CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 17
on the case-law of the Court
April 2000

Statistical information[1]

		April	2000
I. Judgments delivered			
Grand Chamber		5[2]	11[2]
Section I		5	20(22)
Section II		26	57
Section III		6	70(74)
Section IV		13	31(41)
Total		**55**	**189(205)**
II. Applications declared admissible			
Section I		2(3)	73(216)
Section II		17	63
Section III		11	82(83)
Section IV		8	60(62)
Total		**38(39)**	**278(424)**
III. Applications declared inadmissible			
Section I	- Chamber	5	28(42)
	- Committee	54	233
Section II	- Chamber	6	32(38)
	- Committee	86	365
Section III	- Chamber	2	42(43)
	- Committee	53(82)	471(500)
Section IV	- Chamber	7(8)	33(36)
	- Committee	161	671
Total		**374(404)**	**1875(1928)**
IV. Applications struck off			
Section I	- Chamber	0	1
	- Committee	3	3
Section II	- Chamber	1	19
	- Committee	1	5
Section III	- Chamber	0	4
	- Committee	1	7
Section IV	- Chamber	1	5
	- Committee	3	14
Total		**10**	**58**
Total number of decisions[2]		**422(453)**	**2211(2410)**
V. Applications communicated			
Section I		21	108(117)
Section II		9	79(81)
Section III		18(19)	71(74)
Section IV		12	56
Total number of applications communicated		**60(61)**	**314(328)**

[1] A judgment or decision may concern more than one application. The number of applications is given in brackets.
[2] Not including partial decisions.

[* = non-final judgment]

ARTICLE 2

LIFE
Allegations of unlawful killings by or with the collusion of the security forces: *admissible*.

JORDAN - United Kingdom (N° 24746/94)
McKERR - United Kingdom (N° 28883/95)
KELLY and others - United Kingdom (N° 30054/96)
SHANAGHAN - United Kingdom (N° 37715/97)
Decision 4.4.2000 [Section III]

These four cases concern allegations of unlawful killings by the security forces, or with their connivance, in Northern Ireland. The first applicant's son was shot and killed by an officer of the Royal Ulster Constabulary in uncertain circumstances. The second applicant's father was shot by a Royal Ulster Constabulary Home Support Unit in circumstances remaining in dispute after more than ten years of inquest proceedings. In the third application, the applicants' relatives were killed in an ambush operation organised by the RUC allegedly with the intention of shooting them. In the last application, the applicant's son, who was an active member of Sinn Fein, was killed while driving to his work; the shooting was claimed by a loyalist group but the applicant alleges that members of the police colluded in his death.
Admissible under Article 2.

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment in prison and effectiveness of investigation: *no violation/violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]

Facts: The applicant was arrested in April 1992 on suspicion of belonging to the mafia, on the basis of uncorroborated statements of a former *mafioso* (*pentito*), whose information was second-hand. The applicant was acquitted in November 1994, but as he did not arrive back at the prison until after midnight and the registration officer was absent he could not be released until the following morning. He claims that he was subjected to ill-treatment during his detention in Pianosa prison, where he alleges that the ill-treatment of inmates (slapping, squeezing of testicles, beatings, as well as insults and intimidation) was systematic. At a hearing in October 1993, the applicant and other inmates complained about ill-treatment which they claimed had occurred until October 1992. This was borne out by a judge's report. However, criminal proceedings were discontinued because the pepetrators could not be identified. During his detention, the applicant was kept under a special security regime until January 1995. Moreover, his correspondence was censored, partly on the basis of court decisions and partly on the basis of an order of the Minister for Justice, but at one stage without any basis. After the applicant's acquittal, preventive measures ordered during his detention were applied for three years (curfew between 8 p.m. and 6 a.m., obligation not to leave his home without informing the supervisory authorities, obligation to report weekly to the police, prohibition on going to bars or

public meetings or associating with persons with a criminal record) and he was ordered to live in a particular place. His attempts to have these measures lifted were rejected on the ground that although there had been insufficient evidence for a conviction there was enough to justify preventive measures. The measures also had the effect of depriving the applicant of his voting rights. In January 1998 the applicant was awarded 64 million lire as compensation for his "unjust" detention.

Law: Article 3 - The applicant has not produced any conclusive evidence in support of his allegations of ill-treatment and the only concrete evidence he has furnished (prison medical register and certain specific reports) does not suffice to fill that gap. He has not suggested that he was ever refused permission to see a doctor, yet he did not complain about ill-treatment until a hearing a year after the most recent incidents and has not given any explanation for that delay. The material available does not constitute sufficient evidence to support the conclusion that the applicant was subjected to physical and mental ill-treatment, and this finding is not called into question by the judge's report on the general conditions in Pianosa prison.

Conclusion: no violation (9 votes to 8).

Article 3 - The applicant's complaints did give reasonable cause for suspecting that he may have been subjected to improper treatment, and an effective official investigation was therefore required. Certain investigations were carried out, but the Court was not satisfied that they were sufficiently thorough and effective to satisfy this requirement. The investigation was slow and no effort was made to allow the applicant to identify the perpetrators in person, although he maintained that he would be able to do so. In these circumstances, there has been a violation of Article 3.

Conclusion: violation (unanimously).

Article 3 - With regard to the applicant's complaint about the conditions in which he was transferred from Pianosa to other prisons, he has not supplied detailed information and there is insufficient evidence to reach the conclusion that Article 3 was violated.

Conclusion: no violation (unanimously).

Article 5(3) - An award of compensation in respect of "unjust" detention does not imply that the detention did not satisfy the requirements of Article 5, and although the length of the detention was taken into account in calculating the amount of compensation, there was no acknowledgement, express or implied, that the length had been excessive. The applicant may therefore still claim to be a victim. His detention lasted almost two years and seven months (to the date of acquittal, rather than the date of release). While the cooperation of *pentiti* is a very important weapon in the fight against the mafia, the risk that a person may be accused and arrested on the basis of unverified statements must not be underestimated. Statements by *pentiti* must therefore be corroborated and hearsay must be supported by objective evidence, especially when deciding whether to prolong detention, since such statements necessarily become less relevant with the passage of time. In view of the applicant's acquittal due to the absence of other evidence, very compelling reasons would be required for his lengthy detention to be justified. The other grounds relied on by the courts (risk of pressure on witnesses and interfering with evidence, dangerous nature of the accused, complexity, requirements of the investigation) were reasonable, at least initially, but the decisions referred to the prisoners as a whole and did not point to any factor capable of showing that the risks actually existed or establish that the applicant posed a danger. No account was taken of the fact that the accusations against him were based on evidence which had become weaker rather than stronger. Accordingly, the grounds were not sufficient to justify the length of the detention.

Conclusion: violation (unanimously).

Article 5(1) - While some delay in implementing a decision to release from detention is often inevitable, the delay in the case of the applicant was only partly due to the relevant administrative formalities, the additional delay being due to the absence of the registration officer. In these circumstances, the continued detention of the applicant after his return to the prison did not amount to the first step in the execution of the order for his release and did come within any of the sub-paragraphs of Article 5(1).

Conclusion: violation (unanimously).

Article 8 - With regard to periods when the censorship of the applicant's correspondence was based on Law no. 354 of 1975, the Court saw no reason to disagree with the view expressed by the European Commission of Human Rights that the censorship did not comply with Article 8 due to the lack of clarity in the relevant provisions. With regard to the period when censorship was based on an order by the Minister for Justice under the provisions concerning the special regime, since the Court of Cassation has held that the Minister had no power to take measures concerning prisoners' correspondence the interference was not in accordance with the law. Finally, for one specific period there was no legal basis whatsoever.
Conclusion: violation (unanimously).
Article 6(3) - In the light of the above conclusion, this complaint is absorbed in the foregoing.
Conclusion: not necessary to examine (unanimously).
Article 2 of Protocol No. 4 - The very severe restrictions on the applicant's freedom of movement undoubtedly amounted to an interference with his rights under this provision. This was in accordance with the law and pursued legitimate aims, namely the maintenance of *ordre public* and the prevention of crime. However, while concrete evidence gathered at trial, although insufficient to secure a conviction, may nonetheless justify reasonable fears that the person may commit offences in the future, the grounds relied on in refusing to revoke the measures after the applicant's acquittal cannot lead to the conclusion that the restrictions were justified. They cannot therefore be regarded as necessary.
Conclusion: violation (unanimously).
Article 3 of Protocol No. 1 - The Court had no doubt that temporarily suspending the voting rights of persons against whom there is evidence of mafia membership pursues a legitimate aim. However, it did not accept the Government's view that the serious evidence against the applicant had not been rebutted during his trial. Thus, when his name was removed from the electoral roll there was no concrete evidence on which a suspicion that he belonged to the mafia could be based, and the measure cannot be regarded as proportionate.
Conclusion: violation (unanimously).
Article 41 - The Court found no causal link between the violations and sums claimed for pecuniary damage. Taking into account the compensation the applicant had obtained in respect of his pre-trial detention, it awarded him 75 million lire in respect of non-pecuniary damage. It also made an award in respect of costs.

INHUMAN TREATMENT
Ill-treatment of a foreign national in police custody: *friendly settlement*.

DENMARK - TURKEY (Nº 34382/97)
Judgment 5.4.2000 [Section I]

The application concerned the alleged ill-treatment of a Danish citizen while in custody in Turkey in 1996, as well as an allegation of a widespread practice of ill-treatment in police custody. Criminal proceedings were brought against two policemen, who were however acquitted in December 1998. An appeal is pending before the Court of Cassation.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicant Government of 450,000 Danish kroner (DKK). In addition, the applicant Government noted with satisfaction a declaration by the respondent Government in which the latter expressed regret concerning occasional and individual cases of torture and ill-treatment in Turkey and described new legal and administrative control and punishment regulations as a result of which such individual acts have substantially decreased. The applicant Government welcomed the steps taken to combat ill-treatment and torture. The parties agreed that the use of inappropriate police interrogation techniques constitutes a violation of Article 3 and that such techniques shall be prevented in future and recognised that this aim can best be attained through training. The applicant Government expressed satisfaction at the respondent Government's voluntary participation in the Council of Europe's comprehensive project relating to police training and undertook to make a significant financial contribution to the

project. Furthermore, the applicant Government will finance a bilateral project aimed, subject to agreement between the parties, at the training of Turkish police officers, in order to achieve further knowledge and practical skills in the field of human rights. Finally, the parties have decided to establish a continuous bilateral political dialogue which will focus on human rights issues with a view to improving the human rights situation in concrete fields, and have agreed that individual cases as well as general issues may be raised by either party within the framework of that dialogue.

INHUMAN TREAMENT
Alleged ill-treatment in police custody and effectiveness of investigation: *violation*.

VEZNEDAROGLU - Turkey (N° 32357/96)
*Judgment 11.4.2000 [Section II]

Facts: The applicant was arrested in July 1994 on suspicion of belonging to the PKK. She alleges that she was tortured for four days. She claims in particular that she was hung by the arms and had electric shocks applied to her mouth and sexual organs and that she was threatened with death and rape. Medical reports prepared prior to her release noted bruising on her arm and leg. She complained to both the public prosecutor and the State Security Court judge before whom she was brought that she had been tortured. She was later acquitted.
Law: Article 3 - It is impossible to establish whether the injuries sustained by the applicant were caused by the police or that she was tortured to the extent that she claims and the Court was not persuaded that hearing witnesses would make it possible to conclude beyond reasonable doubt that the applicant's allegations were substantiated. However, the difficulty rests with the failure of the authorities to investigate her complaints. Her insistence on her complaint of torture, along with the medical evidence in the file, should have been sufficient to alert the public prosecutor to the need to investigate the substance of the complaint, but no steps were taken to obtain further details from her or to question the police officers. In the circumstances, she had laid the basis of an arguable claim that she had been tortured and the authorities' inertia was inconsistent with their procedural obligations to investigate.
Conclusion: violation (unanimously).
Article 41 - The Court considered that the applicant must be taken to have suffered some degree of frustration and anguish in regard to the lack of concern displayed by the authorities with respect to her complaint and awarded her 1,500 US dollars (USD) in that respect. It also made an award in respect of costs.

EXPULSION
Expulsion to Iran: *settlement between parties*.

ASPICHI DEHWARI - Netherlands (N° 37014/97)
Judgment 27.4.2000 [Section I]

The applicant, an Iranian national, applied for asylum in the Netherlands in 1995, claiming to have been an active opponent of the Iranian regime since 1977 and to have been detained and ill-treated on several occasions. His request for asylum or, in the alternative, for a residence permit on humanitarian grounds, was rejected.
The applicant has now been granted a residence permit and does not wish to pursue his application. Furthermore, the parties have reached agreement with regard to costs.

EXPULSION
Expulsion to Iran: *communicated*.

KALANTARI - Germany (N° 51342/99)
Decision 6.4.2000 [Section IV]

The applicant, an Iranian national, fled Iran and entered Germany where he applied for the status of political refugee. The Federal Office for Refugees rejected his application. That rejection was upheld by the Administrative Court and then by the Administrative Court of Appeal. A new application made by the applicant was rejected by the Federal Office for Refugees and the Administrative Court rejected the application to have the expulsion order against the applicant stayed on the ground that he had failed to show that he would be at risk of political persecution if he returned to his country. The Federal Constitutional Court did not allow the appeal. The trial on the merits is still pending in the Administrative Court, but since it does not have suspensive effect, the applicant could at any moment be expelled to Iran. He fled to France, where he is probably still in hiding. He has also made an application for political asylum in Switzerland but its outcome does not appear likely to be successful. After the President of the Court's Fourth Section refused to apply Rule 39 of the Rules of Court, the applicant lodged a second application adducing fresh evidence to show that because he belonged to a family which had already suffered serious political persecution in Iran and because of his own political activities while in exile, he ran the risk of being persecuted and tortured if he returned to his country. In January 2000 the Fourth Section decided to apply Rule 39 and asked the parties for more information relating to the persecution suffered by the applicant's family in particular. The Government informed the Court that they were not in a position to furnish the information requested. The applicant's sister, however, provided further information and produced documents relating to the persecution suffered by her family.
Communicated under Article 3 (and extension of the application of Rule 39).

EXPULSION
Threatened expulsion of applicant in ill-health: *communicated*.

TASKIN - Germany (N° 56132/00)
Decision 6.4.2000 [Section IV]
(See Article 8, below).

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Detention at sobering-up centre: *violation*.

LITWA - Poland (N° 26629/95)
Judgment 4.4.2000 [Section II]

Facts: The applicant, a partially-sighted pensioner, was apprehended by the police at a post office, where he was complaining that his post boxes had been opened and emptied. The police took him to a sobering-up centre, where he was detained for 6½ hours before being released. A form completed by the staff of the centre and signed by a doctor indicated that the applicant was moderately intoxicated on admission. The applicant requested the public prosecutor to institute criminal proceedings against the police officers, whom he accused of ill-treating him, and the centre staff. An investigation was opened but ultimately discontinued. He also brought an action for compensation, in which he further claimed that personal possessions had been stolen. The action was dismissed on the ground that his arrest had been justified and an appeal was rejected.
Law: Article 5(1)(e) - The confinement amounted to a deprivation of liberty and the only ground invoked by the Government was "lawful detention of ... alcoholics". In interpreting that term, the Court looked to the Vienna Convention on the Law of Treaties. In common usage, "alcoholic" denotes a person addicted to alcohol, but there is a link with the other categories in sub-paragraph (e), namely that they may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both grounds, and it is legitimate to conclude that a predominant reason why the Convention allows their deprivation of liberty is not only that they are dangerous for public safety but also that their own interests necessitate their detention. This *ratio legis* indicates that the object of the provision cannot be to allow the detention only of "alcoholics" in the limited sense of the clinical state of alcoholism: persons who have not been medically diagnosed as alcoholics, but whose conduct under the influence of alcohol nevertheless poses a threat to public order or to themselves, can therefore be taken into custody. This does not mean that the detention of an individual merely because of alcohol intake is permitted, but there is nothing to suggest that Article 5(1)(e) prevents the detention of an individual abusing alcohol in order to limit the harm to himself and the public. This interpretation is confirmed by the *travaux préparatoires*, which included reference to "drunkenness". The applicant's detention therefore fell within the ambit of this provision. As to whether it was "lawful" and free from arbitrariness, it is undisputed that the procedure laid down in Polish law was followed and the detention therefore had a legal basis in Polish law. However, the Court had serious doubts as to whether it could be said that the applicant had behaved in such a way that he posed a threat to the public or himself and these doubts were reinforced by the rather trivial factual basis for the detention, as well as the applicant's blindness. No consideration appears to have been given to the less extreme measures which the law allows to be applied to intoxicated persons and which do not necessitate a deprivation of liberty. In the absence of such consideration, the applicant's detention cannot be considered "lawful".
Conclusion: violation (6 votes to 1).

Article 41 - The Court dismissed the applicant's claim in respect of pecuniary damage, since he had failed to reclaim his possessions from the domestic authorities. In respect of non-pecuniary damage, it awarded the applicant 8,000 zlotys (PLN). It also made an award in respect of costs.

LAWFUL ARREST OR DETENTION
Delay in implementing release following acquittal: *violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]
(See Article 3, above).

Article 5(3)

LENGTH OF DETENTION ON REMAND
Detention on remand lasting 2 years 7 months: *violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]
(See Article 3, above).

LENGTH OF DETENTION ON REMAND
Detention on remand lasting over 2 years 6 months: *violation*.

PUNZELT - Czech Republic (N° 31315/96)
*Judgment 25.4.2000 [Section III]

Facts: In December 1992 the applicant, a German national, was detained in the Czech Republic pending extradition to Germany. In April 1993 he was charged by the Czech authorities and subsequently placed in detention on remand. His detention was prolonged on several occasions and his various requests for release, in which he offered bail of up to 15 million korunas (CZK), were rejected. He was convicted in January 1995 but the conviction was quashed by the Court of Cassation in March 1995. In January 1996 the City Court again convicted the applicant and the following July the Court of Cassation confirmed the conviction. The period of detention on remand was deducted from the sentence imposed.
Law: Article 5(3) - The detention on remand lasted from April 1993 until the applicant's conviction in January 1995, but the Court may also examine the detention after the quashing of the conviction until the second conviction, namely from March 1995 until January 1996. The total period is therefore 2 years, 6 months and 18 days. The risk of absconding was a relevant and sufficient reason and it is unnecessary to examine the other grounds relied on. However, the courts did not show the "special diligence" required.
Conclusion: violation (unanimous).
With regard to the repeated refusal to release the applicant on bail, neither this nor the eventual imposition of security of 30 million korunas - given the scale of his financial transactions - infringed his rights. Moreover, if he had been granted bail he would in any event have been re-detained pending his extradition, any security would have been returned to him and he would not have been extradited until the Czech proceedings had ended.
Conclusion: no violation (unanimous).
Article 6(1) - The proceedings lasted from April 1993 until July 1996, a total of 3 years, 3 months and 17 days. The case was not particularly complex, the applicant contributed to the

length and there were no substantial periods of inactivity for which the authorities could be held responsible.
Conclusion: no violation (unanimous).
Article 41 - The Court awarded the applicant 10,000 German marks (DEM) in respect of non-pecuniary damage. It also made an award in respect of costs.

LENGTH OF DETENTION ON REMAND
Length of detention on remand: *struck out*.

RIZZOTTO - France (N° 31115/96)
Judgment 25.4.2000 [Section III]

The case concerns the length of detention on remand and the length of criminal proceedings. The applicant's lawyer has not replied to the letters sent to her and the Court considers that the applicant no longer wishes to pursue his application.

Article 5(4)

SPEEDY REVIEW
Length of time taken to review lawfulness of continuing detention "at Her Majesty's pleasure": *struck out*.

WALSH - United Kingdom (N° 33744/96)
Judgment 4.4.2000 [Section III]

The case concerns alleged delays in reviewing the continuing lawfulness of the applicant's detention "at Her Majesty's pleasure" following the expiry of the tariff period.
The applicant informed the Court that he wished to withdraw his complaints.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to expulsion proceedings: *admissible*.

MAAOUIA - France (N° 39652/98)
Decision 22.3.2000 [Grand Chamber]

The applicant, a Tunisian national, arrived in France in 1980 at the age of 22. Since 1983 he has been living with a French citizen whom he married in 1992. In 1998 he was sentenced to 6 years' imprisonment for assault. In 1991 a deportation order was issued against him, but was later annulled. Since he refused to leave the country, he was sentenced to 1 year's imprisonment and banned from living in French territory for 10 years. The applicant secured the lifting of this measure. He then requested the validation of his immigration status and a residence permit. His request was turned down and his case is still pending before the appellate court. In July 1998 the applicant was given a one-year residence permit. He

complains of the length of the proceedings concerning the validation of his immigration status.
Admissible under Article 6(1).

DETERMINATION
Access to court to object to nuclear power station: *no violation*.

ATHANASSOGLOU and others - Switzerland (N° 27644/95)
Judgment 6.4.2000 [Grand Chamber]

Facts: The applicants own or rent property in the vicinity of a nuclear plant, operated by a private company since 1971. When the company applied for an unlimited renewal of its permit in 1991, a large number of objections were lodged, requesting closure of the plant on the ground that it was unsafe. They referred to a report highlighting deficiencies. All the objections were rejected by the Swiss Federal Council (the Government), which granted the company a conditional operating licence for a limited period. The Federal Council is the responsible authority and there is no appeal against its decisions. It relied on reports from various safety authorities. The applicants complain of lack of access to court.
Law: Government's preliminary objection (non-exhaustion) - the question of non-exhaustion was so closely linked to the substance that the Court joined it to the merits.
Article 6(1) - The domestic legislation and the nature of the grievance are the same as in Balmer-Schafroth (*Reports of Judgments and Decisions* 1997-IV). The rights invoked by the applicants (life, physical integrity, property) are recognised to individuals under Swiss law and it is not contested that there was a genuine and serious dispute of a justiciable nature. However, for the outcome to be directly decisive for these rights, there must be a specific and imminent risk. Having regard to the safety reports obtained, the Court could not perceive any material difference between this case and Balmer-Schafroth as regards the personal circumstances of the applicants, who never claimed to have suffered loss for which they intended to seek compensation. The report which they relied on did not show that they were exposed to a specific and, above all, imminent danger. Therefore, the connection between the Federal Council's decision and the domestic law rights invoked was too remote and tenuous. To the extent that the applicants are seeking to derive from Article 6 a remedy to contest the very principle of the use of nuclear energy, or at the least a means for transferring from the government to the courts the responsibility for taking the ultimate decision on the operation of
individual nuclear power stations, the best manner of regulating the use of nuclear power is a policy decision for each Contracting State to take according to its democratic processes. It is not for the Court to examine the hypothetical question whether, if the applicants had been able to demonstrate a specific and imminent danger to themselves, the Civil Code remedies would have been sufficient to satisfy the requirements of Article 6(1), and it is therefore not necessary for the Court to rule on the Government's preliminary objection. In conclusion, Article 6 is not applicable.
Conclusion: Article 6 not applicable (12 votes to 5).
Article 13 - The reasons given above lead to the conclusion that the applicants did not have an arguable claim, and this provision is therefore inapplicable.
Conclusion: Article 13 not applicable (12 votes to 5).

ACCESS TO COURT
State immunity: *admissible*.

McELHINNEY - United Kingdom (Nº 31253/96)
AL-ADSANI - United Kingdom (Nº 35763/97)
FOGARTY - United Kingdom (Nº 37112/97)
Decision 1.3.2000 [Section III]

McElhinney - The applicant, an Irish policeman (*garda*), claims that he was assaulted by a British soldier who had apparently been involuntarily carried into the Irish Republic on the towbar of the car which the applicant drove through a checkpoint. The applicant brought a civil action against the soldier and the British Secretary of State for Northern Ireland, who however successfully invoked sovereign immunity.
Al-Adsani and Fogarty - Each of the applicants brought civil proceedings which were unsuccessful as a result of the State Immunity Act. The first applicant brought proceedings against Kuwait in respect of alleged torture; the second applicant brought proceedings against the US government, her former employer in London, in respect of alleged sex discrimination.
Admissible under Article 6(1).

ACCESS TO COURT
Failure to examine appeal concerning compensation for nationalised property: *admissible*.

POTOCKA and others - Poland (N° 3376/96)
Decision 6.4.2000 [Section IV]

In 1945, all real property in Warsaw was expropriated to the benefit of the State. However, as a measure of compensation, former owners were offered the right to lodge an application for ownership of their plots for a limited period; such a right could be awarded on the condition that the plots had not been reserved for public use. In 1947, J.P., husband of the first applicant and father of the other applicants, had such an application lodged on his behalf for two plots of land he had formerly owned; the authorities did not reply. In 1990, the second applicant, who had inherited J.P.'s estate, and the other applicants, requested the restitution of the two plots and a decision on the application made in 1947. The District Office rejected the request as a whole, and examined the second limb as a continuation of the 1947 application. The office maintained that the palace situated on the land had been severely damaged during the Second World War and had subsequently been rebuilt at the Government's initiative and expense; thus, nothing justified restitution of the plots. The applicants unsuccessfully appealed to the Governor's Office against this decision and then appealed to the Supreme Administrative Court, which rejected their appeal insofar as it concerned the application lodged in 1947. The court declared that, pursuant to the relevant legislation, it was not competent to deal with appeals against administrative decisions in proceedings instituted before September 1980. Insofar as the appeal concerned the 1990 application for restitution, the court examined this on the merits and found the refusal of restitution to be lawful.
Admissible under Article 6(1) (access to court as regards the application for use of the property).
Inadmissible under Article 1 of Protocol No. 1: The applicants have not shown that they had any relevant existing possessions or any legitimate expectation of having their property

restored to them. Furthermore, the Convention does not guarantee a right to restitution of property: incompatible *ratione materiae*.

PUBLIC HEARING
Absence of public hearing in proceedings relating to land consolidation: *friendly settlement*.

PFLEGER - Austria (N° 27648/95)
Judgment 4.4.2000 [Section III]

The case concerns the absence of any public hearing and the absence of public delivery of decisions in proceedings concerning agricultural land consolidation.
The parties have reached a friendly settlement providing for payment to the applicants of 40,000 schillings (ATS), including 30,000 schillings in respect of costs and expenses.

ORAL HEARING
Absence of oral hearing in proceedings relating to access to children in care: *violation*.

L. - Finland (N° 25651/94)
*Judgment 27.4.2000 [Section IV]
(See Appendix I).

REASONABLE TIME
Length of enforcement proceedings: *violation*

COMINGERSOLL S.A. - Portugal (N° 35382/97)
Judgment 6.4.2000 [Grand Chamber]

Facts: In October 1982 the applicant company brought enforcement proceedings to recover amounts due under bills of exchange. The proceedings are still pending.
Law: Article 6(1) - The proceedings have lasted approximately 17 years and 6 months, and while some aspects of the case were complex, this cannot explain the length, nor can the conduct of the applicant. On the other hand, delays attributable to the authorities suffice in themselves to allow the conclusion that the length was unreasonable. Indeed, a period of 17 years and 5 months for a final decision that has yet to be delivered in proceedings issued on the basis of an authority to execute - which by their very nature need to be dealt with expeditiously - cannot be said to be reasonable.
Conclusion: violation (unanimously).
Article 41 - The applicant cannot claim the value of its debt as compensation for pecuniary damage, since the proceedings are still pending and it is impossible to speculate on their outcome. As to non-pecuniary damage, in the light of its own case-law and the practice of certain Contracting States, the Court cannot exclude the possibility that a company may be awarded pecuniary compensation for non-pecuniary damage. Indeed, since the principal form of redress which the Court may order is pecuniary compensation, it must be empowered to award pecuniary compensation for non-pecuniary damage to companies. Non-pecuniary damage suffered by companies may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team.

In the instant case, the fact that the proceedings continued beyond a reasonable time must have caused the applicant, its directors and shareholders considerable inconvenience and prolonged uncertainty, if only in the conduct of the company's everyday affairs. The applicant was in particular deprived of the possibility of recovering its claim earlier and it remains outstanding. It is therefore legitimate to consider that the applicant was left in a state of uncertainty that justified making an award of compensation. The Court therefore awarded the applicant 1,500,000 escudos (PTE) for the damage sustained.

REASONABLE TIME

Length of civil proceedings: *violation*.

DEWICKA - Poland (N° 38670/97)
*Judgment 4.2.2000 [Section IV]

Facts: The applicant, born in 1911, requested the telephone communications office to conclude a contract with her for the installation of a telephone in her apartment, in view of her age and poor state of health. She was told that it was technically impossible at the time. In June 1993 she sued the office. Her claim was eventually dismissed in August 1997. She appealed and her claim was upheld in January 1998. However, by March 1999 she had been unable to obtain an enforcement order from the first instance court.

Law: Article 6(1) - The proceedings began in June 1993 and ended, with regard to the merits, in January 1998. However, the applicant was then unable to institute enforcement proceedings and in such circumstances these must be regarded as an integral part of the proceedings on the merits. The proceedings had thus lasted 5 years 9 months by March 1999. The case concerned the determination of the right to enter into a simple contract and the fact that it was necessary to obtain expert evidence on a technical question did not in itself render the case complicated. What was at stake for the applicant was undoubtedly of crucial importance to her and the courts were thus obliged to show special diligence. However, the first instance court only showed a level of diligence which would possibly be acceptable in an average civil case, without showing any special promptness. Moreover, it failed for almost a year to produce an enforcement order, although this was a purely technical matter, for which no explanation has been given.

Conclusion: violation (unanimously).

Article 41 - Although the applicant had not submitted any claims after the application had been declared admissible, the Court considered that she had suffered non-pecuniary damage on account of the protracted length of the proceedings and awarded her 15,000 zlotys (PLN) in that respect.

REASONABLE TIME

Length of civil proceedings: *violation*.

I.S. - Slovakia (N° 25006/94)
Judgment 4.4.2000 [Section II]

Facts: The case concerns the length of proceedings relating to a request for restitution of property. The proceedings began in November 1991 and ended in May 1999. During the proceedings, the applicant complained of delays and also requested that the judge dealing with the case be disqualified. The complaint was treated as a complaint of bias.

Law: Government's preliminary objections (non-exhaustion and six month time limit) - The mere fact that the applicant referred to a specific provision of the State Administration Act in his complaint about the delays cannot lead to the conclusion that he failed to exhaust domestic remedies. Moreover, the Government did not raise the six month issue at the admissibility stage and there is therefore estoppel in that respect.

Article 6(1) - The relevant period began on 18 March 1992 when the former Czech and Slovak Federal Republic ratified the Convention and accepted the right of petition. The

Slovak Republic took over rights and obligations arising under international treaties. The proceedings lasted 7 years, 6 months and 12 days for two sets at two levels of jurisdiction each, out of which 7 years, 2 months and 13 days are taken into consideration by the Court. The proceedings raised a complex issue of a factual nature which contributed to some extent to the overall length, and the applicant also contributed by certain delays. However, these factors are not sufficient in themselves to justify the overall length.
Conclusion: violation (unanimously).
Article 41 - The applicant did not submit any claim for just satisfaction.

REASONABLE TIME
Length of civil proceedings: *violation*.

CAPODANNO - Italy (N° 39881/98)
SCIARROTTO and GUARINO - Italy (N° 40623/98)
Judgments 5.4.2000 [Section II]

The cases concern the length of different sets of civil proceedings :
Capodanno - more than 15 years and 10 months for one level of jurisdiction;
Sciarrotto and Guarino - 21 years and 8 months.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicants the following sums in respect of non-pecuniary damage:
Capodanno - 50 million lire (ITL);
Scairrotto and Guarino - 45 million lire for each of the three applicants.

REASONABLE TIME
Length of civil proceedings: *violation*.

A.V. and A.B. - Italy (N° 40958/98)
DI ANNUNZIO - Italy (N° 40965/98)
L.G.S. S.p.a. - Italy (N° 40980/98)
MUSO - Italy (N° 40981/98)
*Judgments 5.4.2000 [Section II]

The cases concern the length of different sets of civil proceedings:
A.V. and A.B. - 8 years and 3 months;
Di Annunzio - over 5 years and 2 months for one level of jurisdiction;
L.G.S. S.p.a. - over 12 years and 7 months for three levels of jurisdiction;
Muso - over 20 years and 6 months.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicants the following sums in respect of non-pecuniary damage:
A.V. and A.B. - 20 million lire (ITL) for each of the two applicants.
Di Annunzio - 10 million lire;
L.G.S. S.p.a. - 15 million lire;
Muso - 50 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

COSCIA - Italy (N° 35616/97)
SANNA - Italy (N° 38135/97)
Judgments 11.4.2000 [Section I]

The cases concern the length of civil proceedings. In the first case the proceedings lasted more than 9 years and 8 months for three levels of jurisdiction. In the second case the proceedings have lasted more than 6 years and one month and are still pending.
Conclusion: violation (unanimously).
Article 41 - In each case the Court awarded the applicant the 12 million lire (ITL) in respect of non-pecuniary damage. It also made an award in respect of costs.

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

PADERNI - Italy (N° 40952/98)
D'ALESSANDRO - Italy (N° 40954/98)
MARCHETTI - Italy (N° 40956/98)
DATTILO - Italy (N° 40960/98)
BUCCI - Italy (N° 40975/98)
MANTINI - Italy (N° 40978/98)
CONTE - Italy (N° 40979/98)
Judgments 5.4.2000 [Section II]

The cases concern the length of different sets of civil proceedings. The Government has reached a friendly settlement with each of the applicants, on the basis of the following payments:
Paderni - 22 million lire (ITL) (20 million lire in respect of non-pecuniary damage and two million lire in respect of costs and expenses);
D'Alessandro - 29 million lire (24 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses);
Marchetti - 21 million lire (16 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses);
Dattilo - 30 million lire (25 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses);
Bucci - 30 million lire (25 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses);
Mantini - 15 million lire (10 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses);
Conte - 9 million lire (8 million lire in respect of non-pecuniary damage and one million lire in respect of costs and expenses).

REASONABLE TIME
Length of civil proceedings: *violation*.

BERTOZZI - Italy (N° 39883/98)
Judgment 27.4.2000 [Section II]

The case concerns the length of civil proceedings (more than 15 years for one level of jurisdiction).
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicant 40 million lire (ITL) in respect of non-pecuniary damage.

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

CAPURRO and TOSETTI - Italy (N° 45071/98)
Judgment 28.4.2000 [Section IV]

The case concerns the length of civil proceedings (about 10 years).
Conclusion: violation (unanimously).
Article 41 - The Court awarded each of the four applicants 29 million lire (ITL) in respect of non-pecuniary damage and 1,250,000 lire in respect of costs and expenses.

REASONABLE TIME
Length of proceedings before the Audit Court (Italy): *violation*.

VERO - Italy (N° 41818/98)
SINAGOGA - Italy (N° 41820/98)
CARDILLO - Italy (N° 41833/98)
DI ANTONIO - Italy (N° 41839/98)
VAY - Italy (N° 41841/98)
*Judgments 28.4.2000 [Section IV]

The cases concern the length of various proceedings in the Audit Court:
Vero - 25 years and 7 months for two levels of jurisdiction, including 24 years and 7 months after the date on which the recognition of the right of petition became effective;
Sinagoga - more than 12 years and 9 months for one level of jurisdiction;
Cardillo - 25 years and 4 months for one level of jurisdiction, including more than 24 years after the date on which the recognition of the right of petition became effective;
Di Antonio - more than 5 years and 8 months for two levels of jurisdiction;
Vay - more than 6 years and 2 months for one level of jurisdiction.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the following sums in respect of non-pecuniary damage:
Vero - 80 million lire (ITL);
Sinagoga - 30 million lire;
Cardillo - 70 million lire;
Di Antonio - 13 million lire;
Vay - 17 million lire.

REASONABLE TIME
Length of proceedings before the Audit Court (Italy): *friendly settlements*.

T. - Italy (no. 1) (N° 41834/98)
T. - Italy (no. 2) (N° 41836/98)

TOLLI -Italy (N° 41842/98)
Judgments 28.4.2000 [Section IV]

The cases concern the length of various proceedings in the Audit Court. The parties have reached friendly settlements providing for payment of the following sums to the applicants:
T.(no. 1) - 10 million lire (ITL) in respect of damage and 3 million lire in respect of costs and expenses;
T.(no. 2) - 13 million lire in respect of non-pecuniary damage and 3 million lire in respect of costs;
Tolli - 13 million lire in respect of damage and 3 million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings following the finding of a violation due to the length: *friendly settlement*.

PICCININI - Italy (N° 28936/95)
Judgment 11.4.2000 [Section II]

The case concerns the length of proceedings. In an earlier application to the European Commission of Human Rights (n° 26031/94), the Commission had already found a violation of Article 6 because the applicant had not had his case examined within a reasonable time. The present application therefore concerns primarily the period after 21 November 1995. The Government have reached a friendly settlement with the applicant, providing for payment to him of 11 million lire (ITL), made up of 10 million lire in respect of non-pecuniary damage and one million lire in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings following the finding of a violation due to the length: *violation*.

ROTONDI - Italy (N° 38113/97)
Judgment 27.4.2000 [Section II]

The case concerns the length of proceedings. In an earlier application to the European Commission of Human Rights (N° 24783/94), the Commission had already found a violation of Article 6 because the applicant had not had his case examined within a reasonable time. The present application therefore concerns primarily the period after 13 June 1995. The proceedings therefore lasted more than one year and eight months, for one level of jurisdiction. While this period does not appear excessive in itself, it follows a rather long overall period which had already been found to constitute a violation.
Conclusion: violation (6 votes to 1).
Article 41 - The Court awarded the applicant 5 million lire (ITL) in respect of non-pecuniary damage.

REASONABLE TIME
Length of civil proceedings following the finding of a violation due to the length: *violation*.

S.A.GE.MA S.N.C. - Italy (N° 40184/98)
Judgment 27.4.2000 [Section II]

The case concerns the length of proceedings. In an earlier application to the European Commission of Human Rights (N° 23473/94), the Commission had already found a violation of Article 6 because the applicant had not had its case examined within a reasonable time. The

present application therefore concerns primarily the period after 17 January 1995. The proceedings therefore lasted 2 years and 6 months, for two levels of jurisdiction. While this period does not appear excessive in itself, it follows a rather long overall period which had already been found to constitute a violation.
Conclusion: violation (6 votes to 1).
Article 41 - The Court awarded the applicant 6 million lire (ITL) in respect of non-pecuniary damage.
REASONABLE TIME
Length of proceedings in the Audit Court (Italy): *friendly settlement*.

PASCALI and CONTE - Italy (N° 41823/98)
C. - Italy (N° 41824/98)
D.M. - Italy (N° 41828/98)
Judgments 5.4.2000 [Section II]

The cases concern the length of proceedings in the Audit Court. The Government have reached a friendly settlement in each case providing for payment of, respectively, (i) 6 million lire (ITL) to each of the two applicants, (ii) 5 million lire, and (iii) 5 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

ACADEMY TRADING LTD. and others - Greece (N° 30342/96)
Judgment 4.4.2000 [Section I]
(See below).

IMPARTIAL TRIBUNAL
Changes in composition of court during proceedings: *no violation*.

ACADEMY TRADING LTD. and others - Greece (N° 30342/96)
Judgment 4.4.2000 [Section I]

Facts: The applicants are shipping companies. In 1982 they brought an action for damages against a bank which had granted a large loan in respect of which they had acted as guarantors. As a result of a shipping crisis, they had been unable to meet the repayment instalments. The action was dismissed in 1987, but the applicants' claim was allowed on appeal in 1990, the Court of Appeal considering that the bank had acted unethically. The bank appealed to the Court of Cassation, threatening to withdraw from the Greek market if the appeal was unsuccessful. The First Chamber of the Court of Cassation quashed the judgment and referred the case to the Fourth Chamber for further examination. That chamber deliberated in February 1992 and held a hearing in December 1992. In June 1993 one of the judges retired, which under Greek law meant that the case had to be re-examined by a new composition. Since no action was taken, the applicants assumed that a decision had in fact been reached prior to the retirement of the judge. However, in June 1994 the former president of the chamber (who was then in a different chamber) returned the file to the secretariat with a hand-written note indicating that a new hearing would be needed in view of the retirement. A hearing was held in May 1994 before five judges, including the rapporteur and another judge who had participated in the deliberations in February 1992. A new rapporteur was appointed, although the original rapporteur was the only judge to have participated in all the previous deliberations and hearings. In June 1995 the court dismissed the applicants' action, the original rapporteur dissenting.
Law: Article 6(1) (impartial tribunal) - While the delay in deciding that the case had to be reheard, the intervention in the proceedings of the former president of the Fourth Chamber and the change of rapporteur at the last hearing inevitably raised some questions in the mind

of the applicants' representatives, they do not provide a legitimate reason to doubt the impartiality of the Court of Cassation. The applicants have failed to show that any of these matters involved any illegality or amounted to a radical or unusual departure from the normal internal practice of the Court of Cassation. In particular, the Court was satisfied that the Government's answers to the specific matters raised by the applicants provided a plausible explanation for the procedures followed. Consequently, the allegation concerning the partiality of the Court of Cassation is unsubstantiated.
Conclusion: no violation (4 votes to 3)
Article 6(1) (reasonable time) - The proceedings began in January 1982 and ended in June 1995. However, the period to be taken into consideration began on 20 November 1985 when Greece accepted the right of petition, and the period to be examined is therefore 9 years, 7 months and 10 days. The subject matter was undoubtedly complex, but there is nothing to suggest that the applicants were responsible for prolonging the proceedings. On the other hand, various periods of inactivity are attributable to the State authorities, which failed to comply with the reasonable time requirement. Having regard also to the overall length, there has been a violation.
Conclusion: violation (unanimously).
Article 41 - The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of the violation. It made an award in respect of costs.

Article 6(1) [criminal]

CRIMINAL CHARGE
Temporary withdrawal of driving licence pending investigation into accident: *communicated*.

D.K. - Slovakia (N° 41263/98)
[Section II]

The applicant's driving licence was withdrawn pending the investigation into an accident caused by him in an inebriated state. His request for judicial review of the administrative decision ordering the withdrawal of his driving licence was rejected on the ground that no review of such procedural decisions was possible. In April 1996, criminal proceedings were initiated against him which are still pending.
Communicated under Article 6(1) (applicability to administrative proceedings, length of criminal proceedings).

ACCESS TO COURT
Obligation to contest a judgment given in default, in order to obtain a judgment in adversarial proceedings before lodging a cassation appeal: *inadmissible*.

HASER - Switzerland (N° 33050/96)
Decision 27.4.2000 [Section II]

In a judgment *in absentia* delivered in May 1995, the Bellinzona Assize Court sentenced the applicant to three years' imprisonment coupled with a ten-year exclusion order for fraud, forgery and uttering, and ordered him to make payment of a very large sum of money in restitution to the injured party. During the trial the applicant had been represented by his lawyer, through whom he also lodged four appeals with various courts. In July 1995 the Federal Court ruled a public-law appeal and an appeal on points of law lodged by the applicant inadmissible on the ground that the channels of appeal within the canton had not been exhausted: a person who had been convicted *in absentia* had to lodge an objection with

the competent cantonal court, obtain a judgment in adversarial proceedings and then, where appropriate, bring the case before the cantonal courts of appeal before bringing it before the Federal Court. The applicant had not lodged an objection as provided by Article 264 of the Code of Criminal Procedure (CCP) of the Canton of Ticino. In September 1995 the Court of Cassation of the Canton of Ticino also declared an appeal by the applicant on points of law inadmissible on the ground that a conviction *in absentia* must be challenged by means of an objection lodged in accordance with Article 264 CCP. The applicant acted through two lawyers to lodge a public-law appeal with the Federal Court against this judgment, arguing that the obligation to remedy the failure to appear was contrary to Articles 6 of the Convention and 2 of Protocol No. 7. In February 1996 the Federal Court rejected this appeal on the ground that it was unfounded. The fourth appeal, lodged by the applicant with the Cantonal Civil Court of Appeal concerning restitution to the injured party was ruled inadmissible in April 1996, as were the public-law appeals and the appeal lodged with the Federal Court. With respect to the public-law appeal, the Federal Court noted that the applicant could still, within the limitation period pertaining to criminal proceedings, bring an application to have the conviction *in absentia* set aside pursuant to the procedure prescribed by Article 264 CCP.

Inadmissible under Articles 6 (1) and (3) (c): This case was to be distinguished from the cases of Poitrimol, Omar and Khalfaoui against France. Firstly, the inadmissibility of the appeals on points of law in the French cases had been based on the fact that the parties to the proceedings had failed to appear, whereas in this case the reason why the Cantonal Court of Cassation did not consider the substance of the applicant's appeal on points of law was that a conviction *in absentia* must be challenged by means of an objection lodged in accordance with Article 264 CCP. Secondly, the French cases had concerned appeals on points of law lodged with the highest national court, and as a result the decisions had deprived the applicants of that level of jurisdiction, whereas in the instant case the appeal on points of law had been lodged with a cantonal court whose decision had not put an end to the proceedings at the domestic level since the applicant still had every opportunity until the expiry of the time-limit for the enforcement of the sentence to lodge an objection with the Cantonal Assize Court in accordance with Article 264 CCP, then, if need be, to lodge an appeal on points of law at the cantonal level and finally to appeal to the Federal Court. Furthermore, the fact that the applicant had been represented before the Assize Court and the fact that, by the terms of Article 264 CCP, a person convicted *in absentia* could obtain a retrial by lodging an objection were compatible with Article 6. The same was true of legislation requiring the person convicted *in absentia* to remedy the failure to appear before entering an appeal on points of law. It was true that according to Article 264 CCP the person convicted *in absentia* could remedy the failure to appear only by being arrested or, as in this case, by appearing at the risk of being arrested on the basis of the prison sentence given. However, the interest in adversarial proceedings in a criminal court of first instance, against whose judgment the only remedy was an appeal on points of law, which was a remedy relating only to application of the law, prevailed over the interest of the person convicted *in absentia* in being exempted from the requirement to remedy the failure to appear so as to avoid the risk of being arrested. Regard being had to the high importance of the appearance of the person convicted to satisfy the requirement of a fair trial, the dismissal of the applicant's appeal on points of law could not be considered a "disproportionate sanction" infringing his right of access to a court or his right to a fair trial: manifestly ill-founded.

Inadmissible under Article 2 of Protocol No. 7: The applicant had had the opportunity to challenge his conviction by lodging an objection before bringing an application on points of law at the cantonal level and finally lodging an appeal with the Federal Court. The obligation placed on a person convicted *in absentia* to lodge an objection before bringing an appeal on points of law pursued a legitimate aim in so far as it permitted trial *de novo* in the presence of the interested party. Furthermore, such an obligation could not be considered to infringe the very substance of the right of appeal: manifestly ill-founded.

Inadmissible under Article 14 read in conjunction with Article 6 and Article 2 of Protocol No. 7: Even if it were assumed that the applicant had raised this complaint in a domestic court, the

situations he had referred to were not similar. Firstly, the case of a person convicted *in absentia* could not be compared to that of an accused who has had the benefit of adversarial proceedings. Secondly, since procedure varied from one Swiss canton to another, accused persons tried in various cantons, like accused persons convicted in various Contracting States, could not lay claim to the same remedies. The applicant could not therefore complain of discrimination: manifestly ill-founded.

FAIR HEARING
Self-incrimination - obligation to submit documents in tax proceedings: *admissible*.

J.B. - Switzerland (N° 31827/96)
Decision 6.4.2000 [Section II]

Between 1979 and 1985, the applicant invested money in several companies. The amounts invested were not, however, declared for the taxation period 1981-88. Tax evasion proceedings were subsequently initiated by the tax authorities against the applicant in respect of the federal taxes. He was asked to furnish all the documents in his possession relating to the companies. The applicant admitted having made the investments but did not hand over any documents. Further requests for information were addressed to him by the tax authorities, with no result. As a consequence, they imposed a disciplinary fine, which the applicant duly paid. The tax authorities later imposed two consecutive disciplinary fines, respectively for federal and cantonal taxes, on the ground that the applicant still would not provide the requested information. The applicant's appeal against the disciplinary fine relating to the federal taxes was dismissed by the Tax Appeals Commission. He unsuccessfully appealed to the Federal Court, arguing that communicating the required documents would amount to self-incrimination. Following the Federal Court's decision, the applicant and the tax authorities reached an agreement which settled the proceedings against the applicant and cancelled the third fine and a fourth one which had been imposed on him at a later stage. According to the agreement, the proceedings before the Convention organs remained unaffected.
Admissible under Article 6(1) (self-incrimination).
Inadmissible under Article 4 of Protocol N° 7: The first fine was imposed on the applicant on the ground that he had not reacted to the authorities' requests to submit relevant documents. The second and increased fine was imposed on him at a later stage on account of his repeated refusals to submit the documents despite the first fine and renewed requests from the authorities. The punishable conduct thus differed both in time and substance, and it could not be deemed that the two impugned decisions were based on the same conduct: manifestly ill-founded.

EQUALITY OF ARMS
Non-disclosure to accused of material submitted to court by prosecution: *violation*.

KUOPILA - Finland (N° 27752/95)
*Judgment 27.4.2000 [Section IV]
(See Appendix II).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Role played by Clerk to the Justices in proceedings leading to imprisonment for failure to pay fine: *communicated*.

MORT - United Kingdom (N° 44564/98)
[Section IV]

The applicant was convicted by a Magistrates' Court for not having paid her television licence fee and a fine was imposed. According to the applicant, the hearing at the trial was dominated by the Clerk to the Justices' interventions. As the applicant failed to pay the instalments of her fine, she was summoned to appear before the court again. An inquiry into her means was conducted on this occasion, most of the questions being put to her by the Clerk. The applicant described the manner in which the Clerk carried out his questioning as being clearly hostile. At the magistrates' request, the Clerk conferred with them in the Retiring Room; he came back with them to the courtroom after the deliberations. The magistrates made an order to commit the applicant to prison for 14 days, suspended on condition that she paid weekly instalments. She failed to do so and was accordingly committed to prison. Her application for judicial review was granted; her claim relied, *inter alia*, on the fact that the Clerk's role in the proceedings gave rise to an appearance of a lack of independence and impartiality in the judicial process. The Divisional Court rejected her arguments and refused to see in her case a point of law of general public importance justifying an examination by the House of Lords.
Communicated under Article 6(1).

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

SERGI - Italy (N° 37118/95)
Judgment 11.4.2000 [Section II]

The case concerns the length of criminal proceedings against the applicant. The Government have reached a friendly settlement with the applicant, providing for payment to him of 23 million lire (ITL), made up of 18 million lire in respect of damages and 5 million lire in respect of costs.

REASONABLE TIME
Length of criminal proceedings: *no violation*.

PUNZELT - Czech Republic (N° 31315/96)
Judgment 25.4.2000 [Section III]
(See Article 5(3), above).

REASONABLE TIME
Length of criminal proceedings: *violation*.

STARACE - Italy (N° 34081/96)

*Judgment 27.4.2000 [Section II]

The case concerns the length of criminal proceedings brought against the applicant. The proceedings lasted 7 years, 7 months and 27 days.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicant 14 million lire (ITL) in respect of non-pecuniary damage, taking into account the fact that he had contributed to the length and the fact that the charge against him was ultimately declared time-barred. The Court also made an award in respect of costs.

REASONABLE TIME
Length of criminal proceedings: *violation*.

PEPE - Italy (N° 30132/97)
*Judgment 27.4.2000 [Section II]

The case concerns the length of criminal proceedings (4 years, 2 months and one day).
Conclusion: violation (unanimous).
Article 41 - The Court awarded the applicant 12 million lire (ITL) in respect of non-pecuniary damage.

REASONABLE TIME
Length of criminal proceedings against former Prime Minister: *communicated*.

ŠLEŽEVIČIUS - Lithuania (N° 55479/00)
[Section III]

The applicant is a former Prime Minister of Lithuania. In January 1996, criminal proceedings were instituted against him on suspicion of misappropriation of funds; he was charged in particular with abuse of office. The proceedings have been pending for four years and three months and to date there has been no first instance decision.
Communicated under Article 6(1).

ARTICLE 8

FAMILY LIFE
Taking of child into care and refusal to terminate care: *violation*.

K. and T. - Finland (N° 25702/94)
*Judgment 27.4.2000 [Section IV]
(See Appendix III).

FAMILY LIFE
Restrictions on access to child in care: *no violation*.

K. and T. - Finland (N° 25702/94)
*Judgment 27.4.2000 [Section IV]
(See Appendix III).

FAMILY LIFE
Restrictions on access to child in care: *no violation*.

L. - Finland/Finlande (N° 25651/94)
*Judgment 27.4.2000 [Section IV]
(See Appendix I).

FAMILY LIFE
Refusal to extend the residence permit of the applicant, a Turkish national who entered Germany in 1988: *communicated*.

TASKIN - Germany (N° 56132/00)
Decision 6.4.2000 [Section IV]

In 1988 the applicant, a Turkish national, entered Germany under a family reunification scheme to join her husband who had resided there since 1981 and had an unlimited residence permit. The applicant was granted a number of limited residence permits. She has two children born in Germany in 1989 and 1992 who have been authorised to stay until 2015. In 1999 the authorities refused to extend the applicant's residence permit pursuant to a provision of the Aliens Act which provides *inter alia* that a residence permit for the purposes of family reunification is granted only if the subsistence of the arriving family member is covered by the foreigner's own gainful employment, his or her assets or other resources of his or her own. The applicant's husband has been unemployed since 1998 and State financial assistance, such as the unemployment benefit he receives, does not constitute such subsistence, nor does the public financial support received by the applicant for living expenses and housing. The applicant appealed. The Administrative Court dismissed an application to stay the execution of the expulsion order against the applicant. It held that the decisive factor was that neither the applicant herself nor her husband was in a position to provide for the needs of the family through his or her own means, without resorting to public financial assistance. It further noted that there was no infringement of the protection of family life as it would be tolerable for the applicant and her husband to return to live in Turkey. In February 2000 the Administrative Court of Appeal upheld this decision. The Aliens Office announced that the applicant would be expelled if she did not leave by 8 March 2000. On 15 March 2000 the Federal

Constitutional Court rejected an appeal by the applicant. In September 1999 the applicant had received hospital treatment; the final medical report mentioned depression and motor function problems.
Communicated under Articles 3 and 8. (Application of Rule 39 of the Rules of Court).

FAMILY LIFE
Lengthy paternity proceedings: *communicated*.

MIKULIĆ - Croatia (N° 53176/99)
[Section IV]

The applicant is a child born out of wedlock. Her mother instituted proceedings in her own name and on behalf of her child to have the paternity of the father recognised. The alleged father having failed to appear despite being summoned, the court ruled against him. However, it later had to annul its own decision because under Croatian law it was not empowered to rule against a defendant who failed to appear in paternity proceedings. Although the alleged father was summoned again on several occasions, he still had not appeared three years after the proceedings had commenced. Moreover, he never underwent the DNA examinations ordered by the court.
Communicated under Article 6(1) (length of proceedings) and 8.

FAMILY LIFE
Decision of the German courts to order the return of the applicant's children to their mother in France and refusal of the French courts to order return of the children to the applicant in Germany: *inadmissible*.

TIEMANN - France and Germany (N° 47457/99 and N° 47458/99)
Decision 27.4.2000 [Section IV]

The applicant, a German national, and his wife, a French national, are the parents of two children born in 1990 and 1994. They separated in January 1997. Two sets of proceedings were then brought: one in Germany and the other in France. With respect to the German proceedings dealing with the granting of parental authority, in a decision of 18 February 1997, the Sulingen District Court re-established the joint exercise of parental authority after hearing the mother's assurances that she would not illegally leave Germany with her children. However, in July 1997 the mother removed her children from Germany without the father's knowledge to settle with them in France. As a result, the District Court granted the applicant the right to determine the children's place of residence, ordered the mother to return the children and declared the mother's removal of the children abroad to have been "wrongful" within the meaning of the Hague Convention of 25 October 1980. In March 1998 the applicant had the children abducted in France and had them brought back to him in Germany. The mother then made an application for the return of her children. This application was rejected by the District Court but allowed by the Celle Court of Appeal, which ordered the return of the children to their mother. That decision was quashed by the Federal Constitutional Court, which referred the case back to the same Court of Appeal. The Celle Court of Appeal then appointed an expert in order to determine to which parent it was appropriate to grant custody of the children and appointed a lawyer to protect the interests of the children. In his report the expert found that while both parents were capable of bringing up the children, after a detailed and reasoned analysis he favoured the return of the children to their mother. On 12 March 1999 the Celle Court of Appeal, after hearing the parents, the children and the expert, ordered the return of the children to their mother, her domicile being their habitual residence within the meaning of the Hague Convention. The Court of Appeal held that the applicant had not proved that returning the children to France would expose

them to physical or psychological harm or would place them in an intolerable position, factors which would prohibit such a return under the Hague Convention. Thus basing its judgment on the clear and apparently well-founded conclusions of the expert report, which made it unnecessary to grant the applicant's request for a second expert opinion, the statements made by the expert at the hearing and the submissions of the children's lawyer, the Court of Appeal concluded that the return of the children to their mother would be in their interests.
In March 1999 the Federal Constitutional Court declared an appeal lodged by the applicant against that decision inadmissible and the mother took the two children back to France. At the same time, proceedings commenced by the mother's petition for divorce in the Blois *tribunal de grande instance* were taking place in France. In August 1997 the judge with jurisdiction for family matters (JAF) permitted the wife to live apart from her husband, with her children at her domicile in France. On 25 September 1997 the JAF, on an application by the applicant and State Counsel, held that even though the removal of the children by the mother had been wrongful, a return could not be foreseen as such a return would result in a grave risk or an intolerable situation for the children within the meaning of the Hague Convention. The applicant appealed against that decision. In March 1998 the Orleans Court of Appeal, at the end of a detailed, reasoned decision which indicated the psychological harm and the intolerable situation for the children which could result from returning them to Germany, upheld the decision of 25 September 1997. The applicant lodged an appeal on points of law against that decision but the Court of Cassation rejected it in June 1999. A new application for the transfer of the children to Germany was filed by the applicant with the JAF, who dismissed it on 13 January 2000. However, given the easing of the family situation since the summer of 1999, the applicant was granted access and residence rights in respect of both children.
Inadmissible under Articles 8, 6(1) (fairness, independence and impartiality, reasonable time), 14 taken together with 6 and 8, 5 of Protocol No. 7: Both the German decision at issue, that is the Celle Court of Appeal's decision of 12 March 1999, and the decisions of the French courts fixing the children's place of residence as the home of their mother, had constituted interference with the applicant's right to respect for family life. Those decisions had been in accordance with the law since they had been based on the Hague Convention, which was applicable in the German and French legal systems. They had pursued the legitimate aim of protection of the rights and freedoms of others. As to whether the German decision was "necessary in a democratic society", the Court found that it had been based on both relevant and sufficient reasons - since the Celle Court of Appeal had based its decision that it was in the interests of the children to live with their mother on a large body of documentary and oral evidence - and that the Celle Court of Appeal had been in a better position than the European Court to strike a fair balance between the conflicting interests in the case. That decision had not been disproportionate in relation to the legitimate aim pursued, given, in particular, the margin of appreciation of the authorities over the matter. As for the matter of the decision-making process and in particular the complaint concerning the expert report, the Court found that there was no reason to believe that this process had not been fair or that the applicant had not been permitted to play a role which was sufficient for the protection of his interests. Likewise, as to whether the French decisions had been "necessary in a democratic society", it appeared that those decisions had been based on relevant and sufficient reasons, in particular, taking into account the seriousness of the conflict between the parents. In this way, taking into account the more favourable position of the French courts to determine the interests in this case and the margin of appreciation under Article 8(2), the decisions had not been disproportionate in relation to the legitimate aim pursued, in spite of the very long period of time taken to hear the appeal on points of law, which was explained by the fact that the case was a very sensitive and contentious one: manifestly ill-founded.

CORRESPONDENCE
Censorship of prisoner's correspondence: *violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]
(See Article 3, above).

ARTICLE 9

FREEDOM OF RELIGION
Exclusion of Jehovah's Witness from profession due to conviction for failing to enlist for military service: *violation*.

THLIMMENOS - Greece (N° 34369/97)
Judgment 6.4.2000 [Grand Chamber]

Facts: In 1983 the applicant, a Jehovah's Witness, was convicted by a court martial of insubordination for having refused to wear a military uniform at a time of general mobilisation. He served half of a four year prison sentence. In 1988 he came second out of sixty in a competitive examination for the appointment of twelve chartered accountants. However, the relevant board refused to appoint him, on the ground that he had been convicted of a felony. The applicant appealed to the Council of State, maintaining, *inter alia*, that his offence was less serious than a felony, but the appeal was ultimately rejected in June 1996.
Law: Government's preliminary objection - A claim by the applicant under a 1997 law which allowed those convicted of insubordination to apply for recognition as conscientious objectors and have their convictions deleted from their criminal record would have been examined by a committee advised by the Ministry of Defence, and neither it nor the Ministry was obliged to grant the request. Moreover, it was not possible to obtain reparation. The same considerations apply to a request for a pardon. In so far as it can be deemed that the Government wish to raise a victim issue, they did not do so at the admissibility stage and are therefore estopped.
Article 14 taken together with Article 9 - The applicant was treated differently on the ground of his status as a convicted person and such a difference does not generally come within the scope of Article 14 in so far as it relates to access to a particular profession, a right which is not guaranteed by the Convention. However, the applicant's complaint concerns rather the fact that no distinction was made between those convicted of offences committed exclusively because of their religious beliefs and those convicted of other offences, and the facts complained of do fall within the ambit of Article 9. The right not to be discriminated against is also violated when the State without objective and reasonable justification fails to treat differently persons whose situation is significantly, and Article 14 is therefore applicable. As a matter of principle, the State has a legitimate interest in excluding some offenders from the profession of chartered accountant, but a conviction for refusing on religious grounds to wear a military uniform cannot imply dishonesty or moral turpitude likely to undermine the ability to exercise that profession. The exclusion of the applicant on the ground that he was unfit for the profession was therefore not justified. He had in fact served a prison sentence and the further sanction was disproportionate. It did not pursue a legitimate aim and there was no objective and reasonable justification for not treating him differently from others convicted of a felony. While the board had no choice but to apply the law, it was the State's enactment of the legislation without appropriate exceptions which violated the applicant's rights.
Conclusion: violation (unanimously).
Article 9 taken alone - In view of the above conclusion, the Court considered it unnecessary to examine this complaint separately.
Conclusion: not necessary to examine (unanimously).

Article 6(1) (length of proceedings) - Although the profession at issue was regulated by administrative law, it was a liberal profession and the proceedings determined the applicant's civil rights. The proceedings lasted seven years, one month and twenty days and there were periods of inactivity which the Government explained only with reference to the court's case-load.
Conclusion: violation (unanimously).
Article 41 - The Court considered that as the applicant had not been unemployed during the period in question and had not shown that he would have earned more as a chartered accountant, no award should be made in respect of alleged pecuniary loss. It awarded the applicant six million drachmas (GRD) in respect of non-pecuniary loss and also made an award in respect of costs.

FREEDOM OF RELIGION
Prison sentence imposed on Jehovah's Witness for refusal to perform military service: *admissible*.

I.S. - Bulgaria (N° 32438/96)
Decision 6.4.2000 [Section IV]

The applicant, a Jehovah's Witness, refused to perform his military service because of his beliefs. The Criminal Code provides that citizens avoiding military service will be liable to imprisonment and criminal proceedings were brought against the applicant. The District Court found that Bulgarian law protected freedom of religion but did not exempt anyone from military service. It convicted him and sentenced him to one and half year's imprisonment. On appeal, the Regional Court suspended the sentence for three years. The applicant's petition on the merits was dismissed by the Supreme Court. The 1991 Constitution provides that substitute civilian service should be regulated by an Act of Parliament. However, at the time of the applicant's conviction no such Act had been adopted. It was eventually adopted at the end of 1998 and entered into force in January 1999.
Admissible under Article 9.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal of television authority to broadcast advertisement: *admissible*.

VgT VEREIN GEGEN TIERFABRIKEN - Switzerland (N° 24699/94)
Decision 6.4.2000 [Section II]

The applicant is an association for the protection of animals. It prepared a television advertisement denouncing the industrial rearing of pigs and encouraging people to eat less meat by showing successively wild pigs in a forest and pigs hemmed in behind bars in an industrial rearing farm. The applicant sent the videotape of the advertisement to the authority responsible for the broadcasting of commercials on Swiss national television, the Television Commercial Company, which replied that it would not broadcast it on account of its "clear political character". In order to be able to file an appeal, the applicant association asked the authority to issue a formal decision of refusal. The Television Commercial Company answered that it was not empowered to do so. The applicant association turned to the Independent Radio and Television Appeal Board, which declared that it could only deal with complaints about programmes that had already been broadcast. The complaint however was transferred to Federal Office of Communication, which informed the applicant association

that the Television Commercial Company was free in its choice of advertisements. The applicant association unsuccessfully filed a complaint with the Federal Department for Transport and Energy. Finally, the Federal Court rejected its administrative law appeal.
Admissible under 10, 13 and 14.

FREEDOM OF EXPRESSION
Conviction of elected local representatives belonging to minority for allegedly stirring up ethnic intolerance: *communicated*.

OSMANI and others - Former Yugoslav Republic of Macedonia (N° 50841/99)
Decision 6.4.2000 [Section II]

The applicants were elected local representatives of two cities, Gostivar and Tetovo. In accordance with decisions taken by the local councils of both towns, the flags of the Republics of Albania and Turkey were to be flown together with the Macedonian flag on the respective town halls' facades. The Constitutional Court ordered the Gostivar local authorities to remove the Albanian and Turkish flags from the front of the town hall by way of an interim measure. A few days later, the first applicant, who was mayor of Gostivar, held a meeting and allegedly called citizens of Albanian ethnic origin to prevent the Albanian flag from being removed. Inter-community tensions arose when citizens of Macedonian ethnic origin tried to remove the Albanian flag. The first applicant organised armed shifts to ensure that the Albanian flag would not be removed. The Constitutional Court later ordered the Tetovo local authorities by an interim measure to remove the Albanian and Turkish flags from the front of the town hall. The flags were eventually removed by the police, which led to further tensions in Gostivar. All the applicants were suspended from their public functions. The events received wide media coverage. The first and second applicants were detained for, respectively, almost three months and one month pending trial. The first applicant was found guilty on the three following counts: stirring up national, racial and religious hatred, disagreement and intolerance by a public official, organising resistance against a lawful decision or activity of a state organ and finally non-execution of a Constitutional Court decision by a public official. He was sentenced to 7 years' imprisonment. The other applicants were found guilty of non-execution of a Constitutional Court decision and sentenced to 2 years' imprisonment. The Constitutional Court dismissed the first applicant's complaint that his right to freedom of expression had been infringed. The applicants were eventually granted an amnesty and dispensed from serving their prison sentences.
Communicated under Article 10, 11 and 34 (victim).

FREEDOM OF EXPRESSION
Imposition of a heavy fine after publication of an allegedly defamatory open letter: *admissible*.

MARÔNEK - Slovakia (N° 32686/96)
Decision 27.4.2000 [Section II]

The applicant was allocated a flat by the local authorities. However, he could not move in since the flat was occupied by someone else, A. The applicant wrote an open letter to the Prime Minister in which he described the situation he was in as deplorable, referring notably to A.'s allegedly unlawful presence in the flat. A daily newspaper published an article in which the applicant's standpoint was presented almost as in the aforementioned letter. A. and his wife sued the applicant and the newspaper for defamation. The civil courts found in their favour and the applicant was ordered to apologise and to pay 100,000 Slovak korunas to each plaintiff.
Admissible under Article 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Membership of hunting association refused with the consequence of depriving of the right to hunt: *communicated*.

RUTKOWSKI - Poland (N° 30867/96)
[Section IV]

The applicant was refused membership of the Polish Hunting Association by several of its local and national organs, membership of the association being obligatory in order to be allowed to hunt. The applicant complained about the refusals of the Hunting Association to the Ministry of the Environment, which declined jurisdiction. The applicant also lodged appeals with the Supreme Administrative Court, which rejected them on the ground that decisions on membership the Hunting Association did not constitute administrative decisions and therefore did not open any right of appeal to that court. The Ministry of the Environment declined jurisdiction to render decisions concerning the refusals of national and regional organs of the Hunting Association. The applicant's subsequent appeal to the Supreme Administrative Court was to no avail, it being held that the Ministry of the Environment had rightly found that it was under no obligation to render an individual administrative decision concerning the applicant's membership of the Hunting Association and that there was no appeal against the Ministry's voluntary decision not to react following the request for review of lawfulness or setting aside the refusals of the Association as regards membership.
Communicated under Articles 6, 8, 11, 13 and 14.

ARTICLE 14

DISCRIMINATION (Article 9)
Obligation of State to treat differently persons convicted of offences committed because of their religious beliefs: *violation*.

THLIMMENOS - Greece (N° 34369/97)
Judgment 6.4.2000 [Grand Chamber]
(See Article 9, above).

DISCRIMINATION (SEX)
Allowance available only to widows: *friendly settlement*.

CORNWELL - United Kingdom (N° 36578/97)
LEARY - United Kingdom (N° 38890/97)
Judgments 25.4.2000 [Section III]

The applicants are widowers who were refused widows' benefits on the ground that such benefits were available only to widows and not to widowers.
The Government have reached a friendly settlement with each of the applicants whereby they will pay to the applicants, respectively, £11,904.60 and £12,226.20, being the sums to which they would have been entitled for the relevant period if they had been widows. Furthermore, the applicants will receive, on an extra-statutory basis, the amounts they would have received if they had been widows, until the entry into force of new legislation which will grant equal treatment to widowers.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
Exequatur of ecclesiastical court judgment despite alleged infringement of rights of defence: *applicant's opposition to proposed relinquishment*.

PELLEGRINI - Italy (Nº 30882/96)
[Section II]

The applicant was married in 1962 in a religious ceremony which was also valid in the eyes of the law. In 1987 she applied for judicial separation. The same year, she was summoned to appear before an ecclesiastical court. At the hearing, she was informed for the first time that he husband had applied for the marriage to be annulled on the grounds of consanguinity. In accordance with the Code of Canon Law, the court dealt with the matter under a summary procedure and decided to annul the marriage. The applicant appealed to the Rota Romana, arguing, *inter alia*, that her right to a fair hearing had been breached in that she had not been notified in advance of the reason for summoning her and, accordingly, had not been able either to prepare her case or to appoint a lawyer to assist her. The Rota upheld the decision annulling the marriage. Its judgment was referred to an Italian court of appeal for a declaration that it could be enforced under Italian law. The applicant requested the court of appeal to quash the Rota's judgment on the ground that the ecclesiastical courts had breached the right to a fair hearing. In a judgment of 1991, the court of appeal declared the Rota's judgment enforceable. The applicant's appeal on points of law was equally unsuccessful.

The applicant having indicated her opposition to the proposed relinquishment of jurisdiction in favour of the Grand Chamber, the Section will continue its examination of the case.

ARTICLE 33

INTER-STATE COMPLAINT

Ill-treatment of a foreign national in police custody: *friendly settlement*.

DENMARK - TURKEY (Nº 34382/97)
Judgment 5.4.2000 [Section I]
(See Article 3, above).

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDIES
Rejection as out of time of an *amparo* appeal contesting a procedure in which the applicants were not parties: *inadmissible*.

BEN SALAH ADRAQUI and others - Spain (N° 45023/98)
Decision 27.4.00 [Section IV]

In August 1987 the husband of the first applicant and father of the other applicants died after being run over by a motor vehicle. The second applicant, who was the victim's son, was questioned but his address in France, although given to the road traffic police, was not included in the deposition received by the judge, which only stated that he had no fixed address in Spain. The criminal investigation in respect of the driver of the vehicle, which initially opened before the Fuengirola investigating judge, was continued before the local magistrate as the offence had been reclassified as a summary offence. On 22 January 1988 the magistrate set the case down for trial on 18 March 1988. The driver of the car was acquitted in a judgment of 21 March 1988. The applicants, who were resident in France, had no knowledge of the summons to attend the hearing or of the judgment itself, these having been published only in the *Official Gazette* of the province of Malaga. In November 1990, not having had any news of the trial, the applicants made an application to join the proceedings, among other requests. That application was rejected by the magistrate on the ground that the proceedings had been closed on 26 October 1988, since the judgment delivered on 21 March 1988 had become final in the interim as no appeal had been entered. In a decision of 1 February 1991, served on 6 February 1991, the magistrate dismissed a request by the applicants that he reconsider his decision (*recurso de reforma*), but nevertheless informed them of all the stages of the proceedings leading up to the decision to close the file after the judgment delivered on 21 March 1988 had become final on 26 October 1988. He also dismissed an appeal lodged by the applicants against the decision of 1 February 1991, as the law did not provide for such a remedy, and ordered that copies of the documents requested by the applicants be sent to them. Despite three requests for execution of that decision, the applicants did not receive copies of the court file until 8 November 1994. On 11 November 1994 an application by the applicants to have the part of the proceedings after

the case had been set down for trial declared void, was declared inadmissible. In a judgment of 22 January 1995, even though State counsel had made submissions in favour of the applicants, the Constitutional Court rejected a *recurso de amparo* lodged by the applicants on 2 December 1994 as being out of time. It held that the *recurso de amparo* should have been lodged within twenty days from service of the decision of 1 February 1991, in accordance with its established case-law to the effect that the time allowed for lodging a *recurso de amparo* began when the persons who should have appeared as parties to proceedings had sufficient knowledge of the existence and material content of the judgment which they sought to challenge. In the instant case they had obtained that information on 6 February 1991, when they were served with the decision of 1 February 1991. The applicants, although assisted by a lawyer, had not lodged the *recurso de amparo* until 2 December 1994.
Inadmissible under Article 6 (1) (non-exhaustion): Referring to the grounds given by the Constitutional Court for its decision to dismiss the *recurso de amparo* as being out of time, the Court held that the point at which time began to run could not be left to the free choice of applicants who would thus have great latitude to put off exercise of the right to commence constitutional proceedings indefinitely. Under Article 35 of the Convention the Court could only deal with a matter after all domestic remedies had been exhausted. According to the established case-law of the Convention institutions that requirement was not satisfied where a remedy had been declared inadmissible because an applicant had failed to comply with a legal formality. In this case, the *recurso de amparo* lodged with the Constitutional Court had been rejected as being out of time, the applicants having let the time allowed expire while using remedies which were not relevant: non-exhaustion of domestic remedies.

ARTICLE 41

NON-PECUNIARY DAMAGE
Question whether a legal person can claim non-pecuniary damage: *non-pecuniary damage awarded*.

COMINGERSOLL S.A. - Portugal (N° 35382/97)
Judgment 6.4.2000 [Grand Chamber]
(See Article 6(1), 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. 14):

NEWS VERLAGS GmbH & CoKG - Austria (Nº 31457/96)
Judgment 11.1.2000 [Section I]

PALMIGIANO - Italy (Nº 37507/97)
Judgment 11.1.2000 [Section II]

AGGA - Greece (Nº 37439/97)
Judgment 25.1.2000 [Section II]

PETIX - Italy (Nº 40923/98)
L. s.r.l. - Italy (Nº 40924/98)
D'ONOFRIO - Italy (Nº 40925/98)
F. - Italy (Nº 40926/98)
R. - Italy (Nº 40927/98)
BATTISTELLI - Italy (Nº 40928/98)
SCARANO - Italy (Nº 40929/98)
GIORGIO - Italy (Nº 40930/98)
M. - Italy (Nº 40931/98)
MORESE - Italy (Nº 40932/98)
TARSIA - Italy (Nº 40933/98)
S. - Italy (Nº 40934/98)
VINCI - Italy (Nº 40935/98)
CECERE - Italy (Nº 40936/98)
BINELIS and NANNI - Italy (Nº 40937/98)
MANCA - Italy (Nº 40938/98)
M. - Italy (Nº 40940/98)
GLEBE VISCONTI - Italy (Nº 40941/98)
GIANNETTI and DE LISI - Italy (Nº 40942/98)
SALVATORI and GARDIN - Italy (Nº 40943/98)
ADAMO - Italy (Nº 40944/98)
SIEGA and 7 others - Italy (Nº 40945/98)
TRIPODI - Italy (Nº 40946/98)
ABBATE - Italy (Nº 40947/98)
RONZULLI - Italy (Nº 40948/98)
NARDONE - Italy (Nº 40949/98)
LIDDO and BATTETA - Italy (Nº 40950/98)
CAPPELLARO - Italy (Nº 40951/98)
Judgments 25.1.2000 [Section III]

BLAISOT - France (Nº 33207/96)
Judgment 25.1.2000 [Section III]

RODRIGUES CAROLINO - Portugal (Nº 36666/97)
Judgment 11.1.2000 [Section IV]

SEIDEL - France (Nº 31430/96)
Judgment 11.1.2000 [Section IV]

MIRAGALL ESCOLANO and others - Spain
(N° 38366/97, 38688/97, 40777/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98)
Judgment 25.1.2000 [Section IV]

Article 44(2)(c)

On 4 April 2000 the Panel of the Grand Chamber rejected a request for revision of the following judgment, which has consequently become final:

DE BLASIIS - Italy (Nº 33969/96)
Judgment 14.12.99 [Section II]

The case concerns the length of criminal proceedings (6 years, 2 months, 8 days) (*violation*).

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Disenfranchisement of suspected *mafioso*: *violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]
(See Article 3, above).

ARTICLE 2 OF PROTOCOL No. 4

FREEDOM OF MOVEMENT
Restrictions on movement of suspected *mafioso*: *violation*.

LABITA - Italy (N° 26772/95)
Judgment 6.4.2000 [Grand Chamber]
(See Article 3, above).

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Impossibility for a person convicted *in absentia* to lodge a cassation appeal directly: *inadmissible*.

HASER - Switzerland (N° 33050/96)
Decision 27.4.2000 [Section II] (MF/MI)
(See Article 6(1), above).

APPENDIX I

Case of L. v. Finland - Extract from press release

Facts: The case concerned an application brought by a father and grandfather, Finnish nationals. The identity of the applicants is confidential.
The applicant father has two daughters, born in 1985 and 1991. The children's mother was hospitalised several times after the birth of the second child on grounds relating to her mental health. In January 1992 the children were placed in provisional public care on suspicion that they had been and would again be sexually abused. The Social Welfare Board restricted the parents' access to the older daughter to two weekly visits at the hospital and did not disclose the younger daughter's whereabouts. The parents appealed to the County Administrative Court.
The psychiatric investigation of the older daughter did not result in any finding that she had been sexually abused. She was later placed in the same substitute home as her sister. In June 1992 the parents were allowed to meet their children for the first time after their placement in the substitute home.
In March 1992 the Social Welfare Board decided to place the children in public care as the parents were incapable of providing them with the stimulation necessary for their growth and development or of ensuring their basic security. The parents appealed first to the County Administrative Court, which rejected their appeals without holding an oral hearing, and then the Supreme Administrative Court, which rejected the appeal.
Between 1992 and 1999, access restrictions allowing the father to meet with his children only a few times a year were maintained by the Social Welfare Board; the grandparents, who were considered to have been disturbing the children's life in their substitute family as well as the older daughter's schooling, were denied access altogether.
The applicants appealed again and requested an oral hearing to draw up a public care plan to reunite the family. The County Administrative Court rejected their appeals, without holding an oral hearing requested by both applicants. No appeal lay against these decisions.
In the beginning of 1994 the parents moved apart and divorced in 1996.
In September 1994 the applicant father's request to revoke the public care orders was refused by the Board. The applicant grandfather appealed against the access prohibition. The court rejected the applicants' appeals without holding an oral hearing. The Supreme Administrative Court refused the applicant father's request for an oral hearing and upheld the County Administrative Court's decision. The applicants' appeals concerning the Board's decisions of 1995 and 1996 were rejected by the Supreme Administrative Court, without holding an oral hearing.
The applicant father's older daughter was psychologically examined again in 1996. According to the doctor's statement, she clearly expressed that she did not wish to meet her father as often as the visits were taking place at that time and that she was not willing to meet her grandparents at all. According to the statement, the examination also confirmed the suspicions of sexual abuse. In 1997 the applicants complained to the National Authority for Medicolegal Affairs, concerning the examinations carried out by the child psychiatrist and psychologist in the hospital. The complaint was found to be ill founded.
In 1998 access restrictions were continued on the ground that both applicants had sexually abused the older girl. They have not appealed.
The applicants complained that their right to family life guaranteed under Article 8 of the Convention had been violated as the measures taken by the authorities had not been aimed at effectively reuniting the family. They also complained that their right to a fair trial guaranteed under Article 6 § 1 of the Convention had been violated as the County Administrative Court refused to hold an oral hearing. They further complained that they had been deprived of an effective remedy guaranteed to them under Article 13.
Law: Articles 8 and 13 - The Court examined the complaint under Article 8 together with the complaint concerning Article 13. The Court recalled that the mutual enjoyment of each

other's company by parent and child, as well as grandparent and child, constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right to respect for family life as protected by Article 8. The impugned measures, as was not disputed, evidently amounted to interference with this right, which constituted a violation of Article 8, unless they were "in accordance with the law", pursued a legitimate aim and could be regarded as "necessary in a democratic society".
In the present case the Court found that the interference was "in accordance with the law" and that the relevant Finnish law was clearly aimed at protecting "health and morals" and "the rights and freedoms" of children. The Court was satisfied that the children were taken into care for reasons which were not only relevant but "necessary in a democratic society", considering that the national authorities acted within the margin of appreciation afforded to them. The Court accepted also that the appeals open to the applicants before the County Administrative Court and the Supreme Administrative Court satisfied the conditions of Article 13 (right to an effective remedy).
The Court recalled that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances allowed, with the ultimate aim of reuniting the natural parent and child. The Court found that the question whether the continuation of care measures was justified had to be assessed in the light of the circumstances and their development since 1992. In this regard it was observed that the applicant father and the mother of the children had separated before the request was made and so no longer constituted a family. The rights and interests of the mother had also to be taken into account. In those circumstances the national authorities could, in the exercise of their discretion, consider the maintenance of the care order to be in the best interests of the children.
The Court noted that while the applicant father's access has been considerably restricted, he has been able to meet the children regularly. In the circumstances of the case, the decisions concerning his access were regarded as satisfying the principle of proportionality and therefore as necessary in a democratic society. The applicant grandfather had been suspected of the sexual abuse of the older child and both children had later indicated that they did not wish to meet him at all. The Court, therefore, accepted that the national authorities could reasonably consider the restriction to be necessary in a democratic society. The Court was also satisfied that the appeals which were open to the applicants before the County Administrative Court met the conditions of Article 13 of the Convention. The Court therefore concluded that the measures in question did not constitute a violation of Articles 8 and 13.
Conclusion: no violation (unanimously).
Article 6 § 1 - The Court first recalled that the instrument of ratification of the Convention deposited by the Finnish Government on 10 May 1990 contained a reservation according to which Finland could not guarantee a right to an oral hearing before certain courts. The reservation was, however, withdrawn insofar as administrative courts were concerned as from 1 December 1996, i.e. before the proceedings leading to the decision of the County Administrative Court of 17 March 1997 had been instituted. In this respect the Court noted that at no stage of the previous proceedings had there been an oral hearing. In view of that, the nature of the issues and of what was at stake for the applicants, the Court was not satisfied that there were exceptional circumstances which would have justified dispensing with a hearing.
The Court therefore concluded that there has been a violation of Article 6 § 1 of the Convention on account of the lack of an oral hearing before the County Administrative Court in the proceedings ending on 17 March 1997.
Conclusion: violation (unanimously).
Article 41 - The applicants claimed that they had suffered non-pecuniary loss resulting from a violation of Article 8, but had not sought any compensation for the alleged violations of Articles 6 and 13. The Court noted that an award of just satisfaction could only be based on the fact that the applicants did not have the benefit of the right to an oral hearing. The Court therefore concluded that a finding of a violation of Article 6 § 1, constituted in itself sufficient just satisfaction for the applicants' alleged non-pecuniary damage. Having considered the

costs and expenses claimed by the applicants, they were awarded FIM 35,000 less the amount received for legal fees from the Council of Europe in legal aid.

APPENDIX II

Case of Kuopila v. Finland -Extract from press release

Facts: The applicant, Kaija Kuopila, a Finnish national, was born in 1927 and lives in Uusikaupunki (Finland).
The applicant is an art dealer. At the beginning of November 1990, she obtained through a transfer of a sales commission a painting that was to be sold. A statement of 1955, according to which the painting was an authentic work of Helene Schjerfbeck (a famous Finnish artist) was attached on the back of the painting. The applicant sold the painting but apparently did not pay the amount due to the original owner of the painting.
The applicant was charged with aggravated fraud and aggravated embezzlement before the District Court of Hyvinkää in autumn 1991. Later she was accused of four additional counts of embezzlement and fraud. In February 1992, the applicant who had doubts as to whether the painting was authentic, requested the Court to authorise and order the examination of its authenticity. Her request was refused. In May 1992 the District Court convicted the applicant as charged and sentenced her to two years and six months' imprisonment.
In July 1992 the applicant, having appealed to the Court of Appeal, requested the Prosecutor to order an investigation into the authenticity of the painting. The police obtained from the National Gallery of Finland a statement according to which the painting was not authentic. In August 1993 the Prosecutor submitted the supplementary police report, including the above-mentioned statement, to the Court of Appeal. In the accompanying letter the Prosecutor, finding that the non-authenticity of the painting did not essentially affect the assessment of the case, asked the Court of Appeal to take the report into account. On 14 September 1993, the Court of Appeal upheld the judgment of the District Court without inviting the applicant to submit comments or holding an oral hearing. The court did not make any separate decision as to whether the supplementary police report had been taken into account as evidence or not.
The applicant found out about the above-mentioned statement in the autumn of 1993. On 14 November 1993 the applicant requested leave to appeal to the Supreme Court. She referred to the fresh statement and maintained that if this information had been available in the lower courts the outcome of the case would have been a different one. On 24 May 1994 the Supreme Court refused the applicant leave to appeal.
On 22 July 1996, the Deputy Parliamentary Ombudsman found that the Prosecutor, by failing to communicate the supplementary police report to the applicant or her representative, had shown negligence in respect of his official duties. As a result, the Deputy Ombudsman addressed a critical remark to the Prosecutor.
The applicant complained that her right to a fair trial as guaranteed under Article 6 of the European Convention on Human Rights had been violated as vital evidence, i.e. the statement form the National Gallery of Finland, was withheld from her.
Law: Article 6 of the Convention - The Court noted that the supplementary police report, including the above-mentioned statement, was submitted to the Court of Appeal by the Prosecutor only about a month before it delivered its judgment. It did not refer to the fresh report in its judgment. Whether the Court of Appeal put any emphasis on the report in its assessment of the case is not known. The Court found, however, that this was not decisive from the point of view of the applicant's right to adversarial proceedings. The Court recalled that under the principle of equality of arms, as a feature of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his or her case in conditions that do not place him or her at a disadvantage vis-à-vis his or her opponent. The Court therefore concluded that there has been a violation of Article 6 § 1 of the Convention.
Conclusion: violation (unanimously).

Article 41 of the Convention - The applicant claimed that she had suffered non-pecuniary loss of FIM 200,000 as a result of the violation of Article 6 of the Convention as, according to her, her sentence would have been six months shorter if the fact that the painting was fake had been taken into account. Since the Court cannot speculate about the outcome of the trial had it been in conformity with Article 6, an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of guarantees of that Article. The Court, having made its assessment on an equitable basis, awarded the applicant FIM 15,000 in respect of non-pecuniary damage, and FIM 30,000 in respect of the applicant's legal fees and expenses less the amount already received for legal fees from the Council of Europe by way of legal aid.

APPENDIX III

Case of K. and T. v. Finland -Extract from press release

Facts: The case concerned an application brought by a mother and her cohabitant (the applicant father), Finnish nationals. The identity of the applicants is confidential.
The applicant mother has four children; an older daughter, son (M.), younger daughter and the youngest daughter (J.). The children were born in 1986, 1988, 1993 and 1995 respectively. The applicant father is the father of the two youngest ones, but not of the older ones. The older daughter has lived with her father since 1992.
The applicant mother has been hospitalised on several occasions, having been diagnosed as suffering from schizophrenia.
In May 1993 the applicant mother's son was placed in a children's home by the Social Welfare Board's decision. This was to be regarded as a short-term support measure as the mother was not at that time able to care for him.
In June 1993 the applicant mother's third child, a daughter, was born and immediately placed in provisional public care with reference to the mother's unstable mental state and the family's long-lasting difficulties. A few days later the applicant mother's son was also placed in public care for the same reasons as his sister. The applicant mother's access to her children was prohibited by the Social Welfare Board's decision of the same day. The mother was hospitalised the following day for eight days on account of psychosis.
In July 1993 the applicant father moved out of the applicant mother's home, allegedly having been told by the social welfare officials that he had to break off his relationship with the applicant mother if he wished to keep his daughter. He later moved back.
Both public care orders were referred by the Board to the County Administrative Court for confirmation. The Court confirmed the care orders, without holding an oral hearing. The Supreme Administrative Court later rejected the applicants' appeal.
The access restriction was prolonged by the Social Welfare Board in September 1993 and the children were placed in a foster home in 1994. Social welfare officials allegedly told both the applicants and the foster parents that the children's placement would last for years. The applicants proposed that the children's public care be implemented in the home of relatives. The Social Welfare Board drew up a care plan concerning the implementation of the public care, allegedly ignoring the applicants' alternative care plan. One month later the applicants requested that the Board should draw up a public care plan aiming at the reunification of the family. They also objected to the allegedly unlawful disclosure of a large number of documents of a confidential character.
In May 1994 both applicants' access to the children was restricted to one monthly visit to the foster home, where access was to take place under supervision during three hours. The grounds for the public care were considered to still exist. In October 1994 the County Administrative Court upheld the access restriction after an oral hearing. The court dismissed the request for cost-free proceedings made by the applicants since the relevant legislation did not cover disputes concerning access restrictions.

In December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Meetings between the applicants and the children were nevertheless only authorised for three hours once a month on premises chosen by the Board. The meetings would also be supervised. The Board confirmed the decision in January 1995. The applicants appealed.
In May 1994 the applicants had also requested that the care order be revoked. The request was rejected by the Board in March 1995. The applicants appealed, requesting to be granted cost-free proceedings and afforded free legal representation. They also requested an oral hearing. The County Administrative Court granted the applicants cost-free proceedings and appointed a representative. No hearing was held. The care plan was considered to have entailed an access restriction and the matter was referred back to the Board. In the light of the court's decision the Acting Social Director formally restricted the applicants' access to the children to one meeting a month. This decision was confirmed by the Board and the applicants appealed again.
A further child was born to the applicants in April 1995. She has not been taken into care.
The rest of the appeal pending before the County Administrative Court when part of the matter was referred back to the Board was rejected by the County Administrative Court in September 1995, without a hearing. In November 1995 the County Administrative Court rejected the applicants' appeal against the access restriction confirmed in August 1995 (the matter which had been referred back to the Board).
In May 1996 social welfare officials revised the public care plan, proposing that the children meet the applicants once a month in the premises of a school at the children's place of residence. The care plan was again revised in October. In June the Social Director continued both applicants' access restriction. One of the foster parents was also ordered to be present at the time of the access, in addition to a person appointed by the Board. The decision was confirmed by the Board. The applicants appealed to the County Administrative Court, requesting an oral hearing. The applicants' appeal was rejected by the County Administrative Court, which had obtained a statement from a child psychiatrist, in June 1997 without an oral hearing. The care plan was revised in April 1997 and December 1998 as before.
The applicants' access restriction was continued in November 1997. The applicants did not appeal. The restriction was prolonged by the Social Director in December 1998, to last until the end of 2000. The visits are to take place under supervision in the premises of a school at the children's place of residence. However, one of the visits is to take place at the applicants' home in the presence of the substitute parents. The Social Director considered, *inter alia*, that the reunification of the family is not in sight as the substitute family is now the children's actual home. The applicants' have appealed against the Board's decision which confirmed the Social Director's decision.
The applicants complained that their right to respect for their family life guaranteed under Article 8 of the European Convention on Human Rights had been violated, and that they had been deprived of an effective remedy under Article 13 of the Convention.
Law: Article 8 of the Convention - It was undisputed before the Court that impugned measures had a basis in national law and, to that extent, the Court was satisfied that such was the case. In the Court's view the relevant Finnish law clearly aimed at protecting "health and morals" and "the rights and freedoms" of children. There was nothing to suggest that it was applied for any other purpose in the present case.
The Court then examined whether the impugned measures were "necessary in a democratic society" in the light of the case as a whole. In so far as the taking into care was concerned, the Court found that the reasons given and the methods used were arbitrary and unjustified in the circumstances. The Court noted that the applicants were not given any chance of even beginning their family life with the new-born J. and that the care order concerning M. could not be reasonably justified in a situation in which the child was already in a safe environment and faced none of the risks mentioned in the relevant law as a precondition for the care order. Despite the margin of appreciation enjoyed by the national authorities in assessing the necessity of taking a child into care, the Court considered, in the light of the case as a whole, that the reasons adduced to justify the care orders were not sufficient and that the methods

used in implementing those decisions were excessive. The Court therefore concluded that the taking into public care constituted a violation of Article 8 of the Convention.
As regards the authorities' refusal to terminate the care, the Court noted that it is not its task to substitute its view for that of the national authorities as to what should have been done. Nor did the Court suggest that public care should in all circumstances be a strictly temporary measure. Even so, in the circumstances of the case, it appeared that there was a lack of any effort seriously to consider the termination of public care, despite evidence of an improvement in the situation which had led to the care orders, and that this amounted to such a lack of fair balance between the various interests involved as to constitute a violation of Article 8 of the Convention. Therefore the Court concluded that there had been a violation of that Article on this ground also.
In so far as the access restrictions and prohibitions were concerned, the Court considered that it was not necessary to examine the access restrictions as a separate issue, except in so far as the present situation was concerned. In that respect, the Court accepted that the national authorities may consider such restrictions necessary in the light of the interests of the children. Therefore the Court concluded that there had been no violation of Article 8 of the Convention in that respect.
Conclusion: violation (unanimously).
Article 13 of the Convention - The Court noted that the applicants could apply to administrative courts against the care order, refusal to terminate the care and various access restrictions. There was no indication that the Finnish administrative courts would not, as a general matter, fulfil the requirements of Article 13. Therefore, the Court considered that there had been no violation of Article 13 of the Convention.
Conclusion: no violation (unanimously).
Article 41 of the Convention - The applicants claimed that they had suffered non-pecuniary loss resulting from a violation of Article 8. Taking into account the obvious frustration caused to the applicants by the breach of their right to their family life, the Court, making its evaluation on equitable basis, awarded the applicants 40,000 Finnish marks (FIM) each, i.e. FIM 80,000 in total, as just satisfaction for the applicants' non-pecuniary damage in respect of the violation of Article 8 of the Convention. Having considered the costs and expenses claimed by the applicants, they were awarded FIM 5,190 less the amount received for legal fees from the Council of Europe in legal aid.
Judge Pellonpää expressed a concurring opinion which is annexed to the judgment.

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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