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

INFORMATION NOTE No. 25
on the case-law of the Court
December 2000

Statistical information[1]

		December	2000
I. Judgments delivered			
Grand Chamber		1	26
Chamber I		9	100
Chamber II		4	254
Chamber III		8	189
Chamber IV		21	126
Total		**43**	**695**
II. Applications declared admissible			
Grand Chamber		1	9
Section I		2	231(380)
Section II		10	273
Section III		7	194(222)
Section IV		8	197(203)
Total		**28**	**904(1087)**
III. Applications declared inadmissible			
Section I	- Chamber	3	94(108)
	- Committee	39	1205
Section II	- Chamber	3	78(89)
	- Committee	148	1384
Section III	- Chamber	5	116(128)
	- Committee	83	1554
Section IV	- Chamber	5	95(99)
	- Committee	54	2015(2021)
Total		**340**	**6541(6588)**
IV. Applications struck off			
Section I	- Chamber	1	9
	- Committee	3	14
Section II	- Chamber	2	37(42)
	- Committee	1	14
Section III	- Chamber	2	17(39)
	- Committee	2	30
Section IV	- Chamber	1	17
	- Committee	0	27
Total		**12**	**165(192)**
Total number of decisions[2]		**380**	**7610(7867)**
V. Applications communicated			
Section I		62	362(422)
Section II		34	367(377)
Section III		51	360(368)
Section IV		11	261(272)
Total number of applications communicated		**158**	**1020(1439)**

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

Judgments delivered in December 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	1	0	0	1
Section I	1	8	0	0	9
Section II	3	1	0	0	4
Section III	3	5	0	0	8
Section IV	14	6	1	0	21
Total	**21**	**21**	**1**	**0**	**43**

Judgments delivered January - December 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	22(23)	2	0	2[1]	26(27)
Section I	76(81)	21(30)	2	1(2)[2]	100(115)
Section II	97(101)	156(160)	0	1[3]	254(262)
Section III	155(160)	27(32)	5(9)	2(4)[1]	189(205)
Section IV	96(107)	24(25)	5	1(10)[1]	126(147)
Total	**446(472)**[4]	**230(249)**	**12(16)**	**7(19)**	**695(756)**

[1] Just satisfaction.
[2] Revision request.
[3] Lack of jurisdiction.
[4] Of the 424 judgments on merits delivered by Sections, 74 were final judgments.

[* = not final]

ARTICLE 2

LIFE
Shooting by police and effectiveness of investigation: *violation*.

<u>GÜL - Turkey</u> (N° 22676/93)
Judgment 14.12.2000 [Section IV]

Facts: In 1993 a police operation took place with a view to locating suspected terrorists identified by an informant. In the course of the searches, a special team went to the applicant's son's house, where three officers fired shots through the front door, hitting the applicant's son, who died from his wounds on the way to hospital. The parties disagree as to the details of the incident, the Government's version being that the applicant's son fired a shot first. The public prosecutor relinquished jurisdiction in favour of the provincial administrative council, which decided that the officers should not be prosecuted. However, the Supreme Administrative Court quashed this decision and a prosecution was brought. After receiving the reports of a gendarme lieutenant and three experts, who concluded that the officers had shot the victim by accident while shooting at the lock, the court acquitted the accused. It did not hear any other witnesses.
A delegation of the European Commission of Human Rights took evidence in the case. It found the evidence of the three officers to be unreliable and lacking in credibility, whereas that of the applicant's son and the victim's widow, to the effect that no warning had been given, was credible and convincing. The Commission also found that it had not been established that two guns had been found in the house, as claimed by the officers. It further considered that there were serious deficiencies in the subsequent investigation, including the autopsy.
Law: Government's preliminary objection (non-exhaustion of domestic remedies) – The applicant was not required to bring an administrative law action under Article 125 of the Constitution, since a remedy leading only to an award of damages cannot be regarded as an effective remedy in respect of fatal assault, the State being obliged also to conduct an investigation capable of identifying and punishing those responsible. On the other hand, the civil and criminal law remedies invoked by the Government are closely linked to the issues raised in the complaints under Articles 2 and 13 and must be joined to the merits.
The Court did not accept the Government's criticisms of the Commission's assessment of the evidence but accepted the facts as established by the Commission.
Article 2 (use of lethal force) – The Court accepted the Commission's finding that there was insufficient evidence concerning the planning of the operation to establish that the police were under instructions to use lethal force or that this was the purpose of the operation. Moreover, it did not find it necessary to determine whether the officers had formulated the intention to kill or acted with reckless disregard for life, since it does not fulfil the function of a criminal court. It was satisfied that the officers used a disproportionate degree of force: there was no satisfactory evidence that the victim had fired a shot and in those circumstances the firing of a large number of shots at the door was not justified by any reasonable belief that the officers' lives were in danger. They may have mistaken the sound of the lock for a gun being cocked, but the reaction of opening fire with automatic weapons on an unseen target in a residential block inhabited by innocent civilians was grossly disproportionate. Consequently, the use of force could not be regarded as absolutely necessary.
Conclusion: violation (unanimously).
In view of the difficulty in making any findings of fact concerning the planning of the operation, the Court made no separate finding of a violation in that respect. Similarly, it considered it inappropriate to make any separate finding of violation with regard to the alleged lack of assistance in obtaining medical care, the claim that the victim might have survived being largely speculative.

Article 2 (effectiveness of investigation) – There were significant omissions in the investigation, in particular the absence of any attempt to find the bullet allegedly fired by the victim, the failure to record properly the alleged finding of two guns in the house, the failure to take any photographs and the failure of the autopsy to record the injuries fully; furthermore, the prosecutor did not take any statements from those involved. The Court has already found that investigations carried out by administrative councils fail to satisfy the requirements of independence and impartiality and although in this case there was a subsequent prosecution the applicant was not informed of this and the court did not hear any witnesses apart from the three officers. The reports obtained by the court assessed the incident on the basis of an assumption that the officers' version was correct and the acquittal was based entirely on the view expressed in the second report that the officers had not been at fault. The court thus effectively deprived itself of its jurisdiction to decide the factual and legal issues. The authorities failed to conduct an adequate and effective investigation into the circumstances of the death, rendering recourse to civil and criminal remedies equally ineffective. The preliminary objection thus has to be dismissed and there has been a violation of Article 2 also in this respect.
Conclusion: violation (unanimously).
Articles 6 and 13 – The Court considered it appropriate to examine this complaint only under Article 13. Since it had found a violation of Article 2 in that the Government were responsible for the death of the applicant's son, the applicant had arguable complaints and the authorities were under an obligation to carry out an effective investigation. For the reasons given under Article 2, no effective criminal investigation could be considered to have been conducted and the applicant had therefore been denied an effective remedy and access to any other available remedies.
Conclusion: violation (6 votes to 1).
Article 41 – The Court, considering that there was a direct causal link between the violation of Article 2 and the loss by the victim's widow and children of his financial support, awarded £35,000 (GBP). It also awarded £20,000 in respect of the victim, to be held by the applicant for the widow and children, and £10,000 for the applicant himself in respect of non-pecuniary damage. Finally, the Court made an award in respect of costs and expenses.

DEATH PENALTY
Imposition of death penalty: *recevable*.

ÖÇALAN - Turkey (N° 46221/99)
Decision 14.12.2000 [Section I]
(See Appendix I).

ARTICLE 3

INHUMAN TREATMENT
Ill-treatment by police: *violation*.

EGMEZ - Cyprus (Nº 30873/96)
Judgment 21.12.2000 [Section IV]

Facts: The facts, as established by the European Commission of Human Rights following the taking of evidence by a delegation, are as follows. A team of anti-drug police officers was sent to arrest the applicant, a British national, at a meeting point close to the buffer zone. He resisted arrest and attempted to escape but was apprended by two officers, with whom he fought. One struck him on the head with a firearm, the second threw him to the ground and a third handcuffed him. He was taken to police headquarters and then to hospital, where

medical examinations revealed numerous bruises and other injuries. At a hearing the following day, the applicant was remanded in custody. A subsequent medical examination by a United Nations doctor also revealed extensive injuries. However, a police investigation concluded that the injuries had been sustained during arrest and that the force used had been proportionate. The applicant complained to the Ombudsman, claiming that he had been subjected to a violent, unprovoked attack by a number of officers on arrest and that he had subsequently been tortured. The Ombudsman concluded that the applicant had been ill-treated on arrest and while being taken to the police headquarters. However, no criminal or other proceedings were brought against the policemen.
Law: Government's preliminary objection (exhaustion of domestic remedies) – A complaint to an Ombudsman is not in principle a remedy which has to be exhausted, but by complaining to the Ombudsman the applicant drew the authorities' attention to his allegations and, since the Attorney General was prepared to treat them as credible, the applicant had an arguable claim. The authorities were therefore placed under an obligation to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible. There is no reason to doubt the effectiveness of the Ombudsman's investigation, but he does not have power to order measures or impose sanctions, so that at the time of publication of the report the authorities' obligation had not been discharged. While it opened the way for the institution of criminal proceedings, the Attorney General refrained from taking any action. The authorities assumed too readily that the applicant would not cooperate and thus prevent an effective prosecution. In any event, the obligation does not necessarily entail the punishment at all costs of the accused, but only an investigation capable of leading to their punishment, and it would therefore have been discharged by the institution of criminal proceedings. In this respect, the importance of the message conveyed to the public should not be under-estimated. Consequently, the applicant exhausted domestic remedies by complaining to the Ombudsman and the preliminary objection must be dismissed.
Article 3 – The Government accepted that the applicant had been intentionally subjected to ill-treatment during his arrest and immediately afterwards. The aim was not, however, to extract a confession; rather, the injuries were inflicted over a short period of heightened tension and emotions. Moreover, there is uncertainty as to the gravity of the injuries sustained (the photographs submitted by the applicant having been "retouched") and there is no convincing evidence of long-term consequences. The ill-treatment cannot be qualified as torture but was serious enough to be considered inhuman treatment.
Conclusion: violation (6 votes to 1).
Article 5(1) – On the basis of the facts established by the Commission, the applicant was arrested on reasonable suspicion of an offence.
Conclusion: no violation (unanimously).
Article 5(2) – On the basis of the facts established by the Commission, the applicant was informed promptly and in a language which he understood of the reasons for his arrest and of any charge against him.
Conclusion: no violation (unanimously).
Article 5(3) – On the basis of the facts established by the Commission, the hearing held the day after the applicant's arrest ensured compliance with this provision.
Conclusion: no violation (unanimously).
Article 5(4) – Following the hearing the day after the applicant's arrest, the lawfulness of his detention was reviewed on two further occasions, once automatically and once on an application for release.
Conclusion: no violation (unanimously).
Article 13 – In view of the reasoning concerning the preliminary objection, there was a breach of this provision also.
Conclusion: violation (unanimously).
Article 6(1) – The Court has always considered it appropriate to examine claims concerning the alleged absence of remedies in respect of ill-treatment under Article 13.
Conclusion: no separate issue (unanimously).

Article 41 – The Court dismissed the applicant's claim in respect of pecuniary damage but awarded him £10,000 (GBP) in respect of non-pecuniary damage. It also made an award in respect of costs.

INHUMAN TREATMENT
Ill-treatment during detention on remand: *violation*

BÜYÜKDAĞ - Turkey (N° 28340/95)
*Arrêt/Judgment 21.12.2000 [Section IV]

Facts: The applicant, who was suspected of belonging to an illegal organisation, was arrested in possession of false identity papers. At the time of her arrest she was suffering from severe problems with her eyesight. She was held in custody for fifteen days without any contact with the outside world. At the end of her period in police custody she was examined by a doctor who diagnosed a reduction in the mobility of her right arm accompanied by pain. The applicant was then brought before the public prosecutor at the National Security Court, to whom she complained that she had been ill-treated in custody. On the instructions of the public prosecutor she underwent further medical tests. The doctors noted in their report that she had suffered bruising to her right wrist and shoulder. The public prosecutor at the National Security Court forwarded the applicant's statement and the medical reports to the public prosecutor's office, which started an investigation to determine whether the allegations of ill-treatment were founded. The police officers on duty while she was in custody were questioned, but they denied the accusations against them and the investigation was closed on the ground that there was no case to answer. One of the police officers who was questioned referred to the applicant's problems with her eyesight. The discharge order was served at the applicant's home although she was in detention pending trial at the time. At a later stage the applicant herself lodged a complaint against the police officers who had been on duty while she was in custody. The public prosecutor at the National Security Court made an order stating that there was no case to answer as the complaints were identical to her previous allegations, which had been investigated and had resulted in a discharge order that had been served on her in person. The applicant challenged that decision arguing in particular that she had not been served as stated as she had been detained on the date in question. The President of the Assize Court who heard her application dismissed it without addressing that argument. The applicant was tried by the National Security Court, sitting as a bench composed of two civilians and a high ranking military judge, on a charge of being a member of an armed organisation that was seeking to undermine the integrity of the State. She was sentenced to twelve years and six months' imprisonment. Her appeal to the Court of Cassation was dismissed.
Law: Article 3 – Traces of bruising had been found on be applicant's body by the doctors who had examined her at the end of her time in police custody. The Government had provided no explanation as to the cause of the bruising. Despite the fact that she was suffering from problems with her eyesight – a fact which, on the evidence, was known to the authorities – the applicant was held for fifteen days without being allowed to see a doctor or a lawyer. The applicant's statements regarding the treatment inflicted on her were precise and consistent. Conversely, the investigation carried out by the domestic authorities had provided no information on the origin of the bruising. It was therefore possible to deduce from the evidence on the case file that the applicant had received a number of blows while in police custody thus explaining the injuries noted on examination. The acts concerned were such as to cause physical and mental suffering and, in view of the applicant's health, were apt to humiliate her and break down her physical and mental resistance. The treatment was therefore inhuman and degrading.
Conclusion: violation (unanimously).
Article 13 [NB. The Court decided to examine the complaint that there had been no effective investigation into the allegations of ill-treatment under this provision] – Since the Court had

held that the respondent State had been responsible for the inhuman and degrading treatment suffered by the applicant, her complaints were “ arguable” for the purposes of Article 13. Consequently, the authorities had been under an obligation to conduct an effective investigation into the conditions in which the applicant had been held in police custody. Yet, in carrying out its investigation the public prosecutor’s office had confined itself to taking statements from the police officers who had been on duty while the applicant was in custody. It had not considered it necessary to take evidence from the applicant or to get her to undergo a medical examination so that the cause of the bruising could be identified. In addition, as the applicant was in prison, the discharge order should have been served on her there and not at her home. Lastly, despite the fact that she had complained that the discharge order that had prevented her from proceeding had not been lawfully served on her, the investigation into the merits had not been reopened. It was also regrettable that the Assize Court had dismissed her application without addressing that argument. In those circumstances, the investigation could not be described as thorough and effective and, therefore, did not satisfy the requirements of Article 13.
Conclusion: violation (unanimously).
Article 6(1) – In a previous decision, the Court had noted that certain aspects of the status of military judges sitting on the national security courts cast doubts on their independence and impartiality. It was understandable that, in view of the accusations which she had to answer, the applicant should have reservations about appearing before a court that included a military judge, since his presence might suggest to her that the National Security Court would allow itself to be guided by considerations that were alien to the nature of her case. Such concerns as to the court’s independence and impartiality could be considered justified. Since it did not have full jurisdiction, the Court of Cassation had been unable to address those concerns.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 100,000 French francs (FRF) for non-pecuniary damage and FRF 15,000 for the costs and expenses incurred.

EXTRADITION
Extradition to the United States of a person for an offence punishable by the death penalty: *inadmissible.*

NIVETTE - France (Nº 44190/98)
Decision 14.12.2000 [Section I]

An international warrant was issued by an American criminal court for the arrest of the applicant, an American national, on suspicion of murdering his companion. He was arrested in France and detained with a view to being extradited. The American authorities lodged a request for his extradition with the French Ministry of Foreign Affairs. The French courts issued an opinion in favour of his extradition subject to their receiving an assurance from the American authorities that they would not call for or carry out the death penalty in his case. The courts referred to a statement by the American prosecution attorney in which he had said that he would not seek the application of the death penalty. The applicant’s appeal to the Court of Cassation was dismissed. The *Conseil d’État* dismissed the applicant’s appeal against the extradition order, holding that the Government had obtained sufficient assurances from the American authorities. The applicant alleged that in any event he faced a full life sentence for the offence of which he was accused.
Inadmissible under Articles 3 and 1 of Protocol No. 6: Exposing a prisoner to “ death row syndrome” could, in certain cases, depending in particular on the time spent in extreme conditions, the ever-present and increasing anguish caused by the execution, and the prisoner’s personal circumstances, be regarded as treatment that went beyond the bounds laid down by Article 3. Furthermore, it was possible that a State’s responsibility might be engaged under Article 1 of Protocol No. 6 if a person was extradited to a State in which there was a serious risk of their being sentenced to death and executed. In the case before the Court,

Article 190.2 of the Californian Criminal Code laid down that the death sentence could not be imposed unless the prosecuting attorney pleaded special circumstances. The prosecuting attorney had twice formally undertaken not to do so. The assurances obtained by the French State were, in the final analysis, such as enable the danger of the death penalty being imposed to be excluded. Extradition was therefore not likely to expose the applicant to a serious risk of treatment or a penalty prohibited by those Articles: manifestly ill-founded.
Communicated under Article 3 with regard to the applicant's allegation that he was in danger of having to serve a full life sentence. The Court also decided to apply Rule 39 of the Rules of Court.

EXTRADITION
Expulsion to the United States of a person running the risk of life imprisonment without reduction of sentence: *communicated.*

NIVETTE - France (Nº 44190/98)
Decision 14.12.2000 [Section I]
(See above).

ARTICLE 5

Article 5(3)

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *violation*.

JABLONSKI - Poland (Nº 33492/96)
Judgment 21.12.2000 [Section IV]

Facts: The applicant was arrested on 21 May 1992. His trial was adjourned on numerous occasions because he was either on hunger-strike or had inflicted injuries on himself. He was ultimately convicted on 28 February 1997. His appeal was dismissed and a cassation appeal was rejected as out of time. Throughout his detention on remand, he lodged regular requests for release, all of which were dismissed, the courts holding that the injuries did not justify release on health grounds, since they were self-inflicted and not life-threatening. On one occasion, the Regional Court requested the Supreme Court to prolong the detention and the latter's decision was served on the applicant 43 days later.
Law: Article 5(3) – The applicant's detention lasted 4 years, 9 months and 7 days, of which 3 years, 9 months and 27 days after Poland's acceptance of the right of petition. The suspicion against the applicant may initially have justified his detention but could not constitute relevant and sufficient grounds for the whole period. Article 5(3) does not oblige the authorities to release a detainee on account of his state of health, this being a question for the national courts. On the other hand, when deciding whether a person should be released the authorities are obliged to consider alternative measures of ensuring his appearance at trial. In this case, no consideration appears to have been given to the possibility of imposing other "preventive measures" expressly foreseen by Polish law. The courts did not give this consideration or refer to any risk of absconding; no account was taken of the fact that with the passage of time and given the number and character of the applicant's acts of self-aggression in prison, it became more and more acutely obvious that keeping him in detention no longer served the purpose of bringing him to "trial within a reasonable time". Thus, his prolonged detention

could not be considered “necessary” from the point of view of ensuring the due course of the proceedings and the reasons given were not sufficient to justify the length of the detention.
Conclusion: violation (unanimously).
Article 5(4) – Although a period of 43 days may *prima facie* appear not to be excessive, it involved only one court and at the time of its decision the applicant had already spent in custody a period twice as long as the maximum term of pre-trial detention foreseen by Polish law. Furthermore, the Government did not plead that there were complex issues and this was not the case – the principal question was whether there were any exceptional, and exhaustively enumerated, legal grounds for the prolongation of pre-trial detention beyond the statutory time-limits. The authorities thus failed to decide “speedily” the lawfulness of the applicant’s continued detention.
Conclusion: violation (unanimously)
Article 6(1) – The proceedings lasted 5 years, 3 months and 19 days, of which 4 years, 4 months and 8 days after Poland's acceptance of the right of petition. Although the applicant's conduct contributed to the prolongation of the proceedings, it does not account for the entire length, for which the authorties must bear responsibility.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the applicant had not shown that the pecuniary loss he claimed had been caused by the length of his detention and dismissed his claim in that respect. It awarded him 25,000 zlotys (PLN) in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Absence of proper and speedy review of lawfulness of detention: *violation*.

VODENIČAROV - Slovakia (Nº 24530/94)
Judgment 21.12.2000 [Section II]

Facts: The applicant was charged with assault. Two hearings in the District Court were disrupted by his behaviour and the second proceeded in his absence. He was convicted and his appeal was rejected. He was subsequently charged with contempt of court and the District Court ordered his psychiatric examination. He applied to the Constitutional Court, which replied that it was not an appellate body in the ordinary court system. In the meantime, the District Court had on 15 July 1995 ordered the applicant's detention in a mental hospital for observation and, despite having challenged the order, he was handcuffed and taken there by the police. The challenge was eventually dismissed on 17 August 1995. His wife had also lodged a complaint with the Prosecutor General's Office. No final decision has been taken in that respect.
Law: Government's preliminary objection (non-exhaustion of domestic remedies) – The Court joined the preliminary objection to the merits.
Article 5(4) – The applicant was detained on the basis of an order which had not become effective, since his objection was pending. Thus, although the law provided for a review of the lawfulness of detention, the procedure initiated by the applicant was disregarded by the authorities. The review was not carried out "speedily". As to the argument that the applicant could have sought redress before the public prosecutor (S. 167 of the Code of Criminal Procedure), this remedy does not satisfy the requirements of Article 5(4) as the procedure followed is not judicial in character. As for proceedings before the Constitutional Court, the Court was not convinced that the applicant could have been reasonably expected to file a constitutional petition while the proceedings concerning his ordinary remedy – which did in

principle comply with Article 5(4) – were pending. The one case relied on by the Government concerned a different situation and has never been confirmed or developed.
Conclusion: violation (unanimously).
Article 41 – The Court found no causal link between the violation and the pecuniary loss claimed by the applicant. It awarded him 60,000 SKK in respect of non-pecuniary damage and also made an award in respect of costs.

SPEEDY REVIEW
Length of time taken to review lawfulness of detention: *violation*.

JABLONSKI - Poland (Nº 33492/96)
Judgment 21.12.2000 [Section IV]
(See above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Request for additional financial assistance: *Article 6 not applicable*.

LA PAROLA and others - Italy (N° 39712/98)
Decision 30.11.2000 [Section IV]

The first two applicants were the parents of the third applicant, a minor who had been disabled since birth, on whose behalf they also acted. The third applicant was born in 1983 and at birth presented serious injuries and deformities. In 1989 the civil-invalidity board of the *département* accepted that she was suffering from 100% invalidity. After several requests, the applicants benefited from assistance measures including a subsidy from the President of the Republic. In November 1996 the regional head office of the welfare department communicated a further request by the applicant for a subsidy to the municipality of Palermo. In support of that request, the Prefecture of Palermo invited the municipality to do whatever was in the child's interest and indicated that the first applicant had complained that a 1986 regional statute containing provisions for financial aid was not being applied. In March 1999 a certificate of the third applicant's entitlement to such aid was issued by a medical department. The applicants indicated that since no decision had been made regarding such aid, they were unable to bring any legal action. It appeared, furthermore, that the applicants had a permanent entitlement and were already in receipt of what, according to the Government, was a substantial amount of benefit, a fact which they have not disputed. The applicants complained that they had not received the financial aid in question and relied on Articles 2, 5 and 8. They also complained of the length of the administrative procedure for obtaining such aid.
Inadmissible under Articles 2, 5 and 8. It was unnecessary to examine the objection that domestic remedies had not been exhausted as the complaints had to be dismissed on other grounds. Firstly, Articles 2 and 5 could not be relied on as the application did not concern a threat to the third applicant's life, an infringement of her right to life, or a restriction on her liberty. Secondly, even supposing that the applicants were entitled to the statutory aid, which was not a matter for the Court to decide, they were already in receipt of benefit on a permanent basis to assist them to cope with the third applicant's disabilities. The scale of that

benefit showed that Italy was already discharging its positive obligations under Article 8: manifestly ill-founded.
Inadmissible under Article 6: The applicants had complained about the length of administrative proceedings; those proceedings were not aimed at determining a dispute but the entitlement to the aid requested. Article 6 was, therefore, not applicable.

ACCESS TO COURT
Refusal to deal with an appeal on points of law due to failure to execute the judgment appealed against (when it is not established that the execution would have "manifestly excessive consequences"): *inadmissible*.

ARVANITAKIS - France (N° 46275/99)
Decision 5.12.2000 [Section III]

As the company which they had formed was in financial difficulties, the applicant and P.B. entered into an agreement under which P.B. was to reimburse a third party the sum of 1,480,000 French francs (FRF) owed by the company and the applicant was to guarantee the company's obligation to repay P.B. that amount. Owing to the company's collapse and in partial performance of the agreement, the applicant reimbursed P.B. FRF 572,500. After the company had gone into compulsory liquidation, the applicant took the view that his guarantee obligations to P.B. had been extinguished. He refused to pay the balance of FRF 907,500 and, declaring himself ruined, returned to Greece. Nancy Court of Appeal, upholding the judgment of the court of first instance, ordered the applicant to pay FRF 1,600,000, that being the amount of the balance with interest. The applicant appealed to the Court of Cassation, submitting that the court of appeal had erred in its determination of the nature of his obligation. On an application by P.B., the First President of the Court of Cassation ordered that the appeal be struck out of the list pursuant to Article 1009-1 of the New Code of Civil Procedure, which enabled such an order to be made if the appellant had failed to comply with the impugned judgment and, as the First President found to be the case in this instance, there was no reason to suppose that the appellant would suffer manifestly unreasonable consequences in the event of compliance. As the judgment had not been complied with within two years after the date of the appeal, the First President of the Court of Cassation granted the applicant's application at the end of that period for a declaration that the appeal had lapsed.
Inadmissible under Article 6(1): The objection that the applicant had failed to exhaust domestic remedies was bound up with the merits, the essence of the applicant's complaint being precisely that no means were available to him to request the reinstatement of the case on the Court of Cassation's list. The Court noted that the decision to strike the appeal out of the list had been taken on the ground that the applicant had not evinced any intention to comply with the decision of the court below and had not sought to show that there was a danger that compliance would entail "manifestly unreasonable consequences" for him personally. The aims pursued by imposing an obligation to comply with the judgment of the court below included protecting creditors and preventing dilatory appeals. Since those aims appeared legitimate, it was appropriate to examine whether the applicant's situation was such that he could not even have begun to comply with the appellate court's order. There was no cogent evidence to suggest that he could not do so since, although he had affirmed that he was a ruined man, he had not produced any certificate as to his revenue and owned immovable property which, even allowing for the mortgages encumbering it, apparently had a substantial value. Lastly, the Court noted – although it was not a decisive factor – that the applicant had retained an adviser whom he had paid out of his own funds; his position was therefore distinguishable from that of the applicants in the Annoni di Gussola and Desbordes-Omer case (see the judgment of 14 November 2000), who had been legally-aided. It had therefore been open to the applicant to make an offer of part-payment so as to demonstrate his good faith and obtain the reinstatement of the appeal on the list; however, paradoxically, he had instead sought a declaration that the appeal had lapsed: manifestly ill-founded.

ACCESS TO COURT
Refusal of the courts to review the lawfulness and merits of an administrative decision ordering that the applicant's car be impounded : *communicated*.

DŽERIŅŠ - Latvia (N° 48681/99)
Decision 14.12.2000 [Section II]

In accordance with a traffic police officer's decision, the applicant's car was impounded. He paid a private company towing and parking fees in order to recover it. The applicant applied to a Riga district court of first instance on various grounds for an order quashing the police officer's decision. The court declared the proceedings inadmissible for formal defect since they concerned both an application for judicial review of an administrative decision and an action for money had and received against a private company, which were two quite separate legal remedies. The judge added, lastly, that in any event the applicant had not complied with the procedural rules for applying for judicial review of a decision imposing a penalty for a breach of administrative regulations. The applicant's appeal against that decision was dismissed finally by the Riga Regional Court on the ground that no right to judicial review or to appeal lay against a mere decision to impound a vehicle. In that regard, the Court notes the absence of any statutory provisions in force enabling such acts to be challenged.

FAIR HEARING
Refusal of court to hear witnesses in support of applicant's case while uncertainties remained concerning the other party's arguments: *inadmissible*.

MERCÜMEK - Turkey (Nº 36591/97)
Decision 5.12.2000 [Section I]

The applicant sought to withdraw the balance on his accounts with a bank, which informed him that the money which he had deposited had already been withdrawn. The applicant initiated proceedings against the bank before the Commercial Court. The court-appointed experts found no conclusive evidence that the applicant had been paid the sums in issue. The bank later produced a document, allegedly signed by the applicant, according to which he had irrevocably released it from its obligation to pay him the sums deposited. The applicant maintained that the document had been forged. He requested that witnesses be heard on the matter of the authenticity of this document and submitted an expert legal opinion stating that other evidence than this document had to be taken into consideration by the court in order to assess the applicant's claim properly. His request, however, was rejected. The court finally dismissed the applicant's claim on the ground that there was no evidence to prove that the document at stake had been forged by the bank. The president of the court resigned six months after the decision and became one of the defendant bank's legal advisers. The Court of Cassation rejected the applicant's appeal as well as his further request for rectification of its judgment.
Inadmissible under Article 6(1): It cannot be said that the domestic court's findings were not supported by evidence or were arbitrary or manifestly unreasonable. The Commercial Court's decision was reviewed on appeal by the Court of Cassation and its soundness affirmed by a majority. Both judgments were supported by detailed reasoning. As regards the applicant's complaint that the domestic court did not hear the testimony of his key witness, it appears that the Commercial Court did not permit witnesses to be heard on behalf of the defendant bank and its consideration of the case was based on the parties' own submissions as well as on the findings of court-appointed experts, whose impartiality was not doubted. The decision of the domestic court to conduct the proceedings in this way cannot be impugned from the standpoint of the principle of equality of arms. Moreover, as regards the applicant's complaint of lack of impartiality of the president of the Commercial Court, he has failed to substantiate that the judge conducted the proceedings in a manner disclosing an appearance of bias

towards the defendant bank with respect either to her behaviour during the trial or to the content of the judgment. It has not been alleged that the judge had any connection and sympathies with the defendant bank before the trial. The fact that after vacating her position on the bench the judge joined a law office which advised the defendant does not amount to an ascertainable fact which could have raised a doubt as to her impartiality: manifestly ill-founded.

IMPARTIAL TRIBUNAL

Part-time judge acting as legal representative of the other party in separate proceedings brought by applicant before the same court: *violation*.

WETTSTEIN - Switzerland (Nº 33958/96)
*Judgment 21.12.2000 [Section II]

Facts: The applicant was involved in unsuccessful proceedings in the Administrative Court of the Canton of Zürich. The court was composed of five judges, including two part-time judges, one of whom had, shortly before, in separate proceedings brought by the applicant, acted as representative of the other party; the other part-time judge shared an office with the first and also with a third lawyer who had also acted for the opposing party in separate proceedings brought by the applicant. The applicant's public law appeal was dismissed by the Federal Court. The law has subsequently been changed to prohibit part-time judges from acting as legal representatives in proceedings before the Administrative Court.
Law: Article 6(1) – There is no reason to doubt that legislation and practice on part-time judiciary in general can be framed so as to be compatible with Article 6. What is at stake is solely the manner in which the proceedings were conducted in this case. While there was no material link between the applicant's case and the separate proceedings in which the two lawyers had acted as legal representatives, there was in fact an overlap in time, since the latter proceedings were still pending before the Federal Court when the former were instituted and indeed only ended two months before the Administrative Court's judgment. The applicant could therefore have reason for concern that the judge in question would continue to see him as the opposing party and this situation could have raised legitimate fears that the judge was not approaching the case with the requisite impartiality. The fact that another colleague had represented the applicant's opponent in further proceedings, while of minor relevance, could be seen as confirming these fears.
Conclusion: violation (unanimously).
Article 41 – The Court saw no causal link between the violation and the pecuniary damage claimed by the applicant and dismissed his claim in that respect. It made an award in respect of costs and expenses.

FAIR HEARING
Self-incrimination – conviction for refusing to answer questions asked by the police: *violation*.

HEANEY and McGUINNESS - Ireland (Nº 34720/97)
QUINN - Ireland (Nº 36887/97)
*Judgments 21.12.2000 [Section IV]

Facts: The three applicants were arrested on suspicion of serious terrorist offences. After having been cautioned by police officers that they had the right to remain silent, they were requested under Section 52 of the Offences Against the State Act 1939 to give details about their movements at the time of the relevant offences. However, they refused to answer any questions and each was convicted of failing to account for his movements and sentenced to 6 months' imprisonment; the applicants in the first case were also charged with membership of an illegal paramilitary organisation but were later acquitted of that offence. Their challenge to the constitutionality of Section 52 was rejected by the Supreme Court but their appeals against their convictions were adjourned pending the outcome of their applications.
Law: Article 6(1) and (2) – The applicants were "charged" for the purposes of Article 6 although they had not been formally charged when the Section 52 requests were made. Heaney and McGuinness were acquitted of the substantive offence and no proceedings were issued against Quinn in respect of the offence of which he had originally been arrested. In general, an acquittal or lack of proceedings preclude an applicant from claiming to be a victim of a violation of the procedural guarantees of Article 6. However, the Court has previously found violations of Article 6(2) in spite of the absence of a conviction and if the present applicants are unable to invoke Article 6, their acquittal or the lack of substantive proceedings would preclude any consideration under Article 6 of their complaints that they were punished prior to that acquittal for remaining silent. In these circumstances, they can invoke paragraphs 1 and 2 of Article 6 in respect of their conviction and imprisonment under Section 52. The safeguards referred to by the Government could not effectively and sufficiently reduce the degree of compulsion imposed by Section 52 to the extent that the essence of the rights at issue would not be impaired, since the choice between providing the information or facing imprisonment remained. Moreover, the legal position as to the admissibility in evidence of any answers given was particularly uncertain at the time, and indeed the applicants were initially given the standard caution. The degree of compulsion imposed by the application of Section 52 in effect destroyed the very essence of the privilege against self-incrimination and the right to remain silent. The security and public order concerns invoked by the Government cannot justify a provision which has this effect and there has therefore been a violation of the applicants' right to remain silent and their right not to incriminate themselves guaranteed by Article 6(1). Moreover, given the close link with the presumption of innocence guaranteed by Article 6(2), there has also been a violation of that provision.
Conclusion: violation (unanimously).
Articles 8 and 10 – The Court considered that no separate issue arose under these provisions.
Conclusion: no separate issue (unanimously).
Article 41 – The Court awarded each of the applicants IR£4,000 in respect of non-pecuniary damage and also made an award in respect of costs and expenses.
[**NB**: These cases establish a further exception to the principle that an applicant who has been acquitted or against whom no criminal proceedings have been pursued cannot claim to be a victim of a violation of the procedural guarantees of Article 6.]

Article 6(3)(b)

ADEQUATE TIME
Availability of sufficiently detailed written judgment within period for lodging an appeal: *no violation*.

<u>ZOON - Netherlands</u> (N° 29202/95)
Judgment 7.12.2000 [Section IV]

Facts: The applicant, a doctor, was convicted of committing euthanasia. The judgment was read out in the presence of the applicant's lawyer, but it is disputed whether the grounds or only the operative parts were read out. The Government state that an abridged version was available at the time of delivery and the practice at the time was for the court to provide a copy if a written request was made. The applicant, who did not appeal, maintains that his lawyer telephone the court within the 14-day time-limit for lodging an appeal and was told that no written judgment was available. The abridged copy did not include the evidence on which the conviction was based; the practice was to prepare a full written judgment only in the event of an appeal being made.
Law: Article 6(1) and (3)(b) – It is not contested that the operative parts of the judgment were read out in the presence of the applicant's lawyer and, whether or not the lawyer knew of the policy of making a copy of the abridged judgment available if a request was made in writing, it is not disputed that the abridged judgment was available within 48 hours of delivery. It was thus possible for the applicant and his lawyer to take cognisance of the text well before expiry of the time-limit for lodging an appeal. The applicant's defences, which were of a legal nature, were addressed in the abridged judgment and although the items of evidence on which his conviction was based were not listed in it, he never denied having committed the acts or challenged the evidence as such. Since in Dutch law an appeal is directed against the charge rather than against the first instance judgment, an appeal involves a completely new establishment of the facts and a reassessment of the law, so that the applicant and his lawyer would have been able to make an informed assessment of the possible outcome of any appeal in the light of the abridged judgment and the evidence in the case-file. It cannot be said, therefore, that the applicant's defence rights were unduly affected by the absence of a complete judgment or by the absence from the abridged judgment of a detailed enumeration of the items of evidence on which his conviction was based.
Conclusion: no violation (unanimously).

Article 6(3)(c)

RIGHTS OF DEFENCE
Free access of applicant to lawyers in domestic criminal proceedings and in proceedings before the Court: *admissible (and proposal to relinquish jurisdiction to the Grand Chamber).*

ÖÇALAN - Turkey (N° 46221/99)
Decision 14.12.2000 [Section I]
(See Appendix I).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Lack of possibility to have complainant cross-examined: *admissible*.

PERNA - Italy (N° 48898/99)
Decision 14.12.2000 [Section II]

The applicant, a journalist, published an article which purported to be a profile of the Palermo Principal Public Prosecutor. In reporting on proceedings initiated by the principal public prosecutor against a known politician, the applicant presented the former as a man who had pledged allegiance to the communist party and who used his profession to further that party's plans, in particular, to the detriment of the politician against whom proceedings had been brought. The principal public prosecutor lodged a complaint and the applicant was found guilty of libel. During the proceedings, the applicant made unsuccessful requests to cross-examine the complainant and to have documents capable of proving the truth of the facts reported in his article filed in the documents file. On appeal, the applicant alleged that, like other statements in his article, the prosecutor's political allegiance was a factual issue and could easily have been proved had the trial court granted his requests. Moreover, he claimed that he was a columnist and had merely exercised his right to report and comment when writing the profile complained of. The court of appeal found the article in question to be clearly defamatory on account of the way in which the applicant had presented the facts and the principal public prosecutor's conduct. It also held that the applicant's requests to cross-examine the complainant and evidence adduced before the trial court were not pertinent in that they related to the non-defamatory parts of the article, the truth of which did not need to be shown. The Court of Cassation upheld the decision of the Court of Appeal.
Admissible under Articles 6(3)(d) and 10.

ARTICLE 8

PRIVATE LIFE
Covert tape and video recordings used in evidence against accused: *communicated*.

ALLAN - United Kingdom (N° 48539/99)
[Section III]

The applicant and another man were arrested on suspicion of having committed a robbery. The applicant's co-accused admitted to the offence as well as to other similar robberies. The applicant denied any involvement. The police suspected the applicant and his co-accused of having committed a murder on the occasion of a recent robbery. They were remanded in custody. With authority granted by the Chief Constable, their cell and visit areas were bugged with audio and video devices; similar authority was obtained for the police station where the applicant was later held. The visits of a friend of the applicant were recorded and a cell-mate was fitted with recording devices by the police to elicit evidence from the applican. He gave evidence at the trial, and maintained that the applicant had admitted his presence at the murder scene; the purported admission was not part of the recordings made and was discussed at the trial. The recorded conversations were adduced in evidence at the trial, the applicant's counsel having unsuccessfully challenged the admissibility in evidence of extracts from the covert tape and video recordings. The applicant was eventually convicted of murder and sentenced to life imprisonment. His requests for leave to appeal were turned down.
Communicated under Articles 6(1), 8 and 13.

FAMILY LIFE
Lengthy paternity proceedings: *admissible*.

MIKULIĆ - Croatia (N° 53176/99)
Decision 7.12.2000 [Section IV]

The applicant is a child born out of wedlock. Her mother instituted proceedings in her own name and on behalf of her child to have the paternity of the father recognised. The alleged father having failed to appear despite being summoned, the court ruled against him. However, it later had to annul its own decision because under Croatian law it was not empowered to rule against a defendant who failed to appear in paternity proceedings. Although the alleged father was summoned again on several occasions, he still had not appeared three years after the proceedings had commenced. Moreover, he never underwent the DNA examinations ordered by the court.
Admissible under Article 6(1) (length of proceedings), 8 and 13.

HOME
Refusal of application by gypsies for planning permission for residential caravan on land owned by them: *friendly settlement*.

VAREY - United Kingdom (Nº 26662/95)
Judgment 21.12.2000 [Grand Chamber]

The applicants are gypsies who were refused planning permission to station a residential caravan on land which they had acquired. The first applicant was convicted of failing to comply with an enforcement notice and the applicants eventually had to move elsewhere.
The parties have reached a friendly settlement providing for payment to the applicants of compensation of £60,000 (GBP) plus costs.

HOME
Search of applicant's business premises and home in relation to criminal proceedings against his son: *communicated*.

BUCK - Germany (N° 41604/98)
[Section IV]

The applicant's son was fined for having exceeded the speed limit with a car belonging to the applicant's company. His son contested the administrative decision imposing the fine, and pleaded not guilty before the District Court. The applicant, who had been summoned as a witness, refused to give evidence, as he was entitled to do as a family member. The court subsequently issued a search warrant for the premises of the applicant's company and his home. The search was carried out; the seizure of several documents was ordered by the District Court. The appeals lodged by the applicant against the search warrant and the seizure order were unsuccessful. The Federal Constitutional Court refused to entertain the applicant's subsequent constitutional complaint.
Communicated under Article 8.

ARTICLE 9

FREEDOM OF RELIGION
Land on which places of worship erected registered as property of the Treasury and another public body : *friendly settlement*.

INSTITUT DE PRETRES FRANCAIS and others - Turkey (N° 26308/95)
Judgment 14.12.2000 [Section IV]

In 1982, in order to finance the upkeep of its church buildings, the Institute of French Priests *(Institut de Prêtres français*) let out part of an estate to which had become entitled in 1859 under the terms of a foundation set up by the Ottoman Sultan. In 1988 the Treasury brought an action for a declaration that the Institute's title to the property was void and for restitution of the property. Judgment was entered for the Treasury on the ground that the Institute did not have the requisite legal personality and had sought to make profits by letting the premises out, contrary to its religious object. Thus, at the end of the proceedings, an order was made for the estate to be registered in the name of the Treasury and the Directorate General of Foundations.
The parties have agreed on a friendly settlement under the terms of which the Treasury and the Directorate General of Foundations agree, *inter alia*, that the priests responsible for the

administration of the Institute shall have a life tenancy, an arrangement that will enable the Institute in particular to let the land. The Treasury and the Directorate General of Foundations will be entitled to a reasonable portion of the rent, and waive their right to sums that have fallen due since the ruling that the Institute's title was void.

FREEDOM OF RELIGION
Parliamentary reports on sects having allegedly triggered a policy of repression against Jehovah witnesses: *communicated*.

FEDERATION CHRETIENNE DES TEMOINS DE JEHOVAH - France
(N° 53430/99)
[Section III]

The applicant is an association responsible for representing the interests of and providing legal protection for 1,149 associations established locally in France to enable Jehovah's Witnesses – which the applicant says is the third largest Christian faith in France – to practice their faith. The Jehovah's Witnesses were first registered as a religious association at a prefecture in 1906. Since then, that faith had been practised without hindrance in France. In 1995 the National Assembly set up a commission to investigate sects. After holding approximately twenty hearings in private and taking other steps the commission published a report known as the Gest/Guyard report. On the basis of an appraisal carried out by the Central Office of General Intelligence (*direction centrale des renseignements généraux*), a list of movements considered to be sects and classified as dangerous was compiled in the report. The Jehovah's Witnesses were included in the list. The report was widely circulated among both the public authorities and the general public. In 1998 a second parliamentary commission was set up to pursue its predecessor's investigations. It focused its attention on the financial, property and fiscal aspects of the sects. The applicant said that the second parliamentary commission's report (the Guyard/Brard report) contained erroneous and defamatory information on it, including allegations of tax fraud. It made several requests to the President of the National Assembly to have certain passages removed from the report, but received no response. The applicant added that as a result of the report the State had taken a series of administrative measures against the Jehovah's Witnesses – such as refusing members of that faith the right to work as assistants in nursery schools and denying the organisation exemption from rates on its places of worship – and had adopted repressive statutory provisions against sects. The applicant points out that there is no remedy for persons aggrieved by the reports of parliamentary commissions, the authors of such reports enjoy full immunity from suit and the commissions had wide-ranging investigative powers.
Communicated under Articles 6, 9 and 13 taken alone or together with Article 14. *Application to be given priority* (Rule 41 of the Rules of Court).

ARTICLE 13

EFFECTIVE REMEDY
Lack of adequate investigation on allegations of ill-treatment during detention on remand: *violation*.

BÜYÜKDAĞ - Turkey (n° 28340/95)
*Judgment 21.12.2000 [Section IV]
(See Article 3, above).

ARTICLE 14

DISCRIMINATION (Article 8)
Discrimination between homosexual and heterosexual partners as regards transmission of the right to tenancy after the death of one of the partners: *communicated*.

KARNER - Austria (N° 40016/98)
[Section III]

The applicant, a homosexual, lived with his partner from 1989 in a flat rented by the latter. They shared all expenses pertaining to the flat. In 1994, the applicant's partner died, leaving him his estate. In 1995, the applicant's landlord instituted proceedings to obtain the termination of the tenancy. His claim was dismissed both at first instance and appeal. The Supreme Court, however, was favourable to the landlord and terminated the tenancy. The court considered that the legislation which preserved a right to tenancy to unmarried partners in the event of the death of one of the partners should be interpreted as only applying to heterosexual couples.
Communicated under Article 14 combined with Article 8.

ARTICLE 43

Article 43(2)

On 13 December 2000 the Panel of the Grand Chamber accepted a request for referral of the following case to the Grand Chamber:

PISANO - Italy (N° 36732/97)
Judgment 27.7.2000 [Section II]

The case concerns the refusal of the courts to hear a witness for the defence.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 22):

HOWARTH - United Kingdom (N˚ 38081/97)
Judgment 21.9.2000 [Section IV]

LOPES GOMES DA SILVA - Portugal (N° 37698/97)
Judgment 28.9.2000 [Section IV]

I.J.L., G.M.R. and A.K.P. - United Kingdom (N˚ 29522/95, 30056/96 and 30574/96)
Judgment 19.9.2000 [Section III]

OLDHAM - United Kingdom (N˚ 36273/97)
Judgment 26.9.2000 [Section III]

BIBA - Greece (N° 33170/96)
Judgment 26.9.2000 [Section III]

JOSEPH-GILBERT GARCIA - France (N˚ 41001/98)
Judgment 26.9.2000 [Section III]

DAGORN - France (N˚ 42175/98)
Judgment 26.9.2000 [Section III]

De LISI - Italy (N˚ 40974/98)
Judgment 28.9.2000 [Section II]

MESSINA - Italy (Nº 25498/94)
Judgment 28.9.2000 [Section II]

Article 44(2)(c)

On 13 December 2000 the Panel of the Grand Chamber rejected a request for revision of the following judgment, which has consequently become final:

GLASER - United Kingdom (N˚ 32346/96)
Judgment 19.9.2000 [Section III]

The case concerns enforcement of access to children.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Property belonging to a religious association since 1859 registered as property of the Treasury and another public body: *friendly settlement*.

INSTITUT DE PRETRES FRANCAIS and others - Turkey (N° 26308/95)
Judgment 14.12.2000 [Section IV]
(See Article 9, above).

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF THE PEOPLE
Candidate who came second on his party's list at parliamentary elections not chosen to replace elected candidate on latter's death: *struck out*.

SPIŠÁK - Slovakia (Nº 43730/98)
Decision 7.12.2000 [Section II]

The applicant came second in terms of votes for the Slovak National Party's candidates at the 1994 parliamentary elections in the constituency of Eastern Slovakia. While the candidate of the party who had obtained most votes became member of the National Council, the other candidates on the list, including the applicant, became substitutes in accordance with the Election Act. In December 1996 the elected member died and, by a decision of the party, was replaced by a substitute other than the applicant, despite the latter having been second on the list. The National Council accepted the party's decision in this respect. The Constitutional Court, upon the applicant's appeal, found that the National Council had violated his constitutional rights and infringed the Election Act by approving the party's decision. Following new parliamentary elections in 1998, the term of office of the members of the National Council elected in 1994 expired without the applicant having had the opportunity to sit.
The parties have reached a friendly settlement and the applicant has expressed his wish not to pursue his application.

ARTICLE 1 OF PROTOCOL No. 6

ABOLITION OF THE DEATH PENALTY
Extradition to the United States of a person for an offence punishable by the death penalty: *inadmissible.*

NIVETTE - France (Nº 44190/98)
Decision 14.12.2000 [Section I]
(See Article 3, above).

PROCEDURAL MATTERS

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Extradition to the United States of a person running the risk of life imprisonment without reduction of sentence: *application of Rule 39.*

NIVETTE - France (Nº 44190/98)
Decision 14.12.2000 [Section I]
(See Article 3, above).

APPENDIX I

Öçalan v. Turkey – text of press release

On 21 November 2000 a Chamber of seven Judges from the First Section of the European Court of Human Rights held a hearing on the admissibility and the merits of the application lodged by Abdullah Öcalan on 16 February 1999. Mr Öcalan, a Turkish national who was born in 1949 and is currently incarcerated in İmralı Prison (Bursa, Turkey), complained of violations of the following Articles of the European Convention on Human Rights: Articles 2 (right to life), 3 (prohibition of ill-treatment), 5 (right to liberty and security), 6 (right to a fair trial), 7 (no punishment without law), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 13 (right to an effective remedy), 14 (prohibition of discrimination), 18 (limitation on use of restrictions on rights) and 34 (right of individual application).

On 14 December 2000 the Chamber declared Mr Öcalan's complaints admissible, with the exception of two complaints under Article 5 (5 § 2 - the right to be informed of the reasons for his arrest and of any charge; and 5 § 5 - the right to compensation for a breach of the provisions of Article 5). The issue of whether the applicant exhausted domestic remedies in respect of his remaining complaints under Article 5 has been joined to the merits.

The Chamber further decided to inform the parties of its intention to relinquish jurisdiction in favour of the Grand Chamber (seventeen Judges) in accordance with Article 30 of the Convention, which provides: "Where a case pending before a Chamber raises a serious question of interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties objects". The parties have been given one month in which to indicate to the Chamber whether they object to relinquishment.

Summary of the facts

In November 1998 the applicant, the leader of the PKK, was deported from Syria. After periods of residence in a number of different countries, he was arrested in Nairobi (Kenya) on 16 February 1999 during an operation conducted in disputed circumstances. He was transferred to Turkey and placed in police custody on the same day at İmralı Prison.

On 23 February 1999 the applicant appeared before a judge of the National Security Court, who ordered him to be placed in pre-trial detention.

In an indictment filed on 24 April 1999 the Public Prosecutor at the Ankara National Security Court accused the applicant of carrying out actions calculated to bring about the separation of a part of Turkish territory and of forming and leading an armed gang to achieve that end. The Public Prosecutor asked the court to sentence the applicant to death under Article 125 of the Criminal Code.

On 29 June 1999 the Ankara National Security Court found the applicant guilty as charged and sentenced him to death under Article 125 of the Criminal Code.

By a judgment of 25 November 1999 the Court of Cassation upheld in all respects the judgment of 29 June 1999.

On 30 November 1999 the European Court of Human Rights asked the respondent Government, under Rule 39 of the Rules of Court, to adopt the following interim measure: "*The Court requests the respondent Government to take all necessary steps to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant's complaints under the Convention.*"

List of other judgments delivered in December

Articles 3 and 5

JEZNACH - Poland (N° 27580/95)
Judgment 14.12.2000 [Section IV]

The case concerns alleged ill-treatment and unlawful detention – struck out of the list (absence of intention to pursue petition).

Article 5(4)

CROKE - Ireland (Nº 33267/96)
Judgment 21.12.2000 [Section IV]

The case concerns the absence of independent and automatic review of psychiatric detention, both on initial detention and subsequently – friendly settlement (undertaking to amend the law, in addition to payment of compensation of an undisclosed sum).

Article 6

KALLITSIS - Greece (N° 46351/99)
Judgment 14.12.2000 [Section II]

The case concerns the refusal of the authorities to comply with a judgment of the Audit Court – struck out of the list (matter resolved).

MOSTICCHIO - Italy (Nº 41808/98)
*Judgment 5.12.2000 [Section I]

The case concerns the length of administrative proceedings – no violation.

MOTIERE - France (N° 39615/98)
*Judgment 5.12.2000 [Section III]

BALLESTRA - France (N° 28660/95)
GENESTE - France (N° 48994/99)
*Judgment 12.12.2000 [Section III]

MALINOWSKA - Poland (N° 35843/97)
*Judgment 14.12.2000 [Section IV]

F.S. - Italy (Nº 44471/98)
CATANIA and ZUPELLI - Italy (Nº 45075/98)
MURRU - Italy (no. 2) (Nº 45091/98)
MURRU - Italy (no. 3) (Nº 45095/98)
FRANCHINA - Italy (Nº 46529/99)
WASILEWSKI - Poland (Nº 32734/96)
*Judgments 21.12.2000 [Section IV]

These cases concern the length of civil or administrative proceedings – violation.

BURGORGUE - France (N° 39615/98)
*Judgment 5.12.2000 [Section III]

PRINCIPE and others - Italy (N° 44330/98)
MARCOTRIGIANO - Italy (N° 44344/98)
Judgments 19.12.2000 [Section I]

MONTEZ CHAMPALIMAUD Lda. - Portugal (Nº 37722/97)
Judgment 21.12.2000 [Section IV]

These cases concern the length of civil or administrative proceedings – friendly settlement.

ÖZCAN - Turkey (N° 31831/96)
BEKDEMİR - Turkey (N° 31853/96)
CAN v. Turkey (N° 33369/96)
POLAT - Turkey (N° 33645/96)
ÖZÇETİN - Turkey (N° 34591/97)
KILIÇ KALKAN - Turkey (N° 34687/97)
Judgment 5.12.2000 [Section I]

H.L. - Finland (N° 33600/96)
Judgment 14.12.2000 [Section IV]

KLINIECKI - Poland (Nº 31387/96)
Judgment 21.12.2000 [Section IV]

These cases concern the length of criminal proceedings – friendly settlement.

Article 8

VALLE - Finland (N° 28808/95)
Judgment 7.12.2000 [Section IV]

The case concerns restrictions on telephone calls made to the applicant by his lawyer while the applicant was in psychiatric care – friendly settlement.

RINZIVILLO - Italie/Italy (Nº 33958/96)
*Judgment 21.12.2000 [Section II]
The case concerns the absence of a legal basis for censoring a prisoner's correspondence – violation.

Article 4 of Protocol No. 7

R. - Austria (N° 32502/96)
S. - Austria (N° 33732/96)
EDELMAYER - Austria (N° 33979/96)
FREUNBERGER - Austria (N° 34186/96)
Judgments 19.12.2000 [Section III]

These cases concern the conviction of the applicants by the criminal courts for negligently causing death or injury while under the influence of alcohol after they had previously been ordered by the administrative authorities to pay fines for driving under the influence of alcohol – friendly settlement.

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