CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 50
on the case-law of the Court
February 2003

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

Statistical information[1]

Judgments delivered	**February**	**2003**
Grand Chamber	2(5)	2(5)
Section I	7	36(38)
Section II	16(17)	27(28)
Section III	15	19
Section IV	6	17
Sections in former compositions	7	8
Total	**53(57)**	**109(115)**

Judgments delivered in February 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(5)	0	0	0	2(5)
former Section I	3	0	0	0	3
former Section II	0	0	0	0	0
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Section I	2	5	0	0	7
Section II	14(15)	1	1	0	16(17)
Section III	14	1	0	0	15
Section IV	6	0	0	0	6
Total	**45(49)**	**7**	**1**	**0**	**53(57)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2(5)	0	0	0	2(5)
former Section I	3	0	0	0	3
former Section II	0	0	0	0	0
former Section III	4	0	0	0	4
former Section IV	0	0	0	1[2]	1
Section I	24(26)	10	0	2[3]	36(38)
Section II	24(25)	2	1	0	27(28)
Section III	18	1	0	0	19
Section IV	16	1	0	0	17
Total	**91(97)**	**14**	**1**	**3**	**109(115)**

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

Decisions adopted		February	2003
I. Applications declared admissible			
Grand Chamber		0	0
Section I		5	10(11)
Section II		2	13
Section III		2	14
Section IV		3	14
former Sections		0	1
Total		**12**	**52(53)**
II. Applications declared inadmissible			
Section I	- Chamber	9	11
	- Committee	225	683
Section II	- Chamber	1	9
	- Committee	350	617
Section III	- Chamber	10	19(20)
	- Committee	160	470
Section IV	- Chamber	2	22
	- Committee	132	455
Total		**889**	**2286(2287)**
III. Applications struck off			
Section I	- Chamber	0	1
	- Committee	1	2
Section II	- Chamber	1	6
	- Committee	2	6
Section III	- Chamber	1	16
	- Committee	0	2
Section IV	- Chamber	2	61
	- Committee	5	6
Total		**12**	**100**
Total number of decisions[1]		**913**	**2438(2440)**

1. Not including partial decisions.

Applications communicated	February	2003
Section I	18	34(36)
Section II	15	40
Section III	57	74
Section IV	51	100
Total number of applications communicated	**141**	**248(250)**

ARTICLE 2

LIFE
Alleged suicide during military service: *communicated*.

ÖZCAN - Turkey (Nº 41557/98)
[Section IV]

The applicant's brother died in 1997, while performing his military service in the Gendarmerie Training Regiment. His body was found by another soldier, in a building that was normally kept locked. The rifle found in the deceased's hands was not his, but that of the soldier who discovered the body. According to statements made by other soldiers to the public prosecutor, the deceased, who had been a private person, had spoken of being very stressed on the evening he died. The body was examined by a general practitioner from the local hospital, who concluded that death was self-inflicted. It was the third such incident in the Regiment that year. The public prosecutor issued a decision of non-jurisdiction on the basis that the suicide had occurred on military premises. The applicant visited the Regiment the following month and indicates that he got either no answer or conflicting answers to his questions. In April 1997, the military prosecutor decided to discontinue his investigation, taking the view that the death was clearly a suicide and that there were no suspicious circumstances. The applicant filed an objection with the Military Court, which requested the military prosecutor to pursue his investigation and to answer a series of questions (keys to the building, why the rifle was not properly stored, any hostility between the deceased and the soldier whose rifle it was). In September 1997, the Military Court considered the answers to these questions and concluded that the applicant's brother had killed himself.
Communicated under Articles 2, 3, 6, 13 and 14.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Detention regime in maximum security prison, including regular strip searches: *violation*.

VAN DER VEN - Netherlands (Nº 50901/99)
Judgment 4.2.2002 [Section I (former composition)]

Facts: The applicant was detained on remand in 1995. He was charged with, *inter alia*, murder. In 1997, following receipt of intelligence information that the applicant was planning to escape, the authorities transferred him to the Extra Security Institution ("EBI"). The security regime involved, in particular, monitoring of all correspondence and telephone calls (limited to twice a week for 10 minutes), limited contact with other detainees and with prison staff, limitation of family visits to one a week for one hour (via an armoured glass partition, except once a month, when physical contact was however limited to a handshake on arrival and departure), and regular strip-searching of detainees. In a report of 1997, the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment ("CPT") concluded that the EBI regime "could be considered to amount to inhuman treatment". The applicant's placement in the EBI was continued until May 2001, when he was transferred to a prison with an ordinary detention regime. He was convicted in March 2001 and sentenced to 15 years' imprisonment. His appeal was dismissed in 2002.

Law: Article 3 – Detention in a high security prison does not in itself raise an issue under this provision but States are required to ensure that the conditions are compatible with respect for human dignity and do not create distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. The applicant's complaints did not concern the material conditions but rather the regime to which he was subjected and the question whether or not this entailed inhuman or degrading treatment depended on an assessment of the extent to which he was personally affected. It was not in dispute that he was subjected to very stringent security measures and his social contacts were strictly limited but this did not involve either sensory isolation or total social isolation. He was placed in the EBI because it was considered extremely likely that he might attempt to escape and he was deemed to be dangerous. Having regard to the very serious nature of the offences, the Court accepted the authorities' assessment of that risk. Moreover, while several psychiatric reports confirmed that the applicant had difficulties in coping with the limitations of the EBI and displayed symptoms of depression, the fact that he missed his family and the strain caused by the criminal proceedings were also mentioned as contributing factors. The Court did not diverge from the CPT's view that the situation in the EBI gave cause for concern, especially if detainees were held there for lengthy periods. For the applicant, the systematic use of strip-searches was one of the features of the regime which was hardest to endure. The Court had previously found that strip-searches may be necessary on occasions to ensure prison security or to prevent disorder or crime. In the present case, however, it was struck by the fact that the applicant was submitted to a weekly strip-search in addition to all the other strict security measures. In those circumstances, and in the absence of convincing security needs, the practice of weekly strip-searches to which the applicant was subjected for approximately three and a half years diminished his human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him. Thus, the combination of routine strip-searching with the other stringent security measures amounted to inhuman or degrading treatment.
Conclusion: violation (unanimously).
Article 8 – Whilst it is an essential part of a prisoner's right to respect for family life that the prison authorities should assist him in maintaining contact with his family, some measure of control over prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention. In the present case, the applicant was subjected to a regime which involved greater restrictions on his private and family life than a regular prison regime in the Netherlands and there was thus an interference with his right to respect for private and family life. There was no indication that the restrictions were not "in accordance with the law" and they pursued the legitimate aim of the prevention of disorder or crime. The authorities were entitled to consider that an escape by the applicant would have posed a serious risk to society and the security measures were established in order to prevent escapes. Security was thus concentrated on those occasions when, and places where, a detainee might obtain objects which could be used in an escape attempt or where he might obtain or exchange information relating to such an attempt. Within these constraints, the applicant was able to receive visitors and to have contact with other inmates and, in the circumstances, the restrictions on his private and family life did not go beyond what was necessary in a democratic society to attain the legitimate aims pursued.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded the applicant 3,000 € in respect of non-pecuniary damage.

LORSÉ and others - Netherlands (Nº 52750/99)
Judgment 4.2.2003 [Section I (former composition)]

This case raises issues similar to those in Van der Ven, above. In addition, the Court concluded that there had been no violation of Article 3 with regard to the effect of visiting restrictions on the detainee's family and that there had been no violation of Article 13.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Arrest and detention on remand in the context of an investigation into terrorist acts, and transfer to a police station for questioning: *admissible*.

KARAGÖZ - Turkey (N° 78027/01)
DUSUN, DAG and YASAR - Turkey (N° 4080/02)
Decisions 6.2.2003 [Section III]

The first applicant, the second applicant's mother and the third applicant were arrested on 28 October, 29 October and 1 November 2001 respectively, and held in custody at the headquarters of the Diyarbakir brigade. They were then taken before the judge of the National Security Court, who ordered that they be remanded in custody. They were subsequently transferred to a remand prison. Following requests from the governor of the region under a state of emergency and of the State Prosecutor pursuant to Article 3 (c) of Decree-law n° 430 on complementary measures to be taken in the context of the state of emergency, the judge gave leave for all three of the applicants to be handed back to the gendarmerie for questioning over a period not exceeding ten days. In the case of the first and third applicants, the measure was renewed several times, in each case for ten days. One of the representatives of the first and third applicants was able to meet the applicant on his return to the remand prison following the first period of questioning at the gendarmerie. The applicant stated that he had been ill treated during the questioning. Furthermore, the first applicant lodged a complaint with the State prosecutor against the gendarmes involved in questioning him for having mistreated him in order to extract a confession from him. The prosecutor declared that he had no jurisdiction and forwarded the complaint file to the Diyarbakir prosecutor's office, which applied to the prefect of the Diyarbakir region for leave to bring criminal proceedings. The committee responsible for administration in Diyarbakir opened a preliminary inquiry against the commander of the gendarmerie, but decided not to proceed with it for want of evidence. The first and third applicants, as well as the mother of the second applicant, could not communicate either with their families or with their lawyers during their time with the gendarmerie, and alleged that they had been mistreated during questioning at the gendarmerie.
Admissible in respect of Articles 3, 5(1), 6 and 13 as well as Article 18. The question of exhaustion of domestic remedies was joined to the merits in the case of application N° 78027/01.
Inadmissible (N° 4080/02) as regards the first applicant as being manifestly ill-founded.

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Continued detention on basis of mental disorder not amenable to treatment : *no violation*.

HUTCHISON REID - United Kingdom (Nº 50272/99)
Judgment 20.2.2003 [Section III]

Facts: The applicant was convicted of culpable homicide in 1967. The court was satisfied that he was suffering from a mental deficiency and made an order for his detention in a mental hospital and a further order restricting his discharge without limit of time. In 1986 the applicant, who had been moved to an open prison, was convicted of assault and attempted abduction and sentenced to three months' imprisonment. On completion of the sentence, he was recalled to hospital on the strength of the 1967 orders. He subsequently sought discharge on a number of occasions and obtained reports from different psychiatrists, most of whom considered that he was not suffering from a mental disorder of a nature or degree justifying continued detention, as he was not treatable. Under the Mental Health (Scotland) Act 1984, where a mental disorder was a persistent one manifested only by abnormally aggressive or seriously irresponsible conduct, as in the applicant's case, detention was only permissible where medical treatment was likely to alleviate or prevent a deterioration of the condition. In April 1994, after several unsuccessful appeals, the applicant again appealed to the Sheriff Court. The Sheriff, having noted that the burden of proof was on the applicant, obtained several psychiatric reports, which agreed that the applicant was suffering from a mental disorder manifested by abnormally aggressive and seriously irresponsible behaviour. The majority also expressed the view that the condition was not curable. The Sheriff nevertheless considered that detention for treatment was appropriate, taking into account the severity of the applicant's condition and the risk of re-offending, and refused the appeal in July 1994. The applicant's petition for judicial review was dismissed but a renewed application was allowed and in August 1997 the Court of Session quashed the Sheriff's decision, considering that he was obliged to discharge a psychopathic patient who was not treatable. However, in December 1998 the House of Lords allowed the Secretary of State's appeal, taking the view that treatment which alleviated the symptoms and manifestations of a mental disorder, even if it did not cure the disorder, fell within the scope of the applicable provision.
Law: Article 5(1)(e) – It was not disputed that the applicant's detention in 1967 was "lawful" and on grounds of mental illness which fell within this provision. Moreover, the domestic proceedings had not resulted in any finding of unlawfulness and there was no basis for interfering with the courts' assessment in that respect. The principal question was therefore whether the detention offended the underlying aim of protecting individuals from arbitrary detention. The applicant's complaint turned on the requirement of domestic law at the time that the mental condition warranting detention should be amenable to treatment. However, there is no such requirement under Article 5, which also allows compulsory confinement when the person needs control and supervision to prevent harm to himself or others. There was nothing arbitrary in the decision not to release the applicant in 1994 and in the light of the finding that there was a high risk of re-offending, the decision could be regarded as justified. Furthermore, no issues of arbitrariness were disclosed by the fact that the grounds for detention in hospital changed during the applicant's detention, nor did the detention offend the spirit of Article 5 – indeed, it would be *prima facie* unacceptable not to detain a mentally ill person in a suitable therapeutic environment. Even if the applicant's condition was not curable or susceptible to treatment, the Sheriff had found that he derived benefit from the hospital environment and that his symptoms became worse outside its supportive structure. In the circumstances, there was a sufficient relationship between the grounds of the detention and the place and conditions of detention to satisfy Article 5(1).

Conclusion: no violation (unanimously).
Article 5(4) – (a) As to the burden of proof, there is no direct Convention case-law governing the onus of proof in proceedings under this provision but it may be regarded as implicit that it is for the authorities to prove that an individual satisfies the conditions for compulsory detention. Indeed, this has been recognised in other proceedings in Scotland and England. The Government argued rather that the burden of proof was largely irrelevant, since in practice the authorities always led evidence in support of the continued detention, and it was true that there was considerable medical evidence before the Sheriff, who made clear and unequivocal findings as to the existence of a serious mental disorder and the risk of the applicant re-offending. However, there was also the issue of whether the condition was amenable to treatment and in that respect the Sheriff, referring to the onus of proof, was not satisfied that the applicant was not suffering from a condition requiring detention in hospital for treatment. It was sufficient that the burden of proof was capable of influencing the decision, which appeared to be the case, since there were conflicting views in that respect. The imposition of the burden of proof on the applicant was not compatible with Article 5(4).
Conclusion: violation (unanimously).
(b) As to the speediness of the review, while the applications challenging the Sheriff's decision involved judicial review rather than full appeals, the courts nonetheless ruled on issues concerning the lawfulness of the applicant's detention, which could potentially have led to his release, and there was no reason why these proceedings should not be taken into account. The fact that the Scottish system provides a four-tier system of review could not justify deprivation of Article 5(4) rights. There were no exceptional grounds justifying the delay in determining the applicant's application for release and these delays were not remedied by the fact that the applicant could re-apply for release each year, since it could not reasonably be anticipated that subsequent applications would have any prospect of success.
Conclusion: violation (unanimously).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Burden of proof on detainee to show he is no longer suffering from a mental disorder warranting detention: *violation*.

HUTCHISON REID - United Kingdom (Nº 50272/99)
Judgment 20.2.2003 [Section III]
(see Article 5(1)(e), above).

REVIEW OF LAWFULNESS OF DETENTION
Time-limit on appeal against detention: *violation*.

SHISHKOV - Bulgaria (Nº 38822/97)
Judgment 9.1.2003 [Section I]

Facts: The applicant was arrested on 22 August 1997 on suspicion of theft and brought before an assistant investigator, who remanded him in custody, with the authorisation or approval of a prosecutor. On 3 September, the applicant's lawyer submitted, through the District Prosecutor's Office, an appeal against the applicant's detention. As the appeal apparently did not reach the District Court, the lawyer submitted a copy directly to the court on 15 September. He also complained about the delays and about denial of access to the case file. Following a hearing on 19 September, the court dismissed the appeal on the ground that it had been submitted after expiry of the seven-day time limit. A further appeal against the detention was dismissed in

February 1998. Following a third appeal, the court ordered the applicant's release on bail in April 1998.
Law: Article 5(3) (promptly before a judge) – The applicant was brought before an assistant investigator who did not have power to make a binding decision and in any event neither the investigator nor the prosecutor who authorised the detention was sufficiently independent and impartial in view of the role they played in the prosecution (cf. *Nikolova* judgment, ECHR 1999-II).
Conclusion: violation (unanimously).
Article 5(1) – It was undisputed that there were reasonable grounds for suspecting the applicant and that his arrest was effected in accordance with domestic law. Moreover, there was no allegation of arbitrariness. The detention thus fell within Article 5(1)(c).
Conclusion: no violation (unanimously).
Article 5(3) (length of pre-trial detention) – There were factors which were highly relevant to the assessment of the danger of absconding, reoffending and collusion and these constituted obvious and compelling reasons for the authorities to consider releasing the applicant well before April 1998. They were, however, disregarded by the investigator and the prosecutor, as well as by the District Court. The authorities relied solely on a statutory presumption based on the gravity of the charges, which shifted to the accused the burden of proving that there was not even a hypothetical danger (cf. *Ilijkov* judgment of 26 July 2001). The applicant's detention was therefore prolonged on grounds that could not be regarded as sufficient. While the majority of cases concerning the length of pre-trial detention involve longer periods than in the present case – less than eight months – Article 5(3) cannot be seen as authorising pre-trial detention unconditionally provided it lasts no longer than a certain minimum period. Justification for any period of detention must be convincingly demonstrated.
Conclusion: violation (unanimously).
Article 5(4) – (a) access to the file: It was established that the applicant's lawyer was refused access to the file until at least 19 September 1997. He was thus unable to study any of the documents essential for determining the lawfulness of the applicant's detention, while the prosecutor had the advantage of full knowledge of the file. This lack of equality of arms was incompatible with Article 5(4).
Conclusion: violation (unanimously).
(b) first appeal: It was not necessary to determine the correct interpretation of the seven-day time limit or to decide when the appeal was submitted. The underlying purpose of Article 5 requires by implication that procedural limitations on the right to challenge the lawfulness of detention before a court must be subject to particularly strict scrutiny. Although the applicant was legally represented and could in any event have lodged an appeal in time without legal assistance, his lawyer was not given access to the file, which undoubtedly hampered the preparation of the appeal in time. Furthermore, when the appeal came up for examination, the applicant's detention, which had already lasted for nearly a month, had not been reviewed by an independent judicial officer and the rejection of the appeal thus prolonged the continuing violation of Article 5(3). As far as Article 5(4) is concerned, the relevant law and practice left unclear what the consequences of this rejection were and the applicant had no way of knowing when he could obtain a judicial examination of the lawfulness of his detention. In fact, it was not examined until five months later and it was not possible to speculate whether an earlier second appeal would have been examined. Having regard to all the relevant facts and the lack of clarity in domestic law and practice, the applicant's exercise of his right had been unduly impaired.
Conclusion: violation (unanimously).
(c) remaining complaints: These complaints were unfounded.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded the applicant 1,500 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 6

Article 6(1)

RIGHT TO A COURT
Court regarding itself as bound by the opinion of a Minister: *violation*.

CHEVROL - France (N° 49636/99)
Judgment 13.2.2002 [Section II]

Facts: The applicant, a French national holding the Algerian State diploma of doctor of medicine, applied to be registered on the roll of the French Medical Council. Her application was refused on the ground that she did not hold the French diploma of doctor of medicine, which was a requirement under the Code of Public Health. The applicant reapplied, relying this time on the application of the government declarations of 19 March 1962 on Algeria, known as the "Evian Accords", and in particular Article 5 of the government declaration of 19 March 1962 on cultural co-operation between France and Algeria, which laid down the principle of the automatic equivalence of French and Algerian diplomas provided that the courses followed were similar. Upon the rejection of her application by the Medical Council she brought an action in the *Conseil d'Etat* on the ground of abuse of authority. At the request of the *Conseil d'Etat*, the Ministry of Foreign Affairs submitted observations. It indicated therein that at the material time the provisions of Article 5 were not applied by the Algerian authorities when they received requests from French nationals holding diplomas awarded in France with the result that those provisions could not be applied for the benefit of the applicant. When the applicant became apprised of those observations, she produced statements in the *Conseil d'Etat* from various Algerian authorities establishing that diplomas obtained in France by French practitioners were automatically recognised as valid in Algeria. In April 1999 the *Conseil d'Etat* dismissed the applicant's action on the ground that the Ministry of Foreign Affairs had stated that Article 5 of the government declaration of 19 March 1962 could not be considered to be in force on the date of the contested decision owing to the lack of reciprocal application on the part of Algeria. In the meantime, the applicant had been granted permission to practise medicine in France on the basis of the year 1997 by a ministerial decree of January 1999 based on the Code of Public Health. In April 1999 she was registered on the roll of the Medical Council on the basis of the year 1997.
Law: Article 6 – On the question of her continued status of "victim": once the applicant had been granted permission to practise medicine in France, none of the competent authorities recognised, explicitly, or even implicitly, that there had been a violation of Article 6(1) of the Convention as alleged by the applicant in her application. Furthermore, the authorisation to practise medicine in France had not eliminated in substance the alleged unfairness of the procedure followed in the *Conseil d'Etat* owing to the preliminary reference made to the Minister of Foreign Affairs. Even allowing that the authorisation obtained by the applicant to practise medicine in France constituted reparation, that authorisation had only been granted in 1999, on the basis of the year 1997 and the procedure about which the applicant complained had been in 1995, with the result that the reparation was only partial. Therefore, since the national authorities had not accepted - either expressly or in substance – or made reparation in full for the violation alleged by the applicant, she was still entitled to claim that she was a victim.
Applicability of Article 6(1): where legislation made access to a profession subject to certain conditions and the person concerned satisfied those conditions, that person had an entitlement to accede to that profession. In this case, the dispute concerned the implementation of

Article 5 of the 1962 government declaration. Apart from the nationality condition, the Code of Public Health made access to the profession of doctor in France conditional on the possession of diplomas, whereas, in that respect, the Health Minister could grant individual authorisations to practise medicine to a number of practitioners who did not fulfil the legal requirements, in particular in the matter of diplomas. The applicant argued that, by virtue of Article 5 of the 1962 government declaration, she satisfied the requirements for direct registration on the roll of the Medical Council in France; since she fulfilled the nationality requirement, the applicant maintained that she would also have fulfilled the second requirement if her diploma had been recognised as equivalent on the basis of an international treaty. Since, according to the case-law of the *Conseil d'Etat*, the 1962 government declaration had to be considered an international convention, its provisions should, in principle, prevail over national law. It followed that the applicant could reasonably argue that if Article 5 of the government declaration had been regarded as being in force, the Algerian diploma that she had obtained in 1969 should have been declared to be automatically valid in France, thus enabling her to satisfy the requirement for a diploma laid down by the Code of Public Health. The applicant would then have been entitled to be registered straight away on the roll of the Medical Council and to practise medicine in France. In short, the applicant had an arguable claim that French law conferred on her the right to be registered on the roll of the Medical Council and therefore to practise medicine in France. As a result, Article 6 applied.
The right to a "hearing": in accordance with its case-law, the *Conseil d'Etat* had relied entirely on an authority of the executive in order to solve the problem it faced of the applicability of the treaties. However, even if consultation of the Minister might seem necessary in order to assess the condition of reciprocity, the practice of the *Conseil d'Etat* of making a preliminary reference on the applicability of a treaty obliged it to follow the opinion of the minister – that is to say, the opinion of an authority external to it and, moreover, part of the executive – without submitting that opinion to scrutiny or to discussion involving both parties. The interposition of the ministerial authority, which had been determinative of the outcome of the court proceedings, was not open to any appeal from applicant, who, moreover, had no possibility to state her views on the use of the preliminary reference or on the wording of the question or to have aspects of her response to the question considered or to reply to the minister in this way, which might have been useful or even decisive in the eyes of the court. In fact, when the applicant became apprised of the observations of the Minister of Foreign Affairs, she adduced before the *Conseil d'Etat* several items of factual evidence which proved in her opinion that the Algerian government had in fact implemented the government declaration of 1962. However, the *Conseil d'Etat* had not even considered that evidence and had therefore been unwilling to assess whether it was well founded. The *Conseil d'Etat* had considered that it was not for it to assess whether Algeria had implemented the 1962 government declaration or to infer itself implications of a possible non-application of that text; it had based itself solely on the opinion of the Minister of Foreign Affairs. In so doing, the *Conseil d'Etat* had considered that it was bound by the opinion of the Minister of Foreign Affairs; it had therefore voluntarily deprived itself of the power to examine and take account of factual evidence that could have been crucial for the practical resolution of the dispute before it. Accordingly, the applicant could not be held to have had access to a court which had, or had given itself, sufficient power to consider all the relevant questions of fact and of law in order to decide the case or, in other words, to a court with power to deal with all aspects of the case.
Conclusion: violation (six votes to one)
Article 41 – The Court awarded the applicant € 17 000 for non-pecuniary damage.

ACCESS TO COURT
Inability of applicant granted legal aid to bring an action against a lawyer to find someone to represent him: *violation*.

BERTUZZI - France (N° 36378/97)
Judgment 13.2.2003 [Section II]

Facts: In June 1995 the applicant was granted full legal aid in order to bring proceedings for damages against a barrister. The three barristers successively appointed by the Chair of the Bar asked to be released from their duties under the legal aid order by reason of their personal links with the barrister about whom the proceedings had been brought. In November 1995 the applicant asked the Chair of the Legal Aid Board and the Chair of the Bar to appoint another barrister. In March 1997 the applicant received only one reply, that of the Chair of the Bar informing him that the decision to award him legal aid in June 1995 had lapsed and that it was for him to reapply if he still wished to carry on with the proceedings.
Law: Article 6(1) – The Legal Aid Board had granted legal aid to the applicant even though it was not compulsory for him to be represented by counsel and had therefore considered that the assistance of a practitioner was of vital importance in these proceedings brought against a barrister. The applicant had seen three barristers in succession withdraw from the case and he had not been able to have another barrister appointed and represent him effectively. Once they were on notice of the withdrawal of those barristers, the competent authorities - the Chair of the Bar or his representative - should have secured their replacement in order that the applicant might have the benefit of effective assistance. Given the attitude of the Chair of the Bar and of the barristers of the local Bar, the applicant could not be reproached for not having made a new application after he had been warned that the grant of legal aid had lapsed. In short, the option of defending his case unaided, in proceedings in which he would have had to face a legal practitioner, did not afford the applicant the right to access to a court in conditions such as to enable him effectively to benefit from the equality of arms inherent in the notion of a fair trial.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the sum of € 5 000 for non-pecuniary damage.

FAIR HEARING
Adoption of retroactive law while court proceedings pending: *no violation*.

FORRER-NIEDENTHAL - Germany (N° 47316/99)
Judgment 20.2.2003 [Section III]
(see Article 1 of Protocol No. 1, below).

REASONABLE TIME
Length of proceedings in the Federal Constitutional Court: *violation*.

NIEDERBÖSTER - Germany (N° 39547/98)
Judgment 27.2.2003 [Section III]

Facts: In June 1993, after initial proceedings had been unsuccessful, the applicant applied to the district court asking for visiting rights in respect of his illegitimate minor daughter. In September 1994 the regional court dismissed the applicant's application, on the ground that visiting rights for the applicant were not in the interests of the child's well-being in accordance with Article 1711 of the Civil Code as then in force. Subsequently, the applicant applied to the Federal Constitutional Court claiming, *inter alia*, that the said article of the Civil Code was unconstitutional. His case was held over since the Court considered it necessary to await the outcome of other constitutional cases already pending concerned with

the constitutionality of the article in question. In early 1998 the Constitutional Court suggested to the applicant that the case be declared decided on the ground that the new Family Law Act governing, *inter alia*, relations between a child and its unmarried father had been enacted and was going to enter into force. The outcome of his application would have been the same if the Court had declared Article 1711 of the Civil Code unconstitutional, since such a decision would merely have obliged the legislator to amend the provision in question within a certain time. The applicant did not give his consent. After being informed that his application was no longer of fundamental importance given the entry into force of the new law and therefore had no chance of being taken up, the applicant agreed to the suggestion. Accordingly, in December 1998 the Federal Constitutional Court ordered him to pay the court fees relating to the constitutional action.
Law: Article 6(1) – The relevant time amounted to five years and more than five months. Given what was at stake in the litigation for the person concerned, it was essential to deal rapidly with cases relating to the custody of children. The constitutional case raised complex problems insofar as it was a question of abolishing the longstanding difference in the treatment of fathers of illegitimate and legitimate children in the matter of the grant of visiting rights. Furthermore, whilst its consideration was confined to the length of the contested proceedings, the Court had also had regard to the fact that, when the applicant had seised the Federal Constitutional Court, it had already been seised of the issues raised by the case for the six previous years and had received the opinions of the State institutions consulted. As far as the conduct of the judicial authorities was concerned, the obligation to hold a hearing within a reasonable time could not be interpreted in the same way in the case of a Constitutional court as compared with an ordinary court. However, it was for the European Court in the last instance to review its application in the light of the circumstances of the case and the criteria set out in its case-law. Admittedly, the means available to the Federal Constitutional Court vis-à-vis the legislator were limited where the latter initiated a reform of the legislative provisions which were the subject of a case brought before that court. However, the Government had not shown that it would have been impossible for the Federal Constitutional Court, after annulling the legal provision at issue and referring the case back to the civil courts, to allow those courts to consider whether the provisional grant to the applicant of visiting rights in respect of his daughter could be granted in the light of the specific circumstances, particularly since the Act on the Federal Constitutional Court allowed it to make interim orders of its own motion. Having regard in particular to the fact that the proceedings related to the grant to the applicant of visiting rights in respect of his daughter and despite the specific context in which the Federal Constitutional Court had to decide the case, the length of the proceedings had been excessive.
Conclusion: violation (unanimously).
Article 41 – The Court considered that its judgment in itself constituted just satisfaction for the non-pecuniary damage suffered. It awarded € 1,800 for costs and expenses.

REASONABLE TIME
Length of proceedings arising out of refusal to admit applicant to Bar Association: *admissible*.

SILČ - Slovenia (Nº 45936/99)
Decision 13.2.2003 [Section III]

(i) The applicant holds a degree in law and has passed the national bar exams. He applied to the Bar Association to become a licensed attorney in December 1997, providing further details in May 1998. In the absence of a decision on his application, he filed an administrative action before the Administrative Court in July 1998. The Bar Association rejected his application in December 1998 on the ground that his past behaviour indicated he was not sufficiently trustworthy to enter the profession. The Administrative Court quashed the Bar Association's decision in June 1999. The latter appealed to the Supreme Court, which rejected

the appeal in February 2001. The Bar Association failed to comply with this ruling within the one-month time limit. In May 2001, the Constitutional Court ruled that the relevant part of the Bar Association's Statute was unconstitutional. The applicant filed another action with the Administrative Court in September 2001 over the Bar Association's non-compliance. In December 2001, the Bar Association again rejected the applicant's application. Proceedings before the Administrative Court are still pending.
(ii) The applicant was also involved in several sets of proceedings before the Administrative Court, the Supreme Court and the Constitutional Court over the period 1994-2001 concerning his right of access to his daughter, born in 1989. In particular, the applicant wished to have more frequent contact with his daughter than the social services allowed. He further complained that the child's mother did not observe the existing arrangements, which were set out in a decision of the social services in 1996. This matter was already the subject of a complaint under the Convention, declared inadmissible by the Commission in 1998.
(iii) The applicant further indicates that criminal proceedings were instituted against him in May 1995, leading to the charge, in 1997, of having impersonated the public prosecutor over the telephone in 1995. He was convicted on this count by the District Court in January 1999. The Higher Court quashed the conviction in May 1999 on the ground that the charges were time-barred.
(i) *Admissible* under Article 6(1), regarding the length of proceedings relating to his application to become a licensed attorney, and Article 13 concerning the effectiveness of available remedies.
(ii) *Inadmissible* under Article 8 in relation to the enforcement of the applicant's right of access to his daughter. Since the Commission examined his case in 1998, the applicant had only made one attempt to enforce the 1996 decision, leading to an enforcement order in 1999. The applicant could have filed a constitutional appeal or a new request for enforcement but did not do so. Moreover, it was evident that his daughter refused to spend weekends alone with him: manifestly ill-founded.
Inadmissible under Article 6(1) (as to the length of the proceedings) and under Article 13, in view of the due diligence of the social authorities and the applicant's failure to make use of existing remedies.
Inadmissible under Article 8 and Article 5 of Protocol No. 7: The applicant's complaint relating to the 1996 decision of the social services was substantially the same as that already examined by the Commission in 1998. Furthermore, domestic remedies had not been exhausted, since proceedings on this issue were still pending before the Supreme Court.
(iii) *Inadmissible* under Article 6(1) regarding the length of the criminal proceedings: There was no indication that the applicant's situation was substantially affected before charges were brought in 1997. The proceedings therefore lasted two years and four months, which did not, in the circumstances, exceed the requirement of a reasonable time: manifestly ill-founded.
Inadmissible under Article 6(1) regarding the fairness of the proceedings, and under Article 13: As the charges against the applicant were dismissed on appeal, he was no longer a victim.

Article 6(1) [criminal]

REASONABLE TIME
Length of criminal proceedings having repercussions on a parent's right of access to his child: *violation*.

SCHAAL - Luxembourg (N° 51773/99)
Judgment 18.2.2003 [Section IV]
(see Article 8, below).

Article 6(2)

PRESUMPTION OF INNOCENCE
Refusal for compensation following acquittal, on ground of failure to show on balance of probabilities that the person did not commit the acts in question: *violation*.

O. - Norway (Nº 29327/98)
Judgment 11.2.2003 [Section III (former composition)]

Facts: The applicant was acquitted by the High Court of committing sexual offences against his daughter. He subsequently lodged a claim for compensation for the damage caused to him by the criminal proceedings. The High Court, composed of the three trial judges, rejected the claim. It noted that the granting of compensation under Article 444 of the Code of Criminal Procedure was dependent on it being shown to be probable that the person had not committed the acts in respect of which he had been acquitted. The court, referring to the evidence adduced at the trial, found it probable that the applicant had sexually abused his daughter. The Appeals Selection Committee of the Supreme Court upheld this decision, although it stressed that the refusal of compensation did not imply that an acquittal was open to doubt.
Law: Article 6(2) – The compensation proceedings did not give rise to a criminal charge but the issue was whether they were linked to the criminal trial in such a way as to fall within the scope of Article 6(2). In that respect, the decisions were taken with specific reference to Article 444, under which a person who had been charged could seek compensation with respect to matters which were directly linked to the criminal proceedings against him. A claim had to be lodged within three months from the close of those proceedings, with the same court and, as far as possible, in the same formation. Moreover, compensation related to damage engaging the responsibility of the State, in view of which the grounds for granting or refusing it had to be of significance to the scope of application of Article 6(2). Leaving aside the different evidentiary standards, the issue in compensation proceedings to a very large extent overlapped with that in the criminal trial and it was determined on the basis of evidence from the trial by the same court. Thus, the compensation claim not only followed the criminal proceedings in time but was also tied to those proceedings in legislation and practice, with regard to both jurisdiction and subject matter. Although the applicant was not "charged with a criminal offence", the conditions for obtaining compensation were linked to the issue of criminal responsibility in such a manner as to bring the proceedings within the scope of Article 6(2), which was therefore applicable. The High Court's reasoning in refusing compensation clearly amounted to the voicing of suspicion against the applicant with respect to the charges of which he had been acquitted. Even if taken together with the cautionary statement of the Appeals Selection Committee, the impugned affirmations were capable of calling into doubt the correctness of the applicant's acquittal, in a manner incompatible with the presumption of innocence.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 5,000 € in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

HAMMERN - Norway (Nº 30287/96)
Judgment 11.2.2003 [Section III (former composition/)]

This case raises issues similar to those in O. v. Norway, above.

PRESUMPTION OF INNOCENCE
Award of damages in civil proceedings against person previously acquitted of criminal offence concerning the same facts : *no violation (Article 6 not applicable)*.

RINGVOLD - Norway (Nº 34964/97)
Judgment 11.2.2003 [Section III (former composition)]

Facts : The applicant was acquitted of sexual abuse of a minor. The court also rejected the victim's compensation claim. However, she appealed against this refusal to the Supreme Court, which ordered the City Court to take oral evidence and authorised the inclusion in the case-file of documents from the criminal case. The Supreme Court examined the matter under the rules of civil procedure and, after hearing the parties and numerous witnesses, ordered the applicant to pay compensation of 75,000 kroner to the victim. The court observed that "the requirement of evidence for the penal and the civil consequences of an action … is different". It noted in that respect that, while the evidentiary requirement in the civil proceedings was stricter than the balance of probabilities, given the serious consequences they could have on the defendant's reputation, it was nonetheless not as strict as that applicable to the establishment of criminal liability. The test was whether, on the balance of probabilities, "it was clearly probable" that the abuse had occurred. Finally, the court stressed that its decision did not undermine the applicant's acquittal.
Law : Article 6(2) – The compensation proceedings were governed by the provisions of the Code of Civil Procedure and the claim was described as "civil" in the Supreme Court's judgment. Thus, the compensation claim was not viewed as a "criminal charge" under domestic law. As to the nature of the proceedings, the claim was to be determined on the basis of principles proper to the civil law of tort. The outcome of the criminal proceedings was not decisive for the civil claim ; the compensation issue was to be the object of a separate legal assessment based on criteria and evidentiary standards which in several important respects differed from those that applied to criminal liability. The fact that an act that might give rise to a civil claim was also covered by the objective constituent elements of a criminal offence could not provide a sufficient ground for regarding the defendant as being "charged with a criminal offence", nor could the fact that evidence from the trial was used to determine the civil law consequences. Otherwise, Article 6(2) would have the undesirable effect of pre-empting the victim's possibilities of claiming compensation, entailing an arbitrary and disproportionate limitation on the right of access to court. Such an extensive interpretation was not supported by either the wording of Article 6(2) or any common approach in Contracting States. Consequently, an acquittal should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict standard of proof. In the present case, the Supreme Court's ruling, in a separate judgment from the acquittal, did not state expressly or in substance that all the conditions were fulfilled for holding the applicant criminally liable. Furthermore, neither the purpose nor the size of the award of compensation conferred on it the character of a penal sanction for the purposes of Article 6(2). Finally, the compensation case was not a direct sequel to the criminal trial and the link between them was not such as to justify extending the scope of Article 6(2) to the former.
Conclusion : no violation (unanimously).

PRESUMPTION OF INNOCENCE
Award of damages in civil proceedings against person previously acquitted of criminal offence concerning the same facts : *violation*.

Y. – Norway (N° 56568/00)
Judgment 11.2.2003 [Section III (former composition)]

Facts : The applicant was convicted of violent assault, sexual assault and homicide. He was also ordered to pay compensation of 100,000 kroner to the victim's parents. The applicant appealed to the High Court which, after taking evidence, acquitted him, accepting the jury's verdict. The following day, after hearing legal argument on behalf of both the applicant and the victim's parents, the court upheld the award of compensation. It observed that it had to be clear "on the balance of probabilities that the accused has committed the offences" and found it "clearly probable" that the applicant had "committed the offences". The Appeals Selection Committee of the Supreme Court refused leave to appeal in so far as the appeal concerned the assessment of evidence but granted leave in so far as the applicant challenged the High Court's procedure and interpretation of the law. However, the Supreme Court rejected the appeal.
Law : Article 6(2) – The fact that the applicant remained "charged" until the acquittal gained legal force was of no relevance to the compensation proceedings, which had their basis in the Damage Compensation Act 1969. Criminal liability was not a prerequisite for liability to pay compensation and even where the victim opted to join the compensation claim to the criminal proceedings it would still be considered as "civil". Indeed, the Supreme Court described it as such. Thus, the compensation claim was not viewed as a "criminal charge" under domestic law. As to the nature of the proceedings, the claim was to be determined on the basis of principles proper to the civil law of tort. The outcome of the criminal proceedings was not decisive for the civil claim ; the compensation issue was to be the object of a separate legal assessment based on criteria and evidentiary standards which in several important respects differed from those that applied to criminal liability. The fact that an act that might give rise to a civil claim was also covered by the objective constituent elements of a criminal offence could not provide a sufficient ground for regarding the defendant as being "charged with a criminal offence", nor could the fact that evidence from the trial was used to determine the civil law consequences. Otherwise, Article 6(2) would have the undesirable effect of pre-empting the victim's possibilities of claiming compensation, entailing an arbitrary and disproportionate limitation on the right of access to court. Such an extensive interpretation was not supported by either the wording of Article 6(2) or any common approach in Contracting States. Consequently, an acquittal should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict standard of proof. However, if the decision on compensation contained a statement imputing criminal liability to the defendant, this could raise an issue falling within the ambit of Article 6(2). It was therefore necessary in the present case to examine whether the domestic courts had acted in such a way or used such language as to create a clear link between the criminal case and the ensuing compensation proceedings, so as to justify extending the scope of the application of Article 6(2). The High Court had found it "clearly probable that [the applicant had] committed the offences" and the Supreme Court, by upholding that judgment, albeit using more careful language, had not rectified the matter. The language employed overstepped the bounds of the civil forum, thereby casting doubt on the correctness of the acquittal and there was accordingly a sufficient link to the earlier criminal proceedings. Article 6(2) was therefore applicable to the compensation proceedings and had been violated.
Conclusion : violation (unanimously).
Article 41 – The Court awarded the applicant 20,000 € in respect of non-pecuniary damage.

PRESUMPTION OF INNOCENCE
Organisation by a security directorate of a press conference concerning the arrest of members of an illegal organisation: *communicated*.

GULER and CALISKAN - Turkey (N° 52746/99)
[Section III]

In June 1997, the first applicant was remanded in custody for belonging to the Organisation of the 4th left Bolshevik-Trotskyites, which was considered illegal. A few days later, the Police Department of the Ministry of the Interior in Ankara organised a press conference during which he was presented as being among the persons being questioned in the context of an operation directed against the illegal organisation. In September 1997 the second applicant was also arrested. In 1998 the National Security Court declared the applicants guilty of belonging to the illegal organisation and of illegal activities under the provisions of anti-terrorist legislation, and sentenced each of them to a term of imprisonment and a fine. In March 1999 the Court of Cassation upheld the judgment on appeal.
Communicated under Article 6(1) (composition of a National Security Court) and Article 6(2) as regards the first applicant.

ARTICLE 8

PRIVATE LIFE
Refusal to divulge identity of biological parents: *no violation*.

ODIEVRE - France (N° 42326/98)
Judgment 13.2.2003 [Grand Chamber]

Facts: The applicant was born in 1965. She was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers, but was only able to obtain non-identifying information about her natural family.
Law: Preliminary objection (failure to exhaust domestic remedies) – Even at the merits stage and subject to Rule 55 of the Rules of Court, the Grand Chamber could reconsider a decision to declare an application admissible if it concluded that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention. No criticism could attach to the applicant in the case before the Court for failing to take her complaint to the administrative courts, since, as the Government had admitted, such an application would have been bound to fail under the relevant legislation. Nor could the applicant be held to task for failing to plead a violation of her rights under Article 8 of the Convention, as those rights were not recognised in domestic law at the material time and had only become so, subject to certain conditions, after legislation was passed almost four years after the application to the Commission was lodged. The Grand Chamber therefore saw no reason to reconsider the decision to reject the preliminary objection which had been raised before the Chamber: preliminary objection dismissed (unanimously).
Article 8 – (a) Applicability: The applicant's purpose was to find out the circumstances in which she had been born and abandoned, including the identity of her natural parents and brothers. Birth, and in particular the circumstances in which the child was born, formed part of the child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention, which was therefore applicable in the case before the Court.

(b) Respect for private life: People had a vital interest, which was protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development. The expression "everyone" in Article 8 of the Convention applied to both the child and the mother. The right to know one's origins was derived from a wide interpretation of the scope of the notion of private life. The child's vital interest in its personal development was also widely recognised in the general scheme of the Convention. On the other hand, a woman's interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions had to be recognised. The case concerned the private interests of two adults that were not easily reconcilable. The problem of anonymous births also raised the issue of the protection of third parties, essentially the adoptive parents, the father and the other members of the natural family, each of whom also had a right to respect for his or her private and family life. The French legislation also sought to protect the general interest and the right to respect for life. In these circumstances, the State's margin of appreciation had to be taken into account; in principle, included within the margin was the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves. Most of the States did not have legislation comparable to that applicable in France, at least as regards the child's permanent inability to establish parental ties with a natural mother who insisted on keeping her identity secret from the child she had brought into the world. However, some countries did not impose a duty on natural parents to declare their identities on the birth of their children and there had been cases of child abandonment in several others. In the light of that diversity of practice, States had to be afforded a margin of appreciation to decide which measures were apt to ensure that the rights guaranteed by the Convention were secured to everyone within their jurisdiction. The applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted on 22 January 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother's identity, subject to the latter's consent being obtained to ensure that the mother's need for protection and the applicant's legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The States had to be allowed to determine the means they considered best suited to achieve the aim of reconciling those interests. Thus, France had not overstepped the margin of appreciation it had to be afforded in view of the complex and sensitive nature of the issue of access to information about one's origins, which concerned such matters as the right to know one's personal history, the choices of the natural parents, the existing family ties and the adoptive parents.

Conclusion: no violation (ten votes to seven).

Article 14, taken together with Article 8 – The applicant had argued that, owing to her inability to find out her natural mother's identity, she had been a victim of restrictions on her capacity to receive property from her. That complaint was in practice the same as the complaint examined under Article 8. In summary, the applicant had suffered no discrimination with regard to her filiation, as, firstly, she had parental ties with her adoptive parents and a prospective interest in their property and estate and, secondly, she could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

Conclusion: no violation (ten votes to seven).

PRIVATE LIFE
Intrusion into applicants' private lives considered to be covered by freedom of press: *struck out of the list (matter resolved)*.

PASCALIDOU and others - Sweden (Nº 53970/00)
Decision 11.2.2003 [Section IV]

The first applicant is a well-known television journalist. The second applicant is her partner and was, at the material time (1998), spokesman in Sweden for the Council of Europe's "All different, all equal" antiracist campaign. The third applicant was Chief of Police in the County of Stockholm and police spokesman at the material time. On different dates in January 1998, a journalist contacted the applicants and showed them photographs of an armed and masked man outside their houses. These photographs were published on the front page of an evening newspaper along with an article claiming that the applicants had been threatened by a Nazi terror group. In June 1998, the journalist and five other persons were prosecuted for unlawful threats against the applicants. The five other persons were convicted. The conviction was finally quashed by the Supreme Court in May 1999, which found that the publication of the photographs formed part of journalistic activity for the purposes of the Freedom of the Press Act. The charges against the appellants did not appear in the exhaustive list set out in the Act (which was subsequently amended so as to include them).
The applicants agreed to discontinue their application, made under Article 8, pursuant to the amendment of the Freedom of the Press Act and an *ex gratia* payment by the Government.

FAMILY LIFE
Suspension of parent's right of access pending criminal proceedings against him on suspicion of having raped his daughter: *violation*.

SCHAAL - Luxembourg (N° 51773/99)
Judgment 18.2.2003 [Section IV]

Facts: In divorce proceedings brought by the applicant's wife, the latter lodged a complaint accusing him of sexually abusing their daughter, which led to the applicant being charged. The divorce, pronounced in July 1994, awarded custody of the minor child to the mother, whilst deferring the decision on whether to grant any access and/or overnight visiting rights to the applicant. In the criminal proceedings the applicant was committed for trial in March 1997 and in April 2000 was acquitted since the alleged offences were clearly not made out. In November 2000 the applicant applied for visiting rights and the right to have his daughter to stay overnight, which were granted by judgment of January 2001. The Court held that the mother had acted solely in order to harm the father and that her allegations were unsubstantiated by any objective evidence and were merely the result of psychological manipulation on her part.
Law: Article 6 – The relevant period was more than six years for one set of proceedings. Since the question of the applicant's visiting rights and/or the right to have his daughter to stay overnight had been suspended, Article 6(1) obliged the criminal court to act exceptionally expeditiously in order to ensure that the criminal proceedings went forward as swiftly as possible in view of the importance of the case for the applicant. Several periods of inactivity were attributable to the national authorities and the government had failed to provide any details of the alleged complexity of the case or to show how the complexity of the case could have justified the periods of inactivity found. Finally, the applicant was not to blame for any particular delay.
Conclusion: violation (unanimously)
Article 8 – a. As regards the period between the decision to defer the decision to suspend the decision on visiting rights and the judgment acquitting the applicant: the fact that the decision

as to whether to grant visiting rights was deferred constituted an interference with the applicant's right to respect for his family life. Pending the outcome of the criminal proceedings for the alleged rape of his daughter, the interest of the minor legitimated the suspension of the applicant's visiting rights. The interference was therefore necessary to protect the rights of another person until the outcome of the criminal proceedings. However, it was also in that same interest of the child to allow the parental bond to develop once again as soon as the measures no longer appeared necessary. However, unreasonable delays in the criminal proceedings had had a direct impact on the applicant's right to family life. In this case, owing to the shortcomings found by the Court in the conduct of the criminal proceedings, the national authorities had not taken all the necessary measures which they could reasonably have been required to take in order to restore the applicant's family life with his young child, in the interests of both those people.
Conclusion: violation (unanimously)
b. As regards the period from the date of the applicant's acquittal: at that date the interference with his right to respect for his family life was no longer necessary for the protection of his child's rights. In this respect, it was important whether, from the date of that decision, the civil court had acted sufficiently expeditiously to ensure that the proceedings would be processed swiftly in view of what was at stake for the applicant. No period of inactivity imputable to the internal authorities was found.
Conclusion: no violation (unanimously).
Article 41 – The Court made an award in respect of non-pecuniary damage and costs and expenses.

PRIVATE AND FAMILY LIFE
Deportation of 16-year old to Bosnia-Herzegovina: *violation*.

JAKUPOVIC - Austria (Nº 36757/97)
Judgment 6.2.2003 [Section III]

Facts: The applicant and his brother, nationals of Bosnia-Herzegovina born in 1979 and 1985 respectively, joined their mother in Austria in 1991. Their mother subsequently remarried and had two further children. In May 1995 a prohibition on possession of arms was issued against the applicant and in August 1995 he was convicted of burglary and given a suspended sentence of five months' imprisonment. As a result, the District Administrative Authority issued a ten-year residence prohibition against him. In February 1996 he was again convicted of burglary and given a suspended sentence of ten weeks' imprisonment. His appeal against the residence prohibition was dismissed in May 1996 and a subsequent complaint was dismissed by the Administrative Court in February 1997. The applicant was duly deported.
Law: Article 8 – The residence prohibition constituted an interference with the right to respect for private and family life which was in accordance with the law and pursued the legitimate aim of the prevention of disorder and crime. As to the necessity of the measure, the applicant had been in Austria for only four years when the residence prohibition was issued and his situation was not comparable to that of a second-generation immigrant, as he must have been well acquainted with the language and culture of his country of origin. Nevertheless, the residence prohibition seriously upset his private and family life: he had arrived in Austria with his brother to join their mother and had apparently no close relatives in Bosnia. Very weighty reasons had to be put forward to justify the expulsion of a 16-year old, alone, to a country which had recently experienced a period of armed conflict and where he had no close relatives. In that respect, the two convictions for burglary, for which only suspended prison sentences were imposed, could not be considered particularly serious, as the offences did not involve any element of violence. While the seriousness of the prohibition on possession of arms should not be underestimated, it could not be compared to a conviction and there was no indication that charges had ever been brought. The Austrian authorities had therefore

overstepped their margin of appreciation and the interference was not proportionate to the aim pursued.
Conclusion: violation (4 votes to 3).
Article 41 – The Court considered the finding of a violation in itself constituted sufficient just satisfaction in respect of the alleged non-pecuniary damage. It made an award in respect of costs and expenses.

FAMILY LIFE
Restrictions on family prison visits: *no violation*.

VAN DER VEN - Netherlands (Nº 50901/99)
Judgment 4.2.2002 [Section I (former composition)]
(see Article 3, above).

LORSÉ and others - Netherlands (Nº 52750/99)
Judgment 4.2.2003 [Section I (former composition)]
(see Article 3, above).

HOME
Search of lawyer's office and seizure of a letter: *violation*.

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
Jugdment 25.2.2003 [Section IV]
(see Article 10, below).

CORRESPONDENCE
Foreseeability of telephone tapping in the context of a criminal investigation: *violation*.

PRADO BUGALLO - Spain (N° 58496/00)
Judgment 18.2.2003 [Section IV]

Facts: Heading an extensive economic complex consisting of a number of tobacco import/export companies, the applicant had a wide network of collaborators in Spain. In connection with a judicial inquiry into drug trafficking, the examining judge, acting at the request of the Ministry of the Interior, gave a number of orders authorising the tapping of the telephone lines of several people suspected of belonging to a cocaine trafficking ring run by the applicant. At the end of the police investigations, the applicant and several of his collaborators were arrested by the police and committed for trial for a number of offences, including drug trafficking and smuggling. The applicant sought to have the evidence obtained by telephone tapping declared null and void. The Court held that the telephone tapping carried out by the police was entirely valid and based its finding that the applicant was guilty of the offences charged in particular on the recordings of intercepted telephone calls. The applicant was sentenced to a term of imprisonment and fined. The Supreme Court upheld the judgment on appeal. Referring to the case-law of the European Court of Human Rights, it held that the interference was justified having regard to the seriousness of the offence of large-scale drug trafficking and lawful. The applicant unsuccessfully brought an *amparo* appeal.
Law: Article 8 – The safeguards introduced by Organic Law 4/1988 of 25 May 1988 specifying the procedures for controlling the interception of telephone conversations did not satisfy all the requirements laid down by the Court's case-law in order to avoid abuses. The law proved inadequate in that respect, in particular in relation to offences which might give rise to telephone tapping and the fixing of a time-limit for carrying out telephone tapping. The superior courts in Spain had held that the changes brought about by this law were insufficient

to afford the guarantees which must be applied to telephone tapping, and had found it necessary to define a whole series of supplementary safeguards. Furthermore, although the 1988 law had introduced some undeniable improvements, major gaps persisted in relation to the time during which the telephone tapping had been carried out in this case. It was true that those shortcomings had largely been remedied by domestic case-law. Nevertheless, even if this change in the case-law could remedy the gaps in the law in a formal sense, it had occurred after the investigating judge's orders that the telephones of the persons participating in the criminal activity directed by the applicant be tapped. Therefore, it could not be taken into account in this case.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant € 7 000 for costs and expenses.

ARTICLE 9

FREEDOM OF RELIGION
Expulsion of Jehovah's Witnesses: *admissible*.

LOTTER - Bulgaria (Nº 39015/97)
Decision 6.2.2003 [Section I]

The applicants, Austrian nationals, are Jehovah's Witnesses, and were married at the relevant time. They moved to Bulgaria in 1993, where they registered a company. The first applicant, as well as other Jehovah's Witnesses, was interrogated in April and July 1993 by the local investigation service, which expressed the view that the applicant's preaching was an intrusion into individuals' homes and privacy and amounted to propaganda against the Government. In June 1994, a legislative amendment took effect requiring religious organisations to re-register. The Jehovah's Witnesses organisation's application was refused and it was required to disband. Thereafter, the authorities considered any activity related to this faith to be unlawful. In July 1995, the applicants' home was searched by police and a number of books and leaflets seized. The police drew up an internal report on the applicants' activities in their town, where they proselytised vigorously. The local investigator stated, in a document drawn up in October 1995, that in view of the applicants' activities and their negative impact on the local population, as well as the fact that their company was completely inactive, their residence permits should be withdrawn. The applicants sought an extension to their permits in October 1995, which was refused by police in December 1995. The applicants were ordered to leave the country by the end of that year. They appealed unsuccessfully to the Minister of the Interior and then to the Regional Court, which held that it lacked jurisdiction over matters relating to national security. The applicants appealed this decision to the Supreme Court, arguing that their fundamental rights were being violated and that the decision to expel them was not a matter of national security. The appeal was dismissed in May 1997. The first applicant was arrested in October 1997 for unlawful proselytising and illegal residence. He left Bulgaria. The applicants' marriage was dissolved and the second applicant married a Bulgarian national and remained in the country. The situation of the Jehovah's Witnesses in Bulgaria was brought before the European Commission of Human Rights in 1998, leading to a friendly settlement. In October 1998, the association was granted the status of religious denomination in Bulgaria.
Admissible under Articles 9 and 14: The Government's objection that the application was out time because the domestic proceedings proved to be futile was rejected. It was reasonable that the applicants took proceedings before the domestic courts in view of their contention that their situation did not affect national security and their reliance on the Constitution. The final decision was therefore taken in May 1997 and the application was lodged within six months of that date.

ARTICLE 10

FREEDOM OF EXPRESSION
Search of journalist's home and office with a view to identifying sources: *violation*.

ROEMEN and SCHMIT - Luxembourg (N° 51772/99)
Judgment 25.2.2003 [Section IV]

Facts: In July 1998 the applicant, a journalist, published an article in a daily newspaper alleging that a Luxembourg minister had committed VAT frauds and had had a fiscal fine imposed on him as a result. The applicants produced documentary evidence in support of those allegations, in particular a decision antedating the publication of the article of the director of the Revenue Department ordering the minister to pay the fine in question. Following a criminal complaint by the minister, an inquiry was initiated for concealment of a breach of professional secrecy against the journalist and for violation of professional secrecy against a person or persons unknown. The Public Prosecutor's application to commence proceedings stated that the inquiry aimed to determine which officials of the Revenue Department had access to the relevant file and documents. The first two searches ordered by the investigating judge, one at the journalist's home and the other at his workplace, proved fruitless and actions for annulment brought by the applicant against the orders of the investigating judge were unsuccessful. During the search of the chambers of the second applicant, who was the first applicant's lawyer in the proceedings brought against him, the officers seized an internal, confidential letter from the director of the Revenue Department dating from after the publication of the article. The applicants explained that that letter had been forwarded anonymously to the editors of the applicant's newspaper and that the applicant had forwarded it immediately to his lawyer. Since that search was null and void, the document seized was returned. But on the same day, a new order of the investigating judge, the validity of which was confirmed, enabled it to be seized once again.
Article 10 – The searches conducted at the applicant's home and business premises with the aim of identifying the perpetrator of a breach of professional secrecy and hence the journalist's source constituted an interference with his rights guaranteed by Article 10. That interference, which was prescribed by law, had legitimate aims relating to the prevention of disorder or crime. The question was essentially whether that interference was necessary in a democratic society. The searches were intended to identify the potential perpetrators of a breach of professional secrecy and the possible unlawful act committed subsequently by the applicant in the performance of his duties; they therefore fell within the sphere of the protection of journalistic sources. The applicant's press article discussed a subject of general interest. The searches had been carried out first at the applicant's premises, whereas the investigation had been initiated concurrently against him and the officials. Measures other than searches of the applicant's premises might have enabled the investigating judge to identify the possible perpetrators of the offences and the Government had failed to show that, in the absence of searches of the applicant's premises, the national authorities would not have been able to identify in the first place whether any breach of professional secrecy had been committed. Searches with the purpose of identifying the journalist's source – albeit fruitless – constituted an act more serious than an order to disclose the identity of the source (see the judgment of 27 March 1996 in the case of *Goodwin*). This was because investigators who, armed with a search warrant, surprise a journalist at his work place have very extensive powers of investigation owing to the fact that they have, *ipso facto*, access to all the documentation held by the journalist. However, the restrictions imposed on the confidentiality of journalistic sources required the Court to carry out the most careful examination. Whereas the reasons invoked by the national courts might be regarded as "relevant", they were not

"sufficient" to justify the searches carried out at the applicant's premises. Those searches were therefore disproportionate to the aims pursued.
Conclusion: violation (unanimously).
Article 8 – The search conducted at the applicant's lawyer's chambers, and the seizure of a document relating to her client's case-file, constituted an interference. That interference, which was prescribed by law, had a legitimate aim, namely that of preventing disorder and crime. As regards the necessity for the interference, whereas the search carried out in this case was accompanied by special procedural guarantees, the search warrant gave relatively wide powers to the investigators. Secondly and above all, the aim of the search ultimately came down to identifying the journalist's source through the intermediary of his lawyer, with the result that the search of the lawyer's chambers affected the rights guaranteed to the applicant by Article 10 of the Convention. Furthermore, the search conducted at the second applicants' chambers was disproportionate to its aim, having regard in particular to the rapidity with which it was carried out.
Conclusion: violation (unanimously).
Article 41 – The Court awarded each applicant the sum of € 4 000 for non-pecuniary damage and awarded the first applicant € 11 629.41 for costs and expenses.

FREEDOM OF EXPRESSION
Imprisonment for advocating Kurdish identity in speech: *communicated*.

DEMIR - Turkey (Nº 72071/01)
[Section III]

The applicant was the leader of the People's Democratic Party when he made a speech at a party meeting in Ankara in October 1999. His speech referred to the Kurdish question, approved of the peaceful dissolution of Czechoslovakia as well as the establishment of new States following the collapse of the Soviet Union and advocated legal recognition of the Kurdish ethnic identity. He was prosecuted for dissemination of propaganda against the indivisible unity of the State under the Prevention of Terrorism Act. The Ankara State Security Court found him guilty as charged in June 2000, fined him 80,000,000 Turkish liras and sentenced him to one year in prison. The applicant's appeal was dismissed by the Court of Cassation in January 2001.
Communicated under Article 10.

FREEDOM TO IMPART INFORMATION
Prohibited on distribution of newspaper in region under state of emergency: *violation*.

ÇETIN and others - Turkey (Nº 40153/98 and Nº 40160/98)
Judgment 13.2.2003 [Section II]

Facts: Most of the applicants worked as journalists for the Turkish-language daily newspaper *Ülkede Gündem*, based in Istanbul. On many occasions in late 1997, the distribution of the newspaper was disrupted as a result of repeated seizures by law enforcement agencies. The public prosecutor's office, which had been served with a complaint for interference with the distribution of the newspaper, found that it had no jurisdiction and forwarded the complaint to the administrative board pursuant to the Act on Criminal Proceedings against Officials. In December 1997 the prefect of the region under the state of emergency prohibited the newspaper's being brought into that region and distributed there. The administrative board gave a decision discontinuing the proceedings, which was upheld by the Council of State. The Prefect of the region under the state of emergency prohibited the newspapers succeeding the daily newspaper *Ülkede Gündem* from being brought into the region and distributed there.

Law: Preliminary objection from the government (non-exhaustion) – Turkish law affords no legal remedy so as to obtain the annulment of a measure ordered by the prefect of the region under the state of emergency. As far as the action for damages referred to by the government was concerned, the government had not given any example of a person who had obtained compensation following such an action. It had not been shown in this case that such a procedure had been capable of allowing the applicants to obtain redress and that it would have had reasonable prospects of success. The objection was therefore rejected.
Article 10 – The prohibition on distributing and bringing the newspaper into the region under the state of emergency constituted an interference with the applicants' freedom to communicate ideas and information. There was no point in determining whether the legal provision in question satisfied the requirements of accessibility and foreseeability in view of the finding reached below from the point of view of the necessity for the interference. In view of the sensitive nature of the fight against terrorism and the need for the authorities to show vigilance in the face of acts liable to increase violence, it could be accepted that the prohibition pursued the aim of defending public order and the protecting national security. As for the necessity for the interference, the prefect of the region under a state of emergency had wide-ranging prerogatives with regard to the administrative prohibition of the distribution and introduction of publications. Such prior restrictions were not incompatible *a priori* with the Convention but they had to be set in a particularly strict legal framework as regards the delimitation of the prohibition and the effectiveness of judicial review of any abuses. In this case, the powers conferred on the prefect of the region under a state of emergency and the application of the rules governing the state of emergency were not subject to strict and effective judicial review of any abuses. Admittedly, account had to be taken of the difficulties associated with the fight against terrorism and of the political tension existing in the region in question at the material time on account of acts of terrorism. The articles which had been the subject of seizure proceedings were certainly capable of having a particular impact on that sensitive climate, even though the press often had less immediate and less powerful an impact than audiovisual media. However, the prohibiting decision had not been reasoned and made no reference to the decisions relating to the seizures. In the absence of a detailed statement of reasons, accompanied by adequate judicial review, the application of such a measure was capable of different interpretations. Accordingly, in the applicants' opinion, the prohibition in question could have been based on the publication in *Ülkede Gündem* of severe criticism of the activities of the law enforcement agencies in the region. Furthermore, citizens, as passive interlocutors, had to receive several messages, and to choose and form their opinions on the basis of those various expressions of opinion, since democratic society was enriched by this pluralism of ideas and information. Moreover, the prohibition at issue had still been in force more than one and a half years after the newspaper had ceased publication and the publications which succeeded it had also been prohibited. Lastly, such measures could be lifted only by a unilateral discretionary act of the prefect of the region under the state of emergency. In short, the lack of judicial review of the administrative prohibition of publications deprived the applicants of guarantees sufficient to avoid any abuses. The interference connected with the application of the rules on the state of emergency in question was not necessary in a democratic society.
Conclusion: violation (unanimously).
Article 41 – The Court awarded each of the applicants € 2 500 for non-pecuniary damage and € 3000 to all the applicants for costs and expenses.

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of political party by the Constitutional Court: *no violation*.

REFAH PARTISI [THE WELFARE PARTY] and others - Turkey
(Nº 41340/98, Nº 41342/98, Nº 41343/98 and Nº 41344/98)
Judgment 13.2.2003 [Grand Chamber]

Facts: The first applicant is a political party and the others were, at the material time, its chairman and two vice-chairmen, all of whom were also Members of Parliament. The party obtained 16.88% of the vote in the 1991 general elections and 22% of the vote in the 1995 general elections, when it became the largest party in Parliament. It subsequently formed a coalition government with the True Path Party. In May 1997, Principal State Counsel at the Court of Cassation applied to the Constitutional Court for the dissolution of the party on the ground that it was a centre of activities contrary to the principles of secularism (Article 69 § 6 of the Constitution). He referred to acts and statements of certain leaders and members of the party. The party's representatives submitted that the statements had been distorted and taken out of context, that no criminal offence had been committed and that the party had been given no warning permitting it to expel any member acting contrary to the law. State Counsel maintained that the party had described itself as engaged in a holy war (*jihad*) and had expressed the intention of introducing a theocracy and Islamic law (*sharia*). In January 1998 the Constitutional Court ordered the dissolution of the party. It referred to statements made by the second applicant with regard to the introduction of separate legal systems and the institution of a theocracy, if necessary by force, which the court found to be contrary to the constitutional principle of secularism. The court also referred to statements made by other members of the party, including Members of Parliament, advocating the introduction of *sharia* and, in some instances, the use of violence. As an automatic consequence of the dissolution, the party's assets were transferred to the Treasury. Moreover, the court decided to terminate the applicants' mandates as Members of Parliament and to ban them from founding or joining any other political party for five years.
Law: Article 11 – The dissolution constituted an interference with freedom of association. As to whether it was prescribed by law, it was not disputed that activities contrary to the principles of equality and respect for the democratic, secular republic were undoubtedly unconstitutional or that the Constitutional Court had sole jurisdiction to dissolve a party which was a centre of such activities. Although a divergence had arisen between the Law on the regulation of political parties and the Constitution, the Constitution took precedence over statute law and the Constitutional Court was clearly required to give precedence to the provisions of the Constitution. Moreover, Refah was a large political party which had legal advisers conversant with constitutional law and the rules governing political parties, while the other applicants were experienced politicians and two of them were also lawyers. In these circumstances, the applicants were reasonably able to foresee the dissolution of the party if its leaders engaged in anti-secular activities. Furthermore, taking into account the importance of the principle of secularism for the democratic system in Turkey, Refah's dissolution pursued the legitimate aims of protection of national security and public safety, prevention of disorder or crime and protection of the rights and freedoms of others.
As to the necessity of the interference, the Court had to concentrate on (i) whether there was plausible evidence that any risk to democracy was sufficiently imminent, (ii) whether the acts and statements of the party's leaders and members were imputable to the party as a whole, and (iii) whether acts and statements imputable to the party formed a whole which gave a

clear picture of a model of society advocated by the party which was incompatible with a "democratic society".
(a) pressing social need – in view of its election results, the party had at the time of its dissolution the real potential to seize political power without being restricted by the compromises inherent in a coalition. Moreover, although the statements had been made several years earlier, the courts could legitimately take into consideration the progression over time of the real risk that the party's activities represented. The programme and policies of a party may become clear through the accumulation of acts and speeches over a relatively long period and the party may over the years increase its chances of gaining political power and implementing its policies. While Refah's policies were dangerous for Convention rights and freedoms, the real chances of it implementing those policies made that danger more tangible and more immediate, so that the courts could not be criticised for not acting earlier or for not waiting and they had not, therefore, exceeded the margin of appreciation in electing to intervene when they did. As to the imputability to Refah of the acts and speeches of its members, the party had not proposed altering Turkey's constitutional arrangements in a manner contrary to democracy in either its constitution or its coalition programme. The dissolution referred rather to statements made by certain leading figures. The statements made by the three applicants could incontestably be attributed to Refah, since remarks by office-bearers on political questions are imputable to the party they represent unless otherwise indicated. Moreover, in as much as the acts and remarks of other members in elected posts formed a whole which disclosed the party's aims and intentions and projected an image of the society it wished to set up, these could also be imputed to Refah. Finally, Refah had presented those who had made such statements as candidates for important posts and had taken no disciplinary action against them before dissolution proceedings were instituted.
With regard to the main grounds for dissolution, these could be classified into three main groups:
(i) a plurality of legal systems cannot be considered compatible with the Convention system, as it would introduce a distinction between individuals based on religion and thus, firstly, do away with the State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of different religions and beliefs and, secondly, create an unacceptable discrimination;
(ii) as to the application of *sharia* within the context of such a plurality of systems, explicitly proposed in certain of the statements referred to, the Court accepted the Constitutional Court's conclusion that these statements formed a whole and gave a clear picture of a model proposed by Refah of a state and society organised according to religious rules; however, *sharia* is incompatible with the fundamental principles of democracy, since principles such as pluralism in the political sphere and the constant evolution of public freedoms have no place in it and a regime based on *sharia* clearly diverges from Convention values; Contracting States may oppose political movements based on religious fundamentalism in the light of their historical experience, and taking into account the importance of the principle of secularism in Turkey the Constitutional Court was justified in holding that Refah's policy of establishing *sharia* was incompatible with democracy;
(iii) as to the relationship between *sharia* and the plurality of legal systems, Refah's policy was to apply some of *sharia*'s private law rules to the Muslim population in the framework of a plurality of legal systems; however, such a policy goes beyond the freedom of individuals to observe the precepts of their religion and falls outside the private sphere to which Turkey confines religion, thus suffering from the same contradictions with the Convention system as the introduction of *sharia*; freedom of religion, including freedom to manifest religion, is primarily a matter of individual conscience and the sphere of individual conscience is quite different from the field of private law, which concerns the organisation and functioning of society – it had not been disputed that in Turkey everyone can observe in his private life the requirements of his religion but on the other hand any State may legitimately prevent the application within its jurisdiction of private law rules of religious inspiration prejudicial to public order and the values of democracy;

(iv) as to the possibility of recourse to force, whatever meaning is given to *jihad* there was ambiguity in the terminology used to refer to the method to be employed to gain political power and in all the speeches referred to by the Constitutional Court the possibility was mentioned of resorting "legitimately" to force; moreover, the leaders had not taken prompt steps to distance themselves from members who had publicly approved the use of force.
In conclusion, in view of the fact that Refah's plans were incompatible with the concept of a "democratic society" and the real opportunities it had of putting them into practice, the penalty imposed by the Constitutional Court could reasonably be considered to have met a "pressing social need".
(b) proportionality – Refah's other Members of Parliament remained in office and in view of the low value of its assets the transfer to the Treasury had no bearing on proportionality. Moreover, the prohibition imposed on the individual applicants was temporary. The interference was not, therefore, disproportionate.
Conclusion: no violation (unanimously).
Articles 9, 10, 14, 17 and 18 and Articles 1 and 3 of Protocol No. 1 – It was unnecessary to examine these complaints separately.
Conclusion: not necessary to examine (unanimously).

FREEDOM OF ASSOCIATION
Refusal of permission to cross from northern to southern Cyprus to attend bi-communal meetings: *violation*.

DJAVIT AN - Turkey (Nº 20652/92)
Judgment 20.2.2003 [Section III]

Facts: The applicant, a Cypriot national of Turkish origin, resides in the northern part of Cyprus and is the "Turkish Cypriot Co-ordinator" of an unregistered association of Turkish and Greek Cypriots whose purpose is to develop close relations between the two communities. Between March 1992 and April 1998, most of the applicant's requests for permission to visit the southern part of the island in order to participate in bi-communal meetings were refused by the Turkish or Turkish Cypriot authorities.
Law: Government's preliminary objections – (a) Responsibility of the respondent State: The Court found in the *Loizidoui* (preliminary objections) judgment(of 23 March 1995 that the Turkish army exercised effective overall control over northern Cyprus, entailing Turkish responsibility for the policies and actions of the "Turkish Republic of Northern Cyprus" and bringing those affected by those policies and actions with Turkey's "jurisdiction". Moreover, in the *Cyprus v. Turkey* judgment of 10 May 2001, the Court concluded that Turkey's responsibility extended to acts of the local administration, which survived by virtue of Turkish military and other support. The matters complained of in the present case consequently fell within Turkey's jurisdiction.
(b) Exhaustion domestic remedies: The respondent Government had referred to a number of constitutional provisions with emphasis on (i) judicial review of administrative acts, decisions and omissions, (ii) recourse to the High Administrative Court in the event of failure of the "TRNC" authorities to reply to an individual petition within the time-limit, and (iii) the possibility of a complaint to the Attorney General. However, the submissions were very general and it had not been shown that any of the remedies would have afforded redress. Moreover, neither a remedy before the administrative courts nor a complaint to the Attorney General could be regarded as adequate and sufficient, as the Court was not satisfied that a determination concerning the refusal of a permit at the "green line" could be made in such proceedings. In that respect, none of the cases referred to by the Government concerned that issue. The application could not, therefore, be rejected for failure to exhaust domestic remedies.

Article 10 – Article 11 was the *lex specialis* and it was unnecessary to examine the issue under Article 10 separately, although regard would be had to the latter in examining and interpreting Article 11.
Conclusion: not necessary to examine (unanimously).
Article 11 – The applicant's complaint was not limited to the question of freedom of movement, that is to physical access to the southern part of Cyprus, but related to his being effectively prevented from meeting Greek Cypriots and participating in bi-communal meetings. Consequently, the characterisation of the complaint as being limited to freedom of movement could not be accepted. Although the applicant was allowed to cross the "green line" and attend some meetings, these were very few in comparison to the number of refusals. Indeed, during the period from February 1996 to April 1998 all of the applicant's requests were denied. Despite the varied nature of the meetings the applicant wished to attend, they shared the core characteristic of being bi-communal and thus had the same aim of bringing into contact Turkish Cypriots from the north and Greek Cypriots from the south with a view to engaging in dialogue and exchanging ideas and opinions in the hope of securing peace. The refusals of permission to cross to the south in effect barred the applicant's participation and there had therefore been an interference with his right to peaceful assembly. The Government had not referred to any law or measures in the "TRNC" regulating the issuing of permits to cross the "green line" for the purpose of attending bi-communal meetings and since it appeared that there was no such law the manner in which restrictions were imposed on the applicant's exercise of his freedom of assembly was not "prescribed by law".
Conclusion: violation (6 votes to 1).
Article 13 – As regards the possible remedies cited by the Government, they had not put forward any example of their use in a case similar to the present one and they had therefore failed to show that such remedies would have been effective.
Conclusion: violation (6 votes to 1).
Article 41 – The Court awarded the applicant 15,000 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

ARTICLE 34

VICTIM
Partial reparation of alleged violation: *preliminary objection dismissed*.

CHEVROL - FRANCE (N° 49636/99)
Judgment 13.2.2002 [Section II]
(see Article 6(1) [civil], above).

HINDER EXERCISE OF THE RIGHT OF PETITION
Extradition notwiststanding interim measure indicated by the Court under Rule 39 of the Rules of Court: *violation*.

MAMATKULOV and ABDURASULOVIÇ - Turkey (Nº 46827/99 and Nº 46951/99)
Judgment 6.2.2003 [Section I (former composition)]

Facts: The two applicants, who were Uzbek nationals, were arrested in Turkey. They were wanted in their country of origin, *inter alia*, for the attempted assassination of the President of the Republic. The Uzbek authorities requested their extradition. Saying that policy towards political dissidents in the Republic of Uzbekistan was repressive, the representative of one of the applicants argued that his client risked being subjected to torture in prison. The Turkish authorities ordered the applicants' extradition one day after the Court had adopted an interim

measure under Rule 39 of the Rules of Court indicating that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court for the applicants not to be extradited pending the Court's decision. The Supreme Court of the Republic of Uzbekistan found the applicants guilty of the charges and sentenced them to terms of imprisonment.

Law: Article 3 – The reports of international bodies responsible for investigating human-rights abuses and denouncing an administrative practice of torture and other forms of ill-treatment of political dissidents and the Uzbek regime's repressive policy towards such dissidents only described the general situation in the Republic of Uzbekistan. There was nothing in the reports to support the specific allegations that had been made by the applicants in the case before the Court, which allegations required corroboration by other evidence. The Court took formal cognisance of diplomatic notes from the Uzbek authorities that had been produced by the Turkish government and of the judgment of the Supreme Court of the Republic of Uzbekistan. Having regard to the circumstances of the case and the evidence before it, the Court considered that there was insufficient evidence for it to conclude that there had been a violation of Article 3.

Conclusion: no violation (unanimously).

Article 6 (1) – (a) This provision did not apply to the extradition proceedings in Turkey.

(b) With regard to the allegation that the applicants had not received a fair trial in the criminal proceedings in the country to which they had been extradited, it had not been shown that they had faced a real risk of being subjected to torture or inhuman or degrading treatment as a result of their extradition. Referring to its findings under Article 3, the Court held that it had not been established by the evidence produced to it that the applicants had been denied a fair trial. Accordingly, no issue arose under Article 6 (1) of the Convention.

Conclusion: no separate examination necessary (unanimously).

Article 34 – After being extradited, the applicants were unable to remain in contact with their representatives. It was implicit in the effective exercise of the right of individual application that for the duration of the proceedings in Strasbourg the principle of equality of arms should be observed and the applicant's right to sufficient time and necessary facilities in which to prepare his or her case respected. However, in the case before the Court, the applicants' representatives had not been able to contact the applicants, despite their requests to the Turkish and Uzbek authorities for permission to do so. The applicants had thus been denied an opportunity to have further inquiries made in order for evidence in support of their allegations under Article 3 of the Convention to be obtained.

In the light of the general principles of international law, the law of treaties and international case-law, the interpretation of the scope of interim measures could not be dissociated from the proceedings to which they related or the decision on the merits they sought to protect.

It followed from Article 34 that, firstly, applicants were entitled to exercise their right to individual application effectively, within the meaning of Article 34 *in fine* – that is to say, Contracting States were not to prevent the Court from carrying out an effective examination of the application – and, secondly, an applicant who alleged a violation of Article 3 of the Convention was entitled to an effective examination of the issue whether a proposed extradition or expulsion would entail a violation of Article 3. Indications given by the Court, as in the present instance, under Rule 39 of the Rules of Court, permitted it to carry out an effective examination of the application and to ensure that the protection afforded by the Convention was effective; such indications also subsequently allowed the Committee of Ministers to supervise the execution of the final judgment. Such measures thus enabled the State concerned to discharge its obligation to comply with the final judgment of the Court, which was legally binding by virtue of Article 46 of the Convention. Thus, in the case before the Court, compliance with the indication given by the Court would undoubtedly have helped the applicants to argue their case before it and the fact that they had been unable to take part in the proceedings before the Court or to speak to their lawyers had hindered them in contesting the Government's arguments on the factual issues and in obtaining evidence. All State Parties to the Convention were under a duty to refrain from any act or omission that might undermine the authority and effectiveness of the final judgment (see Article 46). The

applicants' extradition, in disregard of the indications that had been given under Rule 39, had rendered nugatory the applicants' right to individual application. Any State Party to the Convention to which interim measures had been indicated in order to avoid irreparable harm being caused to the victim of an alleged violation had to comply with those measures and refrain from any act or omission that would undermine the authority and effectiveness of the final judgment. Consequently, by failing to comply with the interim measures indicated by the Court Under Rule 39, Turkey was in breach of its obligations under Article 34 of the Convention.
Conclusion: violation (unanimously).
Article 41 – The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. It made an award for costs and expenses.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Latvia)
Effectiveness of constitutional complaint in relation to alleged violation by a domestic law of a Convention right also guaranteed by the Constitution.

GRISANKOVA and GRISANKOVS - Latvia (N° 36117/02)
Decision 13.2.2003 [Section I]

The applicants, Latvian nationals of Russian origin, complained that the Latvian Education Act made Latvian the only language of instruction used in public schools. They relied before the Court on the right to education as guaranteed by Article 2 of Protocol No 1 to the Convention.
Inadmissible: Where an applicant called in question a provision of legislation or a regulation as being contrary, as such, to the Convention, and the right invoked was among those guaranteed by the Latvian Constitution, it was imperative that, in principle, proceedings be brought before the Latvian Constitutional Court before the European Court of Human Rights, since in such a situation an application before the Latvian Constitutional Court afforded a possible remedy to the situation complained of. In this case, the right to education was among the fundamental rights protected by the Latvian Constitution and the applicants had not challenged the constitutionality of the contested provisions of the Education Act by way of an individual application to the Constitutional Court. Moreover they had not provided any ground likely to cast doubt on the effectiveness of this procedure: non-exhaustion.

Article 35(3)

ABUSE OF RIGHT OF PETITION
Application including numerous insuling remarks in respect of the Court and the Registry: *inadmissible*.

DURINGER and others - France (N° 61164/00 and N° 18589/02)
Decision 4.2.2003 [Section II]

The applicants complained about proceedings they had brought before the *Conseil d'Etat* with a view to annulling a decree on companies and the management of betting on horse races. They were unsuccessful in their action and raised various articles of the Convention before the Court.
Inadmissible: The applications of Messrs Duringer and "Forest Grunge" were held inadmissible: those applicants had sent numerous communications containing serious accusations against judges of the Court and officials of the Registry and statements without any foundation which were extremely insulting and wild and repeatedly reiterated, and did not fall within the ambit of Article 34 of the Convention. The intolerable conduct of Mr Gérard Duringer and, assuming that he existed, "Forest Grunge" was contrary to the aim of the right of individual application as provided for by Articles 34 and 35 of the Convention. It was an abuse of the right of application within the meaning of Article 35(3).

Article 35(4)

ADMISSIBILITY
Grand Chamber decision on inadmissibility argument rejected by a Chamber.

ODIEVRE - France (N° 42326/98)
Judgment 13.2.2003 [Grand Chamber]
(see Article 8, above).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 47):

DEMIR - Austria (Nº 35437/97)
ALLAN - United Kingdom (Nº 48539/99)
LISIAK - Poland (Nº 37443/97)
PIECHOTA - Poland (Nº 40330/98)
LAIDIN - France (Nº 43191/98)
PISANIELLO and others - Italy (Nº 45290/99)
Judgments 5.11.2002 [Section IV]

WYNEN - Belgium (N° 32576/96)
MÜLLER - Switzerland (Nº 41202/98)
YOUSEF - Netherlands (Nº 33711/96)
PINCOVÁ et/and PINC - Czech Republic (N° 36548/97)
SERGHIDES - Cyprus (Nº 44730/98)
Judgments 5.11.2002 [Section II]

RADOŠ - Croatia (Nº 45435/99)
Judgment 7.11.2002 [Section I]

VEEBER - Estonia (no. 1) (Nº 37571/97)
ÖZEL - Turkey (Nº 42739/98)
FERREIRA DA NAVE - Portugal (Nº 49671/99)
Judgments 7.11.2002 [Section III]

BUTEL - France (Nº 49544/99)
ZVOLSKÝ and ZVOLSKÁ - Czech Republic (N° 46129/99)
BĚLEŠ and others - Czech Republic (N° 47273/99)
Judgments 12.11.2002 [Section II]

MATOUŠKOVÁ - Slovakia (Nº 39752/98)
HAVALA - Slovakia (Nº 47804/99)
PŁOSKI - Poland (Nº 26761/95)
LUNDEVALL - Sweden (Nº 38629/97)
SALOMONSSON - Sweden (Nº 38978/97)
DÖRY - Sweden (Nº 28394/95)
Judgments 12.11.2002 [Section IV]

MERICO - Italy (Nº 31129/96)
LUCIANO ROSSI - Italy (Nº 30530/96)
CILIBERTI - Italy (Nº 30879/96)
V.T. - Italy (Nº 30972/96)
T.C.U. - Italy (Nº 31223/96)
MALTONI - Italy (Nº 31548/96)
GNECCHI and BARIGAZZI - Italy (Nº 32006/96)
L. and P. - Italy (Nº 32392/96)
L.B. - Italy (Nº 32542/96)
FOLLI CARÈ - Italy (Nº 32577/96)
D.V. - Italy (Nº 32589/96)
TOSI - Italy (Nº 33204/96)
TONA - Italy (Nº 33252/96)
CAU - Italy (Nº 34819/97)
OREN and SHOSHAN - Belgium (Nº 49332/99)
S.A. SITRAM - Belgium (Nº 49495/99)
DOOMS and others - Belgium (Nº 49522/99)
LEFEBVRE - Belgium (Nº 49546/99)
OVAL S.P.R.L. - Belgium (Nº 49794/99)
DE PLAEN - Belgium (Nº 49797/99)
RANDAXHE - Belgium (Nº 50172/99)
KENES - Belgium (Nº 50566/99)
BOCA - Belgium (Nº 50615/99)
TERET - Belgium (Nº 49497/99)
Judgments 15.11.2002 [Section I]

FRATTINI and others - Italy (Nº 52924/99)
Judgment 26.11.2002 [Section IV]

BUCHEŇ - Czech Republic (Nº 36541/97)
NAGY - Romania (Nº 32268/96)
DRAGNESCU - Romania (Nº 32936/96)
GAVRUS - Romania (Nº 32977/96)
MOSTEANU - Romania (Nº 33176/96)
Judgments 26.11.2002 [Section II]

LAVENTS - Latvia (N° 58442/00)
RADAJ - Poland (Nº 29537/95 and Nº 35453/97)
F.M. - Italy (Nº 43621/98)
MASSIMO PUGLIESE - Italy (Nº 45789/99)
MARZIANO - Italy (Nº 45313/99)
CAROLLA - Italy (revision) (Nº 51127/99)
Judgments 28.11.2002 [Section I]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *admissible*.

BRONIOWSKI - Poland (Nº 31443/96)
Decision 19.12.2002 [Grand Chamber]

Following the Second World War, the Polish State undertook to compensate persons who had been "repatriated" from the so-called "territories beyond the Bug river", which no longer formed part of Poland (and now include certain areas of present-day Belarus, Ukraine and Lithuania), in respect of property which they had been obliged to abandon there. Such persons were, and under the law now in force still are, entitled to have the value of the abandoned property deducted either from the price of immovable property purchased from the State or from the fee for "perpetual use" of State property. In 1968, the applicant's mother inherited the estate of his grandmother, who had abandoned a plot of approximately 400m^2 and a house when repatriated. The applicant's mother was subsequently granted the right of "perpetual use" (for a maximum period of 99 years), of a plot of State land measuring 467m^2, at a fee of PLZ 392 per year. For the purposes of the compensation due from the State, the value of the abandoned property was fixed at PLZ 532,260 and this amount was deducted from the total fee for "perpetual use". After inheriting his mother's estate, the applicant requested payment of the remainder of the compensation due. He was informed that as a result of the enactment of the Local Self-Government Act in 1990, by which most State land had been transferred to the local authorities, it was not possible to satisfy his claim. In 1994 the Supreme Administrative Court dismissed the applicant's complaint about the alleged inactivity on the part of the Government in that they had failed to introduce legislation dealing with such claims. Between 1993 and 2001, the State enacted several statutes that further reduced the already small stock of property designated for compensating repatriated persons.
Admissible under Article 1 of Protocol No. 1: The Court was competent to examine the facts for their compatibility with the Convention only in so far as they had occurred after the date of Poland's ratification of Protocol No. 1 on 10 October 1994, but it could have regard to the facts prior to ratification in as much as they could be considered to have created a situation extending beyond that date or might be relevant to the understanding of facts occurring after

that date. The applicant did not complain of being deprived of the abandoned property or about the denial of a compensation claim based on laws or facts pre-dating ratification of the Protocol, nor was his complaint directed against a single specific decision or measure taken before, or even after, that date. Rather, the factual basis for his Convention claim was the alleged failure to satisfy an entitlement to compensation vested in him under Polish law on the date of the Protocol's entry in force and which, despite intervening legislation, still subsisted. Both at the time of ratification and when the applicant lodged his application, he was entitled under Polish law to obtain a reduction in the price, or in the fee for perpetual use, of immovable property purchased from the State and an identical entitlement was now laid down in other legislation. In so far as the applicant's complaints were directed against the acts and omissions of the State in relation to the implementation of that entitlement to a compensation, which still existed today, the Court had jurisdiction to entertain the application and the Government's plea of lack of jurisdiction *ratione temporis* had to be rejected.
As to whether the applicant had a "possession", it appeared not to have been contested that Poland had taken on an obligation to compensate repatriated persons for the loss of abandoned property. There was no need to examine in detail the nature and extent of that obligation, since there was no dispute over the fact that it was subsequently incorporated into Polish law in the form of an entitlement to credit the value of the abandoned property against the price, or fee for perpetual use, of property purchased from the State. The legal basis for that entitlement had been established in domestic legislation on a continuing basis which subsisted after 10 October 1994 and while it was unnecessary to determine the precise content and scope of the legal interest in question – as that issue should more appropriately be dealt with at the merits stage – the Court was satisfied that the applicant had a proprietary interest recognised under Polish law and eligible for protection under Article 1 of Protocol No. 1.

POSSESSIONS
Annulment of registration of a trade mark: *communicated*.

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

The applicant company produced for and sold in several countries around the world beer with the trademark Budweiser. Following an application lodged in 1981, that trademark had been registered in its name in the Portuguese register of industrial property. Subsequently, the applicant successfully brought judicial proceedings for the annulment of the pre-existing registration of the denomination of origin *Budweiser Bier* in the name of a Czechoslovakian company. However, on an appeal brought by that company, the Lisbon Court of Appeal had ordered the registration of the trademark *Budweiser* in the applicant's favour to be annulled on the basis of a 1987 bilateral treaty between Portugal and Czechoslovakia relating to denominations of origin. The applicant had made an unsuccessful appeal to the Supreme Court.
Communicated under Article 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Absence of restitution or compensation following reunification: *no violation*.

FORRER-NIEDENTHAL - Germany (N° 47316/99)
Judgment 20.2.2003 [Section III]

Facts: The applicant was the legal successor to an undivided succession which owned land in the German Democratic Republic (GDR) on which the premises of a company were situated. In 1959, the company, which was in liquidation, was sold for 180 650 GDR marks to a state-owned institute and the land was registered in the land registry as being "property of the

people", even though two members of the undivided succession had not been duly represented at the sale. Following the reunification of Germany, the institute became the property of the Federal Republic of Germany (FRG). In October 1997 the Federal Court of Justice, overturning rulings made by the ordinary courts in 1995 and1996 on applications brought by the applicant, held that the applicant had not lost his title by *usucapio* for the benefit of the State. That court added that the procedural defects which had affected the sale carried out at the time of the GDR had been expunged by virtue of the new law introducing the Civil Code of July 1997 on property transferred at that time so as to become "property of the people", and hence ruled out any compensation or restitution. The Federal Constitutional Court considered that this did not constitute statutory expropriation such as to warrant compensation.

Law: Article 1 of Protocol N° 1 – The applicant was the legal successor to an undivided succession which owned land in the GDR on which the premises of a company were located. The Federal Court of Justice had held that the applicant had not lost his title by *usucapio*. Nevertheless, the latter was not entitled to assert a right to restitution or a right to compensation, on the ground that the sale had been expunged of the defects which had affected it at the time of the GDR. There had therefore been an "interference" with the applicant's right to respect for his "property". That interference was held to be consistent with the principle of legality; in particular insofar as the Federal Court of Justice had rejected any claim for restitution or compensation on the ground that the – purely formal and trivial – defects which had affected the sale at the material time had been expunged by the law introducing the 1997 Civil Code and moreover that the sale had been in accordance with the general legal principles of the GDR, the Federal Court of Justice had not made an arbitrary interpretation. The law as so applied sought to restore legal certainty and peace in Germany by preserving acquired rights in cases where transfers of property into "property of the people", carried out at the time of the GDR were vitiated only by formal or minor defects, and pursued an aim of public interest. As for the proportionality of the interference, it was appropriate to observe that the Federal Court of Justice had analysed in detail the specific evidence before concluding that the defects raised were not such as to render the sales contract concluded at the time of the GDR nugatory, bearing in mind moreover that the sale had respected the general principles of the law of the GDR. Furthermore, the analysis made by the Federal Constitutional Court to the effect that the law applied was consistent with the Basic Law, having regard to the legitimate aim pursued by the legislature during the period of legal uncertainty connected with reunification, appeared to be well-founded. Moreover, when the sale had taken place in the GDR, the undivided succession had received a not unreasonable amount. There could therefore be no question of a "disproportionate burden". In view in particular of the exceptional circumstances connected with German reunification, the State had not exceeded its margin of appreciation and had not failed to strike a "fair balance" between the applicant's interests and the general interest of German society.

Conclusion: no violation (unanimously).

Article 6(1) – a. The Government had raised the preliminary objection for the first time after the decision on admissibility had been taken and the Court found that there had been nothing to prevent it from raising it at the stage of admissibility: estoppel.

b. Fair trial: Although there had been an intervention of the legislature in this case during the currency of the proceedings, the law in question sought in particular to regulate generally the conflicts relating to property which had emerged following the reunification of Germany with regard to property transferred to become "property of the people" in the GDR by virtue of a legal instrument. To that end, the public authorities had made that law retroactive so as to cover all such situations and all pending judicial proceedings. However, the law was not directed specifically to these proceedings but pursued a public interest aim, namely that of settling such disputes following German reunification in order to secure lasting legal peace and certainty in Germany. Moreover, the applicant had been able to challenge adverse decisions and put forward his arguments at all stages of the proceedings. The applicant had

also had access to independent courts which had ruled in detail on both the circumstances of the case and his arguments, as well as on the conformity of the legal provision at issue with the Basic Law, which was an essential aspect of the dispute in question.
Conclusion: no violation (unanimously).

DEPRIVATION OF PROPERTY
Abolition of exclusive rights of audience before higher courts: *inadmissible*.

WENDENBURG and others - Germany (Nº 71630/01)
Decision 6.2.2003 [Section III]

The applicants are barristers who enjoyed exclusive rights of audience before appeal courts by virtue of section 25 of the Federal Barristers Act of 1959. They derived more than 90% of their income from appeal cases. The provision, which applied in seven of the sixteen *Länder*, was declared incompatible with Article 12 § 1 of the Basic Law by the Federal Constitutional Court in December 2000. The court, considering that a transitional period was warranted, ordered that its ruling should not take effect until July 2002: barristers who had enjoyed rights of audience in the appeal courts would be able to acquire rights of audience before the lower courts as of 1 January 2002, while barristers who had previously had rights of audience before the lower courts would be entitled to appear before the appeal courts as of 1 July 2002. New legislation was adopted in July 2002, enabling barristers to appear before any court of appeal in the country.
Inadmissible under Article 1 of Protocol No. 1: The right to the peaceful enjoyment of possessions does not extend to future income but does apply to law practices and their clientele. It was immaterial whether the applicants acquired these possessions by taking advantage of a favourable position or solely through their own activities. Assuming there had been an interference, it was lawful, as it was based on decisions of the Federal Constitutional Court, which have the force of law. That court had considered that exclusive rights of audience were no longer necessary, in the light of technological advances and other changes. There had been no negative consequences in the *Länder* that did not operate the exclusionary rule, and barristers there were at a disadvantage *vis-à-vis* those who enjoyed exclusive rights of audience in the appellate courts. Even in the *Länder* where the rule applied, 85-90% of barristers worked in partnership with lawyers who had rights of audience before the lower courts. The decision of the Federal Constitutional Court therefore served the general interest. Moreover, it could not be regarded as arbitrary or unreasonable. As to proportionality, the applicants had been accorded a longer transition period than lawyers previously restricted to appearing before the lower courts and a longer transition period would not have been acceptable, as it would have prolonged a situation declared to be unconstitutional. The Federal Constitutional Court's decision was therefore proportionate and justified: manifestly ill-founded.
Inadmissible under Articles 6(1) and 13: The proceedings before the Federal Constitutional Court involved a dispute about a civil right. In view of the effect of its ruling, the proceedings could be regarded as decisive for civil rights and obligations. Although the applicants had not been heard individually, associations defending the professional interests of lawyers had been heard. In view of the large number of lawyers affected by the decision, the Federal Constitutional Court had sufficiently fulfilled the requirements of Article 6(1). The absence of remedies against a ruling of the Federal Constitutional Court did not raise an issue under Article 13: manifestly ill-founded.

CONTROL THE USE OF PROPERTY
Annulment of authorisation to open a pharmacy, on account of excessive number of pharmacies for the area's population : *inadmissible*.

GALLEGO ZAFRA - Spain (N° 58229/00)
Decision 14.1.2003 [Section IV]

In 1989 the applicant obtained authorisation to open a pharmacy and opened his dispensary in January 1990. Two pharmacists who owned dispensaries situated near to that of the applicant contested the decision authorising the opening of the pharmacy on the ground that one of the conditions laid down by national legislation governing the opening of a pharmacist's dispensary had not been satisfied, namely the presence of a population of at least 2 000 inhabitants. By judgment given in 1993, the High Court of Justice declared the authorisation null and void. It held that the requirement for a population density of at least 2 000 persons which was necessary in order to authorise the setting up of a new dispensary had not been satisfied. The applicant's appeal on a point of law and an *amparo* appeal were dismissed. In the meantime, in January 2000, the applicant closed his pharmacy.
Inadmissible under Article 1 of Protocol N° 1: Being an administrative act, authorisation to open a pharmacy did not constitute a firm and definitive right, since it was conditional on the outcome of any administrative appeals susceptible of being brought by third parties with a view to its annulment. In reliance on such authorisation, the applicant had opened a pharmacy and run it for about ten years until its ultimate closure at the end of the proceedings annulling that authorisation. Annulment of the authorisation to open the dispensary therefore constituted a measure governing the use of property. The interference was in accordance with national legislation because it was based on legal provisions held to be in conformity with the Constitution. Rules designed to preserve the geographical distribution of pharmacists' dispensaries in the light of population could be regarded as reflecting the requirements of the general interest of the community as regards access to pharmaceutical services. The interference was not disproportionate to the general interest aim having regard to the precarious nature of the authorisation granted to the applicant, the importance of guaranteeing a network of pharmacies throughout the national territory which was sufficient and tailored to population in order to guarantee the public service of supplying medicinal products, and the substantial margin of appreciation available to the contracting States in this respect: manifestly unfounded.

Other judgments delivered in February 2003

Article 3, Article 5(1), (3) and (4) and Article 13

ZEYNEP AVCI - Turkey (Nº 37021/97)
Judgment 6.2.2003 [Section III]

unlawful detention and failure to detainee promptly before a judge – violation; alleged rape of detainee and conditions of detention and effectiveness of investigation into allegations – no violation.

Article 6 § 1

BUKOWSKI - Poland (Nº 38665/97)
Judgment 11.2.2003 [Section IV]

MARQUES NUNES - Portugal (Nº 52412/99)
Judgment 20.2.2003 [Section III]

TIMAR - Hungary (Nº 36186/97)
Judgment 25.2.2003 [Section II]

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

FERREIRA ALVES - Portugal (Nº 53937/00)
Judgment 27.2.2003 [Section III]

length of civil proceedings – violation.

KIND - Germany (Nº 44324/98)
Judgment 20.2.2003 [Section III]

length of civil proceedings, in particular before the Federal Constitutional Court – violation.

RAITIERE - France (Nº 51066/99)
Epoux GOLETTO - France (Nº 54596/00)
BENHAIM - France (Nº 58600/00)
PERHIRIN - France (Nº 60545/00)
Judgments 4.2.2003 [Section II]

BUFFERNE - France (Nº 54367/00)
Judgment 11.2.2003 [Section II]

GEORGIOS PAPADOPOULOS - Greece (Nº 52464/99)
Judgment 6.2.2003 [Section I]

FUCHS - Poland (Nº 33870/96)
Judgment 11.2.2003 [Section IV]

APPIETTO - France (Nº 56927/00)
Judgment 25.2.2003 [Section II]

length of administrative proceedings – violation.

MENTIS - Greece (Nº 61351/00)
Judgment 20.2.2003 [Section I]

AXEN, TEUBNER and JOSSIFOV - Germany (Nº 54999/00)
Judgment 27.2.2003 [Section III]

length of administrative proceedings – friendly settlement.

TEXTILE TRADERS LIMITED v. Portugal (Nº 52657/99)
Judgment 27.2.2003 [Section III]

length of criminal proceedings which the applicant had joined as a party seeking damages and *assistente* – violation.

LOUERAT - France (Nº 44964/98)
Judgment 13.2.2003 [Section III]

length of criminal and administrative proceedings – violation.

HESSE-ANGER - Germany (Nº 45835/99)
Judgment 6.2.2003 [Section III]

length of proceedings in the Federal Constitutional Court – violation.

ATÇA and others - Turkey (Nº 41316/98)
ÖZDEMIR - Turkey (Nº 59659/00)
Judgments 6.2.2003 [Section III]

independence and impartiality of State Security Court – violation (cf. *Incal* and *Çiraklar* judgments).

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

TĂRBĂŞANU - Romania (Nº 32269/96)
Judgment 11.2.2003 [Section II]

POPOVĂŢ - Romania (Nº 32265/96)
Judgment 25.2.2003 [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.

SZAVA and others - Romania (Nº 32267/96)
Judgment 25.2.2003 [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 – struck out.

G. and M. - Italy (Nº 31740/96)
Judgment 27.2.2003 [Section I]

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

GRAMICCIA - Italy (Nº 57636/00)
Judgment 6.2.2003 [Section I]

G.G. - Italy (Nº 42414/98)
BOLOGNA - Italy (Nº 53231/99)
SAVARESE - Italy (Nº 55673/00)
Judgments 20.2.2003 [Section I]

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

Article 10

ERKANLI - Turkey (Nº 37721/97)
Judgment 13.2.2003 [Section II]

conviction for insulting the State by means of a caricature – friendly settlement.

Article 1 of Protocol No. 1

STATE and others - Romania Nº 31680/96)
GRIGORE - Romania Nº 31736/96)
Judgments 11.2.2003 [Section II]

deprivation of property following annulment by Supreme Court of Justice of judgment ordering return of property previously nationalised – violation.

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

Convention

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

Protocol No. 1

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

Protocol No. 4

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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