CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 13
on the case-law of the Court
December 1999

Statistical information

		December	1999
I. Judgments delivered			
Grand Chamber		4	63
Chamber I		1	3
Chamber II		25	66
Chamber III		6	26
Chamber IV		4	19
Total		**40**	**177**
II. Applications declared admissible			
Section I		48	153
Section II		16	302
Section III		6	189
Section IV		2	87
Total		**72**	**731**
III. Applications declared inadmissible			
Section I	- Chamber	0	54
	- Committee	28	545
Section II	- Chamber	5	117
	- Committee	75	563
Section III	- Chamber	13	159
	- Committee	29	559
Section IV	- Chamber	7	125
	- Committee	139	1267
Total		**296**	**3389**
IV. Applications struck off			
Section I	- Chamber	0	10
	- Committee	1	24
Section II	- Chamber	7	22
	- Committee	1	11
Section III	- Chamber	1	25
	- Committee	0	10
Section IV	- Chamber	1	12
	- Committee	3	16
Total		**14**	**130**
Total number of decisions[1]		**382**	**4250**
V. Applications communicated			
Section I		23	455
Section II		77	446
Section III		9	394
Section IV		63	301
Total number of applications communicated		**172**	**1596**

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

ARTICLE 3

INHUMAN AND DEGRADING TREATMENT
Trial of children in adult court: *no violation*.

T. v. United Kingdom (Nº 24724/94)
V. v. United Kingdom (Nº 24888/94)
Judgments 16.12.99 [Grand Chamber]
(See Appendix I).

ARTICLE 5

Article 5(1)(a)

AFTER CONVICTION
Child detained "at Her Majesty's pleasure" following conviction for murder: *no violation*.

T. v. United Kingdom (Nº 24724/94)
V. v. United Kingdom (Nº 24888/94)
Judgments 16.12.99 [Grand Chamber]
(See Appendix I).

Article 5(2)

INFORMATION ON REASONS FOR ARREST
Alleged lack of information on reasons for arrest: *inadmissible*.

KERR v. United Kingdom (Nº 40451/98)
Decision 7.12.99 [Section III]
(See Article 5(3), below).

INFORMATION ON CHARGE
Alleged lack of information on charge: *inadmissible*.

KERR v. United Kingdom (Nº 40451/98)
Decision 7.12.99 [Section III]
(See Article 5(3), below).

PROMPT INFORMATION
Alleged lack of promptness of information on reasons for arrest and on charge: *inadmissible.*

KERR v. United Kingdom (Nº 40451/98)
Decision 7.12.99 [Section III]
(See Article 5(3), below).

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Arrest under the Prevention of Terrorism Act without being brought promptly before a judge: *communicated*.

KERR v. United Kingdom (Nº 40451/98)
Decision 7.12.99 [Section III]

On 7 November 1996 the applicant was arrested under section 14(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989 on suspicion of being involved in the commission, preparation or instigation of acts of terrorism. The police seized computer equipment from his home. The applicant was subjected to thirty-nine interviews by the police. He was cautioned under the Criminal Evidence (Northern Ireland) Order 1988 and was asked, *inter alia*, about his whereabouts at the time of a recent bomb explosion, his membership of the provisional IRA and the information stored in his computer, which included electoral lists. The applicant remained silent throughout the interviews. On 14 November 1996 he was charged with possession of "any record or document likely to be useful to terrorists" and conspiring to "collect or record any information which is of such a nature as to be useful to terrorists in planning or carrying out an act of violence". Although the charges did not specify the "record or document" or the "information", the police alleged that it was clear from the interviews and the written caution. The applicant was brought before a court on 14 November 1996 and was remanded in custody. He was later questioned about information retrieved from computer discs seized at his home which related to police and army matters and the belief that this information was meant to be used for training terrorist units. He sought judicial review of the prosecution's decision not to provide him with further details of the evidence against him. The authorities maintained that the disclosure of more details would have been prejudicial to their inquiries. The Lord Chief Justice of Northern Ireland finally held that the prosecution was under no duty to provide any further details at that stage of the investigations. The applicant was eventually released from custody, the charges against him having been withdrawn.
Inadmissible under Article 5(2): At the time of his arrest the applicant was notified of the provision under which he was being arrested. However, a bare indication of the legal basis of an arrest, taken on its own, cannot be considered sufficient. In this case, the applicant went through thirty-nine interviews during the week that followed his arrest, and was questioned about his involvement in a recent bomb attack, his membership of the provisional IRA and the items seized by the police from his house. It could be inferred from the intense frequency of the interviews that he was apprised of the reasons for his arrest and of the charges he would be facing within a few hours of his arrest, and thus in accordance with the notion of promptness required by this provision. The charges read out to him on 14 November 1996 pertained to his possession of information with intent to use it for terrorist purposes and were consistent with the line of questioning pursued by the police and with the nature of the materials seized at his house. The fact that these charges were notified to him only a week after his arrest does not in itself raise an issue of promptness. The requirement of promptness comes into play if there is a charge against the applicant. Facts raising a suspicion capable of grounding an arrest need not be of the same level as those necessary to justify bringing a charge against the accused, which comes at the next stage of the criminal investigation. The applicant remained silent and the police were unable to make any headway in pursuing their suspicions against him. As a result, it was only at the end of the period of detention that they could decide whether to charge him: manifestly ill-founded.
Communicated under Article 5(3) and (5).

Article 5(4)

TAKE PROCEEDINGS
Absence of review of continuing legality of detention of child sentenced to detention "at Her Majesty's pleasure": *violation*.

T. v. United Kingdom (Nº 24724/94)
V. v. United Kingdom (Nº 24888/94)
Judgments 16.12.99 [Grand Chamber]
(See Appendix I).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to civil servants: *no violation*.

PELLEGRIN v. France (Nº 28541/95)
Judgment 8.12.99 [Grand Chamber]
(See Appendix II).

APPLICABILITY
Applicability of Article 6 to tax proceedings: *proposed relinquishment of jurisdiction*.

FERRAZZINI v. Italy (N° 44759/98)
[Section II]

After applying – unsuccessfully – for a tax exemption, the applicant was subsequently served with two assessments of supplementary income tax. In January 1988 he lodged three appeals against those decisions with the tax board of first instance having territorial jurisdiction. In February 1998 the tax board informed him that the first appeal would be heard on 21 March that year. On that date the board heard the appeal and decided to strike the case out of the list. In March 1998 the applicant was informed that the two other appeals would be heard on 9 May 1988. That hearing was subsequently adjourned *sine die*.
Communicated under Article 6(1) (applicability of Article 6 to tax proceedings) and proposal to relinquish the case in favour of the Grand Chamber.

CIVIL RIGHTS AND OBLIGATIONS
Granting of licence to run pharmacy: *Article 6 applicable*.

G.S. v. Austria (Nº 26297/95)
Judgment 21.12.99 [Section III]

Facts: In June 1990 the applicant appealed to the Federal Ministry for Health, Sports and Consumer Protection against the refusal of the Provincial Governor to grant him a licence to run a pharmacy. In April 1991 the applicant appealed to the Administrative Court against the administration's failure to decide within the statutory time-limit. The Ministry then refused his appeal and the applicant lodged a further appeal to the Administrative Court in July 1991. In December 1995 he withdrew his appeal, after reaching an agreement with another pharmacist.
Law: Article 6(1) - The Court saw no reason to disagree with the Commission's conclusion that Article 6 applied, since the private law aspects of the profession of pharmacist in Austria outweighed the public law features. The proceedings had taken more than 5 years 5 months, of which more than 4 years 4 months were before the Administrative Court, including a period of total inactivity of 3½ years. Although the proceedings were of some complexity, this argument had little weight as regards the proceedings before the Administrative Court, which did not examine the merits. Moreover, while the State had taken certain measures to reduce the court's workload, with effect from 1991, the applicant's case remained pending, without a decision on the merits, until the end of 1995. No delays were attributable to the applicant, and the Court could not subscribe to the Government's argument that the matter was of little significance to him after he obtained a licence to run a pharmacy elsewhere.
Conclusion: Violation (unanimous).
Article 41 - The Court could not speculate on the outcome of the proceedings had they been terminated within a reasonable time. It awarded the applicant the full amount of his claim in respect of non-pecuniary damage, namely 15,000 schillings (ATS). It also made an award in respect of costs.

CIVIL RIGHTS AND OBLIGATIONS
Disciplinary proceedings against a lawyer: *Article 6 applicable*.

W.R. v. Austria (Nº 26602/95)
Judgment 21.12.99 [Section III]

Facts: In 1987 several sets of disciplinary proceedings were brought against the applicant, a lawyer. In 1989 the Disciplinary Council of the regional Bar convicted him on three of the counts and imposed a fine of 5,000 schillings. The applicant's appeal was dismissed in January 1993 by the Appeals Board, which also found him guilty of two other offences. Taking into account other offences with which it was dealing, the Board imposed a fine of 25,000 schillings. The applicant complained about the length of the proceedings to the Constitutional Court, which dismissed the complaint in October 1994.
Law: Article 6(1) - The applicant's right to practise as a lawyer is a civil right and disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to a dispute ("*contestation*") over civil rights. The possible penalties for disciplinary offences under the relevant provision included a suspension of the right to practise for up to one year and the applicant therefore ran the risk of a temporary suspension. His right to continue to practise was at stake and Article 6 applied under its civil head. That being the case, it was unnecessary to decide whether it also applied under its criminal head. The overall length of the proceedings, 7 years 4 months, for three levels of jurisdiction, cannot be regarded as reasonable.
Conclusion: Violation (unanimous).

Article 41 - The Court allowed in full the applicant's claim in respect of non-pecuniary damages and awarded him 30,000 schillings (ATS). It also made an award in respect of costs and expenses.

CIVIL RIGHTS AND OBLIGATIONS
Disciplinary proceedings leading to dismissal of judge: *communicated*.

PITKEVICH v. Russia (Nº 47936/99)
[Section II]
(See Article 9, below).

CIVIL RIGHTS AND OBLIGATIONS
Building subsidy granted by State pursuant to legislation: *Article 6 applicable*.

S.A. "SOTIRIS and NIKOS ATEE" v. Greece (Nº 39442/98)
Decision 7.12.99 [Section II]

The applicant company applied to the Ministry of the National Economy under Law no. 1892/1990 for a subsidy to build a hotel. Its application was rejected, whereupon it applied to the Supreme Administrative Court for the decision to be set aside. The company's lawyer filed the application at Athens 4th police station. The police officers wrote the number and date of registration on the first page of the application and affixed the police station's seal. They did not, however, note the registration number on the record of the document constituting the application itself. The Supreme Administrative Court, basing its decision on that omission, ruled the application inadmissible on the ground of a procedural flaw. Its judgment was put into final form on 16 May 1997 and the applicant was sent a copy of it on 13 June 1997.
Admissible under Articles 6(1) (access to a court) and 13. As regards the applicability of Article 6, the mere fact that the subsidy requested by the applicant company was a state subsidy did not in itself rule out the existence of a civil right. Firstly, disputes arising from a refusal to grant such a subsidy were primarily economic in nature. In deciding to grant a subsidy the relevant minister did not exercise discretionary powers. He had a duty to assess the circumstances of every company and to grant a subsidy if the statutory conditions were fulfilled. The decision could subsequently be challenged in the Supreme Administrative Court, whose definition determined the civil right in issue.
The applicant company's claim thus concerned a civil right and Article 6 was applicable.

ACCESS TO COURT
Legislative intervention in pending court proceedings: *violation*.

ANTONAKOPOULOS, VORSTSELA and ANTONAKOPOULOS v. Greece
(Nº 37098/97)
Judgment 14.12.99 [Section III]
(See below)

ACCESS TO COURT
Refusal by authorities to comply with court decision: *violation*.

ANTONAKOPOULOS, VORSTSELA and ANTONAKOPOULOS v. Greece
(Nº 37098/97)
Judgment 14.12.99 [Section III]

Facts: In November 1969 the father of the first two applicants and husband of the third resigned from his post as Court of Appeal judge and started receiving a retirement pension. On his death in June 1992 the right to part of that pension was transferred to the third applicant. In November 1994 the third applicant requested an adjustment of her late husband's and her own pension. When this was refused by the State General Accounting Department, she applied to the Court of Audit. In May 1996 she amended her claims to seek an adjustment of her husband's pension for the period December 1991 – June 1992 and of her own pension for the period June 1992 – December 1995 in accordance with scales fixed for judges in service by a decision of the Justice and Finance Ministers of August 1995. In July 1996 the Court of Audit, basing its judgment on that decision, Law no. 2320/1995 and the Code of Civil and Military Pensions, allowed the third applicant's claim in part. It ordered the State firstly to pay to both the third applicant and the two other applicants, namely her children, a supplementary pension in respect of the pension owed to the third applicant's husband for the period in question and, secondly, to pay the third applicant a supplementary pension in respect of her pension for the period in question. The decision of the State General Accounting Department was set aside. Judgment was served on that Department in July 1996 but the sums awarded were not paid. In July 1997 Law no. 2512/1997 was enacted. Section 3 of that statute provided that Law no. 2512/1995 could not be applied to the calculation of judges' retirement pensions. Furthermore, any claim based on that statute was statute-barred, any pending judicial proceedings set aside and any sum paid out, other than pursuant to a final judgment, had to be refunded. In a judgment of December 1997 the Court of Audit, sitting as a full court, held that section 3 of the above-mentioned statute was unconstitutional and contrary to Article 6 of the Convention. On 1 July 1998 the Court of Audit dismissed an appeal lodged by the State. The applicants have still not received the amounts owing to them.
Law: Article 6(1): The instant case concerned the State's duty to pay pension back payments to a civil servant's successors pursuant to the legislation in force. The applicants had thus relied on a subjective pecuniary right arising from specific provisions of the national legislation, which must be considered as a "civil" right. Accordingly, this Article was applicable.
The enforcement of a judgment of any court had to be considered as an integral part of proceedings for the purposes of Article 6. If the authorities were to refuse or omit to enforce judgment, or to delay in doing so, the guarantees under Article 6 from which litigants had benefited during the judicial phase of the proceedings would become purposeless. Furthermore, the principle of the rule of law and the notion of fair trial precluded any interference by the legislature with the administration of justice designed to influence the judicial outcome of a dispute to which the State was a party. In the present case the State General Accounting Department's refusal to comply with the judgment of the Court of Audit of July 1996, which was final and enforceable for the period between that date and July 1997, had infringed the applicants' right to effective judicial protection. Even assuming that the refusal had been validated by Law no. 2512/1997, nothing could justify it after the adoption of the judgment of the Court of Audit of December 1997 declaring that statute unconstitutional.
Conclusion: Violation (unanimous).
Article 1 of Protocol No. 1: A "debt" could constitute a "possession" within the meaning of this Article on condition that it was sufficiently established to be enforceable. The rule of law, which was a fundamental principle of any democratic society, was inherent in all the Articles of the Convention and required the State or public authorities to comply with a judgment made against them. A fair balance between the demands of the general interest and the

requirements of the protection of the individual's fundamental rights would not be achieved unless the interference in question had complied with the principle of lawfulness and was not arbitrary. In the present case the judgment of the Court of Audit of July 1996 had given rise to a sufficiently established debt in the applicants' favour and not just a contingent right as the Government had argued. Moreover, the State's appeal against that decision had not had suspensive effect. Accordingly, the applicants' inability to enforce that judgment until Law No. 2512/1997 was adopted had amounted to an interference with their property right. Furthermore, in intervening after the final judgment of the Court of Audit had been adopted to state that the applicants' claims were statute-barred, the legislature had upset the fair balance between the protection of a property right and the demands of the general interest. Moreover, the State General Accounting Department's refusal to pay the sum owed to the applicants pursuant to the judgment of the Court of Audit, sitting as a full court, declaring unconstitutional section 3 of the Law 2512/1997 had amounted to a further interference with the applicants' right to respect for peaceful enjoyment of their possessions, that refusal being manifestly unlawful under domestic law.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the entire sum claimed by the applicants for pecuniary damage, namely 4, 593,735 drachmas.

ACCESS TO A TRIBUNAL
Excessive formalism as regards the conditions to lodge an appeal: *admissible*.

S.A. "SOTIRIS and NIKOS ATEE" v. Greece (Nº 39442/98)
Decision 7.12.99 [Section II]
(See above).

FAIR HEARING
Disciplinary proceedings with no examination of witnesses for the defence or representation of the defence: *communicated*.

PITKEVICH v. Russia (Nº 47936/99)
[Section II]
(See Article 9, below).

REASONABLE TIME
Length of civil proceedings: *violation*.

FERREIRA DE SOUSA and COSTA ARAÚJO v. Portugal (Nº 36257/97)
Judgment 14.12.99 [Section IV]

The case concerns the length of proceedings brought against the applicants in February 1991 in respect of an action to determine boundaries. The parties reached a friendly settlement in January 1998. The proceedings therefore lasted around 6 years 11 months.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the applicants 700,000 escudos (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

EDILTES S.N.C. v. Italy (Nº 40953/98)
CITTADINI and RUFFINI v. Italy (Nº 40955/98)
I. v. Italy (Nº 40957/98)
CANTACESSI v. Italy (Nº 40959/98)
CASSETTA v. Italy (Nº 40961/98)
CASTELLI v. Italy (Nº 40962/98)
AIELLO v. Italy (Nº 40963/98)
R. v. Italy (Nº 40964/98)
P. v. Italy (Nº 40966/98)
PRIVITERA v. Italy (Nº 40967/98)
MUSO v. Italy (Nº 40969/98)
DI ROSA v. Italy (Nº 40970/98)
F. v. Italy (Nº 40971/98)
MASI v. Italy (Nº 40972/98)
IADANZA v. Italy (Nº 40973/98)
ERCOLINO and AMBROSINO v. Italy (Nº 40976/98)
Judgments 14.12.99 [Section II]

The cases concern the length of various civil proceedings. In each case, the Court recalled that it had found in four judgments of 28 July 1999 that there existed in Italy a practice incompatible with the Convention, resulting from an accumulation of breaches of the "reasonable time" requirement. To the extent that the Court has found such breaches, this accumulation constituted circumstances aggravating the violation of Article 6.
Conclusion : Violation (unanimous).
Article 41 - The Court awarded the following sums:
Ediltes (7 years 11 months for one instance) - 16 million lire (ITL) for pecuniary and non-pecuniary damage and 5 million lire for costs and expenses;
Cittadini/Ruffini (7 years 7 months for the first applicant, and more than 6 years 5 months for the second applicant, for one instance) - 16 million lire for each applicant for non-pecuniary damage;
I. (more than 8 years 7 months for one instance) - 20 million lires for non-pecuniary damage and 3 million lire for costs and expenses;
Cantacessi (more than 6 years 11 months for one instance) - 12 million lire for non-pecuniary damage and 6 million lire for costs and expenses;
Cassetta (more than 6 years 11 months for one instance) - 12 million lire for non-pecuniary damagae and 3 million lire for costs and expenses;
Castelli (more than 5 years 6 months for one instance) - 10 million lire for non-pecuniary damage and 3 million lire for costs and expenses;
Aiello (more than 5 years 8 months for one instance) - 10 million lire for non-pecuniary damage and 3 million lire for costs and expenses;
R. (more than 5 years 7 months for one instance) - 3 million lires for non-pecuniary damage and 1,841,840 lire for costs and expenses;
P. (more than 7 years for one instance) - 21 million lire for non-pecuniary damage and 5 million lire for costs and expenses;
Privitera (more than 16 years and 2 months for two instances) - 44 million lire for non-pecuniary damage and 5 million lire for costs and expenses;
Muso (12 years 11 months for two instances) - 28 million lire for non-pecuniary damage and 1,975,000 lire for costs and expenses;
Di Rosa (more than 13 years and 9 months for two instances) - 12 million lire for non-pecuniary damage and 5,454,388 lire for costs and expenses;
F. (more than 13 years 4 months for two instances) - 10 million lire for non-pecuniary damage and 5 million lire for costs and expenses;

Masi (more than 13 years 2 months for three instances) - 28 million lire for non-pecuniary damage and 4 million lire for costs and expenses;
Iadanza (more than 12 years 5 months for two instances) - 24 million lire for non-pecuniary damage and 3,803,352 lire for costs and expenses;
Ercolino and Ambrosino (8 years 5 months for two instances) - to each of the three applicants 14 million lire for non-pecuniary damage and 1,443,800 lire for costs and expenses.
[In the Cittadini/Ruffini and Masi cases, the Court found unanimously that it was unnecessary to examine whether there had been a violation of Article 1 of Protocol No. 1.]

REASONABLE TIME
Length of civil proceedings: *violation*.

FREITAS LOPES v. Portugal (Nº 36325/97)
Judgment 21.12.99 [Section IV]

The case concerns the length of two sets of civil proceedings. The first began in June 1987 and the second in January 1992. Both are still pending and have therefore lasted respectively 12 years 6 months and 10 years.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded 3 million escudos (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of administrative proceedings: *violation*.

G.S. v. Austria (Nº 26297/95)
Judgment 21.12.99 [Section III]
(See above).

REASONABLE TIME
Length of administrative proceedings: *violation*.

BOUILLY v. France (Nº 38952/97)
Judgment 7.12.99 [Section III]

The case concerns the length of administrative proceedings brought by the applicant in August 1993. The proceedings ended in November 1998 (over 5 years 3 months).
Conclusion: Violation (unanimous).
Not necessary to examine under Article 13 (unanimous).
Article 41 - The Court awarded 30,000 francs (FRF) in respect of non-pecuniary damage, 5,000 francs for the costs incurred in the domestic proceedings and 10,000 francs for the costs incurred in the proceedings before the Convention bodies.

REASONABLE TIME
Length of disciplinary proceedings: *violation*.

W.R. v. Austria (Nº 26602/95)
Judgment 21.12.99 [Section III]
(See above).

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

IACOPELLI v. Italy (Nº 41832/98)
Judgment 14.12.99 [Section IV]

The case concerns the length of proceedings brought by the applicant before the Audit Court (6 years). The parties have reached a friendly settlement providing for payment to the applicant of a global sum of 3 million lire (ITL).

IMPARTIAL TRIBUNAL
Judge deciding on compensation for the length of criminal proceedings in which he had sat: *inadmissible*.

LIE and BERNSTEIN v. Norway (Nº 25130/94)
Decision 16.12.99 [Section II]

In 1981 the applicants created a limited liability company in the media industry. In October 1997 a criminal investigation was initiated against them on suspicion of gross fraud, breach of trust and embezzlement. By a judgment of November 1995, the City Court acquitted them of certain charges and convicted them of others. The length of the proceedings was considered excessive and accordingly the applicants were not requested to pay any costs. The prosecution lodged an appeal to the High Court. The applicants were again partly acquitted and sentenced to 3½ years' imprisonment without having to pay any costs. They lodged an appeal against this decision to the Supreme Court which, by four votes to one, commuted their prison sentence to a suspended sentence, the only dissenting vote being that of judge T. The first applicant brought compensation proceedings for pecuniary and non-pecuniary damage caused by the excessive length of the criminal proceedings but his claim was rejected. He challenged this refusal before the Appeals Selection Committee of the Supreme Court, on which T. sat. The claim for pecuniary damage was rejected unanimously, whereas the claim for non-pecuniary damage was rejected by two votes to one, T. being in favour of refusal. The applicant asked the committee to re-examine his claims for compensation and submitted that T., given the views he had expressed in the appeal on sentencing, should not have been called to decide on the compensation issue. His request for revision was rejected, the Committee noting that a judge's participation in a criminal case against a person claiming compensation was not as such an obstacle to the judge's taking part in the compensation case.
Inadmissible under Article 6(1): In accordance with Norwegian law and in line with the Convention, the Supreme Court, when reviewing the High Court's decision sentencing the applicants to imprisonment, was obliged to take the excessive length of the criminal proceedings into account. The Supreme Court accordingly decided to suspend their prison sentences. The determination of compensation, following the first applicant's request, depended on a broad assessment of whether an award would be appropriate and justified by special reasons. The Appeals Selection Committee of the Supreme Court observed that it could not disregard the fact that the excessive length of the proceedings had already been taken into account in the Supreme Court's review of the sentences and that in view of the circumstances there were no special reasons suggesting that it would be appropriate to make an additional award of compensation. On the other hand, the relevant provisions of domestic law and the Committee's reasoning in no way implied that a reduction of sentence due to the excessive length of the proceedings excluded the possibility of making an award of compensation. However, the fact that T. participated in the criminal proceedings, and issued a dissenting opinion on the review of the sentences, did not imply that he would necessarily reject the compensation claim. The compensation case concerned a different kind of remedy governed by different criteria. Although the length of the criminal proceedings was a relevant factor with regard both to sentencing and to compensation, these remained none the less

separate issues. Therefore, the first applicant did not have any legitimate grounds for fearing that T. felt bound by his opinion on the sentences or had any preconceived idea when deciding on the subsequent compensation claim. There were no reasons either for doubting the impartiality of the Appeals Selection Committee of the Supreme Court in his case: manifestly ill-founded.

Article 6(1) [criminal]

ACCESS TO COURT
Dismissal of cassation appeal due to appellant's failure to surrender into custody: *violation*.

KHALFAOUI v. France (Nº 34791/97)
Judgment 14.12.99 [Section III]

Facts: The applicant was charged and placed in detention on remand for indecent assault by a person in authority. He was accused of having assaulted a patient while working as a houseman in a hospital. The applicant was released under judicial supervision in January 1994. In an order of February 1995 he was committed for trial at a criminal court, which sentenced him to three years' imprisonment, with one year suspended, and ordered him to pay the civil party 30,000 francs in damages. The Court of Appeal upheld the conviction but increased the sentence to four years, with two years suspended, and the damages to 40,000 francs. No arrest warrant was issued against him. In a statement of November 1995 the applicant lodged an appeal on points of law. The public prosecutor's office of the Court of Appeal which had delivered the judgment in question informed him in a letter sent to his residence in Tunis, where he had gone in the meantime, that, under Article 583 of the Code of Criminal Procedure, he had a duty to surrender to custody at the latest the day before the appeal hearing in the Court of Cassation listed for 24 September 1996. The applicant, who was then in Tunisia, requested the Court of Appeal, under the above Article of the Code of Criminal Procedure, to grant him an exemption and submitted in support of his request a medical certificate dated 2 September 1996 prescribing two months' sick leave and rest on grounds of a contagious condition. The applicant argued that he could not leave Tunisia in such conditions, that his state of health precluded his imprisonment and that it was contrary to Article 6 of the Convention to compel someone to surrender to custody in order to avoid forfeiting their right to appeal on points of law. In a judgment of 19 September 1996 the Court of Appeal refused to follow the public prosecutor's submissions and dismissed the application for an exemption. In a judgment of 24 September 1996 the Court of Cassation ruled that the applicant had forfeited his right to appeal on the ground that he had not surrendered to custody and had not obtained an exemption from the duty to surrender to custody.
Law: Article 6(1): The compatibility of the limitations provided for in domestic law with the right of access to a court depended on the particular features of the proceedings in question; all the proceedings conducted in the domestic legal system and the role played by the Supreme Court had to be taken into account, but the conditions of admissibility of an appeal on points of law could be stricter than those of an ordinary appeal. Ultimately, cassation proceedings were a crucial stage in criminal proceedings since they were decisive for the accused.
In the instant case the obligation to surrender to custody, as provided for in the Code of Criminal Procedure, obliged the applicant to submit to the deprivation of freedom imposed by the impugned decision even though under French law an appeal on points of law was of suspensive effect and the judgment being appealed against was not yet irrevocable. Thus the sentence did not become enforceable until and unless the appeal was dismissed. Although the concern referred to by the Government to enforce court judgments was in itself legitimate, the

authorities had other means at their disposal by which they could ensure that an accused appeared for trial either before or after the appeal on points of law was examined. In practice, the obligation to surrender to custody was designed to replace procedures conducted by the police with an obligation incumbent on the accused, non-compliance with which, moreover, was punished by forfeiture of his right to lodge an appeal on points of law. Lastly, the obligation to surrender to custody could not be justified by the special features of the examination of an appeal on points of law. The proceedings in the Court of Cassation, to which an appeal could be made only on points of law, were mainly written and it had not been submitted that the applicant's presence at the hearing was necessary.

As regards forfeiture of the right to appeal, there was no substantial difference between, on the one hand, automatic inadmissibility, the only source of which was the case-law of the Criminal Division of the Court of Cassation for failure to comply with an arrest warrant, as in the case of Poitrimol (judgment of 23 November 1993) and the cases of Omar and Guérin (judgments of 29 July 1998), and, on the other hand, forfeiture of the right to appeal as expressly provided for in Article 583 of the Code of Criminal Procedure. An appeal on points of law, which anyone convicted of a criminal offence was entitled to bring, was not examined in either case. In view of the importance of the review undertaken by the Court of Cassation in criminal matters and the stakes involved in that review for those who had been sentenced to lengthy custodial sentences, it was a particularly severe penalty in the light of the right of access to a court. Respect for the presumption of innocence, taken together with the suspensive effect of an appeal on points of law, made it wrong to oblige a defendant left at liberty to surrender to custody, for however short a period of incarceration.

As regards the possibility of requesting an exemption from the obligation to surrender to custody, the fact that after his request for an exemption had been dismissed by the Court of Appeal – the court which had, moreover, tried and convicted him – he did not surrender to custody did not imply any waiver on his part since forfeiture was automatic. Waiver of a right guaranteed under the Convention had to be conclusively established. Furthermore, the small number of exemptions actually granted suggested that the courts applied strict criteria, as in the instant case, when examining applications. Lastly, rejection of an application was not subject to appeal. Thus the possibility of requesting an exemption from the obligation to surrender to custody was not a factor which made forfeiture less disproportionate.

Conclusion: Violation (6 votes to 1).

Article 41 - The Court awarded the applicant FRF 20,000 for non-pecuniary damage. It also awarded him FRF 13,898 for costs and expenses in the national courts and FRF 30,000 for costs and expenses before the Convention institutions.

FAIR HEARING

Effective participation of child in trial: *violation*.

T. v. United Kingdom (Nº 24724/94)
V. v. United Kingdom (Nº 24888/94)
Judgments 16.12.99 [Grand Chamber]
(See Appendix I).

REASONABLE TIME
Length of criminal proceedings: *violation*.

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

The case concerns the length of criminal proceedings (6 years, 2 months, 8 days).
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the applicant 15 million lire (ITL) for non-pecuniary damage and 5 million lire for costs and expenses.

REASONABLE TIME
Length of criminal proceedings: *violation*.

MARCHETTI v. Italy (Nº 37702/97)
Judgment 14.12.99 [Section II]

The case concerns the length of criminal proceedings (12 years, 3 months, 15 days).
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the applicant 28 million lire (ITL) for non-pecuniary damage and 5 million lire for costs and expenses.

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

PENNA v. Italy (Nº 35168/97)
MASTROENI v. Italy (Nº 41041/98)
M.R. v. Italy (Nº 41892/98)
LOMBARDO v. Italy (Nº 42353/98)
Judgments 14.12.99 [Section II]

The cases concern the length of different sets of criminal proceedings. The Government has reached friendly settlements with each of the applicants, on the basis of the following payments:
Penna - 6 million lire, covering any pecuniary and non-pecuniary damage as well as costs;
Mastroeni - 39 million lire (ITL) (34 million lire for any pecuniary and non-pecuniary damage and 5 million lire for costs);
M.R. - 13 million lire (8 million lire for any pecuniary and non-pecuniary damage and 5 million lire for costs);
Lombardo - 22 million lire (17 million lire for any pecuniary and non-pecuniary damage and 5 million lire for costs).

REASONABLE TIME
Length of criminal proceedings: *violation*.

G.B.Z., L.Z. and S.Z. v. Italy (Nº 41603/98)
Judgment 14.12.99 [Section II]

The case concerns the length of criminal proceedings against the applicants. The proceedings began in 1994 and were still pending in May 1999 (4 years, 4 months, 21 days).
Conclusion: Violation (unanimous).

Article 41 - The Court awarded each of the applicants 8 million lire (ITL). It also awarded a global sum of 1,500,000 lire for costs and expenses.

IMPARTIAL TRIBUNAL
Statements by a member of a jury allegedly casting doubts on his impartiality: *inadmissible*.

MEDENICA v. Switzerland (N° 20491/92)
Decision 16.12.99 [Section II]
(See Article 6(3)(c), below).

INDEPENDENT TRIBUNAL
Fixing of minimum sentence by Executive: *violation*.

T. v. United Kingdom (Nº 24724/94)
V. v. United Kingdom (Nº 24888/94)
Judgments 16.12.99 [Grand Chamber]
(See Appendix I).

Article 6(2)

PRESUMPTION OF INNOCENCE
Refusal of compensation for detention on remand despite acquittal: *admissible*.

C.H. v. Austria (Nº 27629/95)
Decision 14.12.99 [Section III]

WEIXELBRAUN v. Austria (Nº 33730/96)
[Section III]

The two applicants were arrested and placed on detention on remand, respectively on suspicion of attempting to resist public authority and causing aggravated bodily harm and of a double murder and aggravated robbery. They were both acquitted and subsequently decided to claim compensation for the period of their detention on remand. However, their claims were rejected on account of the fact that, according to the Austrian courts, suspicion that they had committed the crimes still existed despite their acquittals.
Admissible under Article 6(2) (Nº 27629/95).
Communicated under Article 6(2) (Nº 33730/96).

PRESUMPTION OF INNOCENCE
Refusal of compensation for detention on remand despite acquittal: *admissible*.

OPPEGÅRD v. Norway (Nº 29327/95)
Decision 14.12.99 [Section III]

HAMMERN v. Norway (Nº 30287/96)
RINGVOLD v. Norway (Nº 34964/94)
[Section III]

The applicants were charged with sexual abuse of minors but were acquitted by High Court juries. The two first applicants claimed compensation with no success. They were considered to have failed to prove on the balance of probabilities that they had not committed the acts in respect of which they had been acquitted. In the third case, the alleged victim lodged a civil claim for compensation following the applicant's acquittal and the latter had to pay her damages on the ground that the evidence produced satisfied the standard proof for establishing that sexual abuse had occurred and that on the balance of probabilities it appeared that the applicant had committed acts of abuse.
Admissible under Article 6(2) (Nº 29327/95).
Communicated under Article 6(2) (Nº 30287/96 and Nº 34964/94).

Article 6(3)(c)

DEFENCE IN PERSON
Conviction *in abstentia* of an accused prevented from attending his trial by decision of a foreign court*: admissible*.

MEDENICA v. Switzerland (N° 20491/92)
Decision 16.12.99 [Section II]

The applicant, who is a doctor, practised in Switzerland until 1984. He then emigrated to the United States where he acquired American nationality and continued to practise as a doctor. In 1982 criminal proceedings were instituted against him by the Swiss authorities, mainly for fraud. In 1988 the applicant was summoned to appear in the Assize Court on 17 April 1989. The applicant indicated that he would appear at the hearing. He was unable to comply with that undertaking, however, as one of his American patients, who was suffering from cancer, had requested and obtained an order from an American judge preventing the applicant from leaving the United States unless he could be replaced by another doctor, on account of the consequences his departure might have for the patient's treatment. The applicant had to surrender his passport to the American authorities. After being informed of that decision, the Swiss judicial authorities asked him to find a replacement doctor for the patient and dismissed his applications for an adjournment of the trial on the ground that he had failed to justify his absence. The President of the Assize Court expressed reservations about the American order preventing the applicant from leaving the country and noted, additionally, that the applicant had neither lodged an appeal against the decision nor made serious endeavours to find a replacement doctor, regardless of the fact that he had had advance notice of the hearing date. The applicant challenged the order preventing him from leaving the United States. However, while his application was being examined, the hearings in the Swiss Assize Court were held on the dates initially scheduled. He could not therefore attend, but was represented by his lawyers. The court sentenced him *in absentia* to a term of imprisonment. The day after judgment was delivered the press reported comments by one of the jurors who had admitted, in respect of the trial, not having "understood much of what was going on". In his appeals

against the Assize Court judgment the applicant submitted, firstly, that his absence had been justified and that his conviction *in absentia* was unlawful. Relying on the comments of the jury member, he also challenged the latter's impartiality. He complained, lastly, that he had been unable to produce certain evidence and that the Assize Court had failed to question a prosecution witness. His appeals were dismissed.
Inadmissible under Articles 6(1) and 6(3)(d): In casting doubt on the impartiality of the Assize Court on the basis of the statements made to the press by a member of the jury, the applicant, although represented by lawyers, had not used the possibility available to him under Swiss law to question that juror. Furthermore, there was no evidence that the juror's conduct had been impartial or that it had influenced the verdict to the applicant's detriment. As regards the Assize Court's refusal to admit certain evidence submitted by the defence, it was for the national courts to decide whether or not evidence was admissible and the Court's role was limited to assessing the fairness of the proceedings considered overall. The same was true of hearing evidence from a witness. In the instant case the applicant had been able, through his lawyers, to "submit all the arguments which he considered relevant to the defence of his interests and to produce evidence in support of his case" and the failure to hear evidence from the witness had not deprived the applicant of a fair trial: manifestly ill-founded.
Admissible under Articles 6(1) and 6(3)(c) as regards the applicant's complaint of his conviction *in absentia*.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Impossibility for accused to cross-examine key witnesses against him: *violation*.

A.M. v. Italy (Nº 37019/97)
Judgment 14.12.99 [Section II]

Facts: A minor of American origin reported the applicant, who was the caretaker at a hotel where he had been staying, to the American authorities claiming that he had indecently assaulted him. The Italian public prosecutor brought proceedings against the applicant for indecently assaulting a minor and committing obscene acts in a public place. The Italian public prosecutor's office sent an international request for judicial assistance to the American criminal court, under the Convention on Judicial Co-operation signed by Italy and the United States, asking for statements to be taken from the minor, his father and the doctor whom the child had consulted. The request stated that no lawyer could be present during questioning. The child's father, who was interviewed by a police officer, confirmed that his son had told him that he had been indecently assaulted by the applicant. The record of that interview and the written statements of other witnesses, including the child's mother and a child psychotherapist, were sent to the Italian authorities. At the request of the public prosecutor's office, the Italian court ordered the documents to be read out in accordance with the Code of Criminal Procedure. The court sentenced the applicant to two years imprisonment, suspended, basing their decision on the complaint filed by the minor with the American authorities and the statements of his parents and the psychotherapist. The applicant appealed on the ground that the child had never been questioned, that evidence had been taken from his mother and the psychotherapist *ultra petita* and had been confined to written statements and, lastly, that the father's evidence had not been taken by an appropriate authority. He also complained about the fact that no lawyer had been able to be present and that the persons interviewed had not taken the oath, which should have prevented the Italian court from convicting him on the basis of their evidence. The Court of Appeal upheld the judgment of the court of first instance and the applicant's appeal on points of law was dismissed.

Law: Article 6(1) combined with Article 6(3)(d): The rights of the defence were restricted in a manner incompatible with the guarantees of Article 6 if a conviction was based solely or decisively on the statements of a witness whom the accused had not been able to cross-examine or have cross-examined either at the investigation stage or at trial. In the instant case the domestic courts had convicted the applicant exclusively on the basis of statements taken in the United Stated prior to the trial and at no stage in the proceedings had the applicant been able to confront his accusers. The Italian authorities had stated in the international request for judicial assistance that no lawyer could be present at the interviews. The Government maintained that under the Convention on Judicial Co-operation between Italy and the United States the applicant could have requested that the witnesses be interviewed in the presence of lawyers. However, the Government had not submitted any judicial decision in which that Convention between Italy and the United States had been so applied. Thus the accessibility and effectiveness of the possibility afforded to the applicant under the Convention to which the Government had referred had not been established. The applicant had not therefore had a sufficient and adequate opportunity to challenge the witness statements on the basis of which he had been convicted.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded ITL 50,000,000 in compensation for the damage suffered by the applicant and ITL 4,837,900 for costs and expenses in the national courts and before the Convention institutions.

ARTICLE 8

FAMILY LIFE
Refusal to grant custody to a parent living in a homosexual relationship: *violation*.

SALGUEIRO DA SILVA MOUTA v. Portugal (N° 33290/96)
Judgment 21.12.99 [Section IV]

Facts: The applicant married in 1983 and a daughter of the marriage, M., was born in 1987. Since 1990 he has been in a homosexual relationship. The applicant and his wife started divorce proceedings in which they reached an agreement giving parental responsibility to the mother and access to the applicant. However, M.'s mother refused the applicant access to their daughter. He therefore sought an order giving him parental responsibility for the child, which was granted by the court in 1994. M. stayed with the applicant until 1995 when, he alleges, she was abducted by her mother. Criminal proceedings are pending in that regard. His ex-wife appealed against the court's decision and the court of appeal reversed the lower court's judgment, holding that, generally, a young child should not be separated from his or her mother and stating that a homosexual environment could not be claimed to be healthy for a child's development given that, in the Court of Appeal's view, it was an abnormal situation. The Court did, nonetheless, grant the applicant a contact order, but this was never complied with. No appeal lay against that decision. The applicant filed an application with the Family Affairs Court for enforcement of the court of appeal's decision. Those proceedings are still pending.
Law: Article 8 taken together with Article 14: As regards a difference in treatment, the court of appeal had acted correctly in considering the interests of the child, basing its decision on both the facts of the case and the law allowing it to award parental responsibility to one parent rather than the other. However, in reversing the decision of the Family Affairs Court and consequently awarding parental responsibility to the mother rather than the father, the court of appeal had had regard to a new factor, namely that the applicant was a homosexual and living with another man. There had therefore been a difference in treatment between the applicant and M.'s mother based on the applicant's sexual orientation, a notion that fell within Article

14 of the Convention since the list set out in that Article was not exhaustive. As regards justification for the difference of treatment, the court of appeal had undoubtedly pursued a legitimate aim in reaching its decision, namely the protection of the child's health and rights. The Court reviewed the court of appeal's decision and noted that, on examining the appeal lodged by the mother, it had had regard to a new factor – the applicant's homosexuality – in deciding to whom parental responsibility should be awarded and had gone on to say: "the child must live in ... a traditional Portuguese family" and "it is unnecessary to examine whether or not homosexuality is an illness or a sexual orientation towards people of the same sex. Either way, it is an abnormality and children must not grow up in the shadow of abnormal situations".
The Court was of the view that those passages from the judgment of the Lisbon Court of Appeal were not simply clumsy or unfortunate, or mere *obiter dicta*; they suggested that the applicant's homosexuality had been decisive in the decision to award parental responsibility to the mother. That conclusion was supported by the fact that, when ruling on the applicant's rights of access, the court of appeal had discouraged the applicant from behaving during visits in a way that would make the child aware that he was living with another man "as if they were spouses". The court of appeal had therefore drawn a distinction dictated by considerations as to the applicant's sexual orientation.
Conclusion: Violation (unanimous).

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

DEMIRTEPE v. France (N° 34821/97)
Judgment 21.12.99 [Section III]

Facts: The applicant, a convicted offender serving a term of imprisonment, filed a complaint against the prison authorities for breaching the secrecy of correspondence. He alleged that letters from his lawyers, the judicial authorities and the prison chaplain had already been opened when they reached him, contrary to the rules laid down in the Code of Criminal Procedure and Article 8 of the Convention. The investigating judge dealing with his allegation found that there was no case on which to bring proceedings. The Court of Appeal, while considering that the actus reus of the offence had been made out, dismissed the applicant's appeal on the ground that it could not find either collective liability on the part of the prison's postal service or criminal liability on the part of the head of the service alone. The applicant appealed on points of law to the Court of Cassation, which dismissed his appeal.
Law: Government's preliminary objection: Domestic remedies had been exhausted in so far as the Government had not shown that the criminal avenue of redress chosen by the applicant was inappropriate for obtaining compensation for the violation found. As regards the remedy available to the applicant in the administrative courts, no proof of its effectiveness had been submitted. Judgments of the administrative courts concerning respect for prisoners' correspondence dated from 1997, whereas the applicant's allegations dated back to 1993. Furthermore, the *Conseil d'Etat* had never ruled on that point.
Article 8: The opening of the applicant's correspondence did indeed amount to an interference with his right to respect for his correspondence. On the Government's own admission, that interference lacked a legal basis. Accordingly, it was unjustified.
Conclusion: Violation (unanimous).
Article 41 - The Court awarded the applicant 5,000 francs and reimbursed him all the expenses he had incurred before the Convention institutions, that is 12,060 francs.

ARTICLE 9

FREEDOM OF RELIGION
Conviction of mufti for usurping functions of a minister of a "known religion": *violation*.

SERIF v. Greece (N° 38178/97)
Judgment 14.12.99 [Section II]

Facts: In 1985 the State appointed T. to a vacant post of mufti (Muslim religious leader) of Rodopi. In 1990 two Muslim Members of Parliament requested that the State, in accordance with the legislation in force, organise elections to fill the posts of mufti of Rodopi and mufti of Xanthi. In the absence of any reply, they decided to organise their own elections in the mosques in December 1990. Prior to these elections, the President of the Republic adopted a legislative act amending the procedure for the appointment of muftis, who thenceforth were to be appointed by presidential decree. Such legislative acts may be adopted "when an extremely urgent and unforeseeable need arises" and must be approved by Parliament within 40 days. The applicant was elected mufti of Rodopi in the elections organised by the two MPs and, together with other Muslims, he initiated proceedings before the Council of State challenging the lawfulness of T.'s appointment. These proceedings are still pending. In February 1991 Parliament enacted a law retroactively validating the legislative act adopted by the President. Criminal proceedings were subsequently brought against the applicant for usurping the functions of minister of a "known religion" and for wearing the uniform of that office without having the right to do so. Following his trial in December 1994, the applicant was convicted and sentenced to 8 months' imprisonment. His conviction was confirmed on appeal and his sentence set at 6 months' imprisonment, commuted to a fine. His appeal on points of law was dismissed by the Court of Cassation.
Law: Article 9: The applicant's conviction amounted to an interference with his rights under this provision "in community with others and in public, to manifest his religion in worship and teaching". It was unnecessary to decide whether the interference was prescribed by law because it was in event incompatible with Article 9 on other grounds. While it pursued the legitimate aim of protecting public order, it could not be regarded as necessary in a democratic society. The courts which convicted the applicant did not mention any specific acts by the applicant taken with a view to producing legal effects, but only to his delivering messages and speeches and appearing in the clothes of a religious leader. However, punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism. There existed an officially appointed mufti, but there is no indication that the applicant attempted to exercise the judicial and administrative functions for which the legislation makes provision and in democratic societies the State does not need to take measures to ensure that religious communities remain or come under a unified leadership. While tension may be created where a religious or any other community becomes divided, this is one of the unavoidable consequences of pluralism and the role of the authorities is not to remove the cause of tension by eliminating pluralism but to ensure that competing groups tolerate each other. In addition, the Government made no allusion to actual disturbances.
Conclusion: Violation (unanimous).
In view of the above finding, the Court found unanimously that it was not necessary to examine whether Article 10 had also been violated.
Article 41 - The Court awarded as compensation for pecuniary damage the equivalent of the fine that the applicant had to pay (700,000 drachmas (GRD)) and as compensation for non-pecuniary damage the sum of 2 million drachmas.

ARTICLE 10

FREEDOM OF EXPRESSION
Judge dismissed for having allegedly misused her office for proselytism: *communicated*.

PITKEVICH v. Russia (Nº 47936/99)
[Section II]

The applicant is a member of the Living Faith Church, which belongs to the Russian Union of Evangelical Christian Churches. She worked as a judge at the Noyabrsk City District Court. In February and March 1997 she stood for mayor of Noyabrsk. The candidate who was later to be elected accused her during the campaign of belonging to a sect. After his election, he requested the dismissal of the applicant from the judiciary. Disciplinary proceedings were instituted against her by an association of judges before the Judiciary Qualification Panel, composed of four judges. The applicant maintains that the Panel refused to call several witnesses in her favour. She was eventually dismissed on the grounds that she had "damaged her reputation as a judge" and misused her office for proselytism. She unsuccessfully appealed to the Supreme Judiciary Qualification Panel of the Russian Federation. She alleged that her representative had not been allowed to attend the hearing. The Supreme Court rejected her other appeal. She claimed that she was not present at the hearing because the date had been changed without her being informed.
Communicated under Article 6(1) (access to court, fair trial), 9, 10 and 14.

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of political party: *violation*.

FREEDOM AND DEMOCRACY PARTY(ÖZDEP) - Turkey
Judgment 8.12.99 [Grand Chamber]
(See Appendix III).

ARTICLE 14

DISCRIMINATION (Article 8)
Refusal to grant custody to a parent living in a homosexual relationship: *violation*.

SALGUEIRO DA SILVA MOUTA v. Portugal (N° 33290/96)
Judgment 21.12.99 [Section IV]
(See Article 8, above).

DISCRIMINATION (Article 1 of Protocol No. 1)
Return of seized property subject to having citizenship : *communicated*.

POLACEK and POLACKOVA v. Czech Republic (Nº 38645/97)
[Section III]

GRATZINGER and GRATZINGEROVA - Czech Republic (Nº 39794/98)
[Section III]

In 1974 and 1983 respectively the applicants were sentenced to terms of imprisonment and their assets confiscated by the former communist regime in Czechoslovakia. They were rehabilitated under the Judicial Rehabilitation Act by a court decision in 1990 and the confiscation of their assets was set aside *ex tunc*. However, they were unable to recover their assets. Implementation of the process of restituting assets is governed by the Extra-Judicial Rehabilitation Act which lays down the principle that only persons having Czech nationality can recover their confiscated property. The applicants brought proceedings in the Czech courts but were unsuccessful. The United Nations Human Rights Committee considered in a similar case that the condition of citizenship laid down by Czech law infringed the rights guaranteed by Article 26 of the Covenant on Civil and Political Rights.
Communicated under Article 1 of Protocol No. 1 and Article 14 taken together with Article 1 of Protocol No. 1.

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
Conviction of GDR officials for participating in the killing of East Germans attempting to escape to West Germany *: relinquishment of jurisdiction.*

STRELETZ v. Germany (N° 34044/96)
KRENZ v. Germany (N° 44801/98)
KESSLER v. Germany (N° 35532/97)
K.-H.W. v. Germany (N° 37201/97)
[Section IV]

The first three applicants were formerly highly-placed dignitaries of the German Democratic Republic (GDR) – respectively, the deputy Minister for Defence, the Prime Minister and the Minister for Defence. All three of them sat on the National Defence Council. The fourth applicant used to be a GDR border guard assigned to guarding the frontier between East and West Germany. The National Defence Council had ordered border guards to protect the demarcation line between the two States at any cost, including the life of anyone who tried to

cross it. Under GDR law the use of a firearm to prevent the commission of an act likely to constitute a serious criminal offence was permitted and the State authorities saw this as providing a basis in law for opening fire on fugitives trying to reach the Federal Republic of Germany (FRG). After reunification, the four applicants were convicted for their part in the deaths of a number of persons killed while seeking to cross to the West between 1971 and 1989. The treaty of reunification of the two Germanys provided that offences committed in the GDR would be dealt with under GDR criminal law as it had stood at the material time, save where the equivalent provisions of FRG law were less severe. The applicants were originally convicted under GDR criminal-law provisions making it an offence intentionally to kill someone or to incite another to do so. However, the courts later applied FRG criminal-law provisions to the applicants because those provisions were more clement. Before the Federal Constitutional Court Mr Streletz, Mr Kessler and Mr W. submitted that they had been convicted in contravention of the principle that the criminal law should not be retrospective, since the conduct underlying the charges against them had not, at the material time, constituted an offence but had been justified under the legislation then in force. The Federal Constitutional Court held that, in the circumstances of the case, the principle that no one should be tried or punished for conduct which did not constitute an offence at the time it occurred had to give way before the requirements of "objective justice". It found that the applicants had been duly tried on the basis of the law of the GDR as it had stood at the time the offences had been committed and that FRG law had been applied only *a posteriori*, in accordance with the terms of the treaty on unification. As regards the justification furnished by GDR legislation, the court weighed the formal legality of that justification against its lawfulness in the light of higher legal norms and concluded that the "order to fire" which the East German authorities had interpreted the legislation as sanctioning had, in any event, been contrary to that State's engagements in the field of human rights. Mr Krenz's appeal is still pending before the Federal Court of Justice.

ARTICLE 34

VICTIM
Applicant unable to demonstrate that he would be personally affected by the enforcement of the law he challenged.

OČIČ v. Croatia (Nº 46306/99)
Decision 25.11.99 [Section IV]

In December 1996. the applicant lodged a complaint with the Constitutional Court, claiming that the Act on compensation for and restitution of assets taken under the Yugoslav communist regime violated the constitutional guarantees of right to property, social justice, rule of law and right to inheritance. He further claimed that the Act prevented him from protecting his own legal interests as well as the interests of clients whom he represented as a lawyer. Fourteen months later, he requested the speeding-up of the proceedings, but received no answer. In April 1999 the court quashed or changed several provisions of the impugned Act for not being in conformity with the Constitution.
Inadmissible under Article 1 of Protocol No. 1: The applicant complained about an Act relating to the restitution of or compensation for property confiscated under the communist regime. This Act had not been enforced against him, and thus it had to be determined whether he could be considered a potential victim. However, even assuming that potential beneficiaries of the rights ensuing from the impugned Act may invoke Article 1 of Protocol Nº 1, the applicant has failed to show that he would have been personally affected by the enforcement of the Act. He maintained that his right to property as such was violated but did not adduce sufficient evidence that he was a potential holder of a right to restitution of or

compensation for any property confiscated under the communist regime, or that property had been taken from him or his legal predecessors. An applicant who is unable to demonstrate that he or she is personally affected by the enforcement of a law which he or she criticises cannot claim to be the victim. Since there was no sufficiently direct connection between the applicant and the damage he allegedly suffered as a result of the Act in issue, he could not claim to be a victim in the meaning of Article 34: incompatible *ratione personae*.

ARTICLE 35(1)

EFFECTIVE DOMESTIC REMEDY (France)
Remedies in respect of interference with a prisoner's correspondence: *preliminary objection rejected*.

DEMIRTEPE v. France (N° 34821/97)
Judgment 21.12.99 [Section III]
(See Article 8, above).

EFFECTIVE DOMESTIC REMEDIES (Portugal)
Alleged ineffectiveness of an appeal intended to speed up proceedings : *inadmissible*.

TOME MOTA v. Portugal (N° 32082/96)
Decision 2.12.99 [Section IV]

The applicant complained of the excessive length of ten sets of criminal proceedings which had been instituted against him for various offences. The new Code of Criminal Procedure, which came into force in 1988, created a mechanism (Articles 108 and 109) whereby defendants in criminal proceedings could request the Public Prosecutor or the Supreme Council of the Judiciary to expedite the proceedings if they had exceeded the statutory time-limits for each stage. The applicant did not exercise that remedy, however. He alleged before the Court that it did not, in reality, provide a remedy for the excessive length of criminal proceedings.
Inadmissible under Article 6(1): The mechanism for expediting proceedings set in place by the new Code of Criminal Procedure was a remedy which was both accessible and effective since it was a method of requesting the Public Prosecutor or the Supreme Council of the Judiciary to give the judges dealing with the case notice to take action. Furthermore, that mechanism was not likely to delay the proceedings because the Public Prosecutor or Supreme Council of the Judiciary had to give its decisions within very short time-limits: non-exhaustion.

ARTICLE 37(1)(c)

ABSENCE OF INTENTION TO PURSUE PETITION
Death of applicant: *struck out*.

SKOUTARIDOU v. Turkey (Nº 16159/90)
Judgment 17.12.99 [Section I]

The applicant complained that since 1974 she had been prevented from having access to and use of her property situated in the northern part of Cyprus. The applicant's representative has informed the Court of the death of the applicant and requested "leave to withdraw the case without admission or prejudice". In view of the existence of a number of pending cases raising similar issues, continued examination of the case is not required.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Non-execution by authorities of court decision ordering payment of pensions: *violation*.

ANTONAKOPOULOS, VORSTSELA and ANTONAKOPOULOS v. Greece
(Nº 37098/97)
Judgment 14.12.99 [Section III]
(See Article 6(1), above).

DEPRIVATION OF PROPERTY
Return of seized property subject to having citizenship : *communicated*.

POLACEK and POLACKOVA v. Czech Republic (Nº 38645/97)
[Section III]
(See Article 14, above).

GRATZINGER and GRATZINGEROVA v. Czech Republic (Nº 39794/98)
[Section III]
(voir article 14, ci-dessus/see Article 14, above).

PROCEDURAL MATTERS

TRANSITIONAL PROVISIONS
ARTICLE 5(4) OF PROTOCOL Nº 11

CASES REFERRED TO THE GRAND CHAMBER
The Panel of the Grand Chamber has decided to refer the following 8 cases to the Grand Chamber:

Former KING OF GREECE v. Greece (No. 25701/94) concerning the ownership of royal property.

D.N. v. Switzerland (No. 27154/95) concerning the impartiality of a court deciding on a request for release from psychiatric detention.

CHAPMAN v. the United Kingdom (No. 27238/95) concerning the refusal of the authorities to allow gypsies to live in caravans on their own land.

MIKULSKI v. Poland (No. 27914/95) concerning the length of detention on remand and the length of criminal proceedings.

T.P. and K.M. v. the United Kingdom (No. 28945/95) concerning the taking of a child into care and the alleged absence of procedural safeguards.

***Z.* and others v. the United Kingdom** (No. 29392/95) concerning the alleged failure of a local authority to take adequate measures to protect children from ill-treatment by their parents.

KUDLA v. Poland (No. 30210/96) concerning the adequacy of psychiatric treatment in prison, the length of detention on remand and the length of criminal proceedings.

HASAN and CHAUCH v. Bulgaria (No. 30985/96) concerning the replacement of a Muslim leader by the State.

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Conditions of detention of a PKK leader: *refusal of rule 39*.

SOYSAL v. Turkey (and Moldova) (N° 50091/99)
[Section I]

The applicant is one of the leaders of the Workers' Party of Kurdistan (PKK). He was allegedly arrested in Moldavia by Turkish intelligence agents and then taken back to Turkey where he is currently being detained. On 30 and 31 July 1999 two applications, brought successively against Turkey and against Turkey and Moldavia, were lodged in his name by German and Turkish lawyers. The applicant's complaints concerned the conditions of his arrest and detention. In the first application the applicant's representatives also asked the Court to apply Rule 39 of its Rules of Court in order to request Turkey to guarantee him, *inter alia*, free access to his lawyers and the free choice of a doctor. On 3 August 1999 the Court

decided to join the applications and communicate them as a matter of urgency to the Turkish Government. It also sent the Government a request for information about the circumstances of the applicant's arrest and detention, his state of health and the contact he had been able to have with his lawyers.

The Court decided not to apply Rule 39. The Government's replies showed that, unlike the situation examined in Application No. 46221/99 (the Öcalan case), on which the applicant had relied, the latter was being held in ordinary conditions of detention. Imprisoned in Ankara and subject to the prison rules of ordinary law, he had been able to converse freely and on a number of occasions with his Turkish lawyers. Although Turkish law did not apparently authorise him to meet his German lawyers they were, however, able to carry out their instructions in collaboration with their Turkish colleagues. Lastly, the medical certificates provided by the Government showed that even if he had not been authorised to choose his doctor as he would have wished he was being regularly seen by a doctor and has been given treatment.

APPENDIX I

Cases of T. and V. v. the United Kingdom - Extract from press release

Facts: The applicants, British citizens born in August 1982 who asked the Court not to reveal their names, were convicted in November 1993 of the abduction and murder of a two-year-old boy. They were ten years old at the time of the offence, and eleven at the time of their trial, which took place in public in the Crown Court and attracted high levels of press and public interest. Following their conviction, the applicants were sentenced to be detained indefinitely, "during Her Majesty's pleasure". According to English law and practice, children and young persons sentenced to be detained during Her Majesty's pleasure must first serve a "tariff" period, set by the Home Secretary, to satisfy the requirements of retribution and deterrence. Following the expiry of the tariff, detainees must be released unless, in the view of the Parole Board, they represent a danger to the public. The Home Secretary set a tariff of fifteen years in respect of each applicant. This decision was quashed in judicial review proceedings by the House of Lords on 12 June 1997. Since that date, no new tariff has yet been set.
The applicants complained that, in view of their young age, their trial in public in an adult Crown Court and the punitive nature of their sentence constituted violations of their rights not to be subjected to inhuman or degrading treatment or punishment as guaranteed under Article 3 of the Convention. They further complained that they were denied a fair trial in breach of Article 6 of the Convention. In addition, they contended that the sentence imposed on them of detention at Her Majesty's pleasure amounted to a breach of their right to liberty under Article 5, and that the fact that a government minister, rather than a judge, was responsible for setting the tariff violated their rights under Article 6. Finally, they complained under Article 5 § 4 of the Convention that, to date, they had not had the opportunity to have the continuing lawfulness of their detention examined by a judicial body, such as the Parole Board.

Law:
I. Issues under the Convention relating to the trial

Government's preliminary objection - The Government submitted that the applicants' complaints that, in view of their young age and degree of emotional disturbance, their trial in public had amounted to inhuman and degrading treatment contrary to Article 3 of the Convention and that they had not been able fully to understand or participate in the trial in breach of Article 6 § 1, should be declared inadmissible on grounds of non-exhaustion of domestic remedies because they had not raised any complaint or appeal during the national proceedings. The Government were not, however, able to refer to any example of a case where an accused under a disability falling short of that required under English law to establish unfitness to plead had been able to obtain a stay of criminal proceedings on the grounds that he was incapable of fully participating in them, or where a child charged with murder or another serious offence had been able to obtain a stay on the basis that trial in public in the Crown Court would cause him detriment or suffering. The Court therefore rejected the preliminary objection.
Article 3 - The Court considered first whether the attribution of criminal responsibility to the applicants in respect of acts committed at the age of ten could in itself amount to inhuman or degrading treatment. It did not find that there was any clear common standard amongst the Member States of the Council of Europe as to the minimum age of criminal responsibility. While most had adopted an age-limit which was higher than that in force in England and Wales, other States, such as Cyprus, Ireland, Liechtenstein and Switzerland, attributed criminal responsibility from a younger age, and no clear tendency could be ascertained from examination of the relevant international texts and instruments, for example, the United Nations Convention on the Rights of the Child. Even if England and Wales was among the few European jurisdictions to retain a low age of criminal responsibility, the age of ten could

not be said to be so young as to differ disproportionately to the age limit followed by other European States. The attribution of criminal responsibility to the applicants did not, therefore, in itself give rise to a breach of Article 3.

The second part of the complaint under Article 3 concerning the trial related to the fact that it took place over three weeks in public in an adult Crown Court with attendant formality. The Court recognised that the proceedings were not motivated by any intention on the part of the State authorities to humiliate the applicants or cause them suffering; indeed, special measures were taken to modify the Crown Court procedure in order to attenuate the rigours of an adult trial in view of the defendants' young age. Moreover, although there was psychiatric evidence that such proceedings could be expected to have a harmful effect on eleven-year-old children, any inquiry into the killing of the two-year-old, whether it had been carried out in public or in private, attended by the formality of the Crown Court or informally in the Youth Court, would have provoked in the applicants feelings of guilt, distress, anguish and fear. Whilst the public nature of the proceedings may have exacerbated these feelings to a certain extent, the Court was not convinced that the particular features of the trial process caused, to a significant degree, suffering going beyond that which would inevitably have been engendered by any attempt by the authorities to deal with the applicants. In conclusion, therefore, it did not find that the applicants' trial gave rise to a violation of Article 3.

Conclusion: No violation (12 votes to 5).

Article 6 § 1 - Article 6, read as a whole, guarantees the right of an accused to participate effectively in his criminal trial. This was the first time that the Court had had to examine how this should apply to criminal proceedings against children, and in particular whether procedures which are generally considered to safeguard the rights of adults on trial, such as publicity, should be abrogated in respect of children in order to promote their understanding and participation. It considered it essential that a child charged with an offence should be dealt with in a manner which took full account of his age, level of maturity and intellectual and emotional capacities, and that steps were taken to promote his ability to understand and participate in the proceedings. In respect of a young child charged with a grave offence attracting high levels of media and public interest, this could mean that it would be necessary to conduct the hearing in private, so as to reduce as far as possible the child's feelings of intimidation and inhibition, or, where appropriate, to provide for only selected attendance rights and judicious reporting. The applicants' trial took place over three weeks in public in the Crown Court. It generated extremely high levels of press and public interest, both inside and outside the court room, to the extent that the judge in his summing up referred to the problems caused to witnesses by the blaze of publicity and asked the jury to take this into account when assessing their evidence. Special measures were taken in view of the applicants' youth, for example, the trial procedure was explained to them, they were taken to see the court-room in advance, and the hearing times were shortened so as not to tire them excessively. Nonetheless, the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven, and there is evidence that certain of the modifications to the court room, in particular the raised dock which was designed to enable the applicants to see what was going on, had the effect of increasing their sense of discomfort during the trial since they felt exposed to the scrutiny of the press and public. There was psychiatric evidence that, at the time of the trial, both applicants were suffering from post-traumatic stress disorder as a result of what they had done to the two-year-old, and that they found it impossible to discuss the offence with their lawyers. They had found the trial distressing and frightening and had not been able to concentrate during it.

In such circumstances the Court did not consider that it was sufficient for the purposes of Article 6 § 1 that the applicants were represented by skilled and experienced lawyers. Although their legal representatives were seated, as the Government put it, "within whispering distance", it was highly unlikely that either applicant would have felt sufficiently uninhibited, in the tense court room and under public scrutiny, to have consulted with them during the trial or, indeed, that, given their immaturity and disturbed emotional state, they would have been capable outside the court room of co-operating with their lawyers and giving

them information for the purposes of their defence. It followed that the applicants had been denied a fair hearing in breach of Article 6 § 1.
Conclusion: Violation (16 votes to 1).
Articles 6 § 1 and 14 taken together - The Court did not consider it necessary to consider this complaint.
Conclusion: Not necessary to examine (unanimous).

II. Issues under the Convention relating to the sentence

Article 3 - States have a duty under the Convention to take measures for the protection of the public from violent crime. The punitive element inherent in the tariff approach did not give rise to a breach of Article 3, and the Convention did not prohibit States from subjecting a child or young person convicted of a serious crime to an indeterminate sentence allowing for his continued detention where necessary for the protection of the public. Until new tariffs had been set it would not be possible to draw any conclusions regarding the length of punitive detention to be served by the applicants, who had now been held for six years since November 1993. The Court did not consider that, in all the circumstances of the case including the applicants' age and conditions of detention, a period of punitive detention of this length could be said to amount to inhuman or degrading treatment.
Conclusion: No violation (10 votes to 7).
Article 5 § 1 - The sentence of detention at Her Majesty's pleasure was clearly lawful under English law and was not arbitrary. There had not, therefore, been any violation of Article 5 § 1.
Conclusion: No violation (unanimous).
Article 6 § 1 - Article 6 § 1 guarantees, *inter alia*, a fair hearing before an independent and impartial tribunal in respect of the "determination ... of any criminal charge ...", including the determination of sentence. The "tariff" served by a juvenile sentenced to detention during Her Majesty's pleasure represented the maximum period during which he could be detained for the purposes of retribution and deterrence. After its expiry, he had to be released unless there was reason to believe that he was dangerous. The Court considered that, as was recognised by the House of Lords in the judicial review proceedings brought by the applicants, the fixing of the tariff amounted to a sentencing exercise. Since the Home Secretary, who set the applicants' tariffs, was clearly not independent of the executive, there had been a breach of Article 6 § 1 in respect of the determination of the applicants' sentences.
Conclusion: Violation (unanimous).
Article 5 § 4 - Because the applicants' tariffs had been decided upon by the Home Secretary, there had been no judicial supervision incorporated in the initial fixing of their sentences. Article 5 § 4 entitled children detained during Her Majesty's pleasure, after the expiry of the tariff period, to periodic review by a judicial body such as the Parole Board of their dangerousness to the public and thus the continuing lawfulness of their detention. However, the applicants had never had the opportunity to enjoy this right, since the Home Secretary's decision had been quashed by the House of Lords and no new tariffs had yet been fixed. The Court therefore found a violation of Article 5 § 4, based on the lack of any opportunity since the applicants' conviction in November 1993 for them to have the lawfulness of their detention assessed by a judicial body.
Conclusion: Violation (unanimous).

III. Article 41 of the Convention

The Court awarded legal costs of 18,000 pounds sterling (GBP) to T. and GBP 32,000 to V.

Judge Reed expressed a concurring opinion and Judges Rozakis, Pastor Ridruejo, Ress, Makarczyk, Costa, Tulkens, Butkevych and Baka expressed partially dissenting opinions, which are annexed to the judgment.

APPENDIX II

Case of Pellegrin v. France - Extract from press release

Facts: Gilles Pellegrin is a French national who was born in 1945 and lives in Bouroche. In 1989 he had been recruited as a technical adviser to the Minister for the Economy, Planning and Trade of Equatorial Guinea. As head of project, he was to be responsible for drawing up the budget of State investment for 1990 and was to participate in the preparation of the three-year plan and the three-year programme of public investment, in liaison with Guinean civil servants and international organisations. Subsequently, he contested a decision by the French Minister for Cooperation and Development not to offer him a new contract to work as a technical adviser overseas on the ground that he had been declared unfit to serve overseas after undergoing a medical examination. Legal proceedings which the applicant instituted on 16 May 1990 are still pending in the Paris Administrative Court. The applicant relies on Article 6 § 1 of the Convention (right to a hearing by a tribunal within a reasonable time).
The applicant complained that his case had not been heard within a reasonable time for the purposes of Article 6 § 1 of the Convention.
Law: Article 6 § 1 of the Convention - The case concerned the applicability of Article 6 § 1 to disputes between States and their servants – an employee on a fixed-term contract in this case. The Court – reviewing its existing case-law on the question – considered that it should put an end to the uncertainty surrounding the applicability of Article 6 § 1 to disputes about conditions of service between public servants and the States which employ them. To that end, it decided to apply a new, "functional" criterion, based on the nature of the employee's duties and responsibilities. The Court accordingly ruled that the only disputes excluded from the scope of Article 6 § 1 of the Convention were those raised by public servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities. A manifest example of such activities was provided by the armed forces and the police. In practice, the Court will now seek to ascertain, in each case, whether the applicant's post entails – in the light of the nature of the duties and responsibilities appertaining to it – direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. Thus, from now on, no disputes between administrative authorities and employees who occupy posts involving participation in the exercise of powers conferred by public law attract the application of Article 6 § 1. On the other hand, disputes concerning pensions all come within the ambit of Article 6 § 1 because on retirement employees break the special bond between themselves and the authorities. The facts of the case showed that the tasks assigned to the applicant gave him considerable responsibilities in the field of the State's public finances, which was, *par excellence*, a sphere in which States exercised sovereign power. This entailed participating directly in the exercise of powers conferred by public law and the performance of duties designed to safeguard the general interests of the State. Accordingly, Article 6 § 1 was not applicable in the case.
Conclusion: No violation (13 votes to 4).
Judge Ferrari Bravo expressed a concurring opinion and Judge Traja a separate opinion. Judges Tulkens, Fischbach, Casadevall and Thomassen expressed a joint dissenting opinion. These opinions are annexed to the judgment.

APPENDIX III

Case of Freedom and Democracy Party (ÖZDEP) v. Turkey - Extract from press release

Facts: The applicant, the Freedom and Democracy Party (ÖZDEP) was founded on 19 October 1992. On 29 January 1993, Principal State Counsel at the Court of Cassation applied to the Constitutional Court for an order dissolving ÖZDEP on the grounds that its programme sought to undermine the territorial integrity and secular nature of the State and the unity of the nation. While the Constitutional Court proceedings were still pending, the founding members of the party resolved to dissolve it in order to protect themselves and the party leaders from the consequences of a dissolution order – namely a ban on their carrying on similar activities in other political parties. On 14 July 1993 the Constitutional Court made an order dissolving ÖZDEP.

The applicant party complained that its dissolution by the Constitutional Court had infringed the right of its members to freedom of association, secured by Article 11 of the European Convention on Human Rights.

Law: Government's preliminary objection - The Court dismissed the Government's preliminary objection in which they had pleaded that ÖZDEP could not claim to be the victim of its dissolution because it had dissolved itself voluntarily before its dissolution was ordered by the Constitutional Court. The Court ruled that since in Turkish law a voluntarily dissolved political party remained in existence for the purposes of dissolution by the Constitutional Court, the Government could not contend before the Court that *ÖZDEP* was no longer in existence when the dissolution order was made.

Article 11 of the Convention - The Court could find nothing in *ÖZDEP*'s programme that could be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. That was an essential factor to be taken into consideration. On the contrary, the need to abide by democratic rules when implementing the proposed political project was stressed in the programme. The court noted in addition that, taken together, the passages in issue in *ÖZDEP*'s programme presented a political project whose aim was in essence the establishment – in accordance with democratic rules – of "a social order encompassing the Turkish and Kurdish peoples". It was true that in its programme *ÖZDEP* also referred to the right to self-determination of the "national or religious minorities"; however, taken in context, those words did not encourage separation from Turkey but were intended instead to emphasise that the proposed political project must be underpinned by the freely given, democratically expressed, consent of the Kurds. In the Court's view, the fact that such a political project was considered incompatible with the current principles and structures of the Turkish State did not mean that it infringed democratic rules. It was of the essence of democracy to allow diverse political projects to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not seek to harm democracy itself. The Court noted the radical nature of the interference in issue: *ÖZDEP* had been definitively dissolved with immediate effect, its assets had been liquidated and transferred *ipso iure* to the Treasury and its leaders had been banned from carrying on certain similar political activities. Moreover, the Government had failed to explain how, as they asserted, *ÖZDEP* could bear any part of the responsibility for the problems caused by terrorism in Turkey since it had scarcely had time to take any significant action. In conclusion, *ÖZDEP*'s dissolution had been disproportionate to the aim pursued and consequently unnecessary in a democratic society. It followed that it had breached Article 11 of the Convention.

Conclusion: Violation (unanimous).

Article 41 of the Convention - By way of just satisfaction, the Court awarded 30,000 French francs for non-pecuniary damage and 40,000 francs for legal costs and expenses.

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