



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

**INFORMATION NOTE No. 21**  
**on the case-law of the Court**  
**August 2000**

### Statistical information

		August	2000
<b>I. Judgments delivered</b>			
Grand Chamber		0	19
Chamber I		0	36(38)
Chamber II		2	199(203)
Chamber III		11	112(116)
Chamber IV		0	51(61)
<b>Total</b>		<b>13</b>	<b>417(437)</b>
<b>II. Applications declared admissible</b>			
Section I		1	142(290)
Section II		5	125
Section III		7(11)	112(126)
Section IV		1(4)	106(112)
<b>Total</b>		<b>14(21)</b>	<b>485(651)</b>
<b>III. Applications declared inadmissible</b>			
Section I	- Chamber	3	67(81)
	- Committee	56	620
Section II	- Chamber	1	63(69)
	- Committee	45	728
Section III	- Chamber	3	69(74)
	- Committee	46	851(910)
Section IV	- Chamber	0	56(60)
	- Committee	76	1195
<b>Total</b>		<b>230</b>	<b>3649(3737)</b>
<b>IV. Applications struck off</b>			
Section I	- Chamber	0	3
	- Committee	0	9
Section II	- Chamber	0	30
	- Committee	0	7
Section III	- Chamber	1	8
	- Committee	3	20
Section IV	- Chamber	0	9
	- Committee	0	19
<b>Total</b>		<b>4</b>	<b>105</b>
<b>Total number of decisions<sup>1</sup></b>		<b>248(255)</b>	<b>4239(4493)</b>
<b>V. Applications communicated</b>			
Section I		4	171(180)
Section II		4	231(234)
Section III		4	253(254)
Section IV		7	179
<b>Total number of applications communicated</b>		<b>19</b>	<b>834(847)</b>

<sup>1</sup> Not including partial decisions

<b>Judgments delivered in August 2000</b>					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	0	0	0	0	0
Section II	2	0	0	0	2
Section III	11	0	0	0	11
Section IV	0	0	0	0	0
<b>Total</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>

<b>Judgments delivered January - August 2000</b>					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	17	1	0	1 <sup>1</sup>	19
Section I	30	6	1	2 <sup>2</sup>	39
Section II	45	151	0	0	196
Section III	92	14	4	2 <sup>1</sup>	112
Section IV	35	13	2	1 <sup>1</sup>	51
<b>Total</b>	<b>219<sup>3</sup></b>	<b>185</b>	<b>7</b>	<b>6</b>	<b>417</b>

<sup>1</sup> Just satisfaction.

<sup>2</sup> One revision request and one lack of jurisdiction.

<sup>3</sup> Of the 202 judgments on merits delivered by Sections, 55 were final judgments.

[\* = not final]

## ARTICLE 5

### Article 5(3)

#### LENGTH OF PRE-TRIAL DETENTION

Length of detention on remand: *violation*.

**P.B. - France** (N° 38781/97)

\*Judgment 1.8.2000 [Section III]

The case concerns the length of detention on remand (4 years and over 8 months) and the length of criminal proceedings (same period).

*Conclusion:* violation of Articles 5(3) and 6(1) (unanimously).

Article 41 – The Court considered that the finding of violation constituted in itself sufficient just satisfaction in respect of the pecuniary and non-pecuniary damage claimed by the applicant. It made an award in respect of costs and expenses.

## ARTICLE 6

### Article 6(1) [civil]

#### APPLICABILITY

Withdrawal of invalidity pension of civil servant, an administrative assistant in the social services : *Article 6 applicable*.

**LAMBOURDIERE - France** (N° 37387/97)

\*Judgment 2.8.2000 [Section III]

*Facts:* The applicant, an administrative assistant in the social security services, was allowed to retire in November 1985. He had been entitled to a temporary invalidity allowance since 1975. Following a medical examination prior to his retirement, the overall level of partial permanent incapacity applied to him was reduced from 10% to 7%, as his health had improved. That brought him below the threshold laid down by the relevant regulations for entitlement to the invalidity allowance, so that payment of the allowance was stopped. In July 1986 he applied to the administrative court for judicial review. His application having been refused, he appealed in May 1989 to the *Conseil d'Etat*, which dismissed his appeal in September 1998.

*Law:* Article 6(1) – In order to determine whether Article 6 was applicable to public servants, whether established or employed under individual contracts, a functional criterion was to be applied. In the present case, the applicant's duties as an administrative assistant in the social security services had not entailed participation in the exercise of powers conferred by public law. Moreover, he had received a temporary invalidity allowance while still employed, and the possibility of continuing to do so after his retirement, the only issue raised in the case, was subject to assessment of his level of incapacity at the time when he retired. Although the administrative authorities had discretion to determine his level of incapacity, once this had been done the termination or continued payment of the allowance were automatic consequences. The administrative authorities had based their decision to stop the applicant's allowance on the relevant law, without using their discretionary powers. The dispute had

therefore been decisive for a civil right and Article 6 was accordingly applicable. As regards the length of the proceedings, the period to be taken into consideration had lasted twelve years and three months at two levels of jurisdiction. It appeared that the protractedness of the proceedings, particularly before the *Conseil d'Etat*, where the case had remained for more than nine years and three months, had been mainly due to the conduct of the administrative courts.

*Conclusion:* violation (unanimously).

Article 41– The Court awarded the applicant FRF 50,000 for non-pecuniary damage.

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## **APPLICABILITY**

Proceedings concerning the dismissal of a person employed under contract by a public body:

*Article 6 applicable.*

### **SATONNET - France** (N° 30412/96)

Judgment 2.8.2000 [Section III]

*Facts:* The applicant, a public servant employed under an individual contract to work for a publicly managed body, was dismissed in October 1982 by a decree issued by the mayor of the local authority which ran the service in question. In December 1982 the applicant challenged his dismissal by means of an application to the local employment tribunal. The employment tribunal ruled that it had jurisdiction and awarded the applicant various sums in compensation. That decision was set aside in January 1985 by the court of appeal, which held that the ordinary courts did not have jurisdiction. The applicant therefore applied to the administrative courts in March 1985. In December 1990 the administrative court set aside the applicant's dismissal on the ground that the decree contained a formal defect. On 21 September 1992 the administrative court of appeal upheld that judgment, finding that the decree had been unlawful. Those proceedings, in which the applicant had challenged his dismissal, ended with a judgment of the *Conseil d'Etat* of 16 October 1995. On the basis of the administrative court of appeal's judgment of 21 September 1992, the applicant asked the mayor to reinstate him with the rights and privileges he would have had if his career had not been interrupted. In July 1993 he asked the administrative court to set aside the mayor's tacit refusal. In February 1995 the applicant also asked the administrative court to award him compensation for the mayor's refusal. The administrative court joined the two applications and in February 1997 ruled on them both together. It set aside the implicit refusal, told the applicant to apply directly to the local authority for payment of the compensation it owed him and awarded him various further sums in compensation. That decision was upheld by the administrative court of appeal and the proceedings are at present pending in the *Conseil d'Etat*.

*Law:* Article 6(1) – Referring to the Pellegrin judgment, the Court held that Article 6(1) was applicable in the case. With regard to the period to be taken into consideration, the Court declined to accept the Government's submission that there had been three successive sets of proceedings, noting in the first place that part of the dispute had concerned the jurisdiction of the administrative and ordinary courts, and that the applicant could not be criticised for applying first to the local employment tribunal, which, moreover, had ruled that it had jurisdiction. Secondly, with regard to the proceedings on the application to set aside the refusal to reinstate the applicant and on his compensation claim of July 1993, currently still pending, the Court held that in the present case those proceedings had been brought to obtain enforcement of the judgment previously given by the administrative court of appeal on 21 September 1992 and could not be regarded as separate from the initial proceedings. Consequently, the length of the proceedings complained of, which had begun in December 1982 and were still pending, was approximately seventeen and a half years. While the Court was aware that the case was somewhat complex on account of the applicant's status as a person employed under an individual contract, which had made it necessary for the administrative and ordinary courts to rule as to which of them had jurisdiction, it nevertheless

considered that neither this complexity nor the applicant's conduct, taken alone, could explain the overall length of the proceedings.

*Conclusion:* violation (unanimously).

Article 41 – The Court awarded the applicant FRF 70,000 for non-pecuniary damage and a certain sum for costs and expenses.

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#### **ACCESS TO COUR**

Absence of possibility of court review of prefectoral decisions staggering the granting of police assistance in enforcement of eviction orders: *violation*.

**G.L. - Italy** (N° 22671/93)

\*Judgment 3.8.99 [Section II]

(See Article 1 of Protocol No. 1, below).

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#### **REASONABLE TIME**

Length of civil proceedings: *violation*.

**LOUKA - Cyprus** (N° 42946/98)

\*Judgment 2.8.2000 [Section III]

The case concerns the length of civil proceedings (11 years and almost 8 months).

*Conclusion:* violation (unanimously).

Article 41 - The Court found that no causal link between the violation and the pecuniary damage claimed by the applicant had been substantiated. It awarded her 4,500 Cypriot pounds (CYP) in respect of non-pecuniary damage and 1,000 CYP in respect of costs and expenses.

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#### **REASONABLE TIME**

Length of administrative proceedings: *violation*.

**SATONNET - France** (N° 30412/96)

Judgment 2.8.2000 [Section III]

(See above).

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#### **REASONABLE TIME**

Length of criminal proceedings: *violation*.

**LAMBOURDIERE - France** (N° 37387/97)

\*Judgment 2.8.2000 [Section III]

(See above).

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#### **REASONABLE TIME**

Length of administrative proceedings: *violation*.

**FATOUROU - Greece** (N° 41459/98)

\*Judgment 3.8.2000 [Section II]

The case concerns the length of administrative proceedings (four years for one level of jurisdiction).

*Conclusion:* violation (unanimous).

Article 41 - The Court awarded the applicant one million drachmas (GRD) in respect of non-pecuniary damage and one million drachmas in respect of costs and expenses.

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### **REASONABLE TIME**

Length of administrative proceedings: *violation*.

### **SAVVIDOU - Greece** (N° 38704/97)

\*Judgment 1.8.2000 [Section III]

*Facts:* The applicant is the owner of a piece of coastal land. Part of her property was expropriated so that the sea-front could be developed. The local council informed her that the amount of compensation due to her was the equivalent of the sum she owed as her contribution to the development costs, so that she was “self-compensated”. The Prefect, to whom the applicant applied for relief, referred to the relevant legislation, which made no provision for compensation in respect of expropriations of that type. In May 1993 the applicant appealed to the Supreme Administrative Court. In June 1997 the Supreme Administrative Court held that the relevant legislation created an irrebuttable presumption that the owner of real property adjoining a public space derived an advantage from the enlargement of that space and was under an obligation to transfer part of his or her land as consideration for that advantage. In the present case it appeared reasonable to consider that the applicant had been “self-compensated” for the loss of part of her land.

*Law:* Article 6(1) – Altogether, the proceedings had lasted more than five years and seven months. The case did not appear to be complex and the applicant’s conduct had not contributed to the prolongation of the proceedings. On the other hand, there had been a considerable delay while the case was before the Supreme Administrative Court, since although the case had been referred to it in May 1993 it had not given judgment until June 1997. The Government had pleaded a strike by members of the Athens Bar, but without giving any further details, so that the Court could not determine what impact, if any, the strike had had on the length of the proceedings. Moreover, while a strike was certainly likely to contribute to a backlog of business for a higher court, domestic courts were still required to determine cases “within a reasonable time”. A delay in judicial proceedings as lengthy as the one that had occurred in the present case was scarcely compatible with the efficiency and credibility of justice required by the Convention. Accordingly, the overall length of the proceedings could not be considered reasonable.

*Conclusion:* violation (unanimously).

Article 1 of Protocol No. 1 – An irrebuttable presumption of “advantage” had been applied in three similar cases against Greece. The Court had found violations of Article 1 of Protocol No. 1 because that system took no account of the diversity of individual situations and ignored differences in the nature of the works and the local topography in particular. Although the legislation applied in the present case was different from that applied in the earlier cases, the applicant had been prevented from submitting to the domestic courts her arguments as to why she should not have to bear the cost of developing the sea-front alone and why the State, as owner of the foreshore, should also contribute half of the cost. Thus the applicant had had to bear a special, excessive burden which could only have been justified by the possibility of proving the prejudice she claimed to have suffered and obtaining commensurate compensation if she successfully did so.

*Conclusion:* violation (unanimously).

Article 41 – The Court awarded the applicant GRD 51,690,000 for pecuniary damage, GRD 3,000,000 for non-pecuniary damage and GRD 3,000,000 for costs and expenses.

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## **REASONABLE TIME**

Length of administrative proceedings: *friendly settlement*.

### **DESCHAMPS - France** (N° 37925/97)

\*Judgment 2.8.2000 [Section III]

The case concerns the length of proceedings before the administrative courts (9 years, including 7 years at first instance).

*Conclusion:* violation (unanimous).

Article 41 - The Court dismissed the applicant's claim in respect of pecuniary damage. It awarded him 50,000 francs (FRF) in respect of non-pecuniary damage, and 11,620 francs in respect of costs and expenses.

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## **ORAL HEARING**

Lack of oral hearing before Administrative Court: *violation*.

### **ENTLEITNER - Austria/** (N° 29544/95)

\*Judgment 1.8.2000 [Section III]

*Facts:* The applicant appealed to the Regional Land Reform Board against an administrative decision concerning ownership of certain land rights. His appeal was rejected after an oral hearing. The Constitutional Court declined to deal with his constitutional complaint and referred the case to the Administrative Court, which dismissed the applicant's claim and also his request for an oral hearing.

*Law:* Article 6(1) (independence and impartiality) – The Court has already held in previous cases that the regional land reform boards are independent and impartial, and the legal situation concerning their membership and procedure has not changed.

*Conclusion:* no violation (unanimous).

Article 6(1) (lack of oral hearing) – The Court has already found that the lack of an oral hearing before the Administrative Court constitutes a violation and there are no circumstances to distinguish this case from previous ones.

*Conclusion:* violation (unanimous).

Article 41 – The Court cannot speculate on the outcome of the proceedings had an oral hearing been held and the applicant's claim for pecuniary damage must be dismissed. The Court made an award in respect of costs and expenses.

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## **Article 6(1) [criminal]**

## **REASONABLE TIME**

Length of criminal proceedings: *violation*.

### **IKANGA - France** (N° 32675/96)

\*Judgment 2.8.2000 [Section III]

The case concerns the length of criminal proceedings (over six years and still pending at the investigation stage).

*Conclusion:* violation (unanimously).

Article 41 – The Court rejected the applicant's claims in respect of pecuniary damage, in the absence of any causal link. It awarded him 30,000 francs (FRF) in respect of non-pecuniary damage and 1,500 francs in respect of expenses.

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**REASONABLE TIME**

Length of criminal proceedings: *violation*.

**CHERAKRAK - France** (N° 34075/96)

\*Judgment 2.8.2000 [Section III]

The case concerns the length of criminal proceedings (4 years, 9 months and 19 days).

*Conclusion*: violation (unanimously).

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of the non-pecuniary damage claimed by the applicant.

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**REASONABLE TIME**

Length of criminal proceedings: *violation*.

**P.B. - France** (N° 38781/97)

\*Judgment 1.8.2000 [Section III]

(See Article 5(3), above).

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**REASONABLE TIME**

Length of criminal proceedings: *no violation*.

**C.P. and others - France** (N° 36009/97)

\*Judgment 1.8.2000 [Section III]

*Facts*: The case concerned the length of criminal proceedings against the applicants in connection with a large-scale fraud involving a number of companies.

*Law*: Article 6(1) – The proceedings had lasted more than seven years and ten months in all. The case had been very complex since it concerned a large-scale fraud involving a number of companies and consisting in complex transactions calculated to evade the vigilance of the investigating authorities. The investigating judge had had to untangle a network of interlinked companies and identify the exact nature of the institutional, administrative and financial relations between them. Although the applicants had exercised numerous remedies, particularly during the judicial investigation, having made a large number of applications to the investigating judge, they had not contributed unduly to the overall length of the proceedings. Regard being had to the complexity of the case and the energetic prosecution of the investigation by the investigating judge, the time taken for the judicial investigation stage (more than two years and eight months) could not be considered unreasonable. Although a long time had been taken by the public prosecutor to draft an application for an extension of the investigation stage (one and a half years), this had not had any specific impact on the overall length of the proceedings. Lastly, the length of the judicial proceedings after the investigation stage (more than three years and six months) could not be considered excessive in view of the fact that three different courts had had to hear the case.

*Conclusion*: no violation (unanimously).

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**REASONABLE TIME**

Length of criminal proceedings: *violation*.

**BERTIN-MOUROT - France** (N° 36343/97)

\*Judgment 2.8.2000 [Section III]

(See below).

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## **REASONABLE TIME**

Length of criminal proceedings – starting point of the period to be taken into account.

### **BERTIN-MOUROT - France** (N° 36343/97)

\*Judgment 2.8.2000 [Section III]

*Facts:* The case concerned the length of criminal proceedings against the applicant for unauthorised export of a painting of disputed authenticity, in breach of customs and tax legislation among other provisions.

*Law:* Article 6(1) – The starting-point of the period to be taken into consideration had been, at the latest, the date when the public prosecutor had requested the opening of a judicial investigation in respect of the applicant, whom he had therefore “charged” with a criminal offence within the meaning of the Convention, and not seven years later, as the Government had submitted, since the fact that the applicant had not been in France during that period did not mean in the present case that his situation had not been “substantially affected”. The proceedings had therefore lasted fourteen years, six months and two days. While the case had been somewhat complex on account of its financial and cultural implications, the Court considered that, regard being had to the overall length of the proceedings and notwithstanding the applicant’s conduct, which could not provide a decisive explanation for such a long period, the “reasonable time” condition had not been satisfied.

*Conclusion:* violation (unanimously).

Article 41 – The Court awarded the applicant FRF 60,000 for non-pecuniary damage and FRF 28,854 for costs and expenses.

<b>ARTICLE 44</b>
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### **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. 18):

### **BERGENS TIDENDE and others - Norway** (N° 26132/95)

Judgment 2.5.2000 [Section III]

### **CONDON - United Kingdom** (N° 35718/97)

Judgment 2.5.2000 [Section III]

### **SANDER - United Kingdom** (N° 34129/96)

Judgment 9.5.2000 [Section III]

### **FERTILADOUR S.A. - Portugal** (N° 36668/97)

Judgment 18.5.2000 [Section IV]

### **VAN PELT - France** (N° 31070/96)

Judgment 23.5.2000 [Section III]

### **ARBORE - Italy** (N° 41840/98)

Judgment 25.5.2000 [Section IV]

**BERNARD - France** (N° 38164/97)  
Judgment 30.5.2000 [Section III]

**FAVRE-CLEMENT - France** (N° 35055/97)  
Judgment 30.5.2000 [Section III]

**BELVEDERE ALBERGHIERA S.r.l. - Italy** (N° 31524/96)  
Judgment 30.5.2000 [Section II]

## ARTICLE 1 OF PROTOCOL No. 1

### PEACEFUL ENJOYMENT OF POSSESSIONS

Staggering of the granting of police assistance to enforce eviction order: *violation*.

**G.L. - Italy** (N° 22671/93)  
\*Judgment/ 3.8.99 [Section II]

*Facts:* In 1988 the applicant obtained an eviction order against the tenant of an apartment which he owns. The judge made the order enforceable from 1 September 1989. However, as a result of legislation providing for the staggering of evictions, he was not entitled to police assistance in enforcing the eviction order. Consequently, attempts by a bailiff to recover possession of the apartment were unsuccessful. In 1993 the applicant made a statutory declaration that he urgently required the premises for his son. However, numerous further attempts by the bailiff were unsuccessful. The tenant vacated the premises spontaneously in 1997.

*Law:* Article 1 of Protocol No. 1 – The interference amounted to a control of the use of property and had a legitimate aim in the general interest. However, while the staggering system is not in itself open to criticism, it must provide certain procedural safeguards to ensure that its operation is not arbitrary or unforeseeable. In this case, despite being entitled to priority for police assistance from 1993, the applicant was only able to recover possession three years and five months later when the tenant left of his own accord. For six years and three months the applicant was left in a state of uncertainty. Until 1993 he was not able to apply to the judge or the administrative court to have the denial of police assistance set aside, since the prefect's decision in that respect was entirely legitimate, and thereafter he had no prospects of accelerating the grant of police assistance, which depended on availability of policemen. Moreover, he had no prospects of obtaining compensation through the courts. Consequently, an excessive burden was imposed on him.

*Conclusion:* violation (unanimously).

Article 6(1) – The Court has already held in the *Immobiliare Saffi v. Italy* judgment that this provision applies to the procedure for eviction of tenants. While a stay of execution of a judicial decision may be justified in exceptional circumstances, the case does not concern an isolated refusal by the prefect to provide police assistance; rather, the enforcement of the order was stayed after 1 January 1990 as a result of the intervention of the legislature, which reopened and rendered nugatory the judge's decision as to the date by which the tenant had to vacate the premises. The legislature conferred a power on prefects to intervene systematically in the enforcement of eviction orders and the assessment of whether it was appropriate to stay enforcement was not subject to any effective review by the courts. The applicant was thus deprived of his right to have the dispute decided by a court. His complaint concerning the length of the proceedings is absorbed by that complaint.

*Conclusion:* violation (unanimously).

Article 41 – The Court awarded the applicant 47,600,000 lire (ITL) in respect of pecuniary damage and 20 million lire in respect of non-pecuniary damage. It also awarded 1,135,670 lire in respect of costs and expenses.

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**PEACEFUL ENJOYMENT OF POSSESSIONS**

Compensation for expropriation offset by contribution owed for the coastal developments having justified the expropriation: *violation*.

**SAVVIDOU - Greece** (N° 38704/97)

\*Judgment 1.8.2000 [Section III]

(See Article 6(1), above).



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

**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
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**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

