CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 9
on the case-law of the Court
August 1999

Statistical information

		August	1999
I. Judgments delivered			
Grand Chamber		1	49
Chamber I		0	2
Chamber II		0	4
Chamber III		0	2
Chamber IV		0	10
Total		**1**	**67**
II. Applications declared admissible			
Section I		33	72
Section II		5	234
Section III		19	120
Section IV		1	50
Total		**58**	**476**
III. Applications declared inadmissible			
Section I	- Chamber	7	42
	- Committee	14	297
Section II	- Chamber	6	82
	- Committee	47	288
Section III	- Chamber	9	83
	- Committee	30	333
Section IV	- Chamber	1	82
	- Committee	0	584
Total		**114**	**1791**
IV. Applications struck off			
Section I	- Chamber	0	5
	- Committee	0	0
Section II	- Chamber	0	4
	- Committee	0	3
Section III	- Chamber	10	21
	- Committee	1	4
Section IV	- Chamber	0	9
	- Committee	0	10
Total		**11**	**56**
Total number of decisions[1]		**183**	**2323**
V. Applications communicated			
Section I		5	238
Section II		12	198
Section III		18	250
Section IV		1	145
Total number of applications communicated		**36**	**831**

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

ARTICLE 2

EXTRADITION
Extradition to Republic of Uzbekistan of political dissidents risking death: *admissible.*

MAMATKULOV - Turkey (Nº 46827/99)
ABDURASULOVIÇ - Turkey (Nº 46951/99)
Decision 31.8.99 [Section I]

The applicants, both Uzbek nationals, were arrested in Turkey. They were wanted in their country of origin for the attempted assassination of the President of the Republic. The Uzbek authorities made a request for their extradition to which the Turkish authorities acceded. However, the applicants maintained that they faced the death penalty if extradited owing to the repressive policy of the Republic of Uzbekistan against political dissidents. They have produced various documents in support of their allegations. The applicants were nonetheless extradited and have since been found guilty and sentenced to terms of imprisonment by the High Court of the Republic of Uzbekistan. The Section has decided to join the two applications.
Admissible under Articles 2 and 3.

EXPULSION
Deportation to Iran: *admissible.*

G.H.H. and others - Turkey (Nº 43258/98)
Decision 31.8.99 [Section I]

The applicants, G.H.H, his wife and son, are Iranian nationals living in Turkey. The two first applicants were anti-government activists in Iran in the late 1970s and early 1980s. The first applicant then started writing articles for a dissident newsletter, as well as controversial poems. He claims that he was detained on several occasions because of his political views and was placed under the strict surveillance of the Iranian intelligence services. He also maintains that in 1996 he was severely beaten by the Iranian security forces while in detention. He was released on bail but ordered to report back to the authorities, which he never did. A number of persons belonging to same dissident circles were arrested, murdered or disappeared in unclear circumstances around the same period. In 1997 the applicant managed to flee to Turkey, where his wife and son joined him. He was twice refused refugee status by the UNHCR, before eventually obtaining it in 1999. In the meantime, the Turkish authorities issued a deportation order against the applicants, no stay of execution being provided for pending the outcome of an appeal against such an order. Moreover, the Ministry of Foreign Affairs never informed them that it had rejected their requests for asylum, leaving them no chance to appeal. The Ministry, however, finally allowed them to stay, for humanitarian reasons, on a temporary basis. In March 1999, the competent authorities were asked to extend their temporary stay in Turkey.
Admissible under Article 2, 3, 8 and 13.

ARTICLE 3

INHUMAN TREATMENT
Applicants allegedly beaten up by prison staff after refusing to submit to search: *admissible*.

SATIK and others - Turkey (Nº 32866/96)
Decision 31.8.99 [Section III]

The applicants allege that they were severely beaten by prison staff and gendarmes following their refusal to submit to a search procedure, which they considered arbitrary, before being taken to court. The Government disputed this version of the incident. They maintained that more than 20 prisoners refused to be searched and linked themselves together as they proceeded towards the prison exit. While going down some stairs that led to the exit, they fell on top of one another and hit themselves on the banister and the walls.
Admissible under Articles 2 and 3.

ARTICLE 5

Article 5(1)(c)

PROCEDURE PRESCRIBED BY LAW
Clerical error in custody order: *no violation*.

DOUIYEB - Netherlands (Nº 31464/96)
Judgment 4.8.99 [Grand Chamber]

Facts: A warrant for the applicant's arrest was issued on suspicion of contravening Article 250*ter* of the Criminal Code, which prohibits trafficking in persons. The applicant was duly arrested at his home by police officers who, according to the report, showed the warrant to the applicant. After the applicant had been questioned by the police, who had informed him of the subject matter of the questioning, the assistant public prosecutor ordered his detention. The custody order referred to Article 250 of the Criminal Code and mentioned "living off immoral earnings". The following day, the applicant was brought before an investigating judge. The prosecution requested the applicant's detention on remand, referring to Article 250*ter* of the Criminal Code. The applicant's lawyer requested the applicant's release, arguing that custody had been ordered on the basis of Article 250 of the Criminal Code, which refers to an offence for which, in his submission, custody could not be ordered. The investigating judge, finding that the custody had not been unlawful, ordered the applicant's detention on remand. The written order mentioned Article 250*ter* of the Criminal Code. The Regional Court later extended the detention, although the applicant was nevertheless released due to lack of space. He was subsequently acquitted.
Law: Article 5(1)(c): The Court observed that under Dutch law, pre-trial detention may be ordered in case of suspicion of an offence carrying a punishment of 4 years' imprisonment or more and the offences set out in Article 250*ter* and Article 250 of the Criminal Code can attract a sentence of that duration. Consequently, the Court considered that both provisions in principle offereed sufficient scope for detention in police custody. Noting the contents of the various documents relating to the proceedings (which had not been made available to the Commission), all of which mentioned Article 250*ter*, the Court found it established that the reference to Article 250 in the custody order was the result of a mere clerical error and considered that the applicant must have or ought to have been aware of this. It recognised

that the reasons given by the investigating judge in rejecting the submissions of the applicant's lawyer did not contain any express acknowledgement that an error had occurred, but considered that when the matter was placed in its factual context the investigating judge had to be taken as having implicitly rejected the argument. Consequently, the Court concluded that the applicant's complaint was unfounded.
Conclusion: No violation (unanimous).
Article 5(4): The Court noted that the applicant had been brought before an investigating judge, who examined the lawfulness of his detention in police custody, his request for release and the prosecution's request for an extension of the detention. The applicant had therefore had access to proceedings by which the lawfulness of his detention in police custody was decided speedily by a court.
Conclusion: No violation (unanimous).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Alleged failure of judge to examine lawfulness of police custody: *no violation*.

DOUIYEB - Netherlands (Nº 31464/96)
Judgment 4.8.99 [Grand Chamber]
(See above).

REVIEW OF LAWFULNESS OF DETENTION
Applicant deprived of possibility of appealing against detention order: *admissible*.

SHISHKOV - Bulgaria (Nº 38822/97)
Decision 31.8.99 [Section IV]

The applicant was arrested in August 1997 on suspicion of having stolen jewellery and a large amount of money. His act was characterised, pursuant to the Criminal Code, as a serious crime. Shortly after being arrested he admitted the theft, directed the police to the persons who had bought the stolen jewellery and part of the money was returned. He was brought the next day before an assistant investigator who officially charged him and decided that he should be remanded in custody. The order, which was approved by a prosecutor the same day, relied on the danger of his absconding, or committing other crimes, without referring to any further details. In September 1997, the applicant's lawyer lodged an appeal against the detention order. It was rejected on the ground that it had not been lodged within the prescribed time-limit, although the applicant's lawyer justified the lateness of the appeal by the fact that he had been refused access to the case-file. As a result, no further appeal could be made unless a change of circumstances occurred. In February 1998, he filed another appeal against his detention on remand. The District Court refused to release him, on the ground that the seriousness of the crime he was accused of required, pursuant to the Criminal Code of Procedure, that he be kept on remand. No mention was made as to whether there had been a change of circumstances since the first appeal. However, he was eventually released on bail in April 1998 on the grounds that, *inter alia,* he no longer risked to hinder justice since the investigation had been completed and that there was no danger of his absconding in view of his stable family situation. The case is however still pending before the District Court.
Admissible under 5(1)(c), (3) and (4).

ARTICLE 6

Article 6(2)

PRESUMPTION OF INNOCENCE
Test of probability of guilt applied in determining entitlement to compensation following acquittal: *admissible*.

SIGURÐADÓTTIR - Iceland (Nº 32451/96)
Decision 24.8.99 [Section 1]

The applicant and her cohabitee, P., were arrested in the course of an investigation in a drug-related case. P. was kept in custody but the applicant was released the next day. She was interrogated again at a later stage and arrested without any court order. The order remanding her in custody was issued the following day. She was released a month afterwards, the detention order having been prolonged. The Supreme Court eventually found P. guilty of drug trafficking and sentenced him to imprisonment. The public prosecutor then issued an indictment against the applicant, on the ground that she had given money to P. knowing that he was importing drugs and that he could get her some. However, she was acquitted and she subsequently decided to claim compensation for her arrest and detention. Her claims were rejected. She appealed to the Supreme Court, which upheld the decision. The test applied was whether it was more likely that the applicant was guilty than innocent.
Admissible under Article 6(2).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Statements made by victims to the police taken as evidence for the trial: *inadmissible*.

VERDAM - Netherlands (Nº 35253/97)
Decision 31.8.99 [Section I]

The applicant was arrested on suspicion of having raped three prostitutes, A, B and C. A fourth,D, reported to the police after the applicant's arrest that she had also been raped. D made her statement in the presence of the applicant's lawyer who was able to question her. B and D recognised the applicant as the man who had raped them from a series of photographs shown to them by the police in the presence of the lawyer. C also recognised the applicant from the photographs but his lawyer was not there at the time. A DNA examination carried out during the investigation did not exclude his being guilty. He was eventually convicted of rape and attempted rape and sentenced to six years' imprisonment. He lodged an appeal, requesting that B, C and D be heard as witnesses, which the court agreed to. However, the proceedings were adjourned several times, the witnesses having failed to turn up at the hearings. The police, at the court's request, attempted to find them, but were unsuccessful. The Court of Appeal also convicted the applicant on the basis of evidence which included, *inter alia*, the statements made to the police by the victims.
Inadmissible under Article 6(3)(d): The use as evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with this provision, provided the rights of the defence have been respected. These rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness

against him or her either when the statement is made or at a later stage of the proceedings. In the circumstances, the applicant's conviction of the rape of C and D was based, *inter alia*, on the statements made before the police. D was heard in the presence of the applicant's lawyer, who was able to question her on that occasion. Although it would have been preferable that C and D testified in court, the authorities, despite their efforts, did not manage to secure their attendance. It was thus open to the court to take into account C's and D's statements before the police, especially as they could be corroborated by other evidence produced before it. Moreover, having regard to all the evidence used against the applicant, his conviction cannot be said to have been based "to a decisive extent" on the statements made by C and D to the police: manifestly ill-founded.

ARTICLE 8

PRIVATE LIFE
Disciplinary sanction imposed on a judge on account of his membership of a Masonic lodge: *decision to hold a hearing.*

N.F. - Italy (Nº 37119/97)
[Section II]

The applicant, a judge, joined a masonic lodge. Disciplinary proceedings were initiated against judges who were Freemasons by the Minister of Justice and the public prosecutor at the Court of Cassation after a list had been provided by the Judicial Service Commission. The applicant was summoned before the disciplinary section of the Judicial Service Commission and given a warning. His appeal to the Court of Cassation was dismissed.
The Section has decided to hold a hearing on the admissibility and merits of this application.

FAMILY LIFE
Expulsion, for a determined period, of person convicted for drug offences from country where close family is: *inadmissible*.

FARAH - Sweden (Nº 43218/98)
Decision 24.8.99 [Section 1]

The applicant, a Tunisian national, married a Finnish citizen with whom he had already had a child. They moved to Sweden in 1988. His first application for a residence permit was turned down, while his wife's was granted. As a result, he went back to Tunisia, where his wife and child later joined him for a month. They returned to Sweden later the same year after he had been granted a temporary residence permit. In 1990, he eventually obtained a permanent residence permit. They had two more children in Sweden. In 1993, the applicant and his wife were remanded in custody on suspicion of being involved in a drug-related case. The applicant was finally sentenced to six years' imprisonment and his expulsion with a prohibition on return was ordered. The fact that his wife and children lived in Sweden was taken into consideration and the prohibition was accordingly limited to 10 years. Leave to appeal against this decision was refused. In June 1997 he was released on probation and expelled to Tunisia. His wife and children joined him there from June to August 1997. His further request for annulment of the expulsion order was rejected.
Inadmissible under Article 8: The interference was in accordance with law and pursued the legitimate aim of preventing disorder or crime. The prohibition on the applicant's return to Sweden was to be effective only up to January 2004. Furthermore, his wife and children, who had already visited him in Tunisia in the past, joined him soon after his expulsion from

Sweden for more than two months. Finally, having regard to the seriousness of his crime and his prison sentence for aggravated drug offences, the authorities cannot be considered as having failed to strike a fair balance between the applicant's right to respect for family life and the prevention of disorder and crime: manifestly ill-founded.

ARTICLE 11

FREEDOM OF ASSOCIATION
Disciplinary sanction imposed on a judge on account of his membership of a Masonic lodge: *decision to hold a hearing.*

N.F. - Italy (Nº 37119/97)
[Section II]
(See Article 8, above).

FREEDOM OF ASSOCIATION
Registration of association refused on account of name being considered misleading: *inadmissible*.

APEH ÜLDÖZÖTTEINEK SZÖVETSEGE, IVANYI, RÓTH and SZERDAHELYI - Hungary (Nº 32367/96)
Decision 31.8.99 [Section II]

The first applicant is an unregistered association founded under the name of "Alliance of APEH's persecutees" by the other applicants. APEH is the commonly used abbreviated name of the national tax authority. The Supreme Court, in upholding the refusal of the applicant association's request for registration, found that the applicant association's name did not correspond to its objectives, namely to reform the national taxation system, and that it contravened the Civil Code, which stipulates that a legal entity's name should not give the false impression that its activity is linked to that of another legal person. Finally, the court considered that the expression "persecutees" used in connection with APEH's name was defamatory.
Inadmissible under Article 11: The refusal to register the association constituted an interference with the applicant's right to freedom of association. It was prescribed by law. The refusal was essentially founded on the fact that the intended name comprised both the tax authority's own name, which could have given the impression that the association had an official character or was linked to the APEH, and also the term "persecutees", which was regarded as defamatory of the tax authority. Nothing suggests that the applicants could not have founded and registered an association for the promotion of the taxpayers' interests, had they chosen another name. The dispute thus arose over the actual name of the association. Therefore, the interference with the applicants' freedom of association could not be considered as particularly severe and it was legitimate not to accept to register the proposed name of association given its misleading character: manifestly ill-founded.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION IN FAVOUR OF THE GRAND CHAMBER

State immunity in respect of alleged assault by soldier: *relinquishment of jurisdiction*.

McELHINNEY - United Kingdom (Nº 31253/96)
[Section III]

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.
As neither party filed any objection to the proposed relinquishment, the Section relinquished jurisdiction in favour of the Grand Chamber.

ARTICLE 2 OF PROTOCOL No. 4

FREEDOM TO LEAVE THE COUNTRY

Mother not allowed to leave husband's country with their children and go to own country: *communicated*

ROLDAN TEXEIRA and others - Italy (Nº 40655/98)
[Section II]

The first applicant, a Spanish national, was married to an Italian national by whom she had two children (the other two applicants). The spouses were given leave to live apart while their application for a judicial separation was pending. A provisional residence order was made in favour of the applicant subject to a prohibition on her removing the children from the jurisdiction. A contact order was made in favour of the father. Between April 1996 and July 1997 the first applicant made four applications to the judge for permission to take the children on holiday to Spain. In the first, she intimated that she was considering settling there with her children. The applications, which were opposed by the father, were dismissed by the courts on the ground that there was a risk that the children would be removed from Italy permanently, which, according to the social enquiry reports ordered by the courts, would not be in their interest. The applicant's appeal was declared inadmissible as no appeal lay against the impugned decision.
Communicated under Article 2(2) of Protocol No. to the Convention and Article 8 of the Convention.

APPENDIX

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