CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 56
on the case-law of the Court
September 2003

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

Statistical information[1]

Judgments delivered	September	2003
Grand Chamber	0	8(14)
Section I	5	138(142)
Section II	13	132(137)
Section III	0	61(64)
Section IV	11	113(114)
Sections in former compositions	0	11
Total	**29**	**463(482)**

Judgments delivered in September 2003					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	3	2	0	0	5
Section II	9	4	0	0	13
Section III	0	0	0	0	0
Section IV	5	6	0	0	11
Total	**17**	**12**	**0**	**0**	**29**

NB. No judgments were delivered in August.

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	7(13)	0	0	1[3]	8(14)
former Section I	4	0	0	0	4
former Section II	1	0	0	0	1
former Section III	4	0	0	0	4
former Section IV	1	0	0	1[4]	2
Section I	105(109)	30	0	3[5]	138(142)
Section II	103(108)	21	4	4[6]	132(137)
Section III	55(58)	5	0	1[2]	61(64)
Section IV	75(76)	35	3	0	113(114)
Total	**355(374)**	**91**	**7**	**10**	**463(482)**

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

Decisions adopted		August	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		0	74(76)
Section II		1	77(85)
Section III		0	58(61)
Section IV		19	119(155)
Former Sections		0	1
Total		**20**	**329(378)**
II. Applications declared inadmissible			
Section I	- Chamber	0	40
	- Committee	155	2988
Section II	- Chamber	5	55(56)
	- Committee	110	2856
Section III	- Chamber	0	49(59)
	- Committee	0	1250
Section IV	- Chamber	3	61(63)
	- Committee	0	1991
Total		**273**	**9290(9303)**
III. Applications struck off			
Section I	- Chamber	0	16
	- Committee	0	19
Section II	- Chamber	2	28
	- Committee	0	27
Section III	- Chamber	0	38
	- Committee	0	11
Section IV	- Chamber	0	69(87)
	- Committee	0	21
Total		**2**	**229(247)**
Total number of decisions[1]		**295**	**9848(9928)**

1. Not including partial decisions.

Applications communicated	August	2003
Section I	20	222(227)
Section II	7	221(223)
Section III	0	326(342)
Section IV	1	196(234)
Total number of applications communicated	**28**	**965(1026)**

Decisions adopted		September	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		22(24)	96(100)
Section II		27(28)	103(112)
Section III		8	66(69)
Section IV		37(39)	137(175)
former Sections		0	1
Total		**94(99)**	**403(457)**
II. Applications declared inadmissible			
Section I	- Chamber	9(10)	49(50)
	- Committee	674	3507
Section II	- Chamber	15(29)	65(80)
	- Committee	689	3434
Section III	- Chamber	39(40)	88(99)
	- Committee	323	1573
Section IV	- Chamber	17	75(77)
	- Committee	682	2673
Total		**2448(2464)**	**11464(11493)**
III. Applications struck off			
Section I	- Chamber	9(37)	25(53)
	- Committee	0	19
Section II	- Chamber	5	31
	- Committee	7	34
Section III	- Chamber	5	43
	- Committee	4	15
Section IV	- Chamber	4	73(91)
	- Committee	5	26
Total		**39(67)**	**266(312)**
Total number of decisions[1]		**2581(2630)**	**12133(12262)**

[1.] Not including partial decisions.

Applications communicated	September	2003
Section I	53	255(260)
Section II	29(36)	243(252)
Section III	85(88)	411(431)
Section IV	22(24)	217(257)
Total number of applications communicated	**189(201)**	**1126(1200)**

ARTICLE 1

JURISDICTION OF STATES
Refusal to grant an allowance on the ground, *inter alia*, that there is no reciprocity agreement been the applicant's country of nationality and France: *violation*.

KOUA POIRREZ - France (Nº 40892/98)
Judgment 30.9.2003 [Section II]
(see Article 1 of Protocol No. 1).

ARTICLE 2

LIFE
Alleged negligence of French KFOR troops in the death of a child in the explosion of a bomb in Kosovo: *communicated*.

BEHRAMI - France (Nº 71412/01)
Decision 16.9.2003 [Section II]

The first applicant is a Kosovar, one of whose children was killed and another (the second applicant) severely injured, when a group of children played with undetonated cluster bombs dropped during the NATO bombardments in 1999. The applicant maintains that France is responsible for the death, because the incident took place in the part of Kosovo which is under the jurisdiction and control of French KFOR troops, who had failed to mark the site and/or defuse the bombs, which they knew to be in the area.
Communicated under Article 2.

ARTICLE 3

INHUMAN TREATMENT
Continued detention despite illness and effects of a hunger strike: *communicated*.

TARAK - Turkey (N° 18711/02)
Decision 18.9.2003 [Section III]

In March 1997, the applicant, who had been in provisional detention since December 1996, was charged with offences against the constitutional order. In September 1999, he was transferred to an F-category prison. In September 2001, the applicant went on hunger strike in protest at the conditions of detention in F-category prisons. A medical report drawn up by the authorities on the 119th day of the hunger strike stated that, because of the risk to the applicant's life, his sentence should be suspended for six months. The report also stated that the applicant was suffering from a debilitating pathology. However, it was ordered that the applicant remain in custody on the ground that Article 399 § 1 of the Code of Criminal Procedure makes provision for a sentence to be suspended only in the case of persons who have already been convicted. In May 2002, the applicant abandoned his hunger strike. In June 2002, he was transferred to hospital. In October 2002, the National Security Court sentenced

the applicant to life imprisonment. The applicant's numerous applications for provisional release had been rejected.
Communicated under Articles 3, 5(3) and 5(4) and Article 14 in conjunction with Article 5.

INHUMAN TREATMENT
Conditions of detention in a provisional isolation block of a local branch of the State police: *admissible*.

KADIĶIS - Latvia (n° 2) (N° 62393/00)
Decision 25.9.2003 [Section I]

In April 2000 the applicant was sentenced to fifteen days' "administrative detention" for contempt of court, an offence under the Code of Administrative Offences. No appeal lay against that decision. The applicant lodged an application to set aside and an application for annulment, which were dismissed. The applicant was held in the provisional isolation block of the Directorate of the State Police in Liepāja. He was placed in a cell measuring 6 sq. m., which regularly housed four of five prisoners. Owing to lack of space, the only furniture was a wooden platform serving as a common bed for the prisoners. No daylight entered the cell, which had continuous artificial lighting, was badly ventilated and had no sanitary fittings. The prisoners received one meal per day. The applicant states that he was not allowed outside throughout his detention. He began a hunger strike and states that he was obliged to end it when his health seriously deteriorated.
Admissible under Articles 3 and 13, following joinder to the merits of the objection of failure to exhaust all domestic remedies raised in respect of Article 3.
Inadmissible under Article 6(1) and Article 2 of Protocol no. 7: The respondent Government's objection of failure to comply with the six-month period in respect of Article 6 is upheld. First, as the remedies exercised by the applicant against the order establishing the administrative offence depend on the discretion of the authority seised, they are extraordinary procedural remedies which are not taken into account in the calculation of the six-month period. The final domestic decision for the purposes of Article 35(1) is therefore the order of April 2000. As Latvian law provides that such a decision is to be served on the person convicted, the six-month period begins to run on the date on which the terms of the decision are actually communicated to the applicant. While it is true the applicant's first letter to the Court is dated one day before the expiry of the six-month period, the letter was posted three days later and the Court considers that it is the date of posting indicated on the postmark that must be taken as the date on which the application was submitted. Although under Latvian law the relevant period is automatically extended when it coincides with a holiday, the Court observes that the six-month period is to be calculated according to the criteria applicable to the Convention. The respondent Government have submitted no objection of inadmissibility in respect of Article 2 of Protocol no. 7. The Court reiterates that the rule on compliance with the six-month period is a matter of public policy and that it has jurisdiction to apply it of its own motion: the complaints are out of time.
Inadmissible under Article 5: The applicant's detention under the order convicting him of an administrative offence is held to be consistent with paragraphs 1 and 4 of Article 5: manifestly ill-founded.

EXTRADITION
Extradition of a suspected member of the "Shining Path" to Peru, where he allegedly risks being subjected to ill-treatment: *communicated*.

OLAECHEA CAHUAS - Spain (N° 24668/03)
[Section IV]

The applicant is a Peruvian national residing in London. In July 2003 he was arrested in Spain on suspicion of being a member of the "Shining Path". Pursuant to an international arrest warrant issued by the Peruvian authorities, proceedings to extradite the applicant to Peru were initiated. He was eligible for the simplified procedure provided for in the Treaty between Spain and Peru on Extradition, that is to say, he would be immediately returned to the requesting country and would face trial only for the offences in respect of which the application to extradite him was issued. On 18 July 2003, the *Audienca Nacional* gave leave for the applicant to be extradited to be tried for terrorism by the Peruvian judicial authorities. The decision referred to a verbal diplomatic note from the Ambassador of Peru, in which an assurance was given that the applicant would not be subjected to penalties affecting his physical integrity or to inhuman or degrading treatment. The note stated that the offences of terrorism imputed to the applicant did not attract the death penalty and a sentence of life imprisonment, which was the normal penalty, would not be applied. The applicant appealed against that decision, but was unsuccessful. On 6 August 2003, the Court, to which the applicant had submitted an application, applied Rule 39 of its Rules of Court and requested the Spanish Government to suspend the applicant's extradition temporarily. On the following day, however, the Spanish investigating judge responsible for the case rejected the request for the application of the measures provided for in Article 39 and the applicant was extradited to Peru on the same day.
Communicated under Articles 3, 6 and 34.

EXPULSION
Threatened deportation to the Democratic Republic of Congo: *admissible*.

N. - Finland (N° 38885/02)
Decision 23.9.2003 [Section IV]

The applicant, a citizen of the Democratic Republic of Congo, claims to have worked as a soldier in former President Mobutu's "Division Spécial Présidentielle" (DSP), which was entrusted with the protection of Mobutu, his family and property. He fled the country when Mobutu's regime was overthrown by Kabila. He arrived in Finland in July 1998 and requested asylum. The Directorate of Immigration found the applicant's submissions inconsistent, did not believe that he faced a real risk and ordered his deportation. The Administrative Court rejected the appeal lodged by the applicant as he had not submitted any evidence to substantiate his allegations and his identity had not been established. A date for the applicant's deportation was fixed, but the Government decided not to deport him following the Court's interim measure under Rule 39 of the Rules of Court. The applicant asserts that if he is deported, besides the risk of being subjected to treatment contrary to Article 3, there would be an interference with his private and family life, as he has a common-law wife – whose asylum application is pending – and a child born in Finland.
Admissible under Articles 3 and 8.

EXPULSION
Threatened expulsion to Bangladesh: *communicated*.

LITON - Sweden/Suède (N° 28320/03)
Decision 23.9.2003 [Section IV]

The applicant, a Bangladeshi national, arrived in Sweden in 2001 and applied for asylum on grounds of having been arrested and tortured in Bangladesh on two occasions due to his political activities as a member of an opposition party. The application was refused by the Migration Authority, which considered that the applicant's political activities had been very limited and had not led to a prosecution or a conviction, so that there was no real risk for him. An expulsion order was issued. The applicant appealed against this decision, asserting that he had been prosecuted and convicted for attempted murder, and submitting as evidence a warrant for his arrest in Bangladesh. Medical reports stated that the applicant suffered from Post Traumatic Stress Disorder and required psychiatric treatment. The Aliens Appeal Board nevertheless rejected the appeal. The applicant lodged a new application for asylum and requested that his expulsion be stayed. In September 2003, the Board decided not to stay enforcement of the expulsion order. Under Rule 39 of the Rules of Court, the Court requested the Government not to expel the applicant to Bangladesh until further notice.
Communicated under Article 3.

ARTICLE 5

Article 5(1)(b)

SECURE FULFILMENT OF OBLIGATION PRESCRIBED BY LAW
Detention for refusal to disclose identity: *violation*.

VASILEVA - Denmark (N° 52792/99)
Judgment 25.9.2003 [Section I]

Facts : The applicant is an elderly woman who had a dispute with a ticket inspector on a public bus concerning the validity of her ticket. The applicant refused to disclose her identity to the inspector, and the police were called. She also refused to give her name and address to the police. She was arrested and detained for thirteen and a half hours – from 9. 30 p.m. to 11.00 a.m. – until she had revealed her identity. Following her release, the applicant collapsed and was hospitalised for three days with high blood pressure. The applicant claimed compensation from the Chief Constable for having been detained, and subsequently complained to the Regional Prosecutor and to the Prosecutor General, but her request was not successful. She appealed to the City Court, which awarded compensation. The prosecution appealed, and the High Court reversed the City Court's decision, finding that there had been no basis for granting the applicant compensation as she had continuously refused to reveal her name during both her arrest and subsequent detention. The applicant was refused leave to appeal to the Supreme Court.
Law : Article 5(1)(b) – The detention was in accordance with the Administration of Justice Act, which obliges every person to disclose his name, address and date of birth to the police upon request, and aimed at "securing the fulfilment" of this obligation as required by Article 5(1)(b). The question was whether the authorities, in securing the obligation of disclosure of one's identity, had struck an appropriate balance. The Court acknowledged that it was fundamental for the police to be able to identify citizens in discharging of their duties,

as well as legitimate for transport companies to involve the police in disputes concerning the validity of a bus ticket. It was therefore in accordance with 5(1)(b) to detain the applicant. However, as regards the length of the detention, depriving the applicant of her liberty for thirteen and a half hours had been longer than necessary, and not proportionate to the purpose of her detention, taking into account that efforts to establish her identity had not been undertaken during the full detention period. In addition, the applicant had not been attended by a doctor, which would have been justified given her advanced age and could have also served to overcome the communication impasse between her and the police. In sum, the authorities had failed to strike a fair balance between the right to liberty and the need to ensure the "fulfilment of an obligation prescribed by law".
Conclusion : violation (unanimously).
Article 41 – The Court awarded the applicant 500 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

SECURE FULFILMENT OF OBLIGATION PRESCRIBED BY LAW
Detention for refusing to show identity card to police: *inadmissible*.

NOVOTKA - Slovakia (Nº 47244/99)
Decision 30.9.2003 [Section IV]

The applicant was standing in front of his apartment building when two policemen requested that he show them his citizen's card. As he refused to reveal his identity, he was taken to a police station, where he was searched and placed in a detention cell. He was released one hour later, when his identity had been checked by the police. The applicant complained to various authorities about having been detained unlawfully and filed a petition to the Constitutional Court. In several of these complaints he requested that two of his neighbours be heard, as he maintained that they had indicated his identity to the police when he had been arrested. The complaints were dismissed, as the applicant's detention and search had been in accordance with the Police Corps Act.
Inadmissible under Article 5(1)(b) – The applicant was under an obligation in domestic law to prove his identity and his detention therefore pursued the legitimate aim of securing the fulfilment of an obligation prescribed by law: manifestly ill-founded.
Inadmissible under Article 6(1) (fair hearing) – This provision is not applicable to the proceedings before the Constitutional Court: incompatible *ratione materiae*.
Inadmissible under Article 6(3)(d) – The refusal of the prosecuting authorities to hear the persons who had witnessed the applicant's arrest took place in the context of his complaints against the policemen, and Article 6 does not apply to such proceedings: incompatible *ratione materiae*.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY / APPLICABILITE
Proceedings concerning the statutory duty of a public authority: *admissible*.
Procédure concernant la mission statutaire d'une autorité publique : *recevable*.

O'REILLY and others/et autres - Ireland/Irlande (N° 54725/00)
Decision/Décision 4.9.2003 [Section III]

The ten applicants reside on a public road which was in a very bad condition. They attempted on several occasions to persuade the County Council to repair the road. In view of the latter's refusal, in July 1994 eight applicants started proceedings seeking an order of *mandamus* to compel the Council to repair the road. They claimed that the bad state of the road was causing them many personal, professional and social inconveniences, and negatively affecting their daily lives. The application was heard in April 1995 by the High Court, which delivered its judgment in December 1996, making an order of *mandamus* for the Council to repair the road. The Council appealed to the Supreme Court. The appeal hearing commenced in February 1998, but was adjourned, and could not be resumed until more than a year later. In June 1999, the Supreme Court delivered a judgment allowing the appeal of the Council and ordering that the High Court's order of *mandamus* be set aside.
Admissible under Articles 6(1) and 13 as regards the eight applicants who were parties to the domestic proceedings. The question of exhaustion of domestic remedies was joined to the merits. The Court rejected the Government's argument that Article 6 was not applicable since the dispute mainly concerned the existence and scope of a public duty: the applicants had direct personal and professional interests in the manner in which the Council's statutory duty to repair roads was exercised, and this represented a strong private element in favour of the applicability of Article 6.

ACCESS TO COURT
Rejection of an application to join criminal proceedings against judges as a civil party, on the ground of the immunity enjoyed by judges: *no violation*.

ERNST and others - Belgium (N° 33400/96)
Judgment 15.7.2003 [Section II]
(see Article 10, below).

PUBLIC HEARING
Confidentiality of investigation proceedings: *no violation*.

ERNST and others - Belgium (N° 33400/96)
Judgment 15.7.2003 [Section II]
(see Article 10, below).

PUBLIC JUDGMENT
Absence of public delivery of judgment of the Court of Cassation: *no violation*.

ERNST and others - Belgium (N° 33400/96)
Judgment 15.7.2003 [Section II]
(see Article 10, below).

IMPARTIAL TRIBUNAL
Independence and impartiality of a judge also a Member of Parliament: *admissible*.

PABLA KY - Finland (Nº 47221/99)
Decision 16.9.2003 [Section IV]

The applicant is a company running a restaurant, the premises of which were rented from an insurance company. An agreement was reached between the applicant and the insurance company to renovate more restaurant premises, for which the applicant had to pay an amount of money and its monthly rent was raised. Upon completion of the renovation works, the applicant considered they were unsatisfactory and did not correspond to the original plan. It instituted civil proceedings before the District Court, which rejected the applicant's claim for compensation. The Court of Appeal upheld the District Court's decision. One of the members of the Court of Appeal was also a Member of the Finnish Parliament at the time. Under the Parliament Act, there is incompatibility between being a Members of Parliament and holding certain high positions in the judiciary, but there are no restrictions on being a member of a Court of Appeal.
Admissible under Article 6(1).

Article 6(1) [criminal]

DETERMINATION
Court order leaving charges on file: *inadmissible*.

WITHEY - United Kingdom (Nº 59493/00)
Decision 26.8.2003 [Section IV]
(see below).

FAIR HEARING
Fitness of an eleven year old boy to plead and stand trial: *admissible*.

S.C. - United Kingdom (Nº 60958/00)
Decision 30.9.2003 [Section IV]

When he was eleven years old the applicant was charged with attempted robbery and committed for trial before the Crown Court. Two psychiatric reports drawn up before the trial stated that the applicant had learning difficulties and impaired reasoning skills. At the pre-trial hearing, the applicant's counsel argued that the trial should be stayed as an abuse of process, because the applicant would not be able to understand fully and participate in the trial, given his restricted intellectual abilities. The submission was rejected and the applicant was tried by a judge and jury. Measures were taken to conduct the trial in as informal a manner as possible (the applicant was not required to sit in the dock and the wearing of wigs was dispensed

with). He was convicted and sentenced to two and a half years' detention. The Court of Appeal refused leave to appeal.
Admissible under Article 6.

FAIR HEARING
Trial and conviction in the absence of the accused and his legal representatives: *inadmissible*.

JONES - United Kingdom (N° 30900/02)
Decision 9.9.2003 [Section IV]

The applicant was arrested and charged with conspiracy to rob a post office and released on bail. On the date fixed for the trial he did not surrender to the court. As they had no instructions from him, his lawyers withdrew from the case. The trial judge acknowledged that in principle it would seem wrong to pursue a criminal trial in the absence of the defendant or his legal representatives, but in the exercise of his discretion he decided to proceed with the trial, considering in particular that it was in the interest and psychological needs of the 35 witnesses (some of whom had been traumatised by the events) to have the case dealt with. The applicant was convicted *in absentia* and sentenced to thirteen years' imprisonment. He was arrested a year later. He lodged an appeal but the Court of Appeal considered that the trial judge had exercised his discretion properly and that the applicant had waived his right to be present and legally represented at the trial by his deliberate failure to appear. During the appeal proceedings, the applicant did not submit any fresh evidence or contest the existing evidence against him to counter the merits of the conviction. The Court of Appeal concluded that there were no reasons to hold that his conviction was unsafe or that his trial *in absentia* had been unfair. The applicant appealed to the House of Lords, which considered that, taken as a whole, the proceedings had been fair.
Inadmissible under Article 6(1) and (3): Concerning the possible waiver by the applicant of his rights under Article 6 as a result of his failure to appear at the trial, a waiver could not be inferred because the applicant could not have been expected to know that he was liable to be tried and convicted in his absence. Nevertheless, given that in the appeal proceedings the applicant had the possibility of submitting new evidence – and thus of obtaining a fresh determination of the conviction – the proceedings taken as a whole had been fair: manifestly ill-founded.

REASONABLE TIME
Court order leaving charges on file: *inadmissible*.

WITHEY - United Kingdom (Nº 59493/00)
Decision 26.8.2003 [Section IV]

On the basis of a statement given to the police by E., the applicant was arrested and remanded in custody on charges of indecent assault on children. E. subsequently decided that she would not give evidence against the applicant, as she feared reprisals. As a result, in January 1993 the trial judge ordered that the case not be proceeded with but that the charges be left to lie on the file, with the possibility of the case being resurrected in the event of any repetition of the alleged acts. The applicant unsuccessfully sought on several occasions to have the case reopened with a view to obtaining a formal verdict of "not guilty". However, although the prosecution indicated in 1998 that it had no objection, the trial judge refused to reopen the case, considering that it had not proceeded solely as a result of acts of the applicant. The applicant complains in particular that there has been no determination of the criminal charges against him.
Inadmissible under Article 6(1): There is no right under this provision to a formal conviction or acquittal following the laying of criminal charges. The issue in the present case was

therefore whether the charges against the applicant were still pending and thus whether they had been determined within a "reasonable time". In that respect, the prosecution would have had to apply to the court to resurrect the proceedings and a hearing would have been held at which the applicant could have made submissions as to why the charges should not be pursued. The court would have had to consider the fairness of reopening and whether an excessive period had passed. Moreover, it is only in exceptional circumstances that charges left to lie on the file are later pursued. On that basis, even if there was no undertaking by the prosecution not to pursue the charges later, the order leaving the charges on the file could be considered to have ended the criminal proceedings for the purposes of Article 6. The introduction of a complaint about the length of the proceedings in 2000 was therefore outside the six month time limit under Article 35(1) and the applicant's unsuccessful applications to have the case reopened did not constitute effective remedies interrupting the six month period.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Appointment of judges by Parliament: *inadmissible*.

FILIPPINI - San Marino (N° 10526/02)
Decision 26.8.2003 [Section II]

The applicant, who was prosecuted for defamation, was sentenced to a fine. He claimed that the fact that the San Marino judges were appointed by Parliament meant that his case could not be examined by an independent and impartial tribunal.
Inadmissible under Article 6(1): The fact that the judges are elected by Parliament does not affect their independence if it is clear from their status that, once appointed, they are not subject to any pressure and receive no instructions from the Parliament and that they act in complete independence. The San Marino law in question defines the status of the judges in that sense. The sole fact that the judges are appointed by Parliament does not justify the conclusion that Parliament issues instructions to the judges in the context of their judicial powers. In the present case, there is no objective reason to suspect that the judges dealing with the matter did not act consistently with their legal status. The applicant has not alleged that the judges concerned acted under instructions or showed bias. Political sympathies, which may play a part in the process of appointing judges, cannot in themselves give rise to legitimate doubts as to their independence and their impartiality: manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Obligation to surrender to custody prior to examination of a cassation appeal: *inadmissible*.

C. and D.L. - France (N° 55052/00)
Decision 16.9.2003 [Section II]

The applicants were directors of a company which was placed in judicial liquidation in 1992. Following examination of the company's accounts, criminal proceedings were initiated against the applicants. By judgment of April 1997, the district court found the applicants guilty of financial offences. In June 1998, the Court of Appeal found them also guilty of misusing the company's assets. The applicant were sentenced to terms of imprisonment, fined and disqualified from acting as company directors for fifteen years. The applicants appealed on a point of law. Under Article 583 of the Code of Criminal Procedure then in force, convicted persons were required to surrender to custody no later than the day before the

hearing before the Court of Cassation, unless they obtained a dispensation. The applicants' applications for a dispensation were rejected and they were thus required to surrender to custody. The Court of Cassation dismissed their appeals.
Inadmissible under Article 6(2): The decisions whereby the applicants were convicted at first instance and on appeal were taken following *inter partes* proceedings. The applicants cannot therefore reasonably claim that those judicial decisions reflect the sentiment that they are guilty without their guilt having first been established and without their having had the opportunity to exercise their rights of defence. The mere fact that they were required to surrender to custody before their appeals on a point of law were examined does not call that conclusion into question: manifestly ill-founded.

PRESUMPTION OF INNOCENCE
Radio broadcasting editor presumed responsible as author of a transmission held to be defamatory: *admissible*.

RADIO FRANCE and others - France (N° 53984/00)
Decision 23.9.2003 [Section II]
(see Article 34, below).

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Defence lawyer obliged to plead in the early hours of the morning after a hearing in the Assize Court lasting more than 15 hours: *admissible*.

MAKHFI - France (N° 59335/00)
Decision 23.9.2003 [Section II]

The applicant was accused of rape and of theft as part of a gang and as a re-offender and was committed for trial before an Assize Court. He provided the State Attorney's Department with a list of three witness whom he wished to be called at the expense of the State Attorney's Department. The prosecutor rejected that request. On the first day of the case, the hearing lasted 5 hours and 15 minutes. On the following day, the hearing began at 9.15 a.m. It was adjourned at 1.00 p.m. and resumed at 2.30 p.m., until 4.40 p.m., then continued from 5.00 p.m. until 8.00 p.m. and from 9.00 p.m. until 12.30 a.m. The hearing was resumed at 1.00 a.m. The applicant's lawyer requested that the hearing be adjourned, but his request was refused. The other counsel stated that they were in favour of continuing with the hearing. The hearing continued until 4.00 a.m. It was adjourned for 25 minutes before the defence lawyers made their submissions. Thus, the defence lawyers made their submissions after being present at a hearing lasting a total of 15 hours 45 minutes and on the second day the hearing lasted 17 hours and 15 minutes. The applicant was found guilty and sentenced to eight years' imprisonment. He appealed on a point of law, but was unsuccessful.
Admissible under Article 6(1) and (3).
Inadmissible under Article 6(1) and (3)(d): The applicant did not do what was necessary to ensure that his witnesses were heard. As he had legal aid, the witnesses whom the prosecution refused to call could have been called by the applicant or his counsel, at no cost to the applicant.

Article 6(3)(d)

SECURE ATTENDANCE OF WITNESSES
Citation of witnesses by a legally aided accused in proceedings in the Assize Court: *inadmissible*.

MAKHFI - France (N° 59335/00)
Decision 23.9.2003 [Section II]
(see Article 6(3)(b), above).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction allegedly based on an extensive interpretation of the Public Health Code: *communicated*.

DELBOS and others - France (N° 60819/00)
Decision 18.9.2003 [Section III]

The applicants are directors of certain companies in the Philip Morris Group. The packets of cigarettes which they sold in France bore the notice "Nuit gravement à la santé" ("Causes serious damage to health", preceded by the words "According to Law No. 91-32". The French courts found the companies and the applicants guilty of breach of the Public Health Code. They were criticised for having added the reference to the law in question, as the French State had not chosen to avail itself of that possibility, which was optional under Council Directive 89/622/EEC concerning the labelling of tobacco products. The applicants were each fined 300,000 francs. Before the Court of Cassation, the applicants relied on Article 7 of the Convention. They claimed that the provisions of the Public Health Code merely made it an offence to omit the words "Nuit gravement à la santé", so that by finding that the addition of further words+ constituted an offence, the courts had infringed the principles of the strict interpretation of the criminal law and legal certainty.
Communicated under Article 7.

NULLUM CRIMEN SINE LEGE
Conviction allegedly based on an extensive interpretation of the legislation on audiovisual communication: *admissible*.

RADIO FRANCE and others - France (N° 53984/00)
Decision 23.9.2003 [Section II]
(see Article 34, below).

NULLUM CRIMEN SINE LEGE
Conviction allegedly based on an extensive interpretation of the legislation concerning defamation of a State official via the press: *inadmissible*.

CHAUVY and others - France (N° 64915/01)
Decision 23.9.2003 [Section II]
(see Article 10, below).

HEAVIER PENALTY
Application of a heavier sentence than that provided by law: *violation*.

GABARRI MORENO - Spain (N° 68066/01)
Judgment 22.7.2003 [Section IV]

Facts: The applicant was found guilty of the offence of heroin trafficking, with the mitigating circumstance that he was suffering from a mental disorder, and sentenced to eight years and one day in prison and to a fine. The applicant appealed to the Supreme Court but his appeal was dismissed.
Law: Article 7 – The applicant was liable to a prison sentence of between six years and one day and eight years. The requirement of legal certainty inherent in the lawfulness principle required the *quantum* of the sentence to be rectified. That was not done. The applicant was therefore given a heavier sentence than that to which he was liable in respect of the offence of which he was convicted.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant EUR 1,000 for non-pecuniary damage. It awards costs.

ARTICLE 8

FAMILY LIFE
Failure of authorities to take measures enabling a mother to exercise her visiting rights to her daughters: *violation*.

HANSEN - Turkey (N° 36141/97)
Judgment 23.9.2003 [Section IV]

Facts: The applicant is an Icelandic national who lived in Iceland with a Turkish citizen, H. They had two children born out of wedlock, one in 1981, the other in 1982. The couple married in 1984, but separated in 1989. In 1990, H. went to Turkey for a holiday with his daughters, but never returned with them and informed the applicant that they would stay with him in Turkey. In 1992, the Icelandic authorities granted the applicant custody of the children. The applicant subsequently travelled to Turkey and commenced divorce and custody proceedings there. In a hearing before the Civil Court, the children expressed their wish to stay with their father. In November 1992, the Civil Court gave the custody of the children to H. as they had adapted well to their life in Istanbul and to their father's environment, but it also granted the applicant visiting rights (every July for 30 days). This decision was quashed and opened a series of referrals between the Civil Court and the Court of Cassation, during which the applicant had provisional rights of access. In the end, in 1996 the Civil Court came to a conclusion similar to that of 1992, which this time was upheld by the Court of Cassation:

custody was awarded to H., and visiting rights were granted to the applicant. The reluctance expressed by the children to see their mother was relied on by the court. Despite the visiting rights granted to the applicant by the Turkish courts, between March 1992 and August 1998 the applicant was able to see her children on only four occasions, having nevertheless turned up with enforcement officers at H.'s house more than 50 times (at each of the visits the children were being hidden). The consistent refusal of H. to comply with the access arrangements resulted in his conviction on several occasions by the criminal courts (small fines taking the place of imprisonment each time).
Law: Article 8 – The obligation of national authorities to take measures to facilitate reunion of parent and child is not an absolute one and must be examined in the light of the best interests of the child. The adequacy of any measure taken by the authorities has to be judged by the swiftness of its implementation, since the passage of time can have irremediable consequences for relations between the child and the parent. In the present case, despite the court decisions granting the applicant visiting rights, the authorities did not take all the necessary measures to enforce the applicant's access rights: they did not take any steps to locate the children and failed to take effective measures against H., the fines imposed on him not being adequate. Coercive measures were justified, in view of the total obstruction by H. Throughout the lengthy proceedings, the Turkish authorities never sought the advice of social services or child psychologists with a view to facilitating the applicant's reunion with her daughters, who were never given a real opportunity to develop a relationship with their mother in a calm environment.
Conclusion: violation (unanimously)
Article 14 – There was no basis to find that the applicant had been subjected to discrimination on grounds of her religion or nationality.
Conclusion: no violation (unanimously)
Article 41 – The Court awarded the applicant 65,000 euros in respect of pecuniary and non-pecuniary damage. It also made an award in respect of costs and expenses.

FAMILY LIFE
Inability of father not having custody to secure under the Hague Convention the return of his child, taken abroad by the mither: *inadmissible*.

GUICHARD - France (N° 56838/00)
Decision 2.9.2003 [Section II]

The applicant is the father of an illegitimate child born in 1990, whom both he and the mother officially acknowledged. In 1992, the mother, who is of Canadian nationality, decided unilaterally to take the child to live with her in Montreal. There the mother obtained custody of the child. The applicant unsuccessfully applied to the French courts for the child to be placed under the joint parental authority of both parents. At the same time, the applicant relied on the Hague Convention on the civil aspects of international child abduction and sought the assistance of the Minister of Justice in order to ensure his child's return to France. The Minister of Justice refused on the ground that only the mother had parental authority in respect of the child at the time when she moved abroad and that the child's removal was therefore not "wrongful" for the purposes of that convention. The administrative courts confirmed that the applicant was not entitled to protection under the Hague Convention. Before the Court, the applicant complains that the national authorities refused to intervene on his behalf in application of that Convention.
Inadmissible under Article 8: The family ties established between the applicant and his child may be analysed as "family life". On the date on which the child was removed, the Civil Code automatically conferred the exercise of parental authority (which entails a right of custody) in respect of the child. The applicant, who did not have "rights of custody" within the meaning of the Hague Convention, could not rely on the protection which it provided. Accordingly, Article 8 of the Convention, interpreted in the light of the Hague Convention, did not impose

any positive obligations on the French authorities to secure the child's return. As regards the former Article 374 of the Civil Code, which formed the basis of the refusal to extend the protection of the Hague Convention to the applicant, the Court recalls the case-law of the European Commission of Human Rights on compliance with the right to respect for family life of measures taken by the national authorities on the basis of that provision. The Court sees no reason in the present case to depart from that case-law: manifestly ill-founded.

FAMILY LIFE
Immigrant granted only short-term residence permits since 1989: *communicated*.

ARIZTIMUNO MENDIZABAL - France (N° 51431/99)
Decision 18.9.2003 [Section III]

The applicant, who is of Spanish nationality, is the wife of a leading member of ETA who was extradited from France and imprisoned in Spain. She has lived in France since 1975 and her daughter lives there too. Until 27 November 1989 the applicant was given a series of temporary residence permits, each valid for one year. Since then the French administration has issued only acknowledgements of her applications for a residence permit, each valid for three months, or documents inviting her to collect such acknowledgements, each valid for two weeks. In 1994, the applicant initiated court proceedings for annulment of the Prefect's decision not to issue a residence permit valid for five years. She complained that for many years she had received only temporary residence permits. The court annulled that decision by judgment of November 1996. The administration's appeal was dismissed in January 2000. In January 1997, moreover, the applicant unsuccessfully requested the court to order the administration to issue her with a residence permit.
Communicated under Articles 8 and 13 and Article 2 of Protocol no. 4.

HOME
Search and seizure in a press context: *violation*.

ERNST and others - Belgium (N° 33400/96)
Judgment 15.7.2003 [Section II]
(see Article 10, below).

HOME
Alleged infringement of "home" due to entry of police officers into a restaurant: *inadmissible*.

R. L. and M.-J. D. - France (N° 44568/98)
Decision 18.9.2003 [Section III]

The applicants, who are restaurateurs in Paris, were summoned to attend the police station in connection with disturbances, following a series of incidents involving neighbouring restaurateurs. The applicants, who were exhausted, did not attend. Subsequently three police officers in plain clothes visited their restaurant. They used force in disputed circumstances. Eventually, the first applicant was taken to the police station. The applicants lodged a complaint, together with an application to join the proceedings as parties claiming civil damages, in respect of, *inter alia*, unlawful arrest and seizure and misuse of authority by police officers. The order stating that no further action would be taken delivered by the investigating judge was upheld on appeal. The applicants appealed on a point of law, without success.

Inadmissible under Article 8: The applicants stated before the investigating judge that the police officers had stopped at the door of the dining room of their restaurant and entered only after one of the officers had indicated that the applicant should join them and the latter had refused to do so. Those facts were also established by the Court of Appeal. It was therefore at the invitation of the applicant, who did not wish to join them in the corridor, that the police officers entered the restaurant dining room to interview him. The Court concludes that, in those circumstances at any event, the applicants cannot maintain that the police officers' entry of the premises of their restaurant constituted a violation of their right to respect for their "home": manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Major searches and seizures with a view to identifying journalists' sources: *violation*.

ERNST and others - Belgium (N° 33400/96)
Judgment 15.7.2003 [Section II]

Facts: At the material time, the press had revealed an increasing number of breaches of professional secrecy, some of which appeared to be attributable to a judge in the Principal Prosecutor's Office at the Liège Court of Appeal. The judge responsible for cases involving breaches of professional secrecy issued search warrants in respect of the homes of the applicants, who are journalists, and of the office of their publication. In the case of two of the applicants, the visits were followed by searches of their vehicles. Following the eight searches, numerous documents and also data disks and the hard disks of the applicants' computers had been seized. The applicants were given no information about the proceedings which had made the operation necessary and in which they were neither the accused nor civil parties; the operation did not lead to any charges being preferred. The applicants lodged a complaint against a party or parties unknown, together with an application to join in the proceedings as parties claiming civil damages, alleging breach by public officials of the rights guaranteed by the Constitution. The courts held that as the allegations were made against the investigating judge, that is to say, against a person with immunity from jurisdiction, the application to join in the criminal proceedings as civil parties was inadmissible. Furthermore, the Court of Cassation dismissed their application for a preliminary question to be referred to the Jurisdiction and Procedure Court. In the meantime, the applicants had brought an action for damages against the State, claiming compensation for the harm sustained.
Law: Article 6(1) (access to a court): The immunity from jurisdiction applicable to judges, as a measure ensuring the proper functioning of justice, pursued a legitimate aim. As regards proportionality, immunity from jurisdiction is not as such a disproportionate restriction on the right of access to a court. In order to determine whether immunity from jurisdiction is permissible under the Convention, it is necessary to consider whether the applicants had other reasonable means of effectively protecting their rights as guaranteed by the Convention. At the same time as applying to join in the criminal proceedings as civil parties, the applicants had brought an action for damages in respect of the same facts as those on which they relied in their complaint and claim for civil damages. In addition, in the present case the inadmissibility of the applicants' claim for civil damages in the criminal proceedings and the decision to take no further action on their complaint did not have the consequence of depriving them of any action for damages.
Conclusion: no violation (unanimous).
The Court concludes unanimously that there has been no violation of Article 13.
Article 6(1) (public hearing): A hearing held in private may be justified by reasons relating to the protection of the private life of the parties to the case and to the interests of justice, within

the meaning of the second sentence of Article 6(1). The fact that the applicants' application for damages in the criminal proceedings was examined in private did not breach the publicity requirements.
Conclusion: no violation (unanimous).
Article 14 in conjunction with Article 6(1) – The immunity from jurisdiction enjoyed by judges, which draws a distinction between victims depending on whether offences are attributed to an individual or to a person covered by that immunity, pursues a legitimate aim, namely to protect judges from ill-considered proceedings and to allow them to exercise the judicial function undisturbed and independently. Since the applicants retained the right to bring an action in civil liability against the State, there was a reasonable relationship of proportionality between the means employed by the Belgian legislature and the objective pursued.
Conclusion: no violation (unanimous).
Article 10 –The searches may be analysed as an interference with the rights guaranteed by Article 10. The interference was prescribed by law and had legitimate aims, namely to prevent disclosure of confidential information, to protect the reputation of others and to guarantee the authority and impartiality of the judiciary. As regards the necessity for the impugned measures, it is clear from the facts that the aim of the searches and seizures was to discover the journalists' source of information. The Court questions whether measures other than large-scale searches and seizures at the applicants' homes and at the office of their publication, for example internal inquiries including the questioning of judges, would not have enabled the investigating judge to seek those responsible for the breaches of professional secrecy committed by judges and then that of the receipt of that violation by the applicants. Recalling to mind the principles developed in regard to the confidentiality of journalists' sources (see the *Roemen and Schmitt* judgment, ECHR 2003, and the Goodwin judgment, Reports 1996-II), the Court considers that even on the assumption that the grounds invoked were "relevant", they were not "sufficient" to justify searches and seizures on such a scale. The measures in question were not reasonably proportionate to the legitimate aims pursued, given the interest of a democratic society in ensuring and maintaining the freedom of the press.
Conclusion: violation (unanimous).
Article 8 – It is not disputed that the searches of the applicants' place of work, their private homes and in certain cases their motor vehicles, and the seizure of documents, constitute an interference in the right to respect for the home. The interference was prescribed by law and pursued at the same time the legitimate aims of preventing disorder or crime and protecting the rights and freedoms of others. In regard to combating the breach of the secrecy of the investigation, the legislation and practice of the Contracting States – which may entail visiting homes and seizing items – must offer adequate and sufficient guarantees against abuse. In the present case, the searches were accompanied by certain procedural guarantees but the applicants were not charged with any offences and the various search warrants were drafted in broad terms. The warrants gave no information about the investigation in question, about the precise places to be visited or about the items to be seized and thus conferred wide powers on the investigators. A large number of items, including computer disks and the hard disks of computers were seized; the contents of certain documents and magnetic media were copied. IN addition, the applicants were left in ignorance of the specific reasons for the searches. In short, the searches were not proportionate to the legitimate aims pursued.
Conclusion: violation (unanimous).
Article 41 – The Court awards compensation for non-pecuniary damage. It awards costs and expenses for the proceedings before the Convention organs.

FREEDOM OF EXPRESSION
Press association ordered to issue a communiqué concerning a judgment given against it: *inadmissible*.

SOCIETE PRISMA PRESSE - France (N° 71612/01)
Decision 1.7.2003 [Section II]

An interlocutory order was made against the applicant for having published in the magazine which it publishes an article which intruded into the private life and image of a well-known singer and his wife. As well as awarding damages, the courts ordered that an account of the decision be published in the magazine and on the posters advertising the magazine.
Inadmissible under Article 10: The order made against the applicant may be analysed as an "interference". As to whether it was prescribed by law, the publication ordered by the courts is not expressly referred to in the law but the Civil Code confers on the courts a power whose framework is defined, namely to "prescribe all appropriate measures … to prevent or to put an end to an interference with the intimacy of private life". Although the measures in question are not expressly enumerated, they are not unknown: seizure, prohibition, warning, publication or communication are measures widely used in the sphere in question and were placed on a statutory footing by the legislature in 1970. Furthermore, under the Code of Civil Procedure the court may "adopt by interlocutory order all appropriate measures to prevent or to put an end to the interference and also to make good the resulting damage". In addition, there is a consistent body of case-law which gives legitimacy to judicial publication, which is regarded by the domestic courts as one of the means of making good the damage caused by the press. The fact that publication is ordered in only some cases cannot deprive the provision at issue of the degree of foreseeability required by the case-law. The national case-law thus satisfied the conditions of accessibility and foreseeability necessary to establish that that form of interference is "prescribed by law". The interference pursued a legitimate aim, namely the protection of the rights of others. As regards the necessity for the interference the sole purpose of the article was to satisfy the curiosity of a certain sector of the public about the intimacy of the private life of the couple in question. It could not be taken to contribute to any discussion of general interest to society, in spite of the fact that the individuals were well known. Furthermore, the publication of a judicial communication may constitute appropriate compensation for the victim by informing the public that he is opposed to the unauthorised circulation of his image. That measure forms part of the "Guidelines" of Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe and helps to prevent as much as possible certain facts belonging to the purely private domain of public persons from becoming a "highly lucrative commodity for certain sectors of the media": manifestly ill-founded.
(See the similar case *Société PRISMA PRESSE v. France*, no. 66910/01, decision of 1 July 2002 [Section II]).

FREEDOM OF EXPRESSION
Conviction of a radio broadcasting editor, a journalist and a national radio company for defamation of a public official: *admissible*.

RADIO FRANCE et autres/and others - France (N° 53984/00)
Decision 23.9.2003 [Section II]
(see Article 34, below).

FREEDOM OF EXPRESSION
Member of Parliament prevented by another Member of Parliament from completing a speech in Parliament: *inadmissible*.

ALINAK - Turkey (N° 39930/98)
Decision 2.9.2003 [Section IV]

The applicant was a Member of Parliament, elected on behalf of the SHP party. While he was giving a speech before the National Assembly, when the President had repeatedly ordered him to stop, as the allocated time had expired, an altercation arose with members of another party, including S.A. Claiming that S.A. had used violence to prevent him from completing his speech, the applicant brought an action for damages. The court found against S.A., on the ground that his action interfered with the applicant's rights to express the ideas of those whom he represented. The Court of Cassation quashed the judgment. It held that there had been provocation on the part of the applicant and that S.A. was therefore not liable for any damage. At the close of the subsequent proceedings following referral of the case, the applicant's claim for damages was dismissed.
Inadmissible under Article 10: As the case concerned a dispute between two Members of Parliament, the question for the Court is whether the State failed to fulfil its positive obligations. The minutes of the sitting show that the applicant had been authorised to address his fellow-Members for thirty minutes. After exhausting his speaking time, he was enjoined a number of times by the President of the Assembly to conclude. When he exceeded the allocated time, a number of Members of Parliament, and in particular S.A., who were unhappy with the content of his speech, approached the rostrum and requested the speaker to stops. The President adjourned the sitting. No disciplinary proceedings were subsequently brought against either the applicant or the other Members, including S.A.. The State therefore did not fail to fulfil its positive obligation not to disregard freedom of expression and not to take steps capable of infringing that right: manifestly ill-founded.

FREEDOM OF EXPRESSION
Conviction of the publisher/chief editor of a weekly for publishing a series of articles criticising a Supreme Court judge: *admissible*.

HRICO - Slovakia (Nº 49418/99)
Decision 16.9.2003 [Section IV]

The applicant was the publisher/editor-in-chief of a weekly which published three articles on a defamation case that was pending in the courts. The case concerned proceedings which a former Minister had brought against a poet for alleging that he had a fascist past and should not be a Minister. The articles generally supported the statements which the poet had made, considering them as facts, and expressed regret for the conviction of the poet by the Supreme Court. The judgment was questioned, and strong criticism was in particular expressed towards the Supreme Court judge which had presided the case. The Supreme Court judge filed an action against the applicant claiming an interference with his personality rights. The District Court found that the applicant had exceeded the limits of objective and acceptable criticism by using strong language and terms such as "shameful judgment", "legal farce", "strange reasoning" etc., and ordered him to publish an apology in the weekly and pay the judge compensation. The applicant appealed, and the Regional Court overturned the first instance judgment. This decision was quashed by the Supreme Court, and in a new decision the Regional Court this time upheld the judge's claim, ordering the applicant to pay compensation but not obliging him to publish an apology.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Conviction for defamation of members of a recognised movement of the Resistance: *admissible*.

CHAUVY and others - France (N° 64915/01)
Decision 23.9.2003 [Section II]

The first applicant is the author of a book entitled "AUBRAC-Lyon 1943", published in 1997 by Éditions Albin Michel (the third applicant), whose chairman is the second applicant. The work deals with certain historic events of the second world war concerning the French Resistance. It covers in particular one of the principal grey areas of that period, namely the meeting in Caluire, which is of particular significance to the history of the French Resistance. On 21 June 1943, Klaus Barbie, the regional Head of the Gestapo, arrested the main leaders of the Resistance, who were attending a meeting on the outskirts of Lyons in Caluire. Among those arrested on that occasion was, in particular, the Resistance fighter Raymond Aubrac, who managed to escape in the autumn of 1943. The author of the work sets out to challenge what he calls the official truth of that major episode in the history of the second world war, reported in particular by Mr and Mrs Aubrac in the media. From that aspect, the book contains, in an appendix, a statement signed by Klaus Barbie, said to be the "Testament Barbie", and the writer derives a large number of questions from a comparison of that document with the account of the historic events given by Mr and Mrs Aubrac. Mr and Mrs Aubrac brought an action for defamation against the applicants. Relying on the Law of 29 July 1881 on the press and Law no. 51-19 of 5 January 1951, the court held that the first two applicants were guilty, as principal and accessory respectively, of the offence of public defamation of Mr and Mrs Aubrac in their capacity as members of a "recognised Resistance movement". The Court imposed fines on the first and second applicant. It also ordered them jointly, as between themselves and with the third applicant, to pay damages. The applicants appealed. The Court of Appeal upheld the judgment, after holding in particular that the first applicant's entire exercise was intended to convince the reader that Mr and Mrs Aubrac had committed treason. The Court of Cassation dismissed the applicants' appeal on a point of law.
Admissible under Article 10.
Inadmissible under Article 7: The national courts applied a Law of 1881 and a Law of 1951 which form the basis of a long-established and consistent body of case-law. The publisher and the publishing house, being in the business of publishing works, should have been aware of that situation, if necessary with the advice of specialist lawyers. They were thus in a position to evaluate the risk of legal action should a work of such a kind be published in that form. Furthermore, the applicants were legally represented before the domestic courts and had the benefit of *inter partes* hearings before three levels of jurisdiction. Last, the decisions delivered, which were fully reasoned, do not exceed the limits of a reasonable interpretation of the applicable statutory provisions: manifestly ill-founded.

ARTICLE 11

FREEDOM OF ASSOCIATION
Suspension of the activities of the regional branch of a political party: *admissible*.

VATAN (PEOPLE'S DEMOCRATIC PARTY) - Russia (N° 47978/99)
Decision 4.9.2003 [Section III]

The People's Democratic Party Vatan is a political party which carries out its activities across the territory of the Russian Federation with the aim of protecting and advancing the rights and

freedoms of citizens of Tartar origin. A branch of Vatan was created in the Ulyanovsk region (the party was registered with the Regional Department of Justice). In 1997, the branch issued a statement against the celebration organised by the "war party" in Moscow for the 350th anniversary of the founding of the city of Simbirsk, which was referred to as the date of "colonisation". The announcement also contained calls in favour of increased teaching of the national language and the preservation of Islamic values. In 1998, the branch held a memorial ceremony in the city centre, although the permission it had obtained from the mayor had been confined to places of worship and cemeteries. The prosecutor applied for a suspension of the branch's activities as unconstitutional. The Regional Court granted the request and suspended the activities of the branch for six months, forbidding it *ipso jure* from holding meetings, demonstrations and other public actions or taking part in elections. The Regional Court mainly relied on the statements made in the 1997 announcement by the branch, as well as on other declarations from meetings and conferences of the party. The branch appealed to the Supreme Court, which upheld the Regional Court's decision. The branch was subsequently put into liquidation at the request of the Regional Department of Justice.
Admissible under Articles 9, 10, 11 and 14: The Court joined to the merits the Government's preliminary objection concerning the appicants's lack of victim status.

ARTICLE 14

DISCRIMINATION (Article 1 of Protocol No. 1)
Refusal to grant an handicapped adult allowance to a foreign national: *violation*.

KOUA POIRREZ - France (Nº 40892/98)
Judgment 30.9.2003 [Section II]
(see Article 1 of Protocol No. 1, below).

ARTICLE 34

NON-GOVERNMENTAL ORGANISATION
Application lodged by the French national radio company: *admissible*.

RADIO FRANCE and others - France (Nº 53984/00)
Decision 23.9.2003 [Section II]

The first applicant is the national broadcasting company Radio France, the second applicant is its director of publication and the third applicant is a journalist for one of its radio news stations. In January 1997, a weekly magazine published an article about Mr Junot, entitled: "revelations 1942-1943: deputy to Jacques Chirac at the Paris town hall between 1977 and 1995, Michel Junot was Deputy Prefect at Pithiviers in 1942 and 1943. In that capacity, he was responsible for maintaining order in the two internment camps in his district, Pithiviers and Beaune-la-Rolande". On 31 January 1997, in a radio news bulletin broadcast at 5.00 p.m., the third applicant, citing the weekly magazine as his source, repeated certain items from the article in question, in particular the fact that Mr Junot had organised the departure of a convoy of deportees to the camp at Drancy. The news item was repeated sixty two times on 31 January and 1 February and it was emphasised that it related to an item published by the weekly magazine. It was stated on a number of times in the news bulletins of 1 February that Mr Junot denied the accusations made by the magazine. Mr Junot lodged a complaint against the applicants before the Paris district court for defamation of an official, under the Law of

1881 on the freedom of the press. The district court found the second and third applicants guilty, as principal and accessory respectively, of the offence of public defamation of an official. They were jointly and severally ordered to pay a fine and damages. The applicant company was declared civilly liable and by way of civil reparation was ordered to broadcast a message informing the public of the terms of the judgment. As regards the liability of the second applicant, in his capacity as director of publication, the court considered that he could be exonerated of all responsibility for the first communication, which was broadcast live. It held, however, that the message had then been constantly repeated, which brought the matter within the scope of Article 93-3 of the Law of 29 July 1982 on radio and television broadcasting and rendered the second applicant liable. On appeal by the applicants, the Court of Appeal upheld the judgment at first instance. The applicants' appeal on a point of law was dismissed. They complained, in particular, of what they maintained was the broad interpretation of Article 93-3 of the Law on radio and television broadcasting, which automatically made the director of publication the perpetrator of the offence where the impugned message was broadcast repeatedly.
Admissible under Articles 6(1) and (2), 7 and 10. a) The objection raised by the Government that the applicant company lacks *locus standi* is rejected. The Court considers that the national broadcasting company Radio France is not within the category of "governmental organisations". The Court mentions the following factors: Radio France is not placed under the supervision of the State but under the control of the "independent authority" of the Conseil supérieur de l'Audiovisuel; Radio France does not have a monopoly in sound broadcasting but operates in a sector that is open to competition; it is, essentially, subject to the legislation on incorporated companies, it exercises no powers not subject to the ordinary law in the exercise of its activities and it is subject to the ordinary courts. The Court considers that, although the law assigns public-service tasks to the company and although the company is largely dependent on the State for its finance, the legislature (Law of 30 September 1986 on freedom of communication) has established a regime whose objective is to guarantee its editorial independence and its institutional autonomy. There is thus little difference between the applicant company and companies operating private radio stations and the law, which places sound broadcasting in a competitive context, does not confer on the applicant company a dominant position in that sector. b) The Court rejects the objection of failure to exhaust all domestic remedies in relation to the complaints under Articles 6(1) and (2). Before the applicants lodged their appeal on a point of law, the Court of Cassation had held that the presumption of liability of the director of publication provided for in the Law of 1881 on the freedom of the press was consistent with Article 6(2). The Law of 1982 on radio and television broadcasting reproduces a legal mechanism comparable with that of the Law of 1881 and establishes the same presumption. The Court considers that the applicants could legitimately conclude from the consistent case-law of the Court of Cassation that a ground of appeal on a point of law based on Article 6 of the Convention would have no prospect of success and it therefore rejects the objection.

NON-GOVERNMENTAL ORGANISATION
Application lodged by a person wishing to act in the defence of the interests of a local authority: *inadmissible*.

BREISACHER - France (N° 76976/01)
Decision 26.08.2003 [Section II]

The applicant was granted leave to claim civil damages in place of the City of Paris in a judicial investigation into misappropriation of which the City of Paris was alleged to be the victim in a public tendering procedure. The applicant took advantage of the possibility available to a taxpayer of a municipality to exercise, with leave of the administrative court, the actions which he believes the municipality should have brought but which it has failed to exercise.

Inadmissible under Article 34: The applicant is acting not in his personal capacity but in place of the City of Paris in defending the latter's interests. Independently of the fact that the applicant is not the City of Paris's legal representative, it has consistently been held that a municipality is a legal person governed by public law and must be classified as a governmental organisation: incompatible *ratione personae*.

HINDER EXERCISE OF THE RIGHT OF PETITION
Extradition despite the indication of provisional measures by the Court under Rule 39 of the Rules of Court: *communicated*.

OLAECHEA CAHUAS - Spain (N° 24668/03)
[Section IV]
(see Article 3, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (France)
Complaint not raised before the Court of Cassation on account of old and established unfavourable case-law: *admissible*.

RADIO FRANCE and others - France (N° 53984/00)
Decision 23.9.2003 [Section II]
(see Article 34, below).

SIX MONTH PERIOD
Six month issue raised by the Court of its own motion.

KADIĶIS - Latvia (n° 2) (N° 62393/00)
Decision 25.9.2003 [Section I]
(see Article 5(1), below).

SIX MONTH PERIOD
Difference between date of letter introducing application and date of posting.

KADIĶIS - Latvia (n° 2) (N° 62393/00)
Decision 25.9.2003 [Section I]
(see Article 5(1), below).

SIX MONTH PERIOD
Court order leaving charges on file: *inadmissible*.

WITHEY - United Kingdom (N° 59493/00)
Decision 26.8.2003 [Section IV]
(see Article 6(1) [criminal], above).

ARTICLE 43

Article 43(2)

The Panel has accepted requests for referral to the Grand Chamber of the following judgments:

SMOLEANU - Romania (Nº 30324/96)
LINDNER and HAMMERMAYER - Romania (Nº 35671/97)
Judgments 3.12.2002 [Section II]

POPOVICI and DUMITRESCU - Romania (Nº 31549/96)
Judgment 4.3.2003 [Section II]

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Notes Nos. 52, 53 and 54):

KLAMECKI - Poland (no. 2) (Nº 31583/96)
Judgment 3.4.2003 [Section I]

SYLVESTER - Austria (Nº 36812/97 and Nº 40104/98)
Judgment 24.4.2003 [Section I]

Victor-Emmanuel de SAVOIE - Italy (N° 53360/99)
Judgment 24.4.2003 [Section II]

MALISZEKSI - Poland (Nº 40887/98)
GRYZIECKA and GRYZIECKI - Poland (Nº 46034/99)
PAŚNICKI - Poland (Nº 51429/99)
PIŁKA - Poland (Nº 39619/98)
MAJKRZYK - Poland (Nº 52168/99)
WITCZAK - Poland (Nº 47404/99)
D.K. - Slovakia (Nº 53372/99)
Judgments 6.5.2003 [Section IV]

ŠOĆ - Croatia (Nº 47863/99)
PAPAGEORGIOU - Greece (Nº 59506/00)
Judgments 9.5.2003 [Section I]

TEPE - Turkey (Nº 27244/95)
Judgment 9.5.2003 [Section II (former composition)]

KYRTATOS - Greece (Nº 41666/98)
VOGLINO - Italy (Nº 48730/99)
CARBONE - Italy (Nº 48842/99)
MOTTOLA - Italy (Nº 58191/00)
Judgments 22.5.2003 [Section I]

VERRERIE DE BIOT - France (Nº 46659/99)
KORNBLUM - France (Nº 50267/99)
SANGLIER - France (Nº 50342/99)
VERHAEGHE - France (Nº 53584/99)
CRIŞAN - Romania (Nº 42930/98)
Judgments 27.5.2003 [Section II]

SKAŁKA - Poland (Nº 43425/98)
Judgment 27.5.2003 [Section III]

SOBIERAJSKA-NIERZWICKA - Poland (Nº 49349/99)
HEWITSON - United Kingdom (Nº 50015/99)
Judgments 27.5.2003 [Section IV]

PANTEA - Romania (Nº 33343/96)
BENMEZIANE - France (Nº 51803/99)
MOUESCA - France (Nº 52189/99)
Judgments 3.6.2003 [Section II]

COTLET - Romania (N° 38565/97)
WYLĘGŁY - Poland (Nº 33334/96)
GÓRSKA - Poland (Nº 53698/00)
Judgments 3.6.2003 [Section IV]

ORHAN KAYA - Turkey (Nº 44272/98)
IŞIK - Turkey (Nº 50102/99)
Judgments 5.6.2003 [Section III]

PAULESCU - Romania (Nº 34644/97)
RAMAZANOĞLU - Turkey (Nº 39810/98)
Judgments 10.6.2003 [Section II]

ROYER - Austria (Nº 42484/98)
MALEK - Austria (Nº 60553/00)
Judgments 12.6.2003 [Section I]

VAN KÜCK - Germany (Nº 35968/97)
RICHEUX - France (Nº 45256/99)
GUTFREUND - France (N° 45681/99)
LALLEMENT - France (Nº 46044/99)
EASTERBROOK - United Kingdom (Nº 48015/99)
CHALKLEY - United Kingdom (Nº 63831/00)
Judgments 12.6.2003 [Section III]

ŞEN - Turkey (Nº 41478/98)
SCI BOUMOIS - France (Nº 55007/00)
SEIDEL - France (Nº 60955/00)
LECHOISNE and others - France (Nº 61173/00)
RUIANU - Romania (Nº 34647/97)
Judgments 17.6.2003 [Section II]

BEŇAČKOVÁ - Slovakia (Nº 53376/99)
CHOVANČÍK - Slovakia (Nº 54996/00)
PLOT - France (Nº 59153/00)
KLIMEK - Slovakia (Nº 60231/00)
MUSTAFA - France (Nº 63056/00)
BÓNA - Slovakia (Nº 72022/01)
Judgments 17.6.2003 [Section IV]

WIDMANN - Austria (Nº 42032/98)
HULKI GUNEŞ - Turkey (N° 28490/95)
Judgments 19.6.2003 [Section III]

BOUILLY - France (no. 2) (Nº 57115/00)
Judgment 24.6.2003 [Section II]

ALLARD - Sweden (Nº 35179/97)
MUSTAFA YÜKSEL - Turkey (Nº 42430/98)
ÖZGÜR IŞIK - Turkey (Nº 44057/98)
DERTLI and others - Turkey (Nº 45672/99)
Judgments 24.6.2003 [Section IV]

PASCOLINI - France (Nº 45019/98)
Judgment 26.6.2003 [Section I]

MAIRE - Portugal (N° 48206/99)
MOREIRA & FERREIRINHA, Lda. and others - Portugal
(Nº 54566/00, Nº 54567/00 and Nº 54569/00)
Judgments 26.6.2003 [Section III]

Article 44(2)(c)

On 24 September 2003 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

YILTAŞ YILDIZ TURISTIK TESISLERI A.Ş. - Turkey (Nº 30502/96)
Judgment 24.4.2003 [Section III]

CLUCHER - Italy (Nº 36268/97)
Judgment 17.4.2003 [Section I]

M.M. - Netherlands (Nº 39339/98)
Judgment 8.4.2003 [Section II]
(see Information Note Nº 52)

MOTAIS DE NARBONNE - France (Nº 48161/99)
Judgment (just satisfaction) 27.5.2003 [Section II]

DOWSETT - United Kingdom (Nº 39482/98)
Judgment 24.6.2003 [Section II]
(see Information Note Nº 54)

LÉVAI and NAGY - Hungary (Nº 43657/98)
Judgment 8.4.2003 [Section II]

APPLEBY and others - United Kingdom (Nº 44306/98)
Judgment 6.5.2003 [Section IV]
(see Information Note Nº 53)

SERGIHDES - Cyprus (Nº 44730/98)
Judgment (just satisfaction) 10.6.2003 [Section II]

RABLAT - France (Nº 49285/99)
Judgment 29.4.2003 [Section II]

COVEZZI and MORSELLI - Italy (Nº 52763/99)
Judgment 9.5.2003 [Section I]
(see Information Note Nº 53)

MŐTSNIK - Estonia (Nº 50533/99)
Judgment 29.4.2003 [Section IV]

BORDIERE - France (Nº 53112/99)
Judgment 27.5.2003 [Section II]

RAF - Spain (N° 53652/00)
Judgment 17.6.2003 [Section IV]
(see Information Note Nº 54)

MICHEL RAITIERE - France (Nº 57734/00)
Judgment 17.6.2003 [Section II]

PESCADOR VALERO - Spain (N° 62435/00)
Judgment 17.6.2003 [Section IV]
(see Information Note Nº 54)

PISKURA - Slovakia (Nº 65567/01)
Judgment 27.5.2003 [Section IV]

MARTIAL LEMOINE - France (Nº 65811/01)
Judgment 29.4.2003 [Section II]

SIKA - Slovakia (Nº 69145/01)
Judgment 24.6.2003 [Section IV]

KROENITZ - Poland (Nº 77746/01)
Judgment 25.2.2003 [Section IV]

CANCIOVICI - Romania (Nº 32926/96)
Judgment 26.11.2002 [Section II]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Refusal to grant non-contributory handicapped adult allowance: *violation*.

KOUA POIRREZ - France (Nº 40892/98)
Judgment 30.9.2003 [Section II]

Facts: The applicant, an Ivory Cost national, suffers from a physical handicap. He was adopted by a French national in July 1987, but the declaration of French nationality for which he applied in December of that year was declared inadmissible on the ground that he was an adult on the date of the application. He appealed against that decision. However, a card certifying that he was disabled was issued to him, but the Family Allowances Office refused to award him a disabled adult's allowance. In June 1990, the applicant appealed to the Friendly Settlements Commission, which none the less confirmed the decision, stating that he was neither of French nationality nor a national of a country which had entered into reciprocal agreements with France, as required under the Social Security Code. The applicant then appealed to the Social Security Court, which in June 1991 decided to stay proceedings and to refer a question to the European Court of Justice in Luxembourg for a preliminary ruling. In December 1992, that court ruled that the French legislation was compatible with the European provisions. In March 1993, the Social Security Court dismissed the applicant's appeal. The Court of Appeal upheld that judgment in June 1995 and the Court of Cassation dismissed the appeal on a point of law in January 1998.
Law: Article 14 and Article 1 of Protocol No. 1: a) *Applicability*: The applicant had a pecuniary right for the purposes of Article 1 of Protocol No. 1, since payment of the allowance was prescribed by the applicable legislation. The refusal to pay him the allowance was based on criteria, French nationality or nationality of a country which had concluded a reciprocal agreement with France in respect of that allowance, which constitute a distinction to which Article 14 applies.
b) *Merits*: the refusal to award the allowance in issue was based solely on the finding that the applicant did not possess the appropriate nationality, a condition of eligibility laid down in Article. L. 821-1 of the Social Security Code as then in force. The applicant satisfied the other statutory conditions for award of the social security allowance and, moreover, was entitled to the allowance after the new law abolished the nationality condition. The applicant was then in a situation comparable to that of French nationals or nationals of countries which had entered into a reciprocal agreement as regards his right to the benefit. The difference in treatment, as regards the benefit of the social security allowances, between French nationals or nationals of countries who had signed a reciprocal agreement and other foreign nationals was not based on any "objective and reasonable justification". Even though, at the material time, French was not bound by any reciprocal agreements with the Ivory Coast, it undertook, in ratifying the

Convention, to secure "to everyone within [its] jurisdiction", as the applicant was, the rights and freedoms defined in Section I of the Convention.
Conclusion: violation (six votes to one).
Article 6(1) (reasonable time): The proceedings lasted seven years and more than seven months for three degrees of jurisdiction, of which the period before the ECJ is not to be taken into account. The case, which was quite complex, reveals no delay attributable to the judicial authorities.
Conclusion: no violation (unanimous).
Article 41 – The Court awards damages and costs and expenses.

POSSESSIONS
Undertakings to sell land for building project, subject to conditions ultimately not fulfilled: *inadmissible*.

MIRAILLES - France (N° 63156/00)
Decision 23.9.2003 [Section II]

The applicant, who is an estate agent, took various steps with a view to acquiring land in order to build a residential leisure park. He signed a preliminary contract of sale in 1983, then an endorsement two years later and a second preliminary contract of sale in 1986. In order to give force to the contracts, the applicant paid certain sums of money, the balance being payable upon signature of the deed of sale. However, the promises to sell were subject to three conditions precedent, which required, in particular, the grant of preliminary administrative authorisations. In 1983, the applicant had a land development certificate and the town hall stated on a number of occasions that it was in favour of the project. Eventually, however, the condition precedent relating to the necessary administrative authorisations was not satisfied. In 1991, the applicant claimed compensation for the damage sustained. He criticised the town hall, in particular, for having encouraged him to proceed with his scheme. The applicant was unsuccessful. The court held, in particular, that the municipality had given no precise undertaking and that the damage relied on by the applicant was either unjustified or purely contingent. The applicant's subsequent actions failed.
Inadmissible under Article 1 of Protocol No. 1: The purchase of the land by the applicant did not take place. The condition precedent relating to the obtaining of the necessary administration authorisations by the future purchaser was not satisfied. The right of ownership of the land was never transferred to the applicant. Accordingly, the alleged interference did not concern the applicant's "present assets". The applicant claims to have invested sums of money owing to the attitude of the municipality, which allowed him to have a legitimate expectation that the outcome would be positive as regards the completion of his project. However, the applicant's financial investments were made with a view to future financial profits, which, as they have not already been realised and are not the subject of an enforceable claim, do not constitute an "asset" for the purposes of the Convention. The Court considers that there is a difference between a mere expectation supported (rightly or wrongly) by the attitude of the domestic authorities *vis-à-vis* a real estate development and a "legitimate expectation" for the purposes of Article 1 of Protocol No. 1, which must by nature be more concrete and be based on a statutory provision or a legal act, such as a court decision which has become final. The Court states that the fact that a person considers that he has suffered financial harm at the hands of a public body is not sufficient for the alleged damage to be capable of representing an interference with his right of ownership, whether present or potential. The applicant cannot therefore rely on an "asset": incompatible *ratione materiae*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of recovering property or obtaining adequate rent from tenants: *admissible*.

HUTTEN-CZAPSKA - Poland (Nº 35014/97)
Decision 16.9.2003 [Section IV]

The applicant's parents owned a house in Poland. At the end of the Second World War, in May 1945, the first floor of the house was assigned to a tenant by the municipal authorities where the house was located, and it was subsequently placed under State management in accordance with legislation in force at the time. In 1975, the mayor issued a decision by which the ground floor was leased to another tenant. In 1990, the District Court declared that the applicant had inherited the property and as a result she took over the management of the house from the municipality. With a view to recovering her property she initiated civil proceedings for the relocation of the tenants to dwellings owned by the municipality and claimed compensation for deprivation of and damage to her property. The Regional Court and later the Court of Appeal found that on the basis of the 1994 Act on the Lease of Dwellings and Housing Allowances there was no obligation to relocate the tenants to municipal housing, and dismissed her claims for damage. Her appeal to the Supreme Court was rejected. In 1995 the applicant brought eviction proceedings against the tenants, but the District Court dismissed her claim. The applicant also initiated administrative proceedings requesting that the decisions of 1945 and 1975 by the municipality and the mayor respectively (which were the basis of the tenants' leases) be declared null and void. The courts declared that the decisions "had been issued contrary to law", but did not annul them. Under the 1994 Act the rents which the tenants paid were "controlled", and the applicant claims that the amounts fixed by the authorities did not cover the basic maintenance expenses of her property. The 1994 Act was repealed in 2001 following a judgment of the Constitutional Court. The legislation introduced in replacement continued to make it very difficult for landlords to raise rents.
Admissible under Article 1 of Protocol 1: The Court may have regard to facts prior to ratification if these created a situation beyond that date. The applicant's complaint was not directed at a single measure or decision before the date of ratification, but rather at the continuing restriction on her property rights by successive pieces of legislation. Moreover, it had not been explained how the remedies referred to by the Government would have improved the applicant's situation.

PEACEFUL ENJOYMENT OF POSSESSIONS
Cancellation of indexing of salaries and delay in payment of compensation: *inadmissible*.

CZERWIŃSKA and others - Poland (N° 33828/96)
Decision 30.9.2003 [Section IV]

A law of 1989 designed to harmonise the salaries of servants of the State in the administrative sector with those in the manufacturing sector introduced an indexation of salaries in the administrative sector. A Law of 1991 abolished that indexation for the second half of 1991 and introduced a scheme for the reimbursement of the difference between the salaries in the form of a lump sum. However, payment of this lump sum was deferred. A Law of 1993 decided to grant "compensation certificates" which could be exchanged for shares. In 1993, the applicants brought legal proceedings, but without success, for reimbursement of the difference between the salaries paid under the Law of 1991 and those to which they were entitled under the Law of 1989. A Law of 1997 affirmed the principle of compensation for the lack of indexation of salaries in 1991 and 1992. Eventually, a Law of 1999 and its implementing regulation introduced the principle of payment of a sum of money and defined the specific rules, such as periods of payment.

Inadmissible under Article 1 of Protocol No. 1: a) In so far as the complaint relates to the deprivation of the right to the increase in salaries and its consequences for the calculation of the retirement pension, it is incompatible *ratione temporis*. That does not apply to the question of failure to pay within a certain time the sums payable in the form of "compensation certificates" or of direct payment, since the Government continued to legislate on that matter after the date of the entry into force of Protocol No. 1 in respect of Poland. b) The Laws of 1993 and 1997 did not give rise to a defined and quantifiable obligation towards the applicants on the part of the State. Accordingly, before 1999 the applicants were not the owners of a debt sufficiently established to be payable and could not therefore rely on an "asset" before that date. Nor can the applicants claim to be "victims" for the purposes of Article 34 of the Convention since 1999, in so far as certain sums were awarded to them and the authorities are at present in the process of paying them. The mere fact that payment is staggered and that the age of those concerned has been adopted as a criterion cannot in itself constitute a violation of Article 1 of Protocol No. 1.

DEPRIVATION OF PROPERTY
Obligation to pay bankruptcy costs from bankruptcy estate despite bankruptcy having been declared erroneous: *violation*.

STOCKHOLMS FÖRSÄKRINGS- OCH SKADESTÅNDSJURIDIK AB- Sweden
(N° 38993/97)
Judgment 16.9.2003 [Section II]

Facts: The applicant is a company which instituted proceedings against a forwarding agent concerning the damage of its goods The forwarding agent was subsequently declared bankrupt but its compensation rights emanating from an insurance policy were assigned to the applicant. However, the District Court found that the rights had been assigned invalidly and ordered the applicant to pay the litigation costs incurred by the insurance company. With a view to recovering its litigation costs, and given the lack of seizeable assets of the applicant, the insurance company filed a bankruptcy petition against the applicant. The District Court declared the applicant bankrupt. The declaration of bankruptcy was upheld by the Court of Appeal but subsequently quashed by the Supreme Court, which found that the transfer of rights under the insurance to the applicant had been valid. Following the Supreme Court's ruling, the District Court fixed the fees to be paid to the official receiver who had been in charge of the applicant's bankruptcy. The applicant appealed, arguing that liability to bear the bankruptcy costs would violate its property rights. The appeal was dismissed by the Court of Appeal, and the Supreme Court refused leave to appeal. The assets of the bankruptcy estate were used to cover the receiver's fees.
Law: The Government's preliminary objection (non-exhaustion): proceedings against the State under the Tort Liability Act can be brought only when there has been a wrongful act or omission, and there were no indications that the declaration of bankruptcy by the District Court had been made arbitrarily or negligently: objection dismissed.
Article 1 of Protocol 1 – The assets used to pay the receivers' fees were the applicant's "possessions". The "appropriation" took place after the Supreme Court had quashed the declaration of bankruptcy and under those circumstances it amounted to a deprivation of property. Thus, although the interference could be considered to have been pursued "in the public interest" – to contribute to efficient bankruptcy proceedings – it was not proportionate, bearing in mind that it stemmed from a previous erroneous declaration of bankruptcy.
Conclusion: violation (unanimously).
Article 6(1) – This provision was not applicable: under Swedish law liability for fees remains even if bankruptcy has been quashed, so there was no arguable right to be relieved of that liability.
Conclusion: no violation (unanimously).

Article 13 – The Court of Appeal dismissed the applicant's appeal without an examination on the merits. A claim for damages against the State would not have constituted an effective remedy and there was no evidence of any other remedy.
Conclusion: violation (unanimously)
Article 41 – The Court awarded the applicant 200 euros in respect of pecuniary damage. It also made an award in respect of costs and expenses.

Other judgments delivered in September

Article 5(3)

TEMEL and others - Turkey (Nº 36203/97)
BEKTAŞ - Turkey (Nº 41000/98)
Judgments 23.9.2003 [Section IV]

SATIK - Turkey (Nº 36961/97)
Judgment 25.9.2003 [Section I]

alleged failure to bring detainees promptly before a judge – friendly settlement.

Article 6(1)

GLOD - Romania (Nº 41134/98)
Judgment 16.9.2003 [Section II]

exclusion of court review of lawfulness of decisions of an administrative body – violation.

BAYLE - France (Nº 45840/99)
Judgment 25.9.2003 [Section I]

striking out of a cassation appeal on the ground of the appellant's failure to implement fully the judgment appealed against – violation (cf. *Annoni di Gussola v. France*, ECHR 2000-XI).

PAGES - France (Nº 50343/99)
Judgment 25.9.2003 [Section I]

striking out of a cassation appeal on the ground of the appellant's failure to implement fully the judgment appealed against – no violation (cf. *Annoni di Gussola v. France*, ECHR 2000-XI).

DUMAS - France (Nº 53425/99)
C.R. - France (Nº 42407/98)
Judgments 23.9.2003 [Section II]

SIENKIEWICZ - Poland (Nº 52468/99)
Judgment 30.9.2003 [Section IV]

length of civil proceedings – violation.

JANOWSKI - Poland (no. 2) (Nº 49033/99)
CHUDYBA - Poland (Nº 71621/01)
GÓRECKA - Poland (Nº 73009/01)
KLEDZIK - Poland (Nº 75098/01)
Judgments 23.9.2003 [Section IV]

THEISZLER - Hungary (Nº 52727/98)
Judgment 30.9.2003 [Section II]

length of civil proceedings – friendly settlement.

RACINET - France (Nº 53544/99)
SELLIER - France (Nº 60992/00)
Judgments 23.9.2003 [Section II]

length of administrative proceedings – violation.

LOYEN - France (no. 2) (Nº 46022/99)
Judgment 30.9.2003 [Section II]

length of administrative proceedings – friendly settlement.

SKAWIŃSKA - Poland (Nº 42096/98)
B.R. - Poland (Nº 43316/98)
Judgments 16.9.2003 [Section IV]

BELADINA - France (Nº 49627/99)
Judgment 30.9.2003 [Section II]

length of criminal proceedings – violation.

DEĞIRMENCI and others - Turkey (Nº 31879/96)
Judgment 23.9.2003 [Section II]

length of criminal proceedings, and independence and impartiality of martial law court – friendly settlement.

Article 6(1) and 3(b)

COHEN and SMADJA - France (Nº 53607/99)
Judgment 23.9.2003 [Section II]

alleged inadequacy of reasons given by court – friendly settlement.

Article 6(1) and 10

KARKIN - Turkey (Nº 43928/98)
Judgment 23.9.2003 [Section IV]

conviction for incitement to hatred and hostility, and independence and impartiality of State Security Court – violation.

CARALAN - Turkey (Nº 27529/95)
Judgment 25.9.2003 [Section I]

conviction for making separatist propaganda, and independence and impartiality of State Security Court – friendly settlement (*ex gratia* payment and undertaking to implement reforms).

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

TODORESCU - Romania (Nº 40670/98)
Judgment 30.9.2003 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation and deprivation of property – violation.

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