 25.10.2005 [Section IV]
(see Article 5, below)

INHUMAN OR DEGRADING TREATMENT
Alleged ill-treatment and inadequate living conditions in the transit centre of an international airport: *no violation.*

MOGOŞ - Romania (N° 20420/02)
Judgment 13.10.2005 [Section III]

Facts: The applicants, a couple and three of their children, are stateless persons of Romanian origin. In 1990 they left Romania for Germany and in 1993 they gave up their Romanian nationality. In March 2002 the German authorities deported them to Romania. Since then they have been in the transit centre at Bucharest Airport and have refused to enter Romanian territory.

On 1 April 2002 police officers accompanied by a number of doctors went to the transit centre to organise the urgent transfer of another stateless person to hospital. The parties differed as to the facts of the ensuing incident. The applicants claimed that the police officers had threatened and assaulted them, whereas the Government alleged that the police officers had been attacked by the applicants. Proceedings were subsequently instituted against the first two applicants but were discontinued. The first applicant lodged a criminal complaint against the border police officers, alleging unlawful arrest, wrongful investigation and ill-treatment. The complaint led to an investigation, but those proceedings were also discontinued.
The applicants also maintained that the living conditions at the transit centre were "catastrophic". They additionally claimed that they were suffering from various illnesses and were not being given appropriate medical treatment, an allegation which the Government denied. They further submitted that their correspondence with the Court had been interfered with, in that their mail had been opened and there had been delays in delivering it.

Law: Government's preliminary objection (non-exhaustion): The Court had found in a recent case against Romania that an appeal against a discharge order given by a public prosecutor did not constitute an appropriate and effective remedy for the purposes of Article 35 of the Convention. It could see no reason to depart from that approach in the present case. The objection thus had to be dismissed.
Article 3 – Incident of 1 April 2002: The intervention of the police officers at the transit centre was justified by the urgent need to transfer a stateless person to hospital and was therefore legitimate. As to the assaults they had allegedly sustained, the applicants had not supplied any medical certificates to corroborate their allegations and had taken no steps to have any traces of violence recorded. The only evidence they had filed during the investigation was a video recording made after the incident, showing red patches on the first applicant's back, and the quality of that recording was too poor to remove the uncertainty as to the seriousness of his injuries. Moreover, the criminal investigation into the conduct of the six police officers involved, having established that they had not deliberately used violence against the applicants but had merely attempted to restrain them, led to a finding that there was no case to answer. However, it was clear from all the circumstances and evidence that the applicants had been aggressive and had shown some resistance to the police officers. Setting aside their allegations, it could not be established that they had suffered during the incident acts of violence contrary to Article 3 or that the force used against them by the police officers had been excessive or disproportionate.
Conclusion: no violation (unanimously).

Living conditions at the transit centre: The Court noted that the applicants had firmly refused to set foot in Romanian territory or to enter into a legal relationship with the Romanian State, whereas the Romanian authorities had not prevented them from doing so. Moreover, the applicants had not provided the Court with any objective evidence regarding their living conditions. However, there was no reason to disagree with the information which had been supplied by various Romanian bodies or the findings of the CPT, which contradicted the applicants' allegations. As regards medical care, the applicants had had a number of check-ups and had categorically rejected any hospital treatment. Accordingly, it was not established that the living conditions at the transit centre had been severe enough to entail a violation of Article 3.
Conclusion: no violation (unanimously).

Article 34 – As to the alleged interference with the applicants' correspondence with the Court, they had not disputed the authenticity of their signatures acknowledging receipt of the registered letters sent from Strasbourg. In addition, no delays in dispatching the mail had been recorded and the dates stamped on it by the Romanian post office indicated that it had always been delivered to the applicants on the actual date of arrival. Regarding the applicants' alleged "vulnerability", it was noteworthy that they had been free to leave the transit centre at any time and that their situation was not imputable to the Romanian State. Accordingly, it was not established that the Romanian authorities had interfered with the applicants' correspondence and Romania had not fallen short of its obligations under Article 34 of the Convention.
Conclusion: no violation (unanimously).

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Detention after expiry of an arrest warrant: *violation*.

FEDOTOV - Russia (N° 5140/02)
Judgment 25.10.2005 [Section IV]

Facts: The applicant, who was the president of a non-governmental organisation, was suspected of using his position there for personal gain. In October 1999, the prosecutor charged the applicant and issued an arrest warrant against him. In February 2000, a supervising prosecutor quashed the decision to charge the applicant and cancelled the warrant. His name was nevertheless put on the federal list of wanted persons by the Criminal Police. The applicant was detained at police stations on 14-15 June 2000, and again on 6-7 July, on the basis of the arrest warrant which had subsequently been cancelled. The applicant complained to the City Prosecutor that he had been unlawfully detained and ill-treated whilst in detention. As a result, disciplinary proceedings were brought against the investigator who had failed to notify the relevant Police Department that the arrest warrant had been cancelled. The applicant also sued the authorities and claimed damages for the unlawful criminal proceedings and arrest. In September 2001, the District Court delivered judgment, finding that the criminal proceedings against him had been unlawful because they had been ultimately discontinued for lack of evidence. Having regard to the fact that the applicant had given an undertaking not to leave the town and had not actually been taken into custody, the court awarded him an amount for damages and costs. The applicant appealed, complaining that the District Court had deliberately given an incomplete account of the circumstances of the case and that his claims for compensation for unlawful detention in June and July 2000 had not been considered in the judgment. The City Court upheld the judgment. In January 2002, the applicant initiated proceedings for the enforcement of the judgment of September 2001. After receiving the writ of execution, the applicant complained on several occasions that the amount in the writ was less than the award in the judgment. In 2004, the courts acknowledged that previously issued writs had not conformed to the law on enforcement proceedings. However, to date the judgment has not yet been enforced.

Law: Article 3 – The only account of the conditions of the applicant's detention at the police stations was those furnished by him. A failure on a Government's part to submit information on this without a satisfactory explanation could give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations. (i) *The applicant's detention on 14-15 June 2000*: the applicant had provided very few details about the material conditions of his detention at this police station, where he had remained in custody for twelve hours. He did not allege that his physical or mental integrity was imperilled during that period. Accordingly, treatment to which the applicant was subjected to did not attain the minimum level of severity. (ii) *The applicant's detention on 6-7 July 2000*: the applicant had remained in this police station for a period of twenty-two hours. His description of this police station coincided with the findings of the CPT. The applicant was kept overnight in a cell unfit for an overnight stay, without food or drink or unrestricted access to a toilet. These unsatisfactory conditions exacerbated the mental anguish caused by the unlawful nature of his detention, and hence the applicant had been subjected to treatment contrary to Article 3. Moreover, the authorities had failed to investigate the applicant's complaints concerning the conditions of his detention. Accordingly, there had been a violation of the substantive and procedural aspects of Article 3 in relation to the applicant's detention on 6 and 7 July 2000.
Conclusion: violation (unanimously).

Article 5(1) – The parties agreed that the sole ground for the applicant's arrests was the fact that his name was on the federal list of wanted persons It was not disputed that after February 2000, when the warrant for the applicant's arrest had been cancelled, there was no further decision – either by a court or a prosecutor – authorising his arrest or detention. Moreover, it had not been claimed either that the applicant's detention had been effected for one of the purposes listed in Article 5(1). It followed that his

arrests in June and July 2000 were not "lawful", under either domestic law or the Convention. The Court noted with concern that the only reason for the applicant's arrest had been the lack of cooperation between the competent State authorities, and observed that no records of the arrests appear to have been drawn up.
Conclusion: violation (unanimously).

Article 5(5) – The right to compensation set forth in Article 5(5) presupposes that a violation of one of the preceding paragraphs of Article 5 has been established. In the present case, the Court has found a violation of Article 5(1) in that there was no "lawful" basis for the applicant's arrest. The applicant had validly introduced a claim for the damage he had incurred as a result of his unlawful detention. However, the domestic courts had disregarded it. Moreover, the District Court had made arbitrary findings of fact, stating in its judgment that the applicant "had not actually been taken into custody", despite abundant evidence to the contrary.
Conclusion: violation (unanimously).

Article 6(1) and Article 1 of Protocol No. 1 – By failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities had prevented him from receiving the money to which he was entitled. There had accordingly been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 7,400 in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

Article 5(5)

COMPENSATION
Claim for damages for unlawful detention disregarded by domestic courts: *violation.*

FEDOTOV - Russia (N° 5140/02)
Judgment 25.10.2005 [Section IV]
(see above)

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Secretary of State's certificate blocking judicial review proceedings relating to health deterioration allegedly due to gas tests: *no violation.*

ROCHE - United Kingdom (N° 32555/96)
Judgment 19.10.2005 [Grand Chamber]

Facts: The applicant was discharged from the British Army in the late 1960s. In the 1980s he developed high blood pressure and now suffers from hypertension, bronchitis and bronchial asthma. He is registered as an invalid and maintains that his health problems are the result of his participation in mustard and nerve gas tests conducted under the auspices of the British Armed Forces at Porton Down Barracks in the 1960s. From 1987 the applicant actively sought access to his service records using medical and political channels, with limited success. In 1992 the Secretary of State rejected his claim for a service pension claim as he had not demonstrated a causal link between the tests and his medical condition. When the applicant threatened to bring judicial review proceedings alleging, among other things, negligence on the

part of the Ministry of Defence, the Secretary of State issued a certificate under section 10 of the Crown Proceedings Act 1947, effectively blocking any such proceedings concerning events prior to 1987, while allowing the person concerned to apply for a service pension.
In 1998 the applicant appealed to the Pensions Appeal Tribunal ("PAT") and applied for the disclosure of official information under the PAT Rules to enable the PAT to decide whether his illness was caused or aggravated by the gas tests. The PAT ordered the Ministry of Defence to disclose certain categories of records and certain documents were disclosed in 2001 and 2002. The PAT eventually concluded, relying on an expert report, that there was no evidence to link the applicant's exposure to either gas with his present condition. The mustard gas tests had been designed to test the suitability of military clothing to exposure and were not a gas test *per se*. Furthermore, after a man had died at Porton Down in 1953, safeguards had been put in place to ensure that volunteers were only exposed to safe doses. The PAT nevertheless considered the "difficulties" experienced by the applicant in obtaining the records which were produced to the PAT to be "disquieting". In 2004 the High Court allowed the applicant's appeal and referred the matter back to the PAT for a further hearing. The case is still pending. In 2005 the Government disclosed a further eleven documents, eight of which had not been seen before by the applicant.

Law – Article 6(1)*:* The Court accepted the reasoning of the Court of Appeal and the House of Lords as to the effect of section 10 of the 1947 Act in domestic law. The House of Lords had found that section 10 did not intend to confer on servicemen any substantive right to claim damages against the Crown. It simply maintained the existing and undisputed absence of liability in tort of the Crown to servicemen in the circumstances covered by that section. Section 10 did not therefore remove a class of claim from the domestic courts' jurisdiction or confer any immunity from liability which had been previously recognised; such a class of claim had never existed and was not created by the 1947 Act. Section 10 was found therefore to be a provision of substantive law which delimited the rights of servicemen to seek damages from the Crown and which provided instead, as a matter of substantive law, a no-fault pension scheme for injuries sustained in the course of service. Accordingly, the applicant had no (civil) "right" recognised under domestic law which would attract the application of Article 6(1).
Conclusion: No violation of Article 6 of the Convention (nine votes to eight).

Article 1 of Protocol No. 1: While the applicant had argued that he had a "possession" on the same grounds as he maintained that he had a "civil right" within the meaning of Article 6(1), the Court considered that there was no basis in domestic law for any such claim.
Conclusion: No violation of Article 1 of Protocol No. 1 (16 votes to one).

Article 14: Given its findings that the applicant had no "civil right" or "possession" within the meaning of Article 6(1) and Article 1 of Protocol No. 1 and that neither article was applicable, Article 14 read in conjunction with Article 6(1) or Article 1 of Protocol No. 1 was therefore also inapplicable.
Conclusion: No violation of Article 14 of the Convention (unanimously).

Article 13: Article 13 did not go so far as to guarantee a remedy allowing the primary legislation of a Contracting State to be challenged before a national authority on the grounds that it was contrary to the Convention.
Conclusion: No violation of Article 13 (16 votes to one).

Article 8: The applicant's uncertainty, as to whether or not he had been put at risk through his participation in the tests carried out in Porton Down, could reasonably be accepted to have caused him substantial anxiety and stress. While the PAT found that there was no reliable evidence to suggest a causal link between the tests and the applicant's claimed medical conditions, that was not until 2004 and the High Court had since allowed his appeal and sent the matter back to the PAT, before which the matter remained pending. A significant number of "relevant records" of the 1963 tests had still existed in 1966. However, the Government had not asserted that there was any pressing reason for withholding those records. Following certain revisions of their position and de-classification of documents, they had also submitted that, "nothing of significance" had been withheld on national security grounds. In such circumstances, the Court considered that a positive obligation arose to provide an effective and accessible

procedure enabling the applicant to have access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests. An individual, such as the applicant, who had consistently pursued such disclosure independently of any litigation, should not be required to litigate to obtain disclosure. In addition, information services and health studies had only been started almost 10 years after the applicant had begun his search for records and after he had lodged his application with the Court.
As to the 1998 Scheme, the Court recalled the difficulties experienced by the authorities, even in a judicial context before the PAT, in providing records under the Rule 6 order of the President of the PAT. Even taking into account only the period following the making of the Rule 6 order in 2001, the disclosure had been piecemeal and, over four years later, disclosure remained unfinished. Indeed, the PAT had described as "disquieting" the difficulties experienced by the applicant in obtaining records. It was undoubtedly the case that certain records were, given their age and nature, somewhat dispersed so that the location of all relevant records was, and could still be, difficult. However, it was equally the case that the absence of any obligation to disclose and inform facilitated this dispersal of records and undermined an individual's right to obtain the relevant and appropriate disclosure.
In the overall circumstances, the respondent State had not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests.
Conclusion: Violation of Article 8 (unanimously).

Article 10: The freedom to receive information prohibited a Government from restricting a person from receiving information that others wished or might be willing to impart. That freedom could not be construed as imposing on a State, in circumstances such as those of the applicant's case, positive obligations to disseminate information. There had therefore been no interference with the applicant's right to receive information as protected by Article 10.
Conclusion: No violation of Article 10 (unanimously).

Article 41: The Court awarded the applicant EUR 8,000 for non-pecuniary damage and a certain amount for costs and expenses.

APPLICABILITY
Right to a pension of a former member of Parliament: *article 6 not applicable.*

PAPON - France (N° 344/04)
Decision 11.10.2005 [Section II]

The applicant was convicted of aiding and abetting a crime against humanity. One of the consequences was the suspension of his pension entitlement as a former Member of Parliament. That decision by the National Assembly was appealed against in the administrative courts, which were found by the *Conseil d'État* not to have jurisdiction in such matters.

Inadmissible under Article 6 § 1 – Members of Parliament are not civil servants and their pension fund is not part of the ordinary system but is governed by the National Assembly, being funded by a contribution deducted from each MP's parliamentary allowance and by a subsidy paid out of the Assembly's budget. In sum, the applicant's entitlement to receive his MP's pension was directly related to his former status as MP and was thus an entitlement which, being political in nature, did not fall within the scope of Article 6 § 1. This was particularly the case since, as with MPs' allowances, their pension scheme was introduced to guarantee independence in the performance of their duties: incompatible *ratione materiae.*

Inadmissible under Article 1 of Protocol No. 1 – The proceedings in question did not concern the decision to suspend the pension but a request for the restoration of that pension and thus did not concern a "possession" to which the applicant could have claimed title: incompatible *ratione materiae*.

ACCESS TO COURT
Higher Commercial Court's refusal to admit cassation appeals which had not been filed in accordance with the Code of Commercial Procedure: *inadmissible.*

MPP GOLUB - Ukraine (N° 6778/05)
Decision 18.10.2005 [Section II]

The applicant company was involved in commercial-law litigation resulting in judgments by a regional commercial court and a regional commercial court of appeal. The company eventually challenged a judgment of the latter court by filing a cassation appeal directly with the Higher Commercial Court. This appeal was rejected as it should have been lodged through the first instance or appellate court which had considered the case and where the case file was. The court relied on Article 109 of the Code of Commercial Procedure. The Higher Commercial Court rejected the company's further cassation appeal as it had been lodged outside the one-month time-limit allowed for the introduction of such appeals (Article 110 of the Code of Commercial Procedure) and as the incorrect introduction of a cassation appeal could not suspend that time-limit. The Supreme Court rejected the company's further cassation appeal.
The Court noted that the exercise of a cassation appeal to the Higher Commercial Court as well as of any subsequent cassation appeal to the Supreme Court does not depend on the discretionary power of a State authority. Such appeals must nevertheless be lodged within one month and be transmitted through the lower court in question. As the applicant company had failed to lodge its cassation appeals in accordance with domestic law their rejection had not been arbitrary and undoubtedly had served the purpose of ensuring the proper administration of justice. *Manifestly ill-founded.*

REASONABLE TIME
Length of civil proceedings (9 years and 2 months): *admissible*.

BLAKE - United Kingdom (N° 68890/01)
Decision 25.10.2005 [Section IV]

The applicant joined the British Secret Intelligence Service (SIS) in 1944 and became an agent for the Soviet Union in or around 1951. In 1961 he pleaded guilty to five counts of unlawfully communicating information to the Soviet authorities contrary to the Official Secrets Act 1911, and was sentenced to 42 years' imprisonment. In 1966 he escaped from prison in the United Kingdom to Moscow where he has lived ever since. The applicant signed a contract with British publishers in 1989 to publish his autobiography. He was to receive advances on royalties. The Government did not attempt to stop the publication of the book, but in 1991 it brought proceedings in the High Court seeking to extract from the applicant any financial benefit he would obtain from publication, arguing that in writing and publishing the book he had acted in breach of the duty of confidence he owed to the Crown as a former member of the SIS. The applicant attempted unsuccessfully to obtain legal aid. In 1994 his solicitors were granted leave to cease to act for the applicant, as they could not continue to act on a *pro bono* basis. In 1995 the High Court appointed a Queen's counsel and a junior counsel to act as *amici curiae* in the case. The High Court's judgment concluded that it was not necessary to decide the question of whether the Crown could claim remedies for a breach of fiduciary duty. The Crown appealed, and in 1997 the Court of Appeal granted an injunction restraining the applicant from receiving any payment or other benefit resulting from the exploitation of the book or of any information therein relating to security and intelligence which was in his possession by virtue of his position as a member of SIS. The applicant obtained leave to appeal in 1998. The House of Lords delivered its main judgment in 2000, holding that there was no reason in principle why the courts must in all circumstances rule out an account of profits as a remedy for a breach of contract. Moreover, the Government's entitlement to an account of profits did not confer on the Crown any proprietary interest in the debt due to the applicant from the publisher.
Admissible under Article 6(1) (reasonable time).

Inadmissible under Article 10: The applicant claimed that it was unforeseeable that an account of profits be awarded as a remedy for breach of contract. In assessing foreseeability, the general approach of domestic courts to similar matters was taken into account, noting that there existed numerous authorities for the proposition that damages for breach of contract were compensatory. Whilst the order made by the House of Lords in the present case had no direct precedent, this was not in itself decisive. Bearing in mind that this was an exceptional case, and that there was a clear and strong public interest in preventing the applicant from profiting from his breach of contract and thereby profiting from his crimes, it could not be excluded that the ordinary rules of breach of contract would not apply to the case. Moreover, domestic courts had always afforded great importance to the protection of the secrecy of the security services. Hence, an order for an account of profits for breach of contract against the present applicant was a reasonably foreseeable development of the common law consistent with the "foreseeability" requirement of Article 10 of the Convention.

Inadmissible under Article 1 of Protocol No. 1: Even if the order for an account of profits could be considered to constitute an interference with the applicant's property rights, it did not constitute a deprivation of property within the meaning of this Article: *manifestly ill-founded*.

Article 6(1) [criminal]

FAIR HEARING
Self-incrimination: requirement to attend an interview and answer questions by financial investigators which could have been used in an incriminating way in criminal proceedings: *violation*.

SHANNON - United Kingdom (Nº 6563/03)
Judgment 4.10.2005 [Section IV]

Facts: The applicant, who was charged by the police with false accounting and conspiracy to defraud, was required to attend before a financial investigator to answer questions on whether any person had benefited from the false accounting. The applicant did not attend the interview because he feared his replies could be used as evidence against him in the trial, and as he had allegedly not obtained satisfactory guarantees from the investigators to the contrary. The applicant was as a result convicted and fined for the offence of failing without reasonable excuse to comply with the financial investigator's requirements to answer questions. His appeal against conviction was initially allowed by the County Court, which found that the applicant had a right not to answer questions that would have tended to incriminate him. However, the Court of Appeal confirmed the applicant's conviction on the ground of not having a reasonable excuse for refusing to comply with the investigators' requirements merely because the information sought could be potentially incriminating. In the meantime, the criminal proceedings against the applicant for false accounting and conspiracy to defraud were struck out.

Law: Article 6(1) – Although the underlying proceedings in the present case were not pursued, there was no requirement that allegedly incriminating evidence obtained by coercion actually be used in substantive proceedings before the right not to incriminate oneself applied (see *Heaney and McGuiness v. Ireland* and *Funke v. France*). In fact, under the Court's case-law, there was no need for proceedings even to be brought for the right not to incriminate oneself to be at issue, and it was thus open to the applicant to complain of an interference with his right not to incriminate himself. The present case was to be distinguished from *Heaney and McGuinness*, where the requirement to attend an interview was on a person in respect of whom there was no suspicion and no intention to bring proceedings. However, in assessing the use of coercive measures in the present case, it had to be taken into account that the applicant had already been charged with a crime, and in such circumstances, attending the interview would have involved a real likelihood of being required to give information on matters which could subsequently arise in the criminal proceedings for which he had been charged. As to procedural protection available to the applicant if he had attended the interview and wished to prevent the use of information in criminal proceedings, it would have been open to the investigators to forward information to the police.

Moreover, had the information obtained from the applicant at the interview been used at a subsequent trial, this would have deprived the applicant of the right to determine what evidence he wished to put before the trial court, and could have amounted to "resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused". In conclusion, the requirement for the applicant to attend an interview with financial investigators and to be compelled to answer questions in respect of events of which he had been charged was not compatible with his right not to incriminate himself.
Conclusion: violation (unanimously).

FAIR HEARING
Self-incrimination: requirement to disclose the name and address of the driver of a vehicle caught exceeding a speed limit: *admissible*.

O'HALLORAN and FRANCIS - United Kingdom (Nº 15809/02 and 25624/02)
Decision 25.10.2005 [Section IV]

The applicants are the registered keepers of cars which were caught by a speed camera driving over the permitted speed limit. They received a notice of intention to prosecute (NIP) informing them that proceedings were envisaged against the driver of the vehicle and, in this connection, were asked to furnish the full name and address of the driver at the relevant time. The first applicant confirmed that he had been the driver. When he was committed to trial he sought to exclude the confession he had made in response to the notice of intention to prosecute. He was convicted for the actual speeding offence. The second applicant refused to give the name of the driver invoking his right to silence and privilege against self-incrimination. He was also convicted and fined, and stated that the fine imposed was substantially heavier than that which would have been imposed if he had pleaded guilty to the speeding offence.
Admissible under Article 6.

FAIR HEARING
Person retained abroad and tried *in absentia* whose cassation appeal against an indictment, which was not notified to him personally, was rejected for non-respect of the time-limit: *inadmissible*.

ADEN ROBLEH - France (N° 50018/99)
Decision 18.10.2005 [Section II]

The applicant, a citizen of Djibouti and leader of a political party in opposition to the regime then in power in his country, was suspected of being one of the organisers of a bombing in Djibouti in September 1990 in which a number of French nationals were killed. Two parallel sets of criminal proceedings were opened in Djibouti and in France. In the first, the applicant was placed under judicial supervision in Djibouti in 1998 and his passport was confiscated. In 2001 the Djibouti criminal court convicted him, in a final judgment, of aiding and abetting murder and aiding and abetting attempted murder. He was given a six-year suspended prison sentence. In France, the authorities attempted for a number of years to trace the applicant and took a number of measures to that end, but were unsuccessful. On 13 October 1997 the applicant was indicted by the Indictment Division of the Paris Court of Appeal and committed for trial, together with a number of other individuals, before the Paris Assize Court sitting in the special composition used for terrorism cases. On 17 November 1997 the judgment of the Indictment Division, at the request of the Principal Public Prosecutor at the Paris Court of Appeal, was deemed to have been served on the applicant, with the indication that his address was unknown and that he was currently a "fugitive", by delivery of a copy to the Principal Public Prosecutor at the Paris Court of Appeal on the ground that the "circumstances [made] it impossible to serve the notice on the addressee". On 2 September 1998 the President of the Assize Court ruled that the applicant had forfeited his right of appeal and the decision was served on the Public Prosecutor's office on 9 September 1998 in accordance with the statutory requirements. On 6 November 1998 the applicant appealed on points of law, claiming that the judgment of 13 October 1997 had only been brought to his attention shortly before and by indirect means,

since it had not been served on him personally and directly. In February 1999 the Court of Cassation declared the appeal inadmissible as it had been lodged out of time and the applicant was committed to stand trial for aiding and abetting murder before the Paris Assize Court, which, on 29 November 1999, accepted that the refusal by the Djibouti authorities to give him back his passport made it absolutely impossible for him to appear before the French courts. It decided to defer its decision on his case. The applicant's lawyer subsequently invoked the *non bis in idem* rule, relying on the judgment already given by the Djibouti criminal court. At the time of the present decision, the case had still not been scheduled for hearing in the Assize Court.

Inadmissible under Article 6 – Ineffectiveness of the appeal on points of law: In determining whether a fair hearing has been afforded, the proceedings must be assessed as a whole. In the present case, the Assize Court had acknowledged that it was impossible for the applicant to appear before it and decided to defer its decision. The proceedings were still pending when the present decision was adopted. Moreover, the case was to undergo a new investigation prior to trial before the Assize Court and, in that connection, the applicant would be able to resubmit all the grounds on which his appeal was based. His lawyer had also applied for the discontinuance of the prosecution on the basis of the *non bis in idem* rule, as the applicant had been convicted of the same offences by a final judgment of the Djibouti criminal court. In addition, recent changes to French law had opened the way for appeals against Assize Court judgments and allowed an absent defendant to be represented by a lawyer. Accordingly, after considering the proceedings as a whole, the Court found that the applicant's complaint was premature and should be dismissed.

Equality of arms: The applicant's main argument here was that the prosecution had served the judgment "on itself", with the five-day time limit for the appeal on points of law running from the date of service on the prosecutor. But the rules governing time-limits for appeal sought to provide guarantees of the proper administration of justice and of legal certainty. The right of access to a court did not prevent Contracting States from providing for a procedure to address situations where a person concerned by judicial proceedings could not be traced, provided the rights of those concerned were duly protected. That was the situation in the present case, because the French authorities had taken measures in an attempt to trace the applicant and he remained entitled to submit his arguments to the trial court. The principle of equality of arms had not therefore been infringed: *manifestly ill-founded*.

EQUALITY OF ARMS
Person retained abroad and tried *in absentia* whose cassation appeal against an indictment, which was not notified to him personally, was rejected for non-respect of the time-limit: *inadmissible*.

ADEN ROBLEH - France (N° 50018/99)
Decision 18.10.2005 [Section II]
(see above)

INDEPENDENT AND IMPARTIAL TRIBUNAL
Independence and impartiality of prison Governor in adjudication proceedings: *admissible*.

YOUNG - United Kingdom (Nº 60682/00)
Decision 11.10.2005 [Section IV]
(see below)

IMPARTIAL TRIBUNAL
Referral of a case back to the same court after the annulment of the impugned decision: *inadmissible*.

STOW and GAI - Portugal (N° 18306/04)
Decision 4.10.2005 [Section II]

The applicants were convicted at first instance and given prison sentences for drug trafficking. The Appeal Court set aside the judgment on procedural grounds (there had been no tape-recording of the oral proceedings). The case was referred back to the same court with three judges, two of whom had participated in the first hearing of the case. The applicants, who had unsuccessfully challenged those two judges, were again convicted and given the same sentences. Their appeals were rejected by the Court of Appeal and by the Court of Cassation. The Constitutional Court emphasized that under domestic law a case could only be referred back to a differently composed court when the decision appealed against had been set aside because of a substantive defect.

Inadmissible under Article 6 § 1 – An obligation of impartiality could not be used as the basis for a general rule that an appellate court, after setting aside an administrative or judicial decision, should be obliged to remit the case to a different judicial body or to the same body with a different composition. In the present case, Portuguese law itself made a distinction between instances where the case was referred back after a judgment had been set aside or quashed by the higher court because of a substantive defect that irreversibly vitiated that judgment and instances where a procedural issue was concerned. Whilst it was not difficult to understand that, in the event of a substantive defect, the accused might fear bias on the part of the judges called upon to rehear the case, this was hardly true in the event of a procedural issue. In the present case, after the appeal court had referred the case back, the court below was simply required to keep a tape-recording of the oral proceedings and no new elements had been introduced: *manifestly ill-founded*.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Alleged refusal of legal representation in adjudication proceedings: *admissible*.

YOUNG - United Kingdom (N° 60682/00)
Decision 11.10.2005 [Section IV]

The applicant, who was sentenced to six months' imprisonment for breach of a probation order, suffers from cerebral palsy, a disorder of the central nervous system which can inhibit voluntary muscle control. While in prison she was requested to provide a urine sample during a mandatory drugs' test ("MDT"). However, the applicant claims that given her medical condition she could not provide the sample when it was requested. She alleges that the prison officer appeared irritated and informed her that she was going to put that down as a refusal which could result in additional days' detention. In the adjudication proceedings which followed, the applicant claims to have felt intimidated and of not understanding the jargon used. She therefore had asked if she could have someone with her and the Governor had refused this, informing her that this would only be allowed for someone with severe learning difficulties. The Government alleged that the applicant was asked whether she wished to have any legal representation but had declined. The applicant disputed this, arguing that she had requested legal representation but that it had been refused. The Governor found that the applicant had failed to obey a lawful order and sentenced her to 14 additional days' detention, later reduced to 3 additional days.
Admissible under Article 6.

ARTICLE 8

POSITIVE OBLIGATION
Failure to provide a procedure enabling the applicant to access information allowing him to assess the risk to his health due to his participation in army gas tests: *violation.*

ROCHE - United Kingdom (N° 32555/96)
Judgment 19.10.2005 [Grand Chamber]
(see above, under Article 6(1) - Applicability)

PRIVATE LIFE
Obligation on local councillors to disclose their financial and property situation to the public: *inadmissible.*

WYPYCH - Poland (N° 2428/05)
Decision 25.10.2005 [Section IV]

The applicant was elected town councillor in 2002. In 2003 amendments to the 1998 Local Government (County) Act came into force, imposing an obligation on local councillors to disclose information to the public concerning their financial situation and property portfolio. This is to be done by means of a declaration to the president of the local council. These declarations are subsequently published in a bulletin available to the general public via the Internet. If a councillor refuses to submit a declaration, he or she will be deprived of his monthly emoluments, although not of the councillorship as such.
The applicant asked the Ombudsman to lodge a request with the Constitutional Court to examine whether the provisions in question were compatible with the Constitution. The applicant argued that making such information publicly available would facilitate political harassment and could expose him and his family to criminal acts. In 2004 the Constitutional Court found some of the 2003 amendments incompatible with the Constitution but did not examine the obligation at the heart of the applicant's complaint under Article 8.
The European Court first left open the question whether the applicant should have lodged a constitutional complaint of his own motion in order to challenge the impugned provisions. It found that at any rate the interference with his right to respect for his private life was "in accordance with the law" and undoubtedly pursued the legitimate aim of "the prevention of crime", namely corruption, in connection with the political process in local councils. The interference was also "necessary in a democratic society" in that running for public office is voluntary and the financial situation of persons holding such office is one of legitimate public interest and concern. A councillor's obligation to declare his or her assets serves the purpose of ensuring transparency in the local political process. The information which councillors were being requested to submit was quite comprehensive and the tax authorities were entitled to examine the veracity thereof in the light of the individual's annual income-tax return. This, however, served the purpose of providing a safeguard against abuse or attempts by councillors to evade their obligation to disclose their financial situation. Making the information accessible to all interested parties via the Internet was a safeguard to ensure that the obligation to make declarations available was subject to public scrutiny. *Manifestly ill-founded.*

PRIVATE LIFE
Defamation proceedings brought in vain by leading political and bank figure suggested to have conducted himself unethically (scope of Article 8 with regard to professional reputation and situation): *inadmissible.*

GUNNARSSON - Iceland (N° 4591/04)
Decision 20.10.2005 [Section III]

The applicant unsuccessfully brought defamation proceedings against the author of a newspaper article suggesting that he, at the relevant time Chairperson of the Board of Directors of the Icelandic Investment Bank, Secretary General of the Independence Party as well as Chairperson of the Broadcasting Licensing Committee, had been instrumental in the bank's decision to withdraw a loan offer to, and break off with the Icelandic Broadcasting Company, due to his animosity towards one of its new majority shareholders, J.O. No reasons had been provided by the bank. In rejecting the applicant's appeal the Supreme Court held that the respondent could not be required to prove the truth of the disputed remarks as this would have been unreasonably difficult for him to do. Considering the applicant' prominent position within the Independence Party and given that he had served on the bank's Board of Directors while also chairing the Broadcasting Licensing Committee, as well as the requirement that his work in these areas be independent from his role as Secretary General of the Independence Party, the applicant had to accept public discussion on the connections between his different functions.
Before the European Court the applicant alleged that the national courts had failed to provide an adequate protection of his honour and reputation, in violation of Article 8. Even as a "public figure" he should have been able to enjoy protection against accusations of conduct which, if true, would have been illegal and morally repugnant. The impugned allegations were unsubstantiated factual allegations, not value judgments, and exceeded even the very wide limits of free speech protection afforded by Article 10.
The Court observed at the outset that it had not been argued that the contested news coverage had affected the applicant's "private life" as such, only his professional reputation and situation. Unlike Article 17 of the 1966 International Covenant on Civil and Political Rights, Article 8 of the Convention does not expressly guarantee a right to protection of honour and reputation. The concept of "private life" within the meaning of Article 8 was a broad term not susceptible to exhaustive definition, covering the physical and psychological or moral integrity of a person as well as aspects of an individual's physical and social identity. In no case brought under Article 8 so far had the Court ruled that this provision embodies a right to protection of reputation and honour as such, albeit that these are interests that may be taken into account in the determination of a complaint about a State's failure to ensure the right to respect for private life. Meanwhile, in a case brought under Article 10, the Court had verified whether the authorities had struck a fair balance when protecting on the one hand, freedom of expression as guaranteed by that provision and, on the other, attacked persons' right to protect their reputation, a right held to be protected by Article 8 as part of the right to respect for private life.
Even assuming that the matter in the applicant's case fell within the scope of Article 8, the Court considered that the Icelandic Supreme Court could reasonably conclude that the interests in protecting freedom of speech had been preponderant. It was an undisputed fact that the bank had refused to have any financial dealings with the Icelandic Broadcasting Company and had omitted to state any formal reasons. While the applicant had denied any involvement in that decision and could adduce witness evidence in support thereof, the author of the article had relied on anonymous sources (employees of the bank) stating that the applicant had been opposed to it doing any business with a company in which J.O. took part. The respondent author of the article could only be called to prove that this was indeed what the Bank's employees had told him. In the circumstances, the applicant's interests were not found to warrant placing that burden on the respondent author. The latter had refused to embarrass his sources by asking them to give evidence and they were probably reluctant anyway to give evidence about conduct regarded as inappropriate or unlawful by a member of the bank's Board of Directors.
The European Court noted that the impugned statements in question indisputably had concerned a matter of genuine public interest, namely the motives of a major bank for refusing to have any business dealings with a particular national media company. The article had been published in the context of a public debate in which the Icelandic Prime Minister and other Independence Party leaders had criticised the acquisition of shares by a foreign group in the Icelandic Investment Bank. The purpose was to counter that criticism by highlighting an opinion about the conduct of affairs in the past by leaders of that party. The subject

matter of the disputed speech was therefore of a political nature, in the context of which Article 10 § 2 provided little scope for restrictions. The critical allegations addressed the applicant as a "public figure" with dual roles as Chairperson of the bank's Board of Directors and as Secretary General of the Independence Party. Having laid himself open to close scrutiny by both journalists and the public at large, he could reasonably be expected to display a greater degree of tolerance towards criticism with regard to his performance of these roles than a private individual. In sum, the applicant's complaint that the standards of evidence applied by the Supreme Court, regarding the extent to which the author of the article should be required to prove the veracity of his allegations as to the motives for the bank's refusal, was not capable of raising an arguable issue of failure to comply with the applicant's right to respect for private life under Article 8. *Manifestly ill-founded.*

PRIVATE LIFE
Prohibition under domestic law to use certain medical techniques of artificial procreation: *communicated.*

HALLER and Others - Austria (Nº 57813/00)
[Section I]

The applicants are two couples who suffer from sterility and wished to make use of medically assisted procreation for conceiving a child. The applicants filed a request with the Constitutional Court applying for the review of the constitutionality of certain sections of the Artificial Procreation Act, which they argued directly, affected them. The first applicant submitted that the only way open to her and her husband to conceive a child would be *in vitro* fertilisation using sperm from a donor, a medical technique which was ruled out by the above-mentioned Act. The third applicant submitted that she was also sterile, and the only way open for her to conceive a child would be implanting into her uterus an embryo conceived with ova and sperm from donators, a method which was also prohibited by the Act. The applicants relied on Articles 8 and 12 of the Convention in their constitutional complaint. In October 1999, the Constitutional Court found that although Article 8 was applicable to the applicants' case, the interference and impugned provisions were justified, as by allowing only homologous procreation methods (such as using ova and sperm from the spouses or the cohabitating couple), the legislature aimed at avoiding the forming of unusual personal relations such as having more than one biological mother (a genetical mother and one carrying the child), and also to avoid the risk of exploitation of women. The Constitutional Court also found that the legislation was lawful as regards the principle of equality, and that there was no breach of Article 12 of the Convention.
Communicated under Articles 8, 12 and 14.

FAMILY LIFE
Former Soviet Army officer refused an extension of his residence permit in view of his undertaking to relocate to Russia: *inadmissible.*.

NAGULA - Estonia (Nº 39203/02)
Decision 25.10.2005 [Section IV]

In 2001 the applicant, a Russian national and former officer of the Soviet armed forces, and his wife were refused extension of their temporary residence permits in Estonia, where they had been living from 1981 to 1997 together with the applicant's son and mother-in-law. In 1997 the applicant had benefited from an aid programme provided by the USA in the framework of which he had been allocated an apartment in Sochi, Russia. He had resettled there with his wife the same year and had requested the Estonian authorities to cancel their registration of residence in Tallinn. When agreeing to take part in the aid programme, he had signed a commitment to the USA to leave Estonia. In 1999 the Estonian Foreigners' Act had been amended so as to bar issuing or extending residence permits to persons who had committed themselves to leaving Estonia and who had received an accommodation abroad within the framework of a foreign aid programme.

The Court noted that the applicant and his wife had left Estonia voluntarily in order to be resettled in Russia, while the applicant's son and mother-in-law had remained in Estonia. A first issue arising was whether the applicant had effectively waived any right that he had under Article 8 to maintain his residence in Estonia. The waiver of a right guaranteed by the Convention must be made in an unequivocal manner and must not run counter to any important public interest. The Court was not persuaded by the applicant's argument that his commitment to leave Estonia had been made only *vis-à-vis* the United States of America and not in respect of Estonia. On the evidence before the Court, in particular the applicant's express declarations and the steps he took to honour his part of the resettlement agreement, he had to be considered to have waived unequivocally any rights he may have had under Article 8 to remain in Estonia. Furthermore, having regard to the Estonian-Russian treaty on troop withdrawals and the applicant's commitment, the waiver did not appear to run counter to any public interest. *Manifestly ill-founded.*

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for publishing obscene material on a free preview page of a website: *inadmissible*.

PERRIN - United Kingdom (N° 5446/03)
Decision 18.10.2005 [Section IV]

The applicant was convicted and sentenced to 30 months imprisonment for publishing a free preview page on a website which contained scenes of coprophilia, coprophagia and homosexual fellation. A police officer had previously accessed this page in the course of his duties, which led to the arrest of the applicant. The applicant stated in his interviews with the police that the internet site viewed by the officer was operated and controlled by a company based in the United States of America of which he was a majority shareholder. The applicant's conviction fell under the Obscene Publications Act 1959, on grounds of having published an obscene article. The Court of Appeal dismissed the applicant's appeal claiming that his conviction had breached Article 10. It found that the 1959 Act was sufficiently precise for the interference with the applicant's freedom of expression to be considered as having been prescribed by law. It also found the interference proportional and justified.

Inadmissible under Article 10: The applicant's conviction and sentence for publishing an obscene article had constituted an interference with his right to freedom of expression. As to whether the interference had been prescribed by law, the applicant maintained that the 1959 Act was not sufficiently foreseeable because the major steps towards publication had taken place in the United States, where the 1959 Act did not apply. However, the applicant was a resident of the United Kingdom and could not therefore argue that the laws of the United Kingdom were not reasonably accessible to him. Moreover, concerning the precision of the amended 1959 Act, the Act made it clear that it applied to the transmission of data that was stored electronically, and also clarified the definition of what material was "obscene". Hence, the impugned interference was "prescribed by law" within the meaning of Article 10(2). It was not disputed that the legitimate aim of the interference had been to protect the morals and/or the rights of others. On the question of proportionality, the fact that the dissemination of the images in question may have been legal in other States, such as the United States, did not mean that in proscribing such dissemination within its own territory the respondent State had exceeded its margin of appreciation. Likewise, the fact that there were other means to protect against the harm of such material (such as parental control software packages, making the accessing of the sites illegal and requiring Internet Service Providers ("ISPs") to block access) did not render it disproportionate for a Government to resort to criminal prosecution, particularly when other measures had not been shown to be more effective. As to the applicant's further argument that websites were rarely accessed by accident and normally had to be sought out by the user, the web page in respect of which the applicant was convicted was freely available to anyone surfing the internet and could be sought out by young persons whom the national authorities were trying to protect. It would have been possible for the applicant to have avoided harm by ensuring that none of the

photographs were available on the free preview page. In conclusion, the applicant's criminal conviction could be regarded as having been necessary in a democratic society in the interests of the protection of morals and/or the rights of others. The length of the sentence imposed had not been disproportionate either: *manifestly ill-founded*.

FREEDOM OF EXPRESSION
Order for an account of profits in relation to the publication of an autobiography written by a former agent of the British Intelligence Service alleged to have not been "prescribed by law": *inadmissible*.

BLAKE - United Kingdom (N° 68890/01)
Decision 25.10.2005 [Section IV]
(see Article 6(1), above)

FREEDOM OF EXPRESSION
Common-law rule allowing for a new cause of action to accrue every time a defamatory article is accessed on the internet: *communicated*.

TIMES NEWSPAPERS LTD. (No. 1) - United Kingdom (Nº 23676/03)
[Section IV]

The applicant, which is the proprietor and publisher of a newspaper, published two articles in its newspapers and on its website, alleging that Mr Loutchansky, a Russian businessman, was being investigated for money laundering. Mr Loutchansky brought proceedings for libel in respect of each article. The applicant accepted that the articles were defamatory, but relied on the defence of qualified privilege contending that the allegations were of such a kind and such seriousness that they had a duty to publish them and that the public had a corresponding right to know of them. This defence was struck out by the High Court. As regards the action concerning the continued publication of the articles on the applicant's website, the applicant contended that as a matter of law the only actionable publication of a newspaper article on the internet is that which occurs when the article is first posted on the internet, and that, as a result, the action was barred. The High Court rejected this application, relying in particular on the authority of *Duke of Brunswick v. Harmer*, which sets out the common-law rule that each publication of a defamation gives rise to a separate cause of action. The applicant appealed and argued that as a result of the rule newspapers which maintained internet archives were vulnerable to claims in defamation for years and even decades after the initial hard copy and internet publication. They said that this would inevitably have a chilling effect on the willingness of newspapers to provide internet archives and thus would limit their freedom of expression. The Court of Appeal dismissed the appeal, finding that the rule in the Duke of Brunswick did not impose a restriction on the maintenance of archives that amounted to a disproportionate restriction on freedom of expression. The applicant complains that a rule that allows for a new cause of action to accrue every time a defamatory article is accessed on the internet breaches its rights under Article 10.
Communicated under Article 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Local authorities who incited and participated in demonstrations against a political party defending a minority, and passivity of the police towards the incidents: *violation*.

OURANIO TOXO and others - Greece (N° 74989/01)
Judgment 20.10.2005 [Section I]

Facts: The applicants are a political party, *Ouranio Toxo***,** founded in 1994, and two members of its political secretariat. The party's declared aims include the defence of the Macedonian minority living in Greece and it has regularly taken part in elections since 1994. In September 1995 the party established its headquarters in Florina. It affixed a sign with the party's name in the two languages spoken in the region, Greek and Macedonian, to the balcony of the premises. It included the word "*vino-zito*", written in the "Slavic alphabet". This means "rainbow" in Macedonian but was also the rallying cry of forces who had sought to capture the town of Florina during the civil war in Macedonia. On 12 September 1995 priests from the church in Florina published a statement calling on the people to join a "demonstration to protest against the enemies of Greece who arbitrarily display signs with anti-Hellenic inscriptions". The following day the town council published in the local press a resolution it had adopted to organise protests against the applicants, and the public prosecutor ordered the removal of the sign on the ground that the inclusion of the party's name in Macedonian was liable to sow discord among the local population. On 13 September 1995 police officers removed the sign without giving any explanation to the applicants, who proceeded to install a replacement. That evening the applicants alleged that they were insulted and threatened by a crowd that had gathered in front of the party headquarters among whom they apparently recognised the mayor and town councillors. At about 1.30 a.m. a number of people attacked the party headquarters, entered the premises and assaulted those inside, demanding that they hand over the sign, which the applicants did. A second attack followed at approximately 4 a.m., in the course of which equipment and furniture on the premises were thrown out of the window and set on fire. The applicants alleged that, while these events were taking place, they telephoned the police station located some 500 metres from the party headquarters, but were told that no officers were available to come out. The public prosecutor's office took no action against those involved in the incidents. Criminal proceedings for inciting discord were brought against the applicants who are members of the association, but they were eventually acquitted. They lodged a criminal complaint against those responsible for the incidents and applied to be joined to the proceedings as civil parties, but they were unsuccessful.

Law: Article 11 – The police had removed the sign bearing the party's name in Macedonian. *Ouranio Toxo* was a lawfully constituted party one of whose aims was the defence of the Macedonian minority living in Greece. Affixing a sign to the front of its headquarters with the party's name written in Macedonian could not be regarded as reprehensible or considered to constitute in itself a present and imminent threat to public order. The use of the term "*vino-zito*" had admittedly aroused hostile sentiment among the local population, as its ambiguous connotations were liable to offend the political or patriotic views of the majority of the population of Florina. However, the risk of causing tension within the community by using political terms in public did not suffice, by itself, to justify interference with freedom of association. As regards the authorities' conduct, two days before the incidents the town council had clearly incited the town population to gather in protest against the applicants and some of its members had taken part in the protests. It had thus helped through its conduct to arouse the hostile sentiment of a section of the population against the applicants. The role of State authorities was to defend and promote the values inherent in a democratic system, such as pluralism, tolerance and social cohesion. It would have been more in keeping with those values for the local authorities to advocate a conciliatory stance, rather than to stir up confrontational attitudes. With regard to the conduct of the police, they could reasonably have foreseen the danger that the tension would boil over into violence and clear violations of freedom of association. The State should therefore have taken appropriate measures to prevent or, at least,

contain the violence. However, that had not been done. Despite being contacted repeatedly, the police, who were stationed in the vicinity, had not intervened on the night of the attack, allegedly because of a lack of manpower. Moreover, the public prosecutor had not considered it necessary to start an investigation in the wake of the incidents to determine responsibility. It was only once the applicants had lodged a complaint that the investigation had begun. In cases of interference with freedom of association by individuals, the competent authorities had a duty to take effective investigative measures. For those reasons, the Court found that by both their acts and omissions the Greek authorities had breached Article 11.
Conclusion: violation (unanimously).

Article 41 – the Court made an award by way of reparation for the damages and for costs and expenses.

ARTICLE 13

EFFECTIVE REMEDY
Adequacy of domestic legislation to secure the right to a trial within a reasonable time: *violation*.

LUKENDA - Slovenia (Nº 23032/02)
Judgment 6.10.2005 [Section III]
(see Article 46, below)

ARTICLE 14

DISCRIMINATION (Article 1 of Protocol No. 1)
Refusal of Turkish jurisdictions to recognise the property rights of Greek nationals who inherited real estate in Turkey due to non-respect by Greece of reciprocity: *admissible*.

APOSTOLIDI and others - Turkey (N° 77132/01
Decision 4.10.2005 [Section IV]

In 1990 the Istanbul District Court designated the applicants, who were all Greek nationals, as the heirs of a deceased Turkish national and granted them title to the estate. A third party subsequently claimed a relationship with the deceased by descent. In 1995 the Treasury applied for the annulment of the applicants' title and the appointment of the third party as sole legatee. In 1997 the court granted the Treasury's application, on the ground that under Greek law Turkish nationals could not acquire real estate within a large part of Greek territory without prior authorisation, which in practice was used as a means of restricting the acquisition of real estate by Turks. The court found that the condition of reciprocity laid down by Article 35 of the Turkish Land Ownership Code was not applied between Greece and Turkey and that, accordingly, the applicants, who were Greek nationals, could not claim inheritance of real estate located in Turkey. In 1998 the Court of Cassation quashed the decision at first instance, finding that the court below should have determined the nationality of the third party whose descent from the deceased had been established. In 2000 the District Court concluded that the person was a Turkish national and was the sole heir to the property in question. The Court of Cassation upheld the judgment on 3 July 2001.

Admissible under Article 1 of Protocol No. 1 taken separately and in conjunction with Article 14, in so far as the applicants complained of interference, on grounds of nationality, with their right to the enjoyment of their possessions.
Admissible under Article 6, in so far as the applicants complained of a breach of their right to a fair hearing because of the Turkish courts' interpretation of the reciprocity condition.
Admissible under Article 6 (reasonable time).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Alleged obstacles in correspondence with the Court: *no-violation*.

MOGOS - Romania (N° 20420/02)
Judgment 13.10.2005 [Section III]
(see above)

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Failure to exhaust domestic remedies in respect of Convention grievances: *preliminary objection upheld*.

SIDDIK ASLAN and Others - Turkey (N° 75307/01)
Judgment 18.10.2005 [Section II]

Facts: The applicants' relatives were killed in a clash with gendarme soldiers on 12 September 2001. Thereafter, the applicants requested the authorities to investigate the incidents, find the perpetrators, carry out official identifications of the bodies and autopsies. According to the Government, extensive searches in the area, which was very mountainous, had been conducted after the clash. However, the bodies of the applicants' relatives could not be found, and the Government had assumed that they had decomposed or been taken by terrorists. Several documents drawn up by the Gendarmerie in the context of the official investigation carried out by the Prosecutors' offices describe the unsuccessful attempts to recover the bodies and ammunition. The applicants alleged their relatives had been unlawfully killed by security forces and that the authorities had failed to investigate the circumstances of the killings.

Law: Article 35(1) – The Government's preliminary objection (non-exhaustion): Although the Court had initially considered that the Government's objection was to be joined to the merits, in the light of new information brought to its attention, it considered it appropriate to address the question of whether the criminal investigation at issue could be regarded as effective already at this juncture. It appeared that six or seven days after the killing of their relatives, the applicants had gone to the place where their relatives had been killed and had buried the bodies. They had not imparted this information because of their fears. However, the Court was not convinced about the well-foundedness of the applicants' fears, which allegedly prevented them from sharing this information with anyone. The Court finds that the national authorities took every step within their power to find the bodies, to the extent of the information they held. Their efforts were, however, seriously hampered by the actions of the applicants. In the light of the foregoing, the Court concludes that it cannot be said that the national authorities remained passive in the face of the allegations brought to their attention by the applicants. Thus the authorities cannot be reproached for the failure to find the bodies. As the information concerning the burial of the bodies has only recently been disclosed by the applicants, the national authorities had not yet had the opportunity to establish the identities of the bodies and to clarify the true facts concerning the deaths.
Conclusion: Government's preliminary objection upheld (unanimously).

EFFECTIVE DOMESTIC REMEDY (Italy)
Effectiveness of the "Pinto remedy" on bankruptcy questions: *preliminary objection rejected*.

SGATTONI - Italy (N° 77132/01)
Judgment 6.10.2005 [Section III]

Facts: The applicant was the director of a company which was declared bankrupt in 1991. He was appointed liquidator of the company in January 2001. In March 2001 the company was again declared bankrupt by a court. The company appealed and the appeal proceedings were still pending in May 2005. In April 2002 the applicant lodged an application under the "Pinto Act". This was dismissed on the ground that the length of the bankruptcy proceedings had not been unreasonable.

Law: Article 35 § 1: in matters of insolvency, the remedy made available by the "Pinto Act" could be regarded as an effective one for the purposes of Article 35 § 1 of the Convention only where the application had been lodged with the Italian courts after 14 July 1993. Since the applicant had lodged his application prior to that date, the Court dismissed the Italian Government's objection that the applicant had not exhausted domestic remedies.

Article 1 of Protocol No. 1 - The application was admissible under this head solely in respect of the period after 29 January 2001, when the applicant was appointed liquidator of the company. The length of the bankruptcy proceedings, approximately four years and three months, had not upset the fair balance that had to be struck between the general interest in ensuring the payment of the company's creditors and the company's interest in securing the peaceful enjoyment of its possessions.
Conclusion: no violation (unanimously).

EFFECTIVE DOMESTIC REMEDY (Ukraine)
Cassation appeals to the Higher Commercial Court and the Supreme Court considered effective remedies in commercial-law cases: *inadmissible.*

MPP GOLUB - Ukraine (N° 6778/05)
Decision 18.10.2005 [Section II]
(see above under Article 6(1) - Access to court)

ARTICLE 37

FRIENDLY SETTLEMENT
Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *friendly settlement (general and individual measures following finding of violation originating in a systemic problem).*

BRONIOWSKI - Poland (N° 31443/96)
Judgment 28.9.2005 [Grand Chamber]
(see Article 1 of Protocol No. 1 below)

ARTICLE 46

EXECUTION OF A JUDGMENT
Respondent State encouraged to amend the existing range of remedies or to add new ones to secure effective redress for violations of the right to a fair trial.

LUKENDA - Slovenia (Nº 23032/02)
Judgment 6.10.2005 [Section III]

Facts: The applicant suffered an injury at work and received disability benefits. In 1998, he instituted civil proceedings claiming an increase of his disability benefits. In 2002, the first-instance court delivered a judgment partly upholding the applicant's claim. The applicant's appeal against the judgment was allowed, and the proceedings ended in 2004 with another judgment by the Higher Court which increased the level of the applicant's disability benefits.

Law: The Government's preliminary objection (non-exhaustion): the effectiveness of the remedies advanced by the Government - an administrative action, a claim for damages in civil proceedings, a request for supervision and/or a constitutional appeal - whether taken separately or the aggregate of these procedures, had not been shown. Moreover, if an individual first brought an action in the administrative courts and was then required to lodge a tort claim, this would oblige him to institute two sets of proceedings and the duration of the combined proceedings would probably be excessive. In sum, it would be putting an unreasonable burden on the applicant to require him to exhaust both remedies (objection dismissed).

Article 6(1) (reasonable time) – The total duration of the proceedings had been five years and three months. Although an opinion of a medical expert was required to decide the case, the latter was neither procedurally nor factually of exceptional complexity. Moreover, there was no evidence suggesting that the applicant had contributed in a significant way to the length of the proceedings. Hence, the overall length of the proceedings had been excessive, in particular the duration of the proceedings before the first-instance court, which had exceeded four years.
Conclusion: violation (unanimously).

Article 13 – The Government had failed to establish the effectiveness of the remedies taken separately or the aggregate thereof. See considerations above on the dismissal of the Government's preliminary objection.
Conclusion: violation (unanimously).

Article 46 – As seen in the latest court statistics published by the Ministry of Justice of the respondent State, it was clear that the length of judicial proceedings remained a major problem in Slovenia. The violation of the applicant's right to a trial within a reasonable time was not an isolated incident, but rather a systemic problem that resulted from inadequate legislation and inefficiency in the administration of justice. Under Article 46, a State's legal obligation is not just to pay those concerned the sums awarded by way of just satisfaction, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. In conclusion, the Court had identified some of the weaknesses of the legal remedies guaranteed by the respondent State, whilst acknowledging that certain recent developments showed reassuring improvements. Hence, to prevent future violations of the right to a trial within a reasonable time, it encouraged the respondent State to either amend the existing range of legal remedies or add new ones to secure effective redress for violations of this right.

N.B. The respondent State's obligation to secure through appropriate legal measures and administrative practices the right to a trial within a reasonable time was also included under the operative part of the judgment (six votes to one).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Holding by the applicant, prior to the intervention of the law, of a compensation claim which he could legitimately expect to benefit from in application of established case-law: *Article 1 of Protocol No. 1 applicable.*

MAURICE - France (N° 11810/03)
Judgment 6.10.2005 [Grand Chamber]
(see below).

POSSESSIONS
Refusal of national jurisdictions to register a commercial brand on the basis of a Treaty which came into force after the registration request had been submitted : *no violation*.

ANHEUSER-BUSCH INC. -. Portugal (N° 73049/01)
Judgment 11.10.2005 [Section II]

Facts: The applicant company produces beer and sells it under the brand name "Budweiser" in a number of countries around the world. In 1981 it applied to the Portuguese National Institute for Industrial Property (INPI) to register "Budweiser" as a trade mark. The INPI registered the trade mark in 1995, after the company had obtained a court order revoking the earlier registration of "Budweiser Bier" as a designation of origin by a Czech company. However, the Czech company challenged that decision and the Lisbon Court of Appeal, on the basis of the "1986 Agreement", a bilateral treaty between Portugal and Czechoslovakia which came into force in 1987, protecting registered designations of origin, ordered that the registration of the "Budweiser" trade mark by the applicant company be declared invalid. The applicant company appealed unsuccessfully to the Supreme Court.

Law: Article 1 of Protocol No. 1 – Intellectual property undeniably attracted the protection of Article 1 of Protocol No. 1, but the point in issue in the present case was to ascertain precisely when the right to protection of the trade mark became a "possession" within the meaning of that provision. The legal position of the entity applying for registration of a trade mark indisputably involved certain economic interests, and the brand awareness of the "Budweiser" name gave it undoubted economic value. The applicant company thus had a pecuniary interest that could enjoy a certain legal protection, but was not sufficiently strong to amount to a "legitimate expectation" that attracted the protection of Article 1 of Protocol No. 1. The applicant company could not be sure of being the holder of the "Budweiser" trade mark until it had been definitively registered in its name, since the Czech company had challenged its right to use the trade mark from the time of its application for registration. A trade mark does not amount to a "possession" within the meaning of Article 1 of Protocol No. 1 until its final registration, in accordance with the rules in force in the State concerned. The applicant company thus did not have a possession when the Agreement of 1986 entered into force, and the manner in which the Portuguese courts applied the treaty had not interfered with its rights. Accordingly, Article 1 of Protocol No. 1 was inapplicable and could not therefore have been breached.
Conclusion: no violation (five votes to two).

PEACEFUL ENJOYMENT OF POSSESSIONS
Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *friendly settlement (general and individual measures following finding of violation originating in a systemic problem).*

BRONIOWSKI - Poland (Nº 31443/96)
Judgment 28.9.2005 [Grand Chamber]

Facts: Following the Second World War, the Polish State undertook to compensate persons who had been "repatriated" from the so-called "territories beyond the Bug river", which no longer formed part of Poland, in respect of property which they had been forced to abandon. Such persons were entitled to have the value of such property deducted either from the price of immovable property purchased from the State or from the fee for "perpetual use" of State property. The estimated number of claimants was in the high tens of thousands. In 1968, the applicant's mother inherited the estate of his grandmother, who had abandoned a plot of land and a house when repatriated. The applicant's mother was subsequently granted the right of "perpetual use" of a plot of State land at a fee of PLZ 392 per year. For the purposes of compensation the value of the abandoned property was fixed at PLZ 532,260 and was offset against the total fee for "perpetual use" (PLZ 38,808). After inheriting his mother's estate, the applicant requested payment of the remainder of the compensation due. He was informed that as a result of the enactment of the Local Self-Government Act in 1990, by which most State land had been transferred to the local authorities, it was not possible to satisfy his claim. In 1994 the Supreme Administrative Court dismissed the applicant's complaint about the Government's alleged inactivity in failing to introduce legislation dealing with such claims. Between 1993 and 2001, several laws were passed which further reduced the already small stock of property designated for compensating repatriated persons. In December 2002 the Constitutional Court declared unconstitutional various statutory provisions restricting the possibility of satisfying entitlement to compensation for abandoned property. The court considered that by excluding particular types of State-owned land, the legislation had rendered the "right to credit" illusory. In practice, claimants had to participate in auctions of State-owned property and were frequently excluded as a result of additional conditions being imposed. Furthermore, following the Constitutional Court's judgment the State Agricultural and Military Property Agencies suspended auctions pending the adoption of new legislation. Subsequently, a law of December 2003 provided that the State's obligations towards persons who, like the applicant, had obtained some compensatory property under the previous statutes, were considered to have been discharged. Claimants who had never received any such compensation were awarded 15% of their original entitlement, subject to a ceiling of 50,000 PLN.
The Grand Chamber delivered its principal judgment on 22 June 2004, finding that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention; that the violation had originated in a systemic problem connected with the malfunctioning of Polish legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants; and that Poland was to secure, through appropriate legal measures and administrative practices, the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu. The Court reserved for later the question of an award in respect of any pecuniary or non-pecuniary damage.
In December 2004 the Constitutional Court declared unconstitutional certain provisions of the Law of 2003, including the section fixing the 15% and 50,000 PLN ceiling on claims and the section excluding from the scope of the compensation scheme under that Act anyone who, like the applicant, had received at least some compensation under previous laws.
In March 2005 the respondent Government asked the Registrar for assistance in negotiations between the parties, aimed at reaching a friendly settlement of the case. A settlement was achieved in September 2005 according to which the applicant was to be paid 213,000 Polish zlotys (approximately 54,300 euros) for pecuniary and non-pecuniary damage and a certain amount in costs and expenses. The Government – which, in July 2005, had passed a new law setting the ceiling for compensation for Bug River property at 20% of its original value – furthermore undertook:
to implement as rapidly as possible all the necessary measures in terms of domestic law and practice to secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu;

to intensify their endeavours to make the new Bug River legislation effective and to improve the practical operation of the mechanism designed to provide the Bug River claimants with compensation;
to ensure that the relevant State agencies do not hinder the Bug River claimants in enforcing their "right to credit";
to make available to the remaining Bug River claimants some form of redress for any material or non-material damage caused to them by the defective operation of the Bug River legislative scheme.

Law: Implications of a "pilot-judgment procedure": The friendly settlement had been reached after the Court had delivered its "pilot judgment" which in this case had aimed at facilitating the most speedy and effective resolution of a dysfunction affecting the protection of the right of property in the national legal order. After finding a violation the Court had also adjourned its consideration of applications deriving from the same general cause "pending the implementation of the relevant general measures". In the context of a friendly settlement reached after the delivery of a pilot judgment on the merits of a case, the notion of "respect of human rights as defined in the Convention and the Protocols thereto" necessarily extended beyond the sole interests of the individual applicant and required the Court to examine the case also from the point view of "relevant general measures". In view of the systemic or structural character of the shortcoming at the root of the finding of a violation in a pilot judgment, it was evidently desirable for the effective functioning of the Convention system that individual and general redress should go hand in hand. In determining whether it could strike the present application out of its list on the ground that the matter had been resolved and that respect for human rights as defined in the Convention and its Protocols did not require its further examination, it was therefore appropriate for the Court to consider not only to the applicant's individual situation but also measures aimed at resolving the underlying general defect in the Polish legal order identified in the principal judgment as the source of the violation found.

Terms of the friendly settlement agreed by the parties: The friendly settlement reached between Mr Broniowski and the Polish Government had addressed both the general and the individual aspects of the finding of a violation of Article 1 of Protocol No. 1 in the principal judgment. The parties had recognised the implications, for the purposes of their friendly settlement, of the principal judgment as a pilot judgment.

General measures: Prior to the settlement, Poland had introduced the July 2005 Act, to take into account the findings of the Court's principal judgment and the judgment of 15 December 2004 by the Constitutional Court. The July 2005 Act and the Government's undertakings in their declaration in the friendly settlement were evidently designed to remove the practical and legal obstacles on the exercise of the "right to credit" by Bug River claimants. The declaration, as far as general measures were concerned, related both to the future functioning of the Bug River legislative scheme and redress for any past prejudice suffered by Bug River claimants as a result of the previous defective operation of that scheme. In particular, the Government had referred to specific civil law remedies in connection with enabling the remaining Bug River claimants to seek compensation before the Polish courts for any material and/or non-material damage caused by the systemic situation found to be in breach of Article 1 of Protocol No. 1 in the principal judgment and thus to claim redress, as would be possible under Article 41, if the Court were to deal with their cases on an individual basis. On the other hand, the position in Polish law regarding recovery of compensation from State authorities for non-material damage was less clear. In their declaration in the friendly settlement the Polish Government had suggested that compensation in kind for past non-material damage suffered by Bug River claimants, in particular frustration and uncertainty, had already been provided under the July 2005 Act. However, the Government had also undertaken not to contest that Article 448 read in conjunction with Article 23 of the Civil Code would be capable of providing a legal base for a claim in respect of non-material damage should any Bug River claimant wish to bring one before the Polish courts.
In their amending legislation and in their declaration in the friendly settlement, the Polish Government had, in the Court's view, demonstrated an active commitment to take measures intended to remedy the systemic defects found both by the Court in its principal judgment and by the Polish Constitutional Court. While it was for the Committee of Ministers to evaluate those general measures and their implementation as far as the supervision of the execution of the Court's principal judgment was concerned, the Court, in exercising its own competence to decide whether to strike the case out of its list under Articles 37 § 1(b)

and 39 of the Convention, could not but rely on the Government's actual and promised remedial action as a positive factor.

Individual measures: The payment to be made to the applicant under the settlement provided him with both accelerated satisfaction of his "right to credit" under the Bug River legislative scheme and compensation for any pecuniary and non-pecuniary damage sustained by him. Moreover, he remained free to seek and recover compensation over and above the current 20% ceiling on compensation fixed by the July 2005 Act in so far as Polish law allowed that, in the future, there was nothing to prevent a future challenge of that ceiling before either the Polish Constitutional Court or ultimately the European Court. The Court was therefore satisfied that the settlement in the case was based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 of the Convention and Rule 62 § 3 of the Rules of Court).
Conclusion: Case struck out of the list (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Temporary impossibility for the applicant, who was separated from his wife, to recover the family house occupied by the former and their children: *inadmissible*.

MANCINI - Italy (N° 41812/04)
Decision 13.10.2005 [Section III]

The applicant and his wife had adopted three children. When his wife lodged an application for judicial separation they reached an agreement on the conditions of their separation, whereby the mother would have custody of the minor children and full ownership of the family house would be transferred to the applicant on the payment of a certain sum. Enjoyment of the property was provisionally granted to the mother until the end of 2001. The court approved the terms of the agreement and declared the couple judicially separated. That approval constituted valid title for the transfer of ownership of the house. The applicant paid the agreed sum. The court then postponed the change of occupier until the end of the current school year, considering it necessary to allow the children, who were already upset by their parents' separation, to avoid a traumatic eviction from the family house. The court then granted the applicant the right to recover his house, subject to an obligation for him to assist in finding a new home. The eviction carried out by a bailiff at the applicant's request was unsuccessful because of the mother's absence from the house. Again taking into account the children's best interests, the court then allocated occupancy of the house to the mother. The applicant successfully challenged that decision but the eviction did not take place, as the mother had declared that she had failed to find another suitable home for the children. In the divorce proceedings, the mother was granted urgent and provisional authorisation to occupy the marital home, as the parent having custody of the children.

Inadmissible under Article 1 of Protocol No. 1 – The applicant's inability to recover temporarily the use of his property constituted interference with his right to the peaceful enjoyment of his possessions. The judicial decisions which led to delays in the vacating of the house were taken on the basis of the applicable legislation governing separation and divorce procedures and were justified, without any arbitrariness, by the need to protect the best interests of the minor children. The national authorities thus had to balance the applicant's right to the full enjoyment of his possessions against the right of his children, towards whom he had parental responsibilities, to live in the family house with the parent who had been granted custody, until a suitable alternative solution could be found: *manifestly ill-founded*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Forfeiture of police officer's pension for serious offences: *inadmissible*.

BANFIELD - United Kingdom (N° 6223/04)
Decision 18.10.2005 [Section IV]

The applicant, a police officer, was convicted of sexual offences against women, including rape, and sentenced to a total of 18 years' imprisonment. Three of the offences were committed whilst the applicant was on duty. He was dismissed from the police force after 14 years and 40 days of pensionable service. Bearing in mind the gravity of the offences and the betrayal of an important position of trust, the Home Secretary issued a certificate which allowed the police authority to forfeit the applicant's pension. Following a hearing in which representations from the applicant were heard, the police authority notified him that 75% of his pension would be forfeited. In the appeal proceedings in the Crown Court the amount of the pension to be forfeited was reduced to 65% by the Recorder, which also held that the forfeiture of the pension did not represent a double penalty. The applicant's permission to apply for judicial review of the Crown Court's decision was refused.

Inadmissible under Article 1 of Protocol No. 1: Where a State occupational pension was reduced, as a disciplinary measure, by 100% (as in *Azinas v. Cyprus*) or by 65% (as in the present case), a finding of an "interference" with the peaceful enjoyment of possessions was inevitable. The State's entitlement to bring forfeiture and disciplinary proceedings against the applicant, in addition to the criminal proceedings, was not in question: the criminal proceedings related to the breaches of criminal law, and the disciplinary and forfeiture proceedings related specifically to the applicant's breach of the relationship of trust which must exist between all employees and their employer, but particularly so in the case of the police, who are held out to the public as guarantors of law-enforcement. As to the proportionality of the decision to forfeit the pension, it was not inherently unreasonable for provision to be made for reduction or even total forfeiture of pensions in suitable cases. Whilst the decision to forfeit the applicant's pension was a discretionary measure, the applicant had been afforded extensive procedural protection under relevant domestic law, in particular under Home Office Circular 56/98 which gave guidance on forfeiture of police pensions in a three-stage procedure (this was the main aspect which differentiated this case from *Azinas*). Given the particularly serious nature of the applicant's offences, and the exceptional damage which behaviour such as his can be assumed to cause to the reputation of the police, the decision to deprive the applicant of that part of his pension which represented the State's contributions to his pension could not be seen as upsetting a fair balance between the applicant's individual rights and the concerns of his employer and the general public: *manifestly ill-founded*.

DEPRIVATION OF PROPERTY
Annulment by a law with retroactive effect of a substantial part of compensation claims which the applicants could legitimately have expected to benefit from: *violation.*

MAURICE - France (N° 11810/03)
Judgment 6.10.2005 [Grand Chamber]

Facts: The applicant, who had already given birth to a disabled child a few years before, had a second child who was subsequently found to be suffering from the same disability, whereas the prenatal diagnosis requested by the parents had shown the unborn child to be healthy. A report by the head of the laboratory revealed that the mistaken prenatal diagnosis was the result of transposing the results of the analyses relating to the applicants' family and those of another family, caused by the switching of two bottles. Since, in view of the erroneous diagnosis, the couple had not been given the option of terminating the pregnancy following an *in utero* diagnosis of disability, the applicants submitted a claim seeking compensation for the pecuniary and non-pecuniary damage suffered as a result of the undetected disability. The court-appointed expert concluded that there had been negligence in the organisation and functioning of the laboratory. In an order of December 2001, the urgent-applications judge of the administrative court made them an interim award in respect of all the heads of claim submitted, as the

liability was not seriously open to challenge. However, the appeal court reduced the interim award, basing it solely on the non-pecuniary damage and the disruption to the applicants' lives. In its judgment of June 2002, it applied new legislation (Act of 4 March 2002) which was applicable to pending disputes, holding that compensation should be awarded solely in respect of the damage caused by the negligent switching of bottles and should not extend to the damage caused by the disability itself, since it was not a direct consequence of the negligent act. In February 2003 the *Conseil d'Etat* upheld that ruling and made the applicants an interim award simply in respect of the damage caused by the laboratory's negligence. That decision was followed by the court below. The Administrative Court, in applying the new law, awarded compensation to the applicants solely in respect of the non-pecuniary damage and disruption to their lives (the error of diagnosis having deprived them of the option to terminate the pregnancy). The amounts claimed in respect of the special burdens that would be incurred on account of the child's disability throughout its life (including the cost of house alterations and equipment purchases) could not be taken into account after the new law's entry into force.

Law: Article 1 of Protocol No. 1 – *Applicability*: Before the entry into force of the Act of 4 March 2002 the applicants had had a claim against the person responsible for the error of diagnosis that had caused them damage. They could legitimately have expected that claim to be realised, in accordance with established case-law. It was a "possession". The claim covered the whole of the alleged damage (and thus also the special burdens that would be incurred on account of the child's disability throughout its life).

Observation: The Act of 4 March 2002, which entered into force on 7 March 2002, had deprived the applicants of the possibility of obtaining compensation for the "special burdens" arising from their child's disability whereas, as early as 16 March 2001, they had brought proceedings in the Paris Administrative Court and, in an order of 19 December 2001, the urgent-applications judge of that court had granted them a substantial interim award, given that the liability towards them was not seriously open to challenge. The Act complained of had therefore entailed interference with the exercise of the rights to compensation which could have been asserted under the domestic law applicable until then. In so far as the new Act concerned proceedings brought before 7 March 2002, and which remained pending at that time, the interference amounted to a deprivation of property.
The Act by which the French Parliament had sought to put an end to a line of case-law of which it disapproved and to change the legal rules governing medical liability, even rendering the new rules applicable to existing cases, was "in the public interest".
However, that Act had abolished, with retrospective effect, a substantial portion of the claim to recovery of damages which the applicants could legitimately have expected to be realised, and they had not received appropriate compensation since then.
Conclusion: violation (unanimously).

Regard being had to that finding, the Court held that it was not necessary to examine separately the complaints under Article 14 taken together with Article 1 of Protocol No. 1 and under Article 6 § 1.
The Court held that there had not been a violation of Article 13, which did not go so far as to guarantee a remedy allowing a law to be challenged.

Article 8 – The applicants complained of the legal rules introduced by the Act of 4 March 2002. In the Court's view it could not reasonably be claimed that the French Parliament, by deciding through that Act to reorganise the system of compensation for disability in France, had overstepped the wide margin of appreciation left to it on the question or upset the fair balance that had to be maintained.
Conclusion: no violation (unanimously).

Article 41 – The Court awarded a sum in respect of costs and expenses. It reserved the question of the application of Article 41 in respect of pecuniary and non-pecuniary damage.
(N.B. On the same day the Grand Chamber gave identical findings in the similar case of *Draon v. France*, no. 1513/03).

DEPRIVATION OF PROPERTY
Lack of compensation following the annulment of a property title and the destruction of a building erected on the property: *violation*.

N.A. and others - Turkey (N° 37451/97)
Judgment 11.10.2005 [Section II]

Facts: Having inherited a plot of land on the coast which was entered in the land register, the applicants duly paid all the relevant taxes. After obtaining the necessary administrative permits, they embarked upon the construction of a hotel. When the work was under way, the Public Treasury applied for the registration of the property to be declared invalid and for the demolition of the building. It was successful at first instance on the ground that the applicants' land was located on the shoreline and, under domestic law, could not be privately acquired. The Court of Cassation upheld that judgment. In addition, the applicants were unsuccessful when they claimed damages for the loss of their property rights and for the demolition of the hotel. After pointing out that the shoreline was the property of the State, the domestic courts found that the applicants could not deny that their land was situated on a sandy beach. Moreover, as the land belonged to the State, they considered that its registration in the land register had been unlawful *ab initio*, and that the applicants could not thus claim any compensation from the State.

Law: Article 1 of Protocol No. 1 – It was not disputed that the applicants had acquired and used the disputed land in good faith. Moreover, they were subsequently deprived of their property by a judicial decision which was not in any way arbitrary and fulfilled a legitimate purpose. However, a total lack of compensation for deprivation of property could only be justified in exceptional circumstances. The Turkish Government had failed to give any such justification in the present case. Accordingly, the total lack of compensation for the applicants had upset, to their detriment, the fair balance that had to be struck between the protection of property and the requirements of the general interest.
Conclusion: violation (unanimously).

Article 41: The Court found that the question of just satisfaction was not ready for decision and reserved it in whole.

DEPRIVATION OF PROPERTY
Order for an account of profits in relation to the publication of an autobiography written by a former agent of the British Intelligence Service alleged to have represented a breach of property rights: *inadmissible*.

BLAKE - United Kingdom (N° 68890/01)
Decision 25.10.2005 [Section IV]
(see Article 6(1), above)

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Exclusion of convicted prisoners from voting in parliamentary and local elections: *violation*.

HIRST - United Kingdom (No. 2) (N° 74025/01)
Judgment 6.10.2005 [Grand Chambe]

Facts: The applicant was serving a sentence of life imprisonment for manslaughter but was released from prison on licence in 2004. As a convicted prisoner, he is barred by law from voting in parliamentary or local elections. Some 48,000 other prisoners are similarly affected. He issued proceedings in the High Court, under section 4 of the Human Rights Act 1998, seeking a declaration that the relevant legislation was incompatible with the Convention. His claim and subsequent appeal were both rejected.

Law: The rights guaranteed under Article 3 of Protocol No. 1 were crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and also that the right to vote was a right and not a privilege. Nonetheless, the rights bestowed by this provision were not absolute and there was room for implied limitations. Any limitations on the right to vote had to be imposed in pursuit of a legitimate aim, be proportionate to that aim and not thwart the free expression of the people in the choice of the legislature. Prisoners generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention expressly fell within the scope of Article 5. Article 3 of Protocol No. 1 nevertheless did not exclude that restrictions on electoral rights be imposed on an individual who had, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. However, the severe measure of disenfranchisement was not to be undertaken lightly and the principle of proportionality required a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. As in other contexts, an independent court, applying an adversarial procedure, provided a strong safeguard against arbitrariness.
The Court accepted that the domestic legislation might be regarded as pursuing the legitimate aim of preventing crime and enhancing civic responsibility and respect for the rule of law. As to the proportionality of the voting ban, 48,000 prisoners barred from voting was a significant figure which included a wide range of offenders and sentences, from one day to life and from relatively minor offences to offences of the utmost gravity. Nor was it apparent that there was any direct link between the facts of any individual case and the removal of the right to vote. There was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote. The domestic courts, for their part, did not undertake any assessment of the proportionality of the measure itself.
It was undisputed that the United Kingdom was not alone among Convention countries in depriving all convicted prisoners of the right to vote. It might also be said that the law in the United Kingdom was less far-reaching than in certain other States. However, the fact remained that it was a minority of Contracting States in which a blanket restriction on the right of convicted prisoners to vote was imposed or in which there was no provision allowing prisoners to vote. Moreover, and even if no common European approach to the problem could be discerned, that could not of itself be determinative of the issue. While the margin of appreciation in this field was wide, it was not all-embracing. The law in question remained a blunt instrument, applied automatically to convicted prisoners in prison, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1. The Court therefore endorsed the Chamber's finding under this provision.
Conclusion: violation (12 votes to five).

Articles 10 and 14*:* Like the Chamber, the Grand Chamber found that no separate issue arose either under Article 10 or Article 14 (unanimous).

Article 41*:* The finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. The applicant was awarded a certain amount for costs and expenses.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(1)

FREEDOM OF MOVEMENT
Prohibition on leaving place of residence during criminal proceedings: *no violation*.

FEDOROV and FEDOROVA - Russia (Nº 31008/02)
Judgment 13.10.2005 [Section I]

Facts: The applicants are husband and wife. Criminal proceedings were instituted against them on account of alleged forgery of expense accounts in 1996 and 1998, respectively. An obligation not to leave their place of residence was imposed on them as a preventive measure. In 2003, the District Court formally lifted the obligation not to leave the place of residence without permission in respect of both applicants (although it had already been cancelled by the courts in 2002). The proceedings against the wife were discontinued in 2003, and those in respect of the husband in 2005.

Law: Article 6(1) (reasonable time) – The length of the proceedings had been excessive and failed to meet the "reasonable time" requirement.
Conclusion: violation (unanimously).

Article 2 of Protocol No. 4 – It was not disputed that there had been a restriction on the applicants' freedom of movement. The interference had been in accordance with the law and had pursued the legitimate aim of ensuring the applicants' presence at the place where the investigation was being conducted, thus the protection of crime and protection of rights and freedoms of others. As to the necessity and proportionality of the measure, the present case was to be distinguished from *Luordo v. Italy*, where the Court found that the obligation not to leave one's place of residence imposed on an applicant for the duration of bankruptcy proceedings, which had lasted 14 years and 8 months, had been disproportionate. In the present case the applicants had been subject to criminal proceedings, and it was not questionable that a preventive measure of this nature be applied to ensure the efficient conduct of a criminal prosecution. Moreover, the duration of the measure had not applied for the whole of the criminal proceedings. It had been cancelled by the District Court in 2003. Taking into account the Court's competence *ratione temporis*, the restriction had lasted a period of 4 years and 3 months in respect of both applicants. Hence, the duration of the measure in itself had not been disproportionate. In examining whether a fair balance had been struck, the Court noted that the first applicant had twice applied for permission to leave his district, which had been granted. The applicants had not provided any evidence to show that such a permission to leave their place of residence had been rejected on other occasions, in particular when they had wanted to accompany their son for a job interview. Accordingly, the restriction on the applicants' freedom of movement had not been disproportionate.
Conclusion: no violation (unanimously).

Other judgments delivered in October

Cangoz v. Turkey (Nº 28039/95), 4 October 2005 [Section IV]
Ozturk v. Turkey (Nº 29365/95), 4 October 2005 [Section II]
Conus v. France (Nº 55763/00), 4 October 2005 [Section II]
Svintitskiy and others v. Ukraine (Nº 50312/00), 4 October 2005 [Section II]
Falkovich v. Ukraine (Nº 64200/00), 4 October 2005 [Section II] (striking out)
Sibilski v. Poland (Nº 64207/01), 4 October 2005 [Section IV]
Maisons Traditionnelle v. France (Nº 68397/01), 4 October 2005 [Section II]
Molchan v. Ukraine (Nº 68897/01), 4 October 2005 [Section II]
Citikbel v. Turkey (Nº 497/02), 4 October 2005 [Section II]
Golovin v. Ukraine (Nº 3216/02), 4 October 2005 [Section II]
Bitkivska v. Ukraine (Nº 5788/02), 4 October 2005 [Section II]
Polovoy v. Ukraine (Nº 11025/02), 4 October 2005 [Section II]
Chernobryvko v. Ukraine (Nº 11324/02), 4 October 2005 [Section II]
Jarzynski v. Poland (Nº 15479/02), 4 October 2005 [Section IV]
Sidenko v. Ukraine (Nº 19158/02), 4 October 2005 [Section II]
Toropov v. Ukraine (Nº 19844/02), 4 October 2005 [Section II]
Pastukhov v. Ukraine (Nº 20473/02), 4 October 2005 [Section II]
Belitskiy v. Ukraine (Nº 20837/02), 4 October 2005 [Section II]
Nikishin v. Ukraine (Nº 22993/02), 4 October 2005 [Section II]
Gorski v. Poland (Nº 28904/02), 4 October 2005 [Section IV]
Zyts v. Ukraine (Nº 29570/02), 4 October 2005 [Section II]
Mikheyeva v. Ukraine (Nº 44379/02), 4 October 2005 [Section II]
Ryabich v. Ukraine (Nº 3445/03), 4 October 2005 [Section II]
Bozhko v. Ukraine (Nº 3446/03), 4 October 2005 [Section II]
Sarban v. Moldova (Nº 3456/05), 4 October 2005 [Section IV]
Zhurba v. Ukraine (Nº 7884/03), 4 October 2005 [Section II]
Becciev v. Moldova (Nº 9190/03), 4 October 2005 [Section IV]
Morkotun v. Ukraine (Nº 10072/03), 4 October 2005 [Section II]
Kankowski v. Poland (Nº 10268/03), 4 October 2005 [Section IV]
Krawczak v. Poland (Nº 17732/03), 4 October 2005 [Section IV]
Sivokoz v. Ukraine (Nº 27282/03), 4 October 2005 [Section II]
Nesibe Haran v. Turkey (Nº 28299/95), 6 October 2005 [Section III]
Tanrikulu and others v. Turkey (Nº 29928/96, Nº 29919/96 and Nº 30169/96), 6 October 2005 [Section III]
H.Y. and Hu.Y. v. Turkey (Nº 40262/98), 6 October 2005 [Section I]
Androsov v. Russia (Nº 63973/00), 6 October 2005 [Section I]
Gisela Muller v. Germany (Nº 69584/01), 6 October 2005 [Section III]
Shilyayev v. Russia (Nº 9647/02), 6 October 2005 [Section I]
Papuk Trgovina v. Croatia (Nº 2708/03), 6 October 2005 [Section I]
Marinovic v. Croatia (Nº 9627/03), 6 October 2005 [Section I]
Zagorec v. Croatia (Nº 10370/03), 6 October 2005 [Section I]
Meznaric v. Croatia (Nº 10955/03), 6 October 2005 [Section I]
Drazic v. Croatia (Nº 11044/03), 6 October 2005 [Section I]
Baginski v. Poland (Nº 37444/97), 11 October 2005 [Section IV]
Kanioğlu and others v. Turkey (Nº 44766/98, Nº 44771/98 and Nº 44772/98), 11 October 2005 [Section II]
Ceylan v. Turkey (no. 2) (Nº 46454/99), 11 October 2005 [Section II]
Spang v. Switzerland (Nº 45228/99), 11 October 2005 [Section IV]
Palka v. Poland (Nº 49176/99), 11 October 2005 [Section IV]
Majewski v. Poland (Nº 52690/99), 11 October 2005 [Section IV]
Eşidir and others v. Turkey (Nº 54814/00), 11 October 2005 [Section II]
Bazancir and others v. Turkey (Nº 56002/00 and Nº 7059/02), 11 October 2005 [Section II]

Mehmet Özkan and others v. Turkey (Nº 56006/00), 11 October 2005 [Section II]
Alataş and Kalkan v. Turkey (Nº 57642/00), 11 October 2005 [Section II]
La Rosa and Alba v. Italy (Nº 58119/00), 11 October 2005 [Section IV]
Tibbling v. Sweden (Nº 59129/00), 11 October 2005 [Section II]
Chiro and others v. Italy (no. 1) (Nº 63620/00), 11 October 2005 [Section IV]
Chiro and others v. Italy (no. 2) (Nº 65137/01), 11 October 2005 [Section IV]
Chiro and others v. Italy (no. 3) (Nº 65272/01), 11 October 2005 [Section IV]
Yildiz Yilmaz v. Turkey (Nº 6689/01), 11 October 2005 [Section II]
Chiro and others v. Italy (no. 4) (Nº 67196/01), 11 October 2005 [Section IV]
Chiro and others v. Italy (no. 5) (Nº 67197/01), 11 October 2005 [Section IV]
Szczecinski v. Poland (Nº 73864/01), 11 October 2005 [Section IV]
Sychev v. Ukraine (Nº 4773/02), 11 October 2005 [Section II]
Savitchi v. Moldova (Nº 11039/02), 11 October 2005 [Section IV]
Miklós v. Hungary (Nº 21742/02), 11 October 2005 [Section II]
Slezák and others v. Czech Republic (Nº 27911/02), 11 October 2005 [Section II]
Cibulkova v. Slovakia (Nº 38144/02), 11 October 2005 [Section IV]
Zouhar v. Czech Republic (Nº 8768/03), 11 October 2005 [Section II]
Günaydin v. Turkey (Nº 27526/95), 13 October 2005 [Section I]
La Rosa and Alba v. Italy (Nº 63238/00), 13 October 2005 [Section I]
Colacrai v. Italy (Nº 63296/00), 13 October 2005 [Section I]
Colazzo v. Italy (Nº 63633/00), 13 October 2005 [Section I]
Fiore v. Italy (Nº 63864/00), 13 October 2005 [Section I]
Maselli v. Italy (Nº 63866/00), 13 October 2005 [Section I]
Clinique des Acacias and others v. France (Nº 65399/01, Nº 65405/01, Nº 65406/01 and Nº 65407/01), 13 October 2005 [Section III]
Vasilyev v. Russia (Nº 66543/01), 13 October 2005 [Section I]
Serrao v. Italy (Nº 67198/01), 13 October 2005 [Section I]
De Pascale v. Italy (Nº 71175/01), 13 October 2005 [Section I]
Binotti v. Italy (Nº 71603/01), 13 October 2005 [Section I]
Savvas v. Greece (Nº 22868/02), 13 October 2005 [Section I]
Gerasimova v. Russia (Nº 24669/02), 13 October 2005 [Section I]
Bracci v. Italy (Nº 36822/02), 13 October 2005 [Section III]
Daniliuc v. Moldova (Nº 46581/99), 18 October 2005 [Section IV]
Akdogdu v. Turkey (Nº 46747/99), 18 October 2005 [Section II]
Siroky v. Slovakia (Nº 69955/01), 18 October 2005 [Section IV]
Terem Ltd., Chechetkin and Olius v. Ukraine (Nº 70297/01), 18 October 2005 [Section II]
Tutuncu and others v. Turkey (Nº 74405/01), 18 October 2005 [Section II]
Schemkamper v. France (Nº 75833/01), 18 October 2005 [Section II]
Carvalho Acabado v. Portugal (Nº 30533/03), 18 October 2005 [Section II]
Kilicoglu v. Turkey (Nº 41136/98), 20 October 2005 [Section III]
Umo Ilinden and Ivanov v. Bulgaria (Nº 44079/98), 20 October 2005 [Section I]
Tanrikolu and others v. Turkey (Nº 45907/99), 20 October 2005 [Section III]
Aslan v. Turkey (Nº 48063/99), 20 October 2005 [Section III]
Todorov v. Bulgaria (Nº 50411/99), 20 October 2005 [Section I]
Hristov v. Bulgaria (Nº 52389/99), 20 October 2005 [Section I]
Ozcelik and Others v. Turkey (Nº 55391/00), 20 October 2005 [Section III]
Hatun and others v. Turkey (Nº 57343/00), 20 October 2005 [Section III]
Umo Ilinden and Pirin and others v. Bulgaria (Nº 59489/00), 20 October 2005 [Section I]
Romanov v. Russia (Nº 63993/00), 20 October 2005 [Section III]
Shvedov v. Russia (Nº 69306/01), 20 October 2005 [Section I]
Groshev v. Russia (Nº 69889/01), 20 October 2005 [Section I]
Yetkinsekerci v. United Kingdom (Nº 71841/01), 20 October 2005 [Section III]
Ataoglu v. Turkey (Nº 77111/01), 20 October 2005 [Section III]
Kartal v. Turkey (Nº 4520/02), 20 October 2005 [Section III]
Karagoz v. Turkey (Nº 5701/02), 20 October 2005 [Section III]

Kucuk v. Turkey (Nº 7035/02), 20 October 2005 [Section III]
Tunc v. Turkey (Nº 16608/02), 20 October 2005 [Section III]
Ozata v. Turkey (Nº 19578/02), 20 October 2005 [Section III]
Parkhomov v. Russia (Nº 19589/02), 20 October 2005 [Section I]
Bazhenov v. Russia (Nº 37930/02), 20 October 2005 [Section III]
Uludag v. Turkey (Nº 38861/03), 20 October 2005 [Section III]
N.M. v. Turkey (Nº 35065/97), 25 October 2005 [Section IV]
IPSD and others v. Turkey (Nº 35832/97), 25 October 2005 [Section IV]
Tekin v. Turkey (Nº 50971/99), 25 October 2005 [Section II]
Bakir v. Turkey (Nº 54916/00), 25 October 2005 [Section II]
Geyik Yuksel v. Turkey (Nº 56362/00), 25 October 2005 [Section IV]
Vejmola v. Czech Republic (Nº 57246/00), 25 October 2005 [Section II]
Yildiz v. Turkey (Nº 58400/00), 25 October 2005 [Section II]
Niedzwiecki v. Germany (Nº 58453/00), 25 October 2005 [Section IV]
Okpisz v. Germany (Nº 59140/00), 25 October 2005 [Section IV]
Yigit v. Turkey (Nº 62838/00), 25 October 2005 [Section IV]
Oner and Others v. Turkey (Nº 64684/01), 25 October 2005 [Section IV]
Kutepov and Anikeyenko v. Russia (Nº 68029/01), 25 October 2005 [Section II]
Romanov v. Russia (Nº 69341/01),), 25 October 2005 [Section II]
Fernandez-Rodriguez v. France (Nº 69507/01), 25 October 2005 [Section II]
Gabay v. Turkey (Nº 70829/01), 25 October 2005 [Section IV]
Eser v. Turkey (Nº 5400/02), 25 October 2005 [Section IV]
Polach v. Czech Republic (Nº 15377/02), 25 October 2005 [Section II]
Mete v. Turkey (Nº 39327/02), 25 October 2005 [Section II]
Erol v. Turkey (no. 2) (Nº 47796/99), 27 October 2005 [Section I]
Wirtschafts-Trend Zeitschriftenverlags GmbH v. Austria (Nº 58547/00), 27 October 2005 [Section I]
Quillevere v. France (Nº 61104/00), 27 October 2005 [Section I]
Schenkel v. Netherlands (Nº 62015/00), 27 October 2005 [Section III]
Mathieu v. France (Nº 68673/01), 27 October 2005 [Section I]
Keles v. Germany (Nº 32231/02), 27 October 2005 [Section III]

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three-month time-limit for requesting referral to the Grand Chamber) (see Information Notes Nos. 76 and 77):

I.O. - Turkey (Nº 36965/97)
Ozgur and Turhan - Turkey (Nº 28512/03)
Judgments 28.6.2005 [Section IV]

Exel - Czech Republic (Nº 48962/99)
S.B. and H.T. - Turkey (Nº 54430/00)
Marie-Louise Loyen - France (Nº 55929/00)
Colin - France (Nº 75866/01)
Osvath - Hungary (Nº 20723/02)
Saïd - The Netherlands (No. 2345/02) [Section II (former)]
Judgments 5.7.2005 [Section II]

Lomaseita Oy and others - Finland (Nº 45029/98)
Krumpel and Krumpelova - Slovakia (Nº 56195/00)
Judgments 5.7.2005 [Section IV]

Malinovskiy - Russia (Nº 41302/02)
Shpakovskiy - Russia (Nº 41307/02)
Mihajlovic - Croatia (Nº 21752/02)
Judgments 7.7.2005 [Section I]

Geyer - Austria (Nº 69162/01)
Judgment 7.7.2005 [Section III]

Soner Onder - Turkey (Nº 39813/98)
Guneri and others - Turkey (Nº 42853/98, Nº 43609/98 and Nº 44291/98)
Muslum Gunduz - Turkey (no. 2) (Nº 59997/00)
Judgments 12.7.2005 [Section II]

Contardi - Switzerland (Nº 7020/02)
Munari - Switzerland (Nº 7957/02)
Judgments 12.7.2005 [Section IV]

Fatma Kaçar - Turkey (N° 35838/97)
Asenov - Bulgaria (Nº 42026/98)
De Landsheer - Belgium (Nº 50575/99)
Leroy - Belgium (Nº 52098/99)
La Rosa and others - Italy (Nº 63285/00)
Judgments 15.7.2005 [Section I]

Yilmaz and Gumus - Turkey (Nº 28167/02)
Kurucu - Turkey (Nº 28174/02)
Kahveci - Turkey (Nº 853/03)
Zeynep Sahin - Turkey (Nº 2203/03)
Salih Kaplan - Turkey (Nº 6071/03)
Salih Kaplan - Turkey (no. 2) (Nº 6073/03)

Cafer Kaplan - Turkey (Nº 6759/03)
Mehmet Salih Aslan - Turkey (Nº 59237/00)
Mehmet Celik - Turkey (Nº 61650/00)
Feyyaz Yilmaz - Turkey (Nº 62319/00)
Caplik - Turkey (Nº 57019/00)
Yesiltas and Kaya - Turkey (Nº 52162/99)
Kececi - Turkey (Nº 52701/99 and Nº 53486/99)
Judgments 15.7.2005 [Section III]

P.M. - United Kingdom (Nº 6638/03)
Judgment 19.7.2005 [Section IV]

Mihailov - Bulgaria (Nº 52367/99)
Roseltrans - Russia (Nº 60974/00)
Rohde - Denmark (N° 69332/01)
Desrues - France (Nº 77098/01)
Gerasimova - Russia (Nº 24077/02)
Amassoglou - Greece (Nº 40775/02)
Grinberg - Russia (Nº 23472/03)
Atmatzidi - Greece (Nº 2895/03)
Yavorivskaya - Russia (Nº 34687/02)
Judgments 21.7.2005 [Section I]

Reyhan - Turkey (Nº 38422/97)
Pembe and others - Turkey (Nº 49398/99)
Yildiz and others - Turkey (Nº 52164/99)
Karabas - Turkey (Nº 52691/99)
Levent Can Yilmaz - Turkey (Nº 53497/99)
Rytsarev - Russia (Nº 63332/00)
Baskan - Turkey (Nº 66995/01)
Yayla - Turkey (Nº 70289/01)
Judgments 21.7.2005 [Section III]

Simsek and others - Turkey (N° 35072/97, N° 37194/97)
Siliadin - France (N° 73316/01)
Judgments 26.7.2005 [Section II]

Scutari - Moldova (Nº 20864/03)
Mild and Virtanen - Finland (Nº 39481/98 and Nº 40227/98)
Kniat - Poland (Nº 71731/01)
Judgments 26.7.2005 [Section IV]

Alatulkkila and others - Finland (N° 33538)
Cima - Italy (Nº 55161/00)
Molteni and Ghisi - Italy (Nº 67911/01)
Stornelli and others - Italy (Nº 68706/01)
Gamberini Mongenet - Italy (Nº 68707/01)
Sciortino - Italy (Nº 69834/01)
Czarnecki - Poland (Nº 75112/01)
Judgments 28.7.2005 [Section III]

Article 44(2)(c)

On 12 October 2005 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Ağin v. Turkey (46069/99) - [Section II] judgment of 29 March 2005
Pasculli v. Italy (36818/97) - [Section IV] judgment of 17 May 2005
Scordino v. Italy (no. 3) (43662/98) - [Section IV] judgment of 17 May 2005
Acciardi e Campagna v. Italy (41040/98) - [Section I] judgment of 19 May 2005
Mason v. Italy (43663/98) - [Section IV] judgment of 17 May 2005
Acar and Others v. Turkey (36088/99) - [Section IV] judgment of 24 May 2005
Adali v. Turkey (38187/97) - [Section I] judgment of 31 March 2005
Rokhlina v. Russia (54071/00) - [Section I] judgment of 7 April 2005
Nevmerzhitsky v. Ukraine (54825/00) - [Section II] judgment of 5 April 2005
Heger v. Slovakia (62194/00) - [Section IV] judgment of 17 May 2005
Ukrainian Media Group v. Ukraine (72713/01) – [former Section II] judgment of 29 March 2005
Horváthová v. Slovakia (74456/01) - [Section IV] judgment of 17 May 2005
Rapacciuolo v. Italy (76024/01) - [Section III] judgment of 19 May 2005
Znamenskaya v. Russia (77785/01) - [Section I] judgment of 2 June 2005
Palgutová v. Slovakia (9818/02) - [Section IV] judgment of 17 May 2005
Kaufmann v. Italy (14021/02) - [Section III] judgment of 19 May 2005
Shamayev and 12 others v. Georgia and Russia (36378/02) – [former Section II] judgment of 12 April 2005
Gorokhov and Rusyayev v. Russia (38305/02) - [Section I] judgment of 17 March 2005
J. S. and A. S. v. Poland (40732/98) - [Section IV] judgment of 24 May 2005
Aslangiray and Others v. Turkey (48262/99) - [Section IV] judgment of 31 May 2005
Zawadka c.Poland (48542/99) - [Section III] judgment of 23 June 2005
Emrullah Hattatoğlu v. Turkey (48719/99) - [Section III] judgment of 14 April 2005
Antunes Rocha v. Portugal (64330/01) - [Section II] judgment of 31 May 2005 (*)
Páleník v. the Czech Republic (64737/01) - [Section II] judgment of 21 June 2005
Chmelíř v. the Czech Republic (64935/01) - [Section II] judgment of 7 June 2005
Mařík v. the Czech Republic (73116/01) - [Section II] judgment of 12 April 2005
Szilágyi v. Hungary (73376/01) - [Section II] judgment of 5 April 2005 (*)
Ghibusi v. Romania (7893/02) - [Section III] judgment of 23 June 2005
Pitra v. Croatia (41075/02) - [Section I] judgment of 16 June 2005
Wolfmeyer v. Austria (5263/03) - [Section I] judgment of 26 May 2005
Intiba v. Turkey (42585/98) - [Section II] judgment of 24 May 2005
Fera v. Italy (45057/98) – [former Section I] judgment of 21 April 2005
Cali and Others v. Italy (52332/99) - [Section I] judgment of 19 May 2005

Statistical information[1]

Judgments delivered	October	2005
Grand Chamber	4	10(13)
Section I	33	239(244)
Section II	52(55)	255(261)
Section III	25(30)	141(149)
Section IV	34	142(190)
former Sections	0	20(22)
Total	**148(156)**	**807(879)**

Judgments delivered in October 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4	0	0	0	4
Section I	33	0	0	0	33
Section II	51(54)	0	1	0	52(55)
Section III	25(30)	0	0	0	25(30)
Section IV	34	0	0	0	34
Total	**147(155)**	**0**	**1**	**0**	**148(156)**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9(12)	0	0	1	10(13)
former Section I	5	0	0	1	6
former Section II	7(8)	1(2)	0	0	8(10)
former Section III	5	0	0	1	6
former Section IV	0	0	0	0	0
Section I	233(238)	4	2	0	239(244)
Section II	238(243)	12(13)	4	1	255(261)
Section III	128(136)	7	4	2	141(149)
Section IV	136(184)	3	2	1	142(190)
Total	**761(831)**	**27(29)**	**12**	**7**	**807(879)**

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

Decisions adopted		October	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		25(28)	233(238)
Section II		29(32)	229(237)
Section III*		18	165(171)
Section IV		31(32)	122(127)
Total		**101(110)**	**749(773)**
II. Applications declared inadmissible			
Grand Chamber		0	2(4)
Section I	- Chamber	4	54(55)
	- Committee	815	5306
Section II	- Chamber	14	78(79)
	- Committee	1009	4955
Section III*	- Chamber	44	130
	- Committee	727	4459
Section IV	- Chamber	20	126(129)
	- Committee	868	6553
Total		**3501**	**21663(21670)**
III. Applications struck off			
Section I	- Chamber	11	51
	- Committee	4	47
Section II	- Chamber	11	73
	- Committee	26	87
Section III*	- Chamber	10(35)	37(57)
	- Committee	11	105
Section IV	- Chamber	11(12)	50(51)
	- Committee	10	100
Total		**94(120)**	**550(571)**
Total number of decisions[1]		**3696(3731)**	**22962(23014)**

1. Not including partial decisions.

Applications communicated	October	2005
Section I	70	518
Section II	109	835
Section III	59	432
Section IV	77	391
Total number of applications communicated	**315**	**2176**

* including decisions taken in its former composition.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1 :	Abolition of the death penalty

Protocol No. 7

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