CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

**INFORMATION NOTE No. 5**
**on the case-law of the Court**
**April 1999**

**Statistical information**

| | | April | 1999 |
|---|---|---|---|
| **I. Judgments delivered** | | | |
| Grand Chamber | | 3 | 21 |
| Chamber IV | | 3 | 3 |
| | | | |
| **II. Applications declared admissible** | | | |
| Section I | | 2 | 6 |
| Section II | | 29 | 58 |
| Section III | | 11 | 41 |
| Section IV | | 1 | 19 |
| **Total** | | **43** | **124** |
| | | | |
| **III. Applications declared inadmissible** | | | |
| Section I | - Chamber | 0 | 21 |
| | - Committee | 40 | 163 |
| Section II | - Chamber | 12 | 35 |
| | - Committee | 15 | 97 |
| Section III | - Chamber | 11 | 45 |
| | - Committee | 23 | 169 |
| Section IV | - Chamber | 13 | 38 |
| | - Committee | 80 | 298 |
| **Total** | | **194** | **866** |
| | | | |
| **IV. Applications struck off** | | | |
| Section I | - Chamber | 0 | 4 |
| | - Committee | 2 | 11 |
| Section II | - Chamber | 0 | 4 |
| | - Committee | 1 | 3 |
| Section III | - Chamber | 0 | 4 |
| | - Committee | 0 | 1 |
| Section IV | - Chamber | 1 | 1 |
| | - Committee | 0 | 0 |
| **Total** | | **4** | **28** |
| **Total number of decisions**[1] | | **241** | **1018** |
| | | | |
| | | | |
| **V. Applications communicated** | | | |
| Section I | | 43 | 162 |
| Section II | | 38 | 102 |
| Section III | | 35 | 131 |
| Section IV | | 6 | 82 |
| **Total number of applications communicated** | | **122** | **477** |

[1] **Not including partial decisions.**

## ARTICLE 5

### Article 5(1)

**LAWFUL ARREST OR DETENTION**
Lawfulness of arrest and alleged ill-treatment by the police: *decision to hold a hearing*.

**DREWNIAK - Poland** (Nº 29461/95)
[Section IV]

The applicant and her brother are co-owners of a house in which they both live. The applicant's brother submitted a complaint to the police, alleging that she had cut off the electricity in the part of the house he occupies. As a result, she was arrested and taken to the police station where she was questioned and allegedly ill-treated. She subsequently complained about her arrest to the District Court, stating, *inter alia*, that she had received no summons before being arrested, a claim which the authorities disputed. Her complaint was rejected as out of time. She then appealed to the Regional Court, which quashed the decision and referred the case back to the District Court. Her complaint was, however, once more rejected by the District Court, no appeal lying against this new decision. In the meantime, criminal proceedings were instituted against her, at the district prosecutor's initiative, and she was charged with, *inter alia,* resisting arrest; these proceedings are still pending.
The Section decided that, since certain facts are in dispute between the parties and in view of the doubts as to domestic remedies applicable in the circumstances of the case, a hearing on admissibility should be held.

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### Article 5(3)

**JUDGE OR OTHER OFFICER**
Detainee brought before judge without power to order release: *violation*.

**AQUILINA - Malta** (Nº 25642/94)
Judgment of 29 April 1999 [Grand Chamber]
(See Appendix I, below).

**T.W. - Malta** (Nº 25644/94)
Judgment of 29 April 1999 [Grand Chamber]
(See Appendix II, below).

## ARTICLE 6

### Article 6(1) [civil]

**ACCESS TO COURT**
Cassation appeal declared inadmissible on the ground that the appellant had not set out the facts of the case: *inadmissible*.

**DE VIRGILIIS - Italy** (N° 39211/98)
Decision 20.4.99 [Section II]

The applicant, a lawyer, was suspected of having obtained an authority to act from a client indirectly, through an intermediary. Disciplinary proceedings were brought against him and he received a reprimand from the disciplinary body. That penalty was upheld on appeal. The applicant's appeal on points of law was declared inadmissible by the Court of Cassation on the ground that the facts of the case had not been set out in the notice of appeal. The applicant complained that the rules had been construed too strictly and that, as a result, he had been denied access to a court.
*Inadmissible* under Article 6(1): It was unnecessary in the instant case to decide whether Article 6(1) was applicable. Rules laying down a prescribed form were intended to ensure proper administration and litigants had to expect that they would be applied. However, neither the rules concerned nor their application should prevent litigants from using available remedies. In the instant case, there was nothing to suggest that the rules exempted appellants in proceedings before the Court of Cassation from the obligation to provide a summary of the facts of the case. Given the special nature of the Court of Cassation's role, the Court was able to accept that the procedure followed before it might be more formal. Furthermore, the applicant's case had been considered by two bodies having full jurisdiction and the fairness of the proceedings before those bodies had not been called into question before the Court: manifestly ill-founded.

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**ACCESS TO COURT**
Cassation appeal declared inadmissible on the ground that the authority given by the applicant to his lawyer was on a separate sheet attached to the appeal and not in the appeal itself: *communicated*.

**F.D.M. - Italy** (N° 38659/97)
[Section II]

In 1991 the applicant instituted proceedings against his employer. The proceedings were dismissed and that decision was upheld on appeal. In 1997 the applicant's appeal to the Court of Cassation was dismissed on the ground that the authority which the applicant had given to his lawyer was not in the body of the notice of appeal, as required by the relevant rule of domestic law, but in a separate, unnumbered sheet stapled to it. The notice of appeal could not therefore be regarded as valid. The applicant complains in particular of the length of the proceedings and of an excessively narrow construction by the Court of Cassation of the rule in issue, indeed one that was already contentious to the point that the rule had been amended by statute three months after the proceedings had ended.
*Communicated* under Article 6(1) (length of the proceedings and access to a tribunal).

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**CIVIL RIGHTS AND OBLIGATIONS**
Fairness of tax proceedings: *inadmissible*.

**VIDACAR S.A. and OPERGRUP S.L. - Spain** (N° 41601/98 and 41775/98, joined)
Decision 20.4.99 [Section IV]

The two applicant companies, who operated a gaming concern, were required to pay an annual duty on their fruit machines. The rates of duty for 1990 were set by legislative decree but were increased by a statute passed that same year. The applicant companies brought various proceedings challenging the statute and requested that the issue of its constitutionality be referred to the Constitutional Court. The first-instance and appellate courts refused to make the referral and the Constitutional Court, sitting as a final court of appeal, dismissed the applicant companies' *amparo* appeal, despite having declared the provision concerned unconstitutional and void a few months earlier on a referral from another court. Unlike the companies that had been successful in those proceedings, the applicant companies were therefore unable to recover the additional duty they had paid. They relied on Article 6(1) and Article 14.
*Inadmissible* under Article 6, which did not apply to tax proceedings. The fact that proceedings were of a pecuniary nature was not enough to make them "rights and obligations of a civil nature", notably where the pecuniary obligation had arisen from fiscal legislation: incompatible *ratione materiae*.

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**FAIR HEARING**
Refusal to allow third party to intervene in civil proceedings which affect it : *settlement between parties*.

**TROME S.A. - Spain** (Nº 27781/95)
Judgment of 1 April 1999 [Section IV]

*Facts*: Ten former owners of land expropriated in 1958 applied to the *Audiencia territorial* for judicial review and an order for restitution of the land. In 1983 the *Audiencia territorial* found in their favour and made an order for the restitution of ten plots of land. That decision was upheld by the Supreme Court in 1989. In 1992 the applicant company acquired the right to restitution and requested the town-planning department of the Andalusian regional government to execute the 1983 restitution order. However, without informing the applicant company, the Andalusian regional government sought a ruling on the interpretation of the order, and its rectification (*aclaración*). The original holders of the right to restitution were informed and lodged observations. In 1993 the Andalusia High Court of Justice rectified a clerical error in the restitution order and excluded from its scope certain plots that had not belonged to the former owners who had instituted the judicial-review proceedings before the *Audiencia territorial*. In 1994 the applicant company discovered that the original holders of the right it acquired in 1992 to restitution of the plots had, without informing it, lodged an appeal to the Court of Cassation against the order of the Andalusia High Court of Justice. The applicant company applied to the Supreme Court to have that order set aside on the ground that it had been divested of plots to which it had acquired a right of restitution and deprived of the right to receive notice of the hearing and to be heard as a party affected by the "rectification of an error". The Supreme Court dismissed that application and held that there had been no need for the applicant company to be served with notice as it had not been a party to the main proceedings. The applicant company's *amparo* appeal to the Constitutional Court was dismissed.
*Law*: The parties have informed the Court that they have signed an agreement with a view to settling the dispute. The agreement essentially provides that the Andalusian public landholding company, which is unable to return to the applicant company 12,564.48 sq. m. of land in the area of San Pablo in Seville on which railway lines and the Carmona road have

been built, will replace that section with a like area comprising two plots adjoining the land whose restitution has been ordered.

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**EQUALITY OF ARMS**
Appointment by a court of an expert from the administrative authority party to the proceedings: *communicated*.

**LASMANE - Latvia** (Nº 43293/98)
[Section II]

The applicant, a notary public by profession, was ordered by the State Revenue Service, on the basis of the Personal Tax Act, to pay additional income tax and a penalty for tax evasion. She unsuccessfully complained to the Revenue, stating that as a public official she could not be held liable to pay tax surcharges established on the basis of a business activity. She brought civil proceedings against the Revenue, and the Revenue brought civil proceedings against her. The District Court having rejected its complaint, the Revenue appealed to the Regional Court, which asked each of the parties to choose an expert to examine the applicability of the relevant Act. The Revenue having failed to do so, the court appointed a court expert instead. The applicant submitted that, although he was not expressly presented as such before the court, the court expert happened to be an official of the Revenue. After having received the expert opinions and heard the case, the court dismissed the applicant's complaint. Her subsequent appeal on points of law, in which she denounced the fact that the court expert was not impartial, was rejected by the Supreme Court.
*Communicated* under Article 6 (applicability).

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**REASONABLE TIME**
Length of civil proceedings: *friendly settlement*.

**ANTUNES TOMÁS REBOCHO - Portugal** (Nº 34562/97)
Judgment of 30 April 1999 [Section IV]

This case concerned the length of civil proceedings. In May 1992 the applicant brought an action in damages for loss sustained in a road-traffic accident. In 1996 a court of first instance awarded him part of his claim. The applicant appealed to the Lisbon Court of Appeal, which delivered its decision in February 1998. The outcome of the appeal is not known.
The Government have agreed to pay the applicant compensation of 700,000 escudos in settlement of the case.

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**ACCESS TO COURT**
Lodging of a memorial by the applicant's lawyer, marked as concerning the cassation appeal against the judgment in the applicant's case, but without expressly stating that it was lodged on for and on behalf of the applicant: *inadmissible*.

**MOHR - Luxembourg** (N° 29236/95)
Decision 20.4.99 [Section II]

On an appeal in criminal proceedings that had been brought against him, the applicant, who had been convicted at first instance, was acquitted on some counts although his conviction on other counts stood. He appealed against that decision to the Court of Cassation by making a declaration to the registry of the prison where he was detained pending the appeal. Three weeks later his lawyer lodged written submissions with the registry of the Court of Cassation. The Court of Cassation held that the appeal was invalid as, under the relevant domestic legislation, persons appealing to the Court of Cassation after conviction were required to lodge written submissions with the registry. In the instant case, although the applicant's lawyer had lodged written submissions, no notice of appeal had been lodged by or on behalf of the applicant. The applicant maintained that the Court of Cassation had applied the relevant legislation in a questionable and unforeseeable way and that it had been quite clear that the lawyer had lodged the submissions on his behalf.
*Inadmissible* under Article 6(1): An appeal to the Court of Cassation is a special stage in criminal proceedings which may be of capital importance for the accused. Rules laying down a prescribed form were intended to ensure proper administration and parties had to expect them to be applied. However, neither the rules concerned nor their application should prevent defendants from using available remedies. In the present case, there was nothing to suggest that the reason the lawyer had failed to state on whose behalf he was lodging the written submissions was because he was exempted from the obligation to do so rather than, as the Government said, he had chosen not to. Given the special nature of the Court of Cassation's role, the Court was able to accept that the procedure followed before it might be more formal. Furthermore, the applicant's case had been considered by two bodies having full jurisdiction and the fairness of the proceedings before those bodies has not been called into question before the Court. Regard being had to the proceedings as a whole and the applicable domestic law, the decision in issue could not be said to have been unforeseeable. Given the margin of appreciation which the States have to determine the rules governing the admissibility of appeals, the Court found that the applicant had not suffered a disproportionate interference in his right of access to a court: manifestly ill-founded.

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**FAIR HEARING**
Admissibility in criminal proceedings of evidence improperly obtained by a listening device installed by the police in a private house: *admissible*.

**KHAN - United Kingdom** (Nº 35394/97)
Decision 20.4.99 [Section III]

The applicant was convicted of drug trafficking on the sole ground of evidence improperly obtained by a listening device installed by the police on the premises of a friend of the applicant. He appealed against the conviction, disputing the admissibility of the tape recordings as evidence. The Court of Appeal dismissed the appeal but certified as a point of law of general importance the question of whether tape recorded conversations, obtained by a listening device attached by the police to a private house, were admissible in a criminal trial. The applicant was granted leave to appeal from the decision of the Court of Appeal

dismissing his appeal against conviction. However, the House of Lords dismissed his appeal on points of law.
*Admissible* under Articles 6, 8 and 13. [The Section decided that a hearing should be held as regards the issue under Article 6(1) (fair hearing).]

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## Article 6(3)

**RIGHTS OF DEFENCE**
Free access of applicant to lawyers in domestic criminal proceedings and in proceedings before the Court: *communicated*.

**OCALAN - Turkey** (N° 46221/99)
[Section I]

While in Nairobi, Kenya, the applicant, who is the leader of the PKK (Workers' Party of Kurdistan), was arrested by Turkish security forces in circumstances which have yet to be elucidated, and taken to Turkey. His representatives lodged an application concerning his arrest and detention, invoking Articles 2, 3, 5 and 6. They also requested the Court under Rule 39 of the Rules of Court to indicate interim measures which Turkey should adopt.
The Court applied Rule 39 and requested the Turkish authorities to secure compliance with the applicant's rights under Article 6 in the domestic proceedings, to respect the rights of the defence in full, including the applicant's right to see and to have unrestricted, effective access, in private, to the lawyers representing him, and to ensure that the applicant had an effective opportunity through lawyers of his own free choosing to exercise his right of individual petition to the Court. The Government were also invited to inform the Court of all steps taken by the authorities to satisfy the requests. The Committee of Ministers were informed of these provisional measures. The Turkish authorities indicated that they were not prepared to answer the questions as they went far beyond the scope of interim measures within the meaning of Rule 39. The Committee of Ministers was informed of their refusal. The Court stressed that it was very important that the Governments of the High Contracting Parties complied with any interim measures they were requested to take under Rule 39(1).
*Communicated* under Article 3, Article 5(1), (3) and (4), Article 6(1) (independent and impartial tribunal) and 3 and Article 34.

## ARTICLE 8

**PRIVATE LIFE**
Listening device installed by the police in a private house: *admissible.*

**KHAN - United Kingdom** (Nº 35394/97)
Decision 20.4.99 [Section III]
(See Article 6(1), above).

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**HOME**
Search of a company's premises: *inadmissible*.

**BANCO DE FINANZAS E INVERSIONES, S.L. - Spain** (Nº 36876/97)
Decision 27.4.99 [Section IV]

Complaints alleging tax fraud were lodged against a number of companies which had placed investments through the applicant company, FIBANC. The investigating judge ordered the institution of criminal proceedings against FIBANC and a search of all its premises; he directed that the investigation was to be confidential. According to the applicant company, the search was nonetheless carried out in the presence of various members of the press. A detailed account of the search was broadcast that same day on radio and television. The applicant company lodged appeals against the issue of the search warrant, but they were dismissed. It complained of a breach of its right to respect for its home.
*Inadmissible* under Article 8: On the assumption that a company's premises could be considered a "home" within the meaning of Article 8, a search of them would amount to an interference with the right guaranteed by that Article. In the instant case, the search warrant had been issued in accordance with the Code of Criminal Procedure in the interests of public safety and for the prevention of crime. Those were legitimate aims under Article 8. As regards the necessity of the interference, the investigating judge had had no alternative but to issue a search warrant so that evidence could be obtained of a suspected offence by the company. The investigating judge stated that he had issued the warrant because the applicant company had, after a number of demands, furnished only unreliable documents that did not enable the true position to be established. As regards the fact that within two and a half hours of its beginning the search had been reported on television, there was not even any prima facie evidence that the judicial authorities or the relevant court had been in breach of their duty to maintain confidentiality. The fact that the press had divulged information about the search could not by itself amount to a breach of the right to respect for the home: manifestly ill-founded.

## ARTICLE 9

**MANIFEST RELIGION OR BELIEF**
Refusal to grant the son of the applicants, Seventh Day Adventists, a general exemption on religious grounds from attending school on Saturdays: *inadmissible*.

**MARTINS CASIMIRO and CERVEIRA FERREIRA - Luxembourg** (N° 44888/98)
Decision 27.4.99 [Section II]

The applicants and their son, F., were members of the Seventh-day Adventists, a religious body for whom Saturday is a day of total rest. The applicants sought special dispensation for their son so that he would not have to attend school on Saturdays. Although their request was turned down by the mayor, the applicants stopped taking F. to school on Saturdays. As a result, an action was brought against them in the youth court, which stayed the proceedings to give the applicants the opportunity of making a fresh request for special dispensation. That, too, was refused by the municipal council. The applicants sought judicial review of the refusals. The court of first instance dismissed their applications on the ground that while pupils might individually and on an *ad hoc* basis be given special dispensation from compulsory school attendance in order to worship or to attend religious celebrations, a general dispensation from attendance on Saturdays, which was an important part of the ordinary school week, was likely to cause excessive disruption to the timetable of the pupil concerned, the teachers and the other pupils. The court of appeal upheld that judgment. The applicants submitted that the refusal to grant them special dispensation amounted to a breach of their right to practice their religion freely.
*Inadmissible* under Article 9: Freedom of thought, conscience and religion was one of the foundations of a "democratic society" within the meaning of the Convention. It was, in its religious dimension, one of the most vital of the elements that went to make up the identity of believers and their conception of life. The pluralism indissociable from a democratic society, which had been dearly won over the centuries, depended on it. While religious freedom was primarily a matter of individual conscience, it also implied, *inter alia*, freedom to manifest one's religion. Bearing witness in words and deeds was bound up with the existence of religious convictions. In the case before the Court, the refusal to grant special dispensation could be regarded as a restriction on the applicants' right freely to manifest their religion. The Luxembourg authorities had considered that while special dispensation might be given on an *ad hoc* basis for the celebration of religious ceremonies peculiar to certain faiths, no general dispensation was to be given such as would adversely affect the right to education, which was protected by Article 2 of Protocol No. 1 to the Convention and whose importance in a democratic society could not be overstated. The dispensation requested by the applicants would have had the effect of excluding the child from the normal school timetable as Saturday was one of the days of the school week. The court of first instance had stated that dispensation of that sort would have infringed the rights of the other pupils, too, as it was potentially disruptive of the school system. States had a duty to ensure that children were able to exercise their right to education. Furthermore, where the parents' right to respect for their religious convictions, rather than enhancing the child's right to education, came into conflict with it, the interests of the child prevailed. Under the circumstances, the Court held that the statutory provision that precluded the applicants from being granted general dispensation from the obligation to ensure that their son, a minor, attended school on Saturdays was justified for the protection of the rights and freedoms of others, notably the right to education: manifestly ill-founded.

## ARTICLE 11

**FREEDOM OF ASSOCIATION**
Obligatory membership of hunting associations: *violation*.

**CHASSAGNOU and others - France** (Nº 25088/94, 28331/95 and 28443/95)
Judgment of 29 April 1999 [Grand Chamber]
(See Appendix III, below).

## ARTICLE 34

**VICTIM**
Compensation proceedings brought after introduction of the application but still pending: *inadmissible*.

**KOKAVECZ - Hungary** (Nº 27312/95)
Decision 20.4.99 [Section II]

The applicant was arrested on suspicion of having committed a murder and his detention on remand was ordered by a court. The applicant was charged, *inter alia*, with instigation to premeditated murder. His appeals against the detention order and its subsequent prolongation were to no avail. However, his release was finally ordered, at his request, and he was later acquitted of the charge of instigation to premeditated murder. Following his acquittal, the applicant brought a claim for compensation for the time spent in detention on remand. The claim is still pending.
*Inadmissible* under Article 5(1) and (3): At the time of the introduction of the application, no issue arose as to the exhaustion of the domestic remedies which were then at the applicant's disposal as regards the termination of his detention on remand. However, after his acquittal, the remedies designed to seek pecuniary redress for the pre-trial detention of persons subsequently acquitted became available to him, that is an official liability action and a compensation claim. The applicant has availed himself of the latter possibility, and the proceedings are still pending. Given the fact that these proceedings may well result in compensation for undue detention on remand, the applicant can no longer claim to be a victim: manifestly ill-founded.

## ARTICLE 1 OF PROTOCOL NO. 1

**POSSESSIONS**
French civil servants having been on secondment in Monaco unable to draw concurrent French and Monacan pensions: *inadmissible*.

**BELLET - France** (Nº 40832/98)
**HUERTAS - France** (Nº 40833/98)
**VIALATTE - France** (Nº 40906/98)
Decision 27.4.99 [Section III]

The three applicants were French civil servants who had been seconded to posts in the Principality of Monaco. As French civil servants they paid contributions to a French civil pension scheme. However, they were also required by Monacan law to pay contributions while on secondment there into a complementary pension scheme. They therefore received on retiring a pension from Monaco as well as their French retirement pension (with the exception of the second applicant, whose French pension was reduced by the amount he received under the Monacan scheme until such time as he waived his right to the latter). The French authorities advised the applicants that under French law they were not entitled to receive both pensions.
*Inadmissible* under Article 1 of Protocol No. 1: The Commission had consistently expressed the view that although the Convention did not guarantee a right to a pension as such, contributions made under a compulsory retirement scheme could in certain cases create a right of property in part of the fund. However, for such a right to accrue the applicant had to have satisfied the conditions laid down by domestic law. In the present case, the statute had clearly provided that civil servants on secondment overseas could not – except in certain circumstances which did not apply to the applicants – participate in a retirement scheme for the post for which they had been seconded or in such capacity acquire any rights to a pension, irrespective of the positions they had held during their career. Furthermore, although the French authorities had for a number of years tolerated retired civil servants receiving both pensions, that had not created a right protected under Article 1 of Protocol No. 1: manifestly ill-founded.

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Obligation of land-owners to allow hunting on their property: *violation*.

**CHASSAGNOU and others - France** (Nº 25088/94, 28331/95 and 28443/95)
Judgment of 29 April 1999 [Grand Chamber]
(See Appendix III, below).

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Obligation of a serviceman to return to the State accommodation with which he had previously been provided: *inadmissible*.

**J.L.S. - Spain** (N° 41917/98)
Decision 27.4.99 [Section IV]

The applicant, who was in the forces, signed an "administrative document for the allocation of special lodging" and thereby obtained the use of accommodation. He asked to be transferred to the provisional reserve. Following a reform, some personnel in the provisional reserve were required to return military accommodation to the State. Administrative

proceedings were issued against the applicant and he was ordered to quit the premises. He brought an administrative appeal to the High Court of Justice against that decision, but the investigating judge gave permission for the eviction to proceed. The applicant then appealed to the *Audiencia provincial* which reversed the impugned decision on the ground that it would be disproportionate to enforce the eviction order while the applicant's administrative appeal was still pending. The High Court of Justice dismissed the applicant's administrative appeal and upheld the order for his eviction. It pointed out in its judgment that the accommodation had been allocated to him as a member of the armed forces; the objective legal position of civil servants working for the authorities could be changed without the principle of lawfulness being infringed and accordingly was not immutable as from the day of their appointment, but was governed by the principle that civil servants accepted that they were subject to a special regime. The applicant then lodged an *amparo* appeal with the Constitutional Court which was dismissed. Before the Court he maintained in particular that the domestic courts had not determined whether the retrospective application of a decree restricting individual rights was contrary to the principle of lawfulness and that the fact that he had been deprived of the use of his accommodation amounted, under the circumstances, to an expropriation.

*Inadmissible* under Article 1 of Protocol No. 1: The applicant's mere expectation that the regulations concerning the use of military accommodation would not be changed could not be regarded as a right of property. The applicant had been given the use of the accommodation he occupied "as a member of the armed forces" at a rent that was well below the market rate. He had signed an "administrative document for the allocation of special accommodation", not a lease. He had not suggested that the use of the accommodation could be assimilated to a private-law contract. He had been given the use of the accommodation because it was difficult for military personnel to find adequate accommodation as they were frequently transferred for professional reasons. The Court further pointed out that a right to live in a given property without being the owner did not constitute "property" within the meaning of Article 1. Furthermore, allowing "users" who, like the applicant, were not even tenants to stay indefinitely in accommodation belonging to the State would hinder the authorities in the exercise of their duty to administer the State's property in accordance with the provisions of the Constitution and the law: incompatible *ratione materiae*.

## PROCEDURAL MATTERS

## TRANSITIONAL PROVISIONS
## ARTICLE 5(4) OF PROTOCOL Nº 11

**FORMER ARTICLE 32**
Late reference to Court: *lack of jurisdiction*.

**LEMOINE - France** (Nº 26242/95)
Judgment of 1 April 1999 [Section IV]

*Facts*: The applicant received notification of an increased assessment of his tax base for the years 1978 to 1980. In 1986 the Revenue issued a decision that the resulting tax liabilities were enforceable and registered a statutory mortgage over land belonging to the applicant (which he valued at a million French francs) as security for the supplementary assessments, which came to just over FRF 82,000,000. The applicant lodged an appeal with the local tax office, which in 1988 acceded to some of his claims . He further appealed to the administrative court, which in 1995 allowed his appeal in part. He then appealed to the administrative court of appeal. At the time of the Court's decision the case was still pending before the administrative courts.
*Law*: Referring to former Article 32(1) of the Convention, the Court noted, firstly, that the Government's request was dated 27 October 1998 and was received by the registry on 9 November 1998. It noted, too, that the Government did not dispute the fact that they had not forwarded their request in time. It found, lastly, that the Government's explanation for the delay did not show any special circumstance apt to justify the request being lodged out of time. Consequently, the request bringing the case before the Court was inadmissible as it had been lodged out of time.
*Conclusion*: the Court had no jurisdiction to take cognisance of the merits of the case.

## APPENDIX I

**Case of Aquilina v. Malta -** Extract from press release

*Facts*: The applicant, Mr Joseph Aquilina, a Maltese national, was born in 1974 and lives in Qormi, Malta. He was arrested on suspicion of having committed an offence involving sexual acts. He was brought within forty-eight hours before a magistrate and applied for bail. His application was communicated to the Attorney General who opposed it. The bail application was then examined by a different magistrate from the one before whom the applicant had appeared initially. It was allowed and Mr Aquilina was released twelve days after his arrest.

The applicant complains of a breach of his right to be brought promptly before a judicial officer with power to release him, a right guaranteed under Article 5 § 3 of the European Convention on Human Rights.

*Law*: The Government's preliminary objection: The Court decided to join to the merits the Government's preliminary objection that the applicant had not exhausted domestic remedies in so far as he had failed to rely on section 137 of the Criminal Code, which constituted along with section 353 the legal basis of Malta's version of the writ of habeas corpus.

Article 5 § 3: The Court reiterated its case-law to the effect that Article 5 § 3 was aimed at ensuring prompt and automatic judicial control of police detention ordered in accordance with the provisions of paragraph 1(c) of Article 5. The judicial officer who exercised this control must actually hear the detained person and take the appropriate decision. The Court stressed that Article 5 § 3 required the judicial officer to consider the merits of the detention. It also considered that the judicial control under Article 5 § 3 could not be made to depend on a previous application by the detained person. Such a requirement would not only change the nature of the safeguard provided for under Article 5 § 3, a safeguard distinct from that in Article 5 § 4, which guaranteed the right to institute proceedings to have the lawfulness of detention reviewed by a court. It might even defeat the purpose of the safeguard under Article 5 § 3 which was to protect the individual from arbitrary detention by ensuring that the act of deprivation of liberty was subject to independent judicial scrutiny. Prompt judicial review of detention was also an important safeguard against ill-treatment of the individual taken into custody. Arrested persons who had been subjected to such treatment might be incapable of lodging an application asking the judge to review their detention. The same could hold true for other vulnerable categories of arrested persons, such as the mentally weak or those who did not speak the language of the judicial officer. The Court shared the parties' view that the applicant's appearance before a Magistrate two days after his arrest could be regarded as "prompt" for the purposes of Article 5 § 3. According to the Government, the Magistrate in question had the power to order the applicant's release of his own motion if the applicant was facing charges that, under domestic law, did not allow for his detention. However, the automatic review required under Article 5 § 3 went beyond the one ground of lawfulness cited by the Government. The Court considered that it must be sufficiently wide to encompass the various circumstances militating in favour and against detention. The Government argued that the applicant could have obtained a wider review of the lawfulness of his detention, going beyond the issue of whether the charges allowed for such detention, by lodging an application under section 137 of the Criminal Code. However, the Court considered that compliance with Article 5 § 3 could not be ensured by making an Article 5 § 4 remedy available. In any event, it was not established that the scope of the review exercised by the Maltese courts under section 137 of the Criminal Code was sufficiently wide to encompass a review of the merits of the detention. As a result, the Court rejected the Government's preliminary objection.

Moreover, the Court considered that the applicant's appearance before the Magistrate two days after his arrest was not capable of ensuring compliance with Article 5 § 3 since the Magistrate had no power to order his release. Accordingly, there was a violation of Article 5 § 3. However, in reaching this conclusion the Court agreed with the Government that the

question of bail was a distinct and separate issue that only came into play when the arrest and detention were lawful. As a result, it did not have to address this issue under Article 5 § 3.
*Conclusion*: Violation (unanimous).
Article 41: The Court considered that, in the special circumstances of the case, the finding of violation of Article 5 § 3 constituted in itself just satisfaction for any non-pecuniary damage suffered by the applicant. It awarded the applicant 3,000 Maltese liras for costs and expenses.
Judges Bonello, Fischbach and Greve expressed partly dissenting opinions and Judges Tulkens and Casadevall a joint partly dissenting opinion. These opinions are annexed to the judgment.

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## APPENDIX II

**Case of T.W. v. Malta -** Extract from press release

*Facts*: The applicant, T.W., a United Kingdom national, was born in 1943 and lives in Luqa, Malta. The applicant was arrested on suspicion of having committed an offence involving sexual acts. He was brought before a magistrate within forty-eight hours and applied for bail. His application was communicated to the Attorney General who opposed it. The bail application was then examined by a different magistrate from the one before whom the applicant had appeared initially. It was refused four days after his arrest. He was released fifteen days later.
The applicant complains of a breach of his right to be brought promptly before a judicial officer with power to order his release, a right guaranteed under Article 5 § 3 of the European Convention on Human Rights. He also complains that his right to a habeas corpus remedy under Article 5 § 4 was infringed.
*Law* : The Government's preliminary objection: The Court decided to join to the merits the Government's preliminary objection that the applicant had not exhausted domestic remedies in so far as he had failed to rely on section 137 of the Criminal Code, which constituted along with section 353 the legal basis of Malta's version of the writ of habeas corpus.
Article 5 § 3: The Court reiterated its case-law to the effect that Article 5 § 3 was aimed at ensuring prompt and automatic judicial control of police detention ordered in accordance with the provisions of paragraph 1 (c) of Article 5. The judicial officer who exercised this control must actually hear the detained person and take the appropriate decision. The Court stressed that Article 5 § 3 required the judicial officer to consider the merits of the detention. It also considered that the judicial control under Article 5 § 3 could not be made to depend on a previous application by the detained person. Such a requirement would not only change the nature of the safeguard provided for under Article 5 § 3, a safeguard distinct from that in Article 5 § 4, which guaranteed the right to institute proceedings to have the lawfulness of detention reviewed by a court. It might even defeat the purpose of the safeguard under Article 5 § 3 which was to protect the individual from arbitrary detention by ensuring that the act of deprivation of liberty was subject to independent judicial scrutiny. Prompt judicial review of detention was also an important safeguard against ill-treatment of the individual taken into custody. Arrested persons who had been subjected to such treatment might be incapable of lodging an application asking the judge to review their detention. The same could hold true for other vulnerable categories of arrested persons, such as the mentally weak or those who did not speak the language of the judicial officer. The Court shared the parties' view that the applicant's appearance before a Magistrate the day after his arrest could be regarded as "prompt" for the purposes of Article 5 § 3. According to the Government, the Magistrate in question had the power to order the applicant's release of his own motion if the applicant was facing charges that, under domestic law, did not allow for his detention. However, the automatic review required under Article 5 § 3 went beyond the one ground of lawfulness cited by the Government. The Court considered that it must be sufficiently wide to encompass the various circumstances militating in favour and against detention. The

Government argued that the applicant could have obtained a wider review of the lawfulness of his detention, going beyond the issue of whether the charges allowed for such detention, by lodging an application under section 137 of the Criminal Code. However, the Court considered that compliance with Article 5 § 3 could not be ensured by making an Article 5 § 4 remedy available. In any event, it was not established that the scope of the review exercised by the Maltese courts under section 137 of the Criminal Code was sufficiently wide to encompass a review of the merits of the detention. As a result, the Court rejected the Government's preliminary objection.

Moreover, the Court considered that the applicant's appearance before the Magistrate the day after his arrest was not capable of ensuring compliance with Article 5 § 3 since the Magistrate had no power to order his release. Accordingly, there was a violation of Article 5 § 3. However, in reaching this conclusion the Court agreed with the Government that the question of bail was a distinct and separate issue that only came into play when the arrest and detention were lawful. As a result, it did not have to address this issue under Article 5 § 3.

*Conclusion*: Violation (unanimous).

Article 5 § 4: The Court noted that the parties had not addressed this issue in the proceedings before it. This being so and having regard also to its conclusion under Article 5 § 3, the Court did not consider it necessary to examine the applicant's complaint under Article 5 § 4.

*Conclusion*: Not necessary to examine (unanimous).

Article 41: The Court considered that, in the special circumstances of the case, the finding of violation of Article 5 § 3 constituted in itself just satisfaction for any non-pecuniary damage suffered by the applicant. It awarded the applicant 2,600 Maltese liras for costs and expenses.

Judge Bonello expressed a party dissenting opinion and Judges Tulkens and Casadevall a joint partly dissenting opinion. The opinions are annexed to the judgment.

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## APPENDIX III

**Case of Chassagnou and others v. France -** Extract from press release

*Facts*: The case concerned three applications originally lodged by ten French nationals, Mrs Marie-Jeanne Chassagnou, Mr René PETIT, Mrs Simone LASGREZAS, Mr Léon DUMONT, Mr Pierre GALLAND, Mr André GALLAND, Mr Edouard PETIT (now deceased), Mr Michel PETIT, Mr Michel PINON and Mrs Josephine MONTION, who were born in 1924, 1936, 1927, 1924, 1926, 1936, 1910, 1947, 1947 and 1940 respectively. Mrs Chassagnou, Mr René Petit and Mrs Lasgrezas live in the municipalities of Tourtoirac and Chourgnac-d'Ans, in the *département* of Dordogne, and are farmers. Mr Dumont, Mr Pierre Galland, Mr André Galland, Mr Michel Petit and Mr Pinon, who are also farmers, live in the municipalities of La Cellette and Genouillac, in the *département* of Creuse. Mrs Montion lives in Sallebœuf, in the *département* of Gironde, where she works as a secretary. All the applicants are owners of landholdings smaller than 20 hectares in area in the case of those who live in Dordogne and Gironde or 60 hectares in the case of those who live in Creuse. Pursuant to the Law of 10 July 1964, known as the "Loi Verdeille", on the organisation of approved municipal or inter-municipality hunters' associations (ACCAs and AICAs), all the applicants, who are opposed to hunting, had to become members of the ACCAs set up in their municipalities and to transfer hunting rights over their land to these associations so that all hunters living in the relevant municipality could hunt there. They could not evade the obligation to join the association and to transfer their hunting rights to it unless the area of their land exceeded a given threshold, which varied from one *département* to another (20 hectares in Dordogne and Gironde and 60 hectares in Creuse). This was not the case. The applicants applied to the French courts to have their land removed from the hunting grounds of the ACCAs of their municipalities, but their applications were dismissed in both the civil and the administrative courts. The final decisions were the Court of Cassation's judgment of 16 March 1994 (in the case of Mrs Chassagnou, Mr R. Petit and Mrs Lasgrezas)

and the *Conseil d'Etat*'s judgments of 10 March 1995 (Dumont and Others case) and 10 May 1995 (Montion case).
The applicants complained that the compulsory inclusion of their land in the hunting grounds of the ACCAs in question and the obligation to join an association of whose objects they disapproved had violated their right of property, their right to freedom of association and their right to freedom of thought and conscience, set forth in Article 1 of Protocol No. 1 to the European Convention on Human Rights and Articles 11 and 9 of the Convention. They also complained of discrimination contrary to Article 14 of the Convention.
*Law*: Article 1 of Protocol No. 1 as regards infringement of the applicants' right of property: The Court noted that in the present case the applicants did not wish to hunt on their land and objected to the fact that others could come onto their land to hunt. However, although opposed to hunting on ethical grounds, they were obliged to tolerate the presence of armed men and gun dogs on their land every year. This restriction on the free exercise of the right of use undoubtedly constituted an interference with the applicants' enjoyment of their rights as the owners of property. As far as the aim of that interference was concerned, the Court considered that it was undoubtedly in the general interest to avoid unregulated hunting and encourage the rational management of game stocks. After noting that none of the options mentioned by the Government (possibility for the applicants to enclose their land, or apply for it to be designated as game reserves or nature reserves) would in practice have been capable of absolving the applicants from the statutory obligation to transfer hunting rights over their land to ACCAs, the Court expressed the view that the various forms of statutory consideration mentioned by the Government could not be considered to represent fair compensation for loss of the right of use. It was clear that it was intended in the Loi Verdeille of 1964 for each landowner subject to compulsory transfer to be compensated for deprivation of the exclusive right to hunt on his land by the concomitant right to hunt throughout those parts of the municipality's territory under ACCA control. However, that compensation was valuable only in so far as all the landowners concerned were hunters or accepted hunting. But the 1964 Act did not contemplate any measure of compensation for landowners opposed to hunting, who, by definition, did not wish to derive any advantage or profit from a right to hunt which they refused to exercise. The Court noted that compulsory transfer of the right to hunt, which in French law was one of the attributes of the right of property, derogated from the principle laid down by Article L. 222-1 of the Countryside Code, according to which no one may hunt on land belonging to another without the owner's consent. The Court further observed that, following the adoption in 1964 of the Loi Verdeille, which had excluded from the outset the *départements* of Bas-Rhin, Haut-Rhin and Moselle, only 29 of the 93 *départements* concerned in metropolitan France had been made subject to the regime of compulsory creation of ACCAs, that ACCAs had been voluntarily set up in only 851 municipalities and that the Law applied only to small landholdings, to the exclusion of both large private estates and State land. In conclusion, notwithstanding the legitimate aims of the Loi Verdeille when it was adopted in 1964, the Court considered that the result of the compulsory-transfer system which it laid down had been to place the applicants in a situation which upset the fair balance to be struck between protection of the right of property and the requirements of the general interest. Compelling small landowners to transfer hunting rights over their land so that others could make use of them in a way which was totally incompatible with their beliefs imposed a disproportionate burden which was not justified under the second paragraph of Article 1 of Protocol No. 1. There had therefore been a violation of that provision.
*Conclusion*: Violation (12 votes to 5).
Article 1 of Protocol No. 1, taken in conjunction with Article 14 of the Convention: The Court observed that the respondent State sought to justify the difference in treatment between small and large landowners by pleading the need to pool small plots of land in order to promote the rational management of game stocks. The Court considered that in the present case the respondent Government had not put forward any convincing explanation how the general interest could be served by the obligation for small landowners only to transfer their hunting rights. Since the result of the difference in treatment between large and small landowners was to give only the former the right to use their land in accordance with their

conscience, it constituted discrimination on the ground of property, within the meaning of Article 14 of the Convention. There had therefore been a violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.
*Conclusion*: Violation (14 votes to 3).
Article 11 of the Convention (freedom of association) taken separately: The term "association", in the Court's view, possessed an autonomous meaning; the classification in national law had only relative value and constituted no more than a starting-point. It was true that the ACCAs owed their existence to the will of parliament, but the Court noted that they were nevertheless associations set up in accordance with the Law of 1 July 1901. Furthermore, it could not be maintained that under the Loi Verdeille ACCAs enjoyed prerogatives outside the orbit of the ordinary law, whether administrative, rule-making or disciplinary, or that they employed processes of a public authority. The Court accordingly considered that ACCAs were indeed "associations" for the purposes of Article 11. The Court considered that in the present case interference with the right to "negative" freedom of association, that is the right not to belong to an association against one's will, had been prescribed by law and pursued a legitimate aim, namely protection of the rights and freedoms of others. In the present case the Government had pleaded the need to protect or encourage democratic participation in hunting. Even supposing that French law enshrined a "right" or "freedom" to hunt, the Court noted that such a right or freedom was not one of those set forth in the Convention, which did, however, expressly guarantee the freedom of association.
As regards the question whether the interference was proportionate to the legitimate aim pursued, the Court noted that the applicants were opposed to hunting on ethical grounds and that their convictions in this respect attained a certain level of cogency, cohesion and importance and were therefore worthy of respect in a democratic society. Accordingly, the Court considered that the obligation for persons opposed to hunting to join a hunters' association might appear, prima facie, to be incompatible with Article 11. The Court noted that in the present case the applicants did not have any reasonable chance of being able to resign their membership. The fact that their properties were included in the hunting grounds of an ACCA and that they did not own a large enough area of land to lodge an objection was sufficient to make their membership compulsory. The Court went on to observe that all public property belonging to the State, a *département* or a municipality, public forests and land belonging to the French National Railway Company was expressly excluded from the ambit of the Loi Verdeille. In other words, the need to pool land for hunting applied only to a limited number of private landowners, whose opinions were not taken into consideration in any way whatsoever. In the light of the above considerations, the arguments put forward by the Government were not sufficient to establish that it was necessary to compel the applicants to become members of the ACCAs in their municipalities despite their personal convictions. With respect to the need to protect the rights and freedoms of others to ensure democratic participation in hunting, an obligation to join an ACCA which was imposed on landowners in only one municipality in four in France could not be regarded as proportionate to the legitimate aim pursued. Nor could the Court see why it might be necessary to pool only small properties while large estates, both public and private, were protected from democratic participation in hunting. To compel a person by law to join an association such that it was fundamentally contrary to his own convictions to be a member of it, and to oblige him, on account of his membership of that association, to transfer his rights over the land he owned so that the association in question could attain objectives of which he disapproved, went beyond what was necessary to ensure that a fair balance was struck between conflicting interests and could not be considered proportionate to the aim pursued. There had therefore been a violation of Article 11.
*Conclusion*: Violation (12 votes to 5).
Article 11, taken in conjunction with Article 14 of the Convention: The Court considered that examination of the complaint under Article 11 read in conjunction with Article 14 was in substance analogous to the examination conducted with regard to Article 1 of Protocol No. 1 and saw no reason to depart from its previous conclusion. It considered that the respondent Government had not put forward any objective and reasonable justification for this difference

in treatment, which obliged small landowners to become members of ACCAs but enabled large landowners to evade compulsory membership, whether they exercised their exclusive right to hunt on their property or preferred, on account of their convictions, to use the land to establish a sanctuary or nature reserve. In conclusion, there had been a violation of Article 11 of the Convention taken in conjunction with Article 14.
*Conclusion*: Violation (16 votes to 1).
Article 9 of the Convention: In the light of the conclusions it had reached with regard to violation of Article 1 of Protocol No. 1 and Article 11 of the Convention, taken both separately and in conjunction with Article 14, the Court did not consider it necessary to conduct a separate examination of the case from the standpoint of Article 9 of the Convention.
*Conclusion*: Not necessary to examine (16 votes to 1).
Application of Article 41 of the Convention: Having noted that the applicants had submitted no claim for costs and expenses, having been represented free of charge before the Convention institutions, the Court dismissed their claims for pecuniary damage for lack of documentary evidence. On the other hand, ruling on an equitable basis, it awarded each of the applicants FRF 30,000 for non-pecuniary damage.
Separate opinions were expressed by several judges.