CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 3
on the case-law of the Court
February 1999

STATISTICAL INFORMATION

I.	Judgments delivered			8[1]
II.	Applications declared admissible:			
	Section I		0	
	Section II		6	
	Section III		6	
	Section IV		5	
	Total			17
III.	Applications declared inadmissible:			
	Section I	- Chamber	11	
		- Committee	36	
	Section II	- Chamber	6	
		- Committee	42	
	Section III	- Chamber	5	
		- Committee	56	
	Section IV	- Chamber	4	
		- Committee	35	
	Total			195
IV.	Applications struck off the list:			
	Section I	- Chamber	0	
		- Committee	6	
	Section II	- Chamber	0	
		- Committee	0	
	Section III	- Chamber	1	
		- Committee	1	
	Section IV	- Chamber	0	
		- Committee	0	
	Total			8

Total number of decisions (not including partial decisions): 220

V. Applications communicated to Governments (Rule 54(3) of the Rules of Court):

Section I	18
Section II	34
Section III	36
Section IV	6
Total number of applications communicated:	94

[1] One judgment dealt with 35 joined applications.

Note: The summaries contained in this Information Note are prepared by the Registry and are not binding on the Court. They are provided for information purposes only and are not intended to replace the judgments and decisions to which they relate. Consequently, they should not be quoted or cited as authority. All judgments and decisions referred to in the Information Note are available for consultation in the Court's database, accessible via the Internet at the following address: http://www.dhcour.coe.fr/hudoc.
The summaries are presented under the relevant article of the Convention (see attached list) and are preceded by a keyword and a brief description of the subject-matter of the complaint, followed by the Court's decision, indicated in italics.

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment in order to extort a confession: *communicated*.

GUR - Turkey (N° 29914/96)
[Section I]
(See Article 6(3)(e), below).

EXPULSION
Expulsions to Croatia and Bosnia-Hercegovina of ethnic Croatians from Bosnia-Hercegovina: *inadmissible*.

ANDRIC - Sweden (Nº 45917/99)
MAJIC - Sweden (Nº 45918/99)
PAVLOVIC - Sweden (Nº 45920/99)
MARIC - Sweden (Nº 45922/99)
ANDRIJIC - Sweden (Nº 45923/99)
JURIC - Sweden (Nº 45924/99)
PRANJKO - Sweden (Nº 45925/99)
Decisions 23.2.99 [Section I]
(See Article 4 of Protocol No. 4, below).

EXPULSION
Expulsion to the Ivory Coast: *inadmissible*.

J.E.D. - United Kingdom (Nº 42225/98)
Decision 2.2.99 [Section III]
(See Article 6(1) (civil), below).

ARTICLE 5

Article 5(1)(a)

COMPETENT COURT
Confinement of soldier by order of Lieutenant Colonel for disobeying orders: *communicated*.

DARICI - Turkey (Nº 29986/96)
Decision 2.2.99 [Section I]

The applicant, an ordinary soldier, was convicted for disobedience to superior orders and sentenced by a Lieutenant Colonel to 21 days of confinement pursuant to the Military Criminal Code. He unsuccessfully complained to his military superiors, alleging that the Lieutenant Colonel was not competent to convict him. The Military High Administrative Court rejected his appeal on the ground that the right to challenge disciplinary sanctions imposed by military superiors was limited. His appeal against this decision was also dismissed. He was convicted for disobedience again and sentenced to confinement by the Lieutenant Colonel. His appeal to his military superiors was once more to no avail.
Communicated under Articles 5(1)(a) and 6.

Article 5(3)

JUDGE OR OTHER OFFICER
Impartiality of officer ordering detention of soldier: *violation*.

HOOD - United Kingdom (Nº 27267/95)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix I).

Article 5(5)

COMPENSATION
Absence of enforceable right to compensation for unlawful detention: *violation*.

HOOD - United Kingdom (Nº 27267/95)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix I).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
International organisation's immunity from jurisdiction in respect of an employment dispute: *no violation*.

WAITE and KENNEDY - Germany (Nº 26083/94)
BEER and REGAN - Germany (Nº 28934/95)
Judgments of 18.2.99 [Grand Chamber]
(See Appendix II)

FAIR HEARING
Absence of reference in appeal court decision to an argument presented by the applicant: *inadmissible*.

DRIEMOND BOUW BV - Netherlands (Nº 31908/96)
Decision 2.2.99 [Section I]

The applicant company hired employees for work in the Netherlands from a German company. The German administration issued secondment certificates for them. The Dutch authorities registered the German company and imposed social security contributions on it. It went bankrupt and consequently the authorities declared the applicant company liable for the payment of the social security contributions for the hired workmen. The applicant company filed an appeal before the Regional Court, submitting that it had found no social security contributions demands. The appeal was dismissed, the court noting that social security contributions demands had been sent to the German company and that no payment had been received in response. The court also found that there was no international secondment at issue, for the employees were all Dutch nationals, residing and working in the Netherlands at the relevant time. They had been insured under the Dutch social security system until their recruitment by the German company and had then been assigned to work in the Netherlands. The applicant company lodged a further appeal with the Central Appeals Tribunal, stressing that it appeared from the case-file that no social security contribution demands had been sent to the German company and that on the other hand letters from another administrative body had created legitimate expectations that the German company would not have to pay the social security contributions. The court dismissed the appeal but, allegedly, did not examine the applicant company's argument regarding the sending of social security contribution demands.
Inadmissible under Article 6(1): Proceedings concerning the payment of contributions under the Dutch social security scheme fall under this provision. Article 6(1) obliges courts to give reasons for their judgments, but cannot be interpreted as requiring a detailed answer to every argument. The extent to which this duty applies may vary according to the nature of the decision and can only be determined in the light of the circumstances of the case. In the instant case, the General Administration Law Act does not state that courts should address every

specific argument raised by the parties, but merely give reasons for their decisions. The dispute was whether the applicant company could be held liable for the payment of the social security contributions which should have been paid by the German company. The decisive point at issue was whether certain requirements contained in the applicable rules on international secondment had been respected on the basis of which the applicant company would have been exempted from this liability or whether it could claim exemption from it on grounds of legitimate expectations raised by another administrative organ. However, the Regional Court did examine the applicant company's argument and stated that it clearly appeared that social security demands had been sent to the German company. The applicant company did not challenge this finding, but merely stated that it had not seen such demands itself. The Central Appeal Court's silence with regard to this argument can reasonably be interpreted as an implied rejection of an argument not considered decisive for the outcome of the proceedings: manifestly ill-founded.

FAIR HEARING
Fairness of expulsion proceedings: *inadmissible*.

J.E.D. - United Kingdom (Nº 42225/98)
Decision 2.2.99 [Section III]

The applicant, an Ivorian national, arrived in London in September 1994 and applied for political asylum, claiming his life was in danger in his home country because of his involvement in a student movement. He maintained that following a demonstration organised by this movement, he was taken to a police station where he was allegedly ill-treated and forced to resign from the movement. The police later sent him a summons and he fled the country. In February 1996, the Secretary of State rejected his asylum application on account of the lack of evidence corroborating his allegations. His appeal was dismissed, but he renewed his application in October 1997, submitting letters and statements of third parties to support his allegations on the existence of a risk of persecution. The Secretary of State did not treat it as a fresh application, since the government ban on the student movement had been lifted. No appeal lay against this decision. The High Court, following a hearing at which the applicant was represented by a lawyer, refused his application for leave to apply for judicial review.
Inadmissible under Article 3: The authorities had due regard to the applicant's arguments and to the past and present situation in the receiving country. Having regard to these elements, the Court after carrying out its own examination of the applicant's arguments and materials considered that he had failed to show that he would face a real risk of being subjected to treatment proscribed by Article 3: manifestly ill-founded.
Inadmissible under Article 6: In the instant case, and without prejudice to the issue of whether Article 6 is applicable to asylum or deportation proceedings, the applicant was able to seek judicial review of the Secretary of State's decision and the High Court proceedings did not indicate any elements of unfairness. He was legally represented and it is not for the Court to comment on the adequacy of his lawyer's presentation of his case before the High Court: manifestly ill-founded.

FAIR HEARING
Alleged legislative interference in the administration of justice: *inadmissible*.

PREDA and DARDARI - Italy (N° 28160/95 et/and 28382/95)
Decision 23.2.99 [Section II]

Ruling on an application made by the applicants, both teachers, a court held that for the purposes of calculating their length of service and salary, their employer (the local authority) had to take into account any national service they had performed. After that decision had become final the legislature passed legislation on the interpretation of an earlier statute; from that point on, for the purposes of calculating length of service and salary, national service was to be taken into account only from the date the statute had entered into force. The local authority therefore informed the applicants that it would apply that law. The applicants sought to have the initial judgment enforced and challenged the constitutionality of the interpretative provision on the ground that, as it affected final decisions, it infringed the non-retroactivity principle. The trial court referred the case to the Constitutional Court, which dismissed the constitutional challenge on the ground that the provision was intended to ensure uniform treatment of people who had performed national service over the same period. The applicants maintained that the enactment of the interpretative law had rendered nugatory the effects of the final judgment that had been delivered in their favour.
Inadmissible under Article 6(1), which did not guarantee that the effects of a final judgment were immutable. The Court had, however, previously held that, by intervening in a manner which was decisive to ensure that the outcome of proceedings in which it was a party was favourable to it, a State might be infringing an applicant's rights under Article 6(1) (see the Stran Greek Refineries and Stratis Andreadis judgment). However, in the instant case, the legislature had intervened only when the proceedings brought by the applicants had ended and its aim had not been to interfere in the applicants' case but to provide a uniform solution to the cases of everyone in the same position. It followed that it did not appear that it had been the State's intention to intervene in the applicants' proceedings in a manner contrary to Article 6(1): manifestly ill-founded.

FAIR HEARING
Alleged legislative interference in the administration of justice: *admissible*.

ANTONAKOPOULOS and others - Greece (N° 37098/97)
Decision 23.2.99 [Section III]

The father of the first two applicants, who was also the third applicant's husband, had retired from his post with the Legal Council of State and received a pension. After his death, part of the pension was assigned to his widow, who subsequently made an unsuccessful application for an increase. She then applied to the Audit Court, which upheld her claim in part, ordering the State to pay the applicants an additional pension. That decision was served on the State Paymaster General but the amounts awarded were not paid. A law was passed declaring that all judgment debts were statute-barred. The Audit Court ruled that that law was unconstitutional. The applicants maintain that the authorities' refusal to comply with the Audit Court's decision constitutes a violation of their right to a fair hearing and to respect for their

possessions since they have no means of compelling the authorities to comply with the decision in their favour. They also argue that the passing of the law in issue (one that was declared unconstitutional) amounted to an interference by the State in the administration of justice with a view to securing a favourable outcome to proceedings to which it was a party.
Article 34 : the Court considered that the first two applicants, who had declared that they wished to pursue the proceedings on their own and their mother's behalf, could be regarded as victims and noted that the situation complained of had continued after their application was lodged and so was a continuing one.
Admissible under Article 6(1) and Protocol No.1.

EQUALITY OF ARMS
Dismissal of applicants' claims on the basis of a judgment given in separate proceedings brought by someone in the same position as the applicants: *communicated*.

MARTINEZ-CARO DE LA CONCHA CASTANEDA and others - Spain
(N° 42646-42648/98, 42650/98, 42653/98, 42656-42661/98 and/et 43556/98)
[Section I]

The applicants, who were civil servants, considered that, owing to an incorrect construction of the applicable legislation, they had not received their full entitlement to special allowances due for overseas service. They brought proceedings before the *Audiencia Nacional*. Meanwhile, other civil servants in a similar position had obtained favourable decisions. The State Counsel's Office appealed on points of law against a judgment in favour of a civil servant in the same position as the applicants. On 27 June 1997 the Supreme Court found in favour of the State Counsel's Office and reversed the impugned judgment. The applicants, who were not informed of that decision, requested that the issue whether the legislative provision was constitutional be referred to the Constitutional Court. The applicants' proceedings before the *Audiencia Nacional* were dismissed, that court following the Supreme Court's decision of 27 June 1997. They appealed to the Constitutional Court, contending that the judgment of 27 June 1997 had been delivered in proceedings to which they had not been a party, that they had not been informed that the State representative had lodged an appeal on points of law, that they had not been able to appear or put forward submissions and that the decision had not been served on them. They submit that the fact that their proceedings were dismissed in reliance on the decision of 27 June 1997 was inconsistent with the principle of equality of arms and the right to a fair hearing. The Constitutional Court dismissed their appeal.
Joined and communicated under Article 6(1) (equality of arms), and Article 14 taken together with Article 1 of Protocol No. 1.

REASONABLE TIME
Length of civil proceedings: *violation*.

LAINO - Italy (N° 33158/96)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix III).

Article 6(1) [criminal]

ACCESS TO COURT
Conviction of soldier by officer for disobeying orders: *communicated*.

DARICI - Turkey (Nº 29986/96)
Decision 2.2.99 [Section I]
(See Article 5(1)(a), above).

INDEPENDENT TRIBUNAL
Independence and impartiality of courts-martial: *violation*.

CABLE and others - United Kingdom (Nos 24436/94, 24582/94, 24583/94, 24584/94, 24895/94, 25937/94, 25939/94, 25940/94, 25941/94, 26271/95, 26525/95, 27341/95, 27342/95, 27346/95, 27357/95, 27389/95, 27409/95, 27760/95, 27762/95, 27772/95, 28009/95, 28790/95, 30236/96, 30239/96, 30276/96, 30277/96, 30460/96, 30461/96, 30462/96, 31399/96, 31400/96, 31434/96, 31899/96, 32024/96, 32944/96)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix IV).

HOOD - United Kingdom (Nº 27267/95)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix I).

Article 6(2)

PRESUMPTION OF INNOCENCE
Refusal of compensation for detention on remand: *inadmissible*.

HIBBERT - Netherlands (Nº 38087/97)
Decision 26.1.99 [Section I]

On 24 September 1991, the applicant was arrested and detained on remand on suspicion of having committed robbery. On 20 December 1991, the Regional Court of Amsterdam acquitted him on account of the lack of sufficient evidence and ordered his immediate release. The public prosecutor filed an appeal. The Court of Appeal quashed the first instance decision, and convicted the applicant for robbery and extortion and sentenced him to two years' imprisonment. Upon his appeal on points of law, the Supreme Court quashed the decision and referred the case back to the Court of Appeal, which acquitted him again for lack of sufficient evidence. The applicant then claimed compensation for the time spent in pre-trial detention and reimbursement of the legal costs incurred. His requests were both dismissed by the Court of Appeal. He died on 9 August 1998.
Article 34: Although the heirs of a deceased applicant cannot claim a general right to have the examination of his application to the Court continued, close relatives have,

on a number of occasions, been granted the right by the Court to act on behalf of the deceased applicant. The Court, in the instant case, decided that the deceased applicant's mother could pursue the application on his behalf.
Inadmissible under Article 6(2): A statement suggesting guilt would offend the principle of presumption of innocence, whereas a mere reference to a state of suspicion has been deemed unobjectionable by the Court in previous cases. In the present circumstances, the Court of Appeal's refusal to grant the applicant compensation was based on the fact that several witnesses had made incriminating statements as to his involvement in punishable acts, establishing thereby "reasonable suspicion" that had justified his pre-trial detention. Therefore, the Court of Appeal's decision did not violate the presumption of innocence: manifestly ill-founded.

Article 6(3)(e)

FREE ASSISTANCE OF INTERPRETER
Alleged absence of the assistance of an interpreter during the preliminary investigation: *communicated*.

GUR - Turkey (N° 29914/96)
[Section I]

The applicant was arrested on suspicion of armed assault on a petrol station, intentional killing and being a member of an illegal organisation (the PKK). He was questioned by the *gendarmerie*, the public prosecutor and the investigating judge and made certain statements. His application for bail was refused. The National Security Court heard the applicant, who, through an interpreter, denied all the accusations against him and retracted his statements, saying that he had signed them under duress. The death penalty was imposed but was subsequently commuted to life imprisonment. The Court of Cassation dismissed his appeal, but allowed the appeals of three of his co-defendants and ordered their retrial The applicant asserted that statements he had made under questioning about some of the offences charged had been obtained only through ill-treatment and admissions had been extracted from him only under duress. He complained that the proceedings had been unfair as he had not had an interpreter when he made his statements and did not understand Turkish since, though having Turkish nationality, he was of Kurdish origin.
Communicated under Articles 3, 6(1) and (3)(e), and 35(1) (exhaustion of domestic remedies).

ARTICLE 8

PRIVATE LIFE
Discharge from army on the basis of a policy against the participation of homosexuals in the armed forces: *admissible*.

LUSTIG-PREAN - United Kingdom (Nº 31417/96)
BECKETT - United Kingdom (Nº 32377/96)
SMITH - United Kingdom (Nº 33985/96)
GRADY - United Kingdom (Nº 33986/96)
Decisions 23.2.99 [Section III]

These cases concern the investigation and administrative discharge of armed forces personnel relating to the implementation of an absolute policy against the participation of homosexuals in the armed forces of the United Kingdom. The third and fourth cases also raise several other issues.
Admissible under Article 8 alone and in conjunction with Article 14 (and the second two cases also under Article 3 and 10 in conjunction with Article 14 and Article 13 in conjunction with Articles 3, 8, 10 and 14).

ARTICLE 9

FREEDOM OF RELIGION
Obligation of Members of Parliament to swear an oath on the Gospels: *violation*.

BUSCARINI and others - San Marino (Nº 24645/94)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix V).

FREEDOM OF RELIGION
Alleged interference by the State in the appointment of a Muslim religious leader: *partly admissible and partly inadmissible*.

SERIF - Greece (N° 38178/97)
Decision 26.1.99 [Section II]

The State appointed T. to a vacant post of mufti (Muslim religious leader). Two Muslim members of parliament requested that the State, in accordance with the legislation in force, organise elections to fill, among others, the post held by T. In the absence of any reply, they decided to organise their own elections in the mosques, one Friday at the end of prayers. In the meantime, the President of the Republic passed a law amending the procedure for the appointment of muftis, who henceforth were to be appointed by presidential decree. On Friday 28 December 1990, the applicant was elected mufti by the worshippers present in the mosques and, together with other Muslims, he initiated proceedings challenging the lawfulness of T.'s appointment. These proceedings are still pending. One month later, a law was passed validating

retroactively the new law on the appointment of muftis. In 1991, the prosecuting authorities initiated criminal proceedings against the applicant for usurping the functions of minister of a recognised religion and for wearing the vestments of that office without having the right to do so. Following a trial in which many witnesses were heard, the applicant was sentenced to 8 months' imprisonment. His conviction was confirmed on appeal and his sentence set at 6 months' imprisonment, convertible into a fine. His appeal on points of law was dismissed. The applicant complains of the unfairness of the proceedings, relying on Article 9, in that he was convicted despite the fact that Muslims have the right to elect their mufti, and on Article 10, as he maintains that his conviction was the result of statements he was alleged to have made.
Admissible (after a hearing) under Articles 9 and 10.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for publishing and distributing documents for the benefit of an illegal organisation: *communicated*.

BIÇKICIOĞLU - Turkey (Nº 30497/97)
Decision 2.2.99 [Section I]

The applicant was arrested by policemen of the anti-terrorist branch at a friend's house. Periodicals of an illegal organisation, EKİM, were found in the premises and handwritten documents considered as compromising were found on her. She and her friend were taken to the police headquarters. She was allegedly detained alone in a cell for 12 days without having access to her lawyer or family or being informed promptly of the reason for her arrest and of the charges against her. She claims she was insulted, threatened with death and forced to listen to her friend being ill-treated. She further contends that she was only given bread twice a day. The public prosecutor instituted proceedings against her for being involved in the EKİM. The State Security Court dismissed her plea of unconstitutionality concerning certain provisions of the Anti-Terrorism Law. The court stated that although the EKİM was not an armed terrorist organisation, it aimed nonetheless at damaging the unity of the Republic and thus fell under the Anti-Terrorism Law. She was eventually found guilty of assisting a terrorist organisation in publishing and distributing its declarations. She was heavily fined and sentenced to 10 months' imprisonment.
Communicated under Articles 35(1) (exhaustion of domestic remedies), 3, 5(3), 6(1), 7, 9 and 10.

ARTICLE 11

FREEDOM OF ASSOCIATION
Entry into force of a law requiring candidates for certain public offices not to be Freemasons: *communicated*.

GRANDE ORIENTE D'ITALIA DI PALAZZO GIUSTINIANI - Italy
(N° 35972/97/97)
[Section IV]

The applicant, a society of Freemasons, has no separate legal personality under domestic legislation. An Italian regional authority passed a regional law on the procedures to be followed for nominations and appointments to public office within its jurisdiction. One of the provisions of the law lays down how and under what conditions candidates for nomination and appointment are to be put forward and provides, *inter alia*, that candidates must not be freemasons. The applicant society complains of a breach of freedom of association, of the right to respect for private life, of freedom of thought and conscience and of freedom of expression, and also of discrimination and the lack of an effective remedy.
Communicated under Articles 8, 9, 10, 11, 13 and 14.

ARTICLE 14

DISCRIMINATION (Article 8)
Discharge from army due to implementation of policy against participation of homosexual in armed forces: *admissible*.

LUSTIG-PREAN - United Kingdom (Nº 31417/96)
BECKETT - United Kingdom (Nº 32377/96)
SMITH - United Kingdom (Nº 33985/96)
GRADY - United Kingdom (Nº 33986/96)
Decisions 23.2.99 [Section III]
(See Article 8, above).

DISCRIMINATION (Article 8)
Disadvantageous position of tenants of State-owned housing: *violation*.

LARKOS - Cyprus (Nº 29515/95)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix VI).

ARTICLE 34

VICTIM
Death of applicant: *applicant's mother entitled to pursue complaint under Article 6(2)*.

HIBBERT - Netherlands (Nº 38087/97)
Decision 26.1.99 [Section I]
(See Article 6(2), above).

ARTICLE 35(1)

EFFECTIVE DOMESTIC REMEDY
Effective remedies (San Marino).

BUSCARINI and others - San Marino (Nº 24645/94)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix V).

ARTICLE 3 OF PROTOCOL NO. 1

VOTE
Exclusion of Gibraltar from European Parliamentary elections: *violation*.

MATTHEWS - United Kingdom (Nº 24833/94)
Judgment of 18.2.99 [Grand Chamber]
(See Appendix VII).

ARTICLE 4 OF PROTOCOL NO. 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Expulsions to Croatia and Bosnia-Hercegovina of ethnic Croatians from Bosnia-Hercegovina: *inadmissible*.

ANDRIC - Sweden (Nº 45917/99)
MAJIC - Sweden (Nº 45918/99)
PAVLOVIC - Sweden (Nº 45920/99)
MARIC - Sweden (Nº 45922/99)
ANDRIJIC - Sweden (Nº 45923/99)
JURIC - Sweden (Nº 45924/99)
PRANJKO - Sweden (Nº 45925/99)
Decisions 23.2.99 [Section I]

All applicants are ethnic Croatian from Bosnia-Hercegovina and hold both Bosnian and Croatian citizenships. They requested asylum in Sweden after having fled Bosnia-Hercegovina. These cases concerned the decision of the immigration authorities to deport them to Croatia after rejecting their requests. The authorities decided that the situation prevailing in Bosnia-Hercegovina made all deportations to that country impossible. However, the authorities noted that there had been no acts of warfare for some time in Croatia and that a cease-fire had been agreed upon between the contending parties. Therefore, expulsion to Croatia was possible and there was no apparent risk that the applicants be forced to take part in armed conflicts or not be afforded protection there. In the Pranjko and Pavlovic cases, the authorities stated that the two applicants could also be sent to Bosnia-Hercegovina, given that the majority of the population of their home-district was of Croatian origin. Furthermore, the applicants submitted medical certificates showing they suffered from psychological disorders which rendered their expulsion impossible.
Inadmissible under Article 4 of Protocol Nº 4: Collective expulsion is to be understood as any measure compelling aliens, as a group, to leave a country, except where a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. The fact that a number of aliens receive similar decisions should not lead to the conclusion that there has been a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis. In the present cases, each applicant submitted an individual application to the immigration authorities and was able to present arguments against his deportation to Croatia. The authorities hence took into account not only the general situation but also each applicant's background and the risks allegedly facing him upon return. Moreover, in rejecting their applications the authorities issued individual decisions concerning each applicant's situation: manifestly ill-founded.
Inadmissible under Article 3: All applicants hold Croatian citizenship. Having regard to their statements, there are no indications that they would be subjected to ill-treatment in Croatia, and there is no evidence that they would be sent from there to Bosnia-Hercegovina unless the population in their home district is in majority of Croatian origin. Thus, there are no substantial grounds for believing that the applicants face a real risk of being subjected to treatment contrary to Article 3 upon return to Croatia, or, under certain circumstances, to Bosnia-Hercegovina.

Furthermore, the police authority in charge of the enforcement of the deportation order takes into account the applicant's state of health when deciding how the deportation should be carried out. Should an applicant be under compulsory psychiatric care due to his mental health, the deportation order could under no circumstances be enforced without the permission of the chief physician responsible for his care: manifestly ill-founded.

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Access to lawyers in connection with the application lodged by the applicant: *refusal of Rule 39*.

OCALAN - Turkey (N° 46221/99)
(Section I)

While in Nairobi, Kenya, the applicant, who is the leader of the PKK (Workers' Party of Kurdistan), was arrested by Turkish security forces in circumstances which have yet to be elucidated and taken to Turkey. His representatives lodged an application concerning his arrest and detention, invoking Articles 2, 3, 5 and 6. They also requested the Court under Rule 39 of the Rules of Court to indicate interim measures which Turkey should adopt.
The Chamber, which had initially held that it was unnecessary to apply Rule 39, had nonetheless decided under Rule 54 (3)(a) to request the Turkish authorities to clarify a number of points concerning the conditions of the applicant's arrest and detention and had indicated that it considered respect of the applicant's rights to put forward his case both in the criminal proceedings and in the proceedings concerning his application to the Court to be of particular importance. It accordingly sought information about whether the applicant would be permitted to receive assistance by counsel in both sets of proceedings. The Government provided certain information concerning the applicant's detention and the circumstances in which he received a visit of two lawyers.
[NB. On 4 March, the Chamber decided to apply Rule 39 in connection with the applicant's right to put forward his case and, in particular, to see his lawyers in private.]

APPENDIX I

Case of Hood v. the United Kingdom - extracts from press release

Facts: The applicant, Mr David Hood, a British national, was born in 1970 and lives in the United Kingdom. In 1995 the applicant was tried and convicted under the Army Act 1955 by court-martial on a number of charges of a criminal nature. He had been detained prior to his court-martial following a decision by his Commanding Officer and the applicant unsuccessfully pursued domestic habeas corpus proceedings in that respect. Central to the court-martial system under the 1955 Act was the role of the "convening officer" who, *inter alia,* was responsible for convening the court-martial and appointing its members and the prosecuting officer. The convening officer had the final decision on the nature and detail of the charges to be brought, and a plea to a lesser charge could not be accepted from the accused without his or her consent. In certain circumstances, the convening officer could dissolve the court-martial either before or during the trial, and, since he or she usually also acted as confirming officer, the court-martial's findings were not effective until confirmed by him or her. Under the 1955 Act (and the rules and regulations made thereunder), an accused's Commanding Officer initially decided on the necessity for the pre-trial detention of an accused.

The applicant complained under Article 5 §§ 3 and 5 about his detention prior to his court-martial by a decision of his Commanding Officer and under Article 6 § 1 that the court-martial was not an independent or impartial tribunal.

Law: In regard to the applicant's pre-trial detention, the Court recalled, *inter alia*, its previous judgment in the Huber case (Huber v. Switzerland judgment of 23 October 1990) where it found that, if the officer authorised by law to decide on the pre-trial detention of an accused is liable to intervene later in the proceedings as a representative of the prosecuting authority, then that officer could not be regarded as being independent of the parties at the time the decision on the accused's pre-trial detention was taken. Having found that the Commanding Officer was liable to play a central role in the later prosecution of the case against the applicant, the Court concluded that the applicant's misgivings about his Commanding Officer's impartiality were objectively justified. It also considered that that officer's responsibility for discipline and order in his command provided an additional reason to doubt his impartiality. Accordingly, the Court found a violation of Article 5 § 3 and, given the absence of a domestic enforceable right to compensation, it also concluded as to a violation of Article 5 § 5 of the Convention.

Conclusion: Violation (unanimous) of Article 5 § 3 and 5 § 5.

As to the applicant's court-martial, the Court recalled that in a previous judgment (Findlay v. the United Kingdom, 25 February 1997) it had found that a court-martial convened pursuant to the Army Act 1955 did not meet the requirements of independence and impartiality set by Article 6 § 1 of the Convention, in view in particular of the central part played in the prosecution by the convening officer, who was closely linked to the prosecuting authorities, was superior in rank to the members of the court-martial and had the power, albeit it in prescribed circumstances, to dissolve the court-martial and to refuse to confirm its decision. The Court could see no reason for distinguishing the present case from this earlier judgment, and therefore found a violation of Article 6 § 1.

Conclusion: Violation (unanimous).

The Court awarded the applicant's reasonable costs and expenses, Judge Zupančič dissenting on the question of an award of non-pecuniary damages to the applicant. His partly dissenting opinion is annexed to the judgment.

APPENDIX II

Cases of Waite and Kennedy v. Germany and Beer and Regan v. Germany - extracts from press release

Facts: Mr Richard Waite is a British national, who was born in 1946 and lives in Griesheim. Mr Terry Kennedy is also a British national. He was born in 1950 and lives in Darmstadt. Mr Karlheinz Beer is a German national, who was born in 1952 and lives in Darmstadt. Mr Philip Regan, a British national, was born in 1960 and lives in London in the United Kingdom. All the applicants, employed by foreign companies, were placed at the disposal of the European Space Agency to perform services at the European Space Operations Centre in Darmstadt. When their contracts were not renewed they instituted proceedings before the Darmstadt Labour Court (*Arbeitsgericht*) against the ESA, arguing that, pursuant to the German Provision of Labour (Temporary Staff) Act (*Arbeitnehmerüberlassungsgesetz*), they had acquired the status of employees of the ESA. In these proceedings, the ESA relied on its immunity from jurisdiction under Article XV (2) of the ESA Convention and its Annex I. The Labour Court declared the actions inadmissible, considering that the ESA had validly relied on its immunity from jurisdiction. Section 20(2) of the Courts Act (*Gerichtsverfassungsgesetz*) provides that persons shall have immunity from jurisdiction according to the rules of general international law, or pursuant to international agreements or other legal rules. In the case of Mr Waite and Mr Kennedy, the Frankfurt/Main Labour Appeals Court (*Landesarbeitsgericht*) and the Federal Labour Court (*Bundesarbeitsgericht*) confirmed that immunity from jurisdiction was an impediment to court proceedings. The Federal Constitutional Court (*Bundesverfassungsgericht*) declined to accept their appeal for adjudication.
The applicants contended that they had not had a fair hearing by a tribunal on the question of whether, pursuant to the German Provision of Labour (Temporary Staff) Act, a contractual relationship existed between them and the ESA. They alleged that there had been a violation of Article 6 § 1 of the Convention.
Law: The Court reiterated the principle that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect only (Golder v. the United Kingdom judgment of 21 February 1975, Series A no.18). The Court noted that the applicants' action against ESA had been declared inadmissible and that the proceedings before the German labour courts had concentrated on the question of whether or not ESA could validly rely on its immunity from jurisdiction. The Court considered that the reasons advanced by the German labour courts to give effect to the immunity from jurisdiction of the ESA could not be regarded as arbitrary. It next examined whether access limited to a preliminary issue was sufficient to secure the applicants' "right to a court", in the light of the principles established in its case-law (Fayed v. the United Kingdom judgment of 21 September 1994, Series A no. 294), in particular the need for such restricted access

to pursue a legitimate aim and for there to be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. According to the Court, the rule of immunity from jurisdiction, which the German courts applied to the ESA, had a legitimate objective. In this respect, it noted that the attribution of privileges and immunities to international organisations was an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. In turning to the issue of proportionality, the Court considered that where States established international organisations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attributed to these organisations certain competences and accord them immunities, there might be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution. For the Court, a material factor in determining whether granting ESA immunity from German jurisdiction was permissible was whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention. It was the opinion of the Court that, since the applicants had claimed the existence an employment relationship with ESA, they could and should have had recourse to the ESA Appeals Board, which is "independent of the Agency", has jurisdiction "to hear disputes relating to any explicit or implicit decision taken by the Agency and arising between it and a staff member" (Regulation 33.1 of the ESA Staff Regulations). The Court had further regard to the possibility open to temporary workers to seek redress from the firms that had employed them and hired them out. The Court concluded that the test of proportionality could not be applied in such a way as to compel an international organisation to submit itself to national litigation in relation to employment conditions prescribed under national labour law. Such an interpretation of Article 6 § 1 of the Convention would thwart the proper functioning of international organisations and run counter to the current trend towards extending and strengthening international cooperation. In view of all these circumstances, the Court found that, in giving effect to the immunity from jurisdiction of ESA, the German courts did not exceed their margin of appreciation.
Conclusion: No violation (unanimous).

APPENDIX III

Case of Laino v. Italy - extracts from press release

Facts: The applicant, Mr Michele Laino, an Italian national, was born in 1960 and lives in Naples. On 15 March 1990 the applicant petitioned the Naples District Court for judicial separation from his wife, Mrs R. He also requested the court to determine the arrangements for custody of the children and use of the family home. On 22 March 1990 the presiding judge of the court set down for 12 July 1990 the hearing on the attempt that had been made to reach a settlement. After finding that the attempt had failed, the presiding judge provisionally awarded custody of the children (born in 1984 and 1988) and use of the house to Mrs R., granted the father access twice a week and ordered him to pay Mrs R. maintenance. After six hearings, three of which were adjourned at the applicant's request, the judge responsible for preparing the case for

trial ordered, on 15 December 1994, that the case file should be sent to the District Court at Nola (province of Naples), which now had territorial jurisdiction to try the case. The date set for the hearing before that court was not until 8 May 1997. On that day, however, the proceedings were adjourned by the court of its own motion to 10 July 1997 because the judge was absent. The parties filed their pleadings on 13 November 1997, and the hearing before the relevant division was held on 8 May 1998. In a judgment of 27 May 1998, the text of which was deposited with the registry on that day, the court pronounced the couple judicially separated, confirmed the provisional measures regarding custody of the children and use of the family home and increased the maintenance. Neither of the parties appealed.

The applicant complained that his right to have his case heard within a reasonable time, as provided in Article 6 § 1 of the European Convention of Human Rights, had been disregarded and that the length of the proceedings had also infringed his right to respect for his family life as guaranteed by Article 8 of the Convention.

Law: Article 6 § 1 of the Convention: According to the Court's case-law, the reasonableness of the length of proceedings has to be assessed, in particular, in the light of the complexity of the case and of the conduct of the applicant and of the relevant authorities. In cases relating to civil status, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life. The Court noted one period of delay which could not be attributed to the respondent State and found that the case was not particularly complex. As to the conduct of the authorities dealing with the case, the Court considered that, having regard to what had been at stake for the applicant (judicial separation and determination of the arrangements for custody of the children and access rights), the domestic courts had failed to act with the special diligence required by Article 6 § 1 of the Convention in such cases. The various periods of inactivity attributable to the State, in particular the ones from 25 November 1993 to 15 December 1994 and from the latter date to 10 July 1997, had failed to satisfy the "reasonable time" requirement. Having regard also to the total duration of the proceedings, the Court concluded that there had been a violation of Article 6 § 1.

Conclusion: Violation (unanimous).

Article 8 of the Convention: Having regard to the finding in respect of Article 6 § 1, the Court held that it was unnecessary to examine whether there had been a violation of Article 8.

Conclusion: Not necessary to examine (unanimous).

Application of Article 41 of the Convention: Mr Laino had claimed 70,000,000 Italian lire (ITL) for the non-pecuniary damage which he alleged that he had sustained. The Court held that the applicant had undoubtedly sustained non-pecuniary damage. Having regard to the circumstances of the case, it decided to award him ITL 25,000,000. The applicant also claimed reimbursement of ITL 16,305,440 in respect of his costs and expenses before the Commission and the Court.

Judge Ferrari Bravo and Judges Tulkens and Casadevall expressed separate opinions, and these are annexed to the judgment.

APPENDIX IV

Case of Cable and others v. the United Kingdom - extracts from press release

Facts: The case originated in thirty-five separate applications, brought by British citizens. Twenty-four of the applicants had served in the air force, and the other eleven applicants had served in the army. Each applicant was charged with one or more civilian criminal or armed forces disciplinary offences and was tried, convicted and sentenced by a court-martial under either the Air Force Act 1955 or the Army Act 1955. Central to the system under the 1955 Acts was the role of the "convening officer" who, *inter alia,* was responsible for convening the court-martial and appointing its members and the prosecuting officer. The convening officer had the final decision on the nature and detail of the charges to be brought, and a plea to a lesser charge could not be accepted from the accused without his or her consent. In certain circumstances the convening officer could dissolve the court-martial either before or during the trial, and, since he or she usually also acted as confirming officer, the court-martial's findings were not effective until confirmed by him or her.
The applicants complained under Article 6 § 1 of the European Convention on Human Rights that the courts-martial which tried them were not independent or impartial tribunals.
Law: The Court recalled that in a previous judgment (Findlay v. the United Kingdom, 25 February 1997) it had found that a court-martial convened pursuant to the Army Act 1955 did not meet the requirements of independence or impartiality set by Article 6 § 1 of the Convention, in view in particular of the central part played in the prosecution by the convening officer, who was closely linked to the prosecuting authorities, was superior in rank to the members of the court-martial and had the power, albeit it in prescribed circumstances, to dissolve the court-martial and to refuse to confirm its decision. The Court could see no reason for distinguishing the cases of the present thirty-five applicants from this earlier judgment, and therefore found a violation of Article 6 § 1.
Conclusion: Violation (unanimous).
The Court awarded the applicants' reasonable legal costs and expenses, Judge Zupančič dissenting on the question of an award of non-pecuniary damages to the applicants. His partly dissenting opinion is annexed to the judgment.

APPENDIX V

Case of Buscarini and others v. San Marino - extracts from press release

Facts: The applicants, Mr Cristoforo Buscarini, Mr Emilio Della Balda and Mr Dario Manzaroli, are San Marinese nationals. They were born in 1943, 1937 and 1953 respectively and live in San Marino. On 18 June 1993 the applicants, who had been elected to the San Marinese parliament (the *Consiglio Grande e Generale*), took their oath of office in writing, omitting the reference to the Gospels required by section 55 of the Elections Act. On 26 July 1993 the parliament ordered the applicants to retake the oath, this time on the Gospels, on pain of forfeiting their seats. The applicants complied with this order, albeit complaining that their right to freedom of religion and conscience as guaranteed by Article 9 of the European Convention on Human Rights

had been infringed. In October 1993 Law no. 115 introduced a choice for Members of Parliament between the traditional oath and one in which the reference to the Gospels was replaced by the words "on my honour". The traditional wording is still mandatory for other categories of public office. The applicants complained that ordering them to swear on the Gospels on pain of forfeiting their parliamentary seats had infringed their right to freedom of religion and conscience guaranteed under Article 9 of the European Convention of Human Rights.

Law: The Government's preliminary objections: The Court first dismissed the respondent Government's preliminary objections, which were that the application was an abuse of process, that it had been lodged out of time and that domestic remedies had not been exhausted.

The merits of the complaint: The Court began by reiterating the relevant principles of its own case-law (see the Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, § 31). The Government's arguments had focused on, *inter alia*, the importance of the oath taken by elected representatives of the people; the special character of San Marino, the history and national traditions of which were linked to Christianity since the Republic had been founded by a saint; and the assertion that the religious significance of the oath had now been replaced by "the need to preserve public order, in the form of social cohesion and the citizens' trust in their traditional institutions". Dealing with these points, the Court observed that, regardless whether the aims referred to by the Government were legitimate or not – a matter on which it did not consider it necessary to rule – it was not in doubt that, in general, San Marinese law guaranteed freedom of conscience and religion. In the instant case, however, requiring the applicants to take the oath on the Gospels had been tantamount to requiring two elected representatives of the people to swear allegiance to a particular religion, a requirement which was not compatible with Article 9 of the Convention. As the Commission had rightly stated in its report, it would be contradictory to make the exercise of a mandate intended to represent different views of society within parliament subject to a prior declaration of commitment to a particular set of beliefs. The limitation complained of accordingly could not be regarded as "necessary in a democratic society". As to the Government's argument that the application had ceased to have any purpose when Law no. 115/1993 was enacted, the Court noted that the oath in issue had been taken before the passing of that legislation.

Application of Article 41 of the Convention: The Court considered that, in the circumstances of the case, the finding of a violation of Article 9 of the Convention constituted sufficient just satisfaction. As regards costs and expenses, the applicants' claim was not quantified and the Court accordingly dismissed it.

APPENDIX VI

Case of Larkos v. Cyprus - extracts from press release

Facts: The applicant, Mr Xenis Larkos, a Cypriot national, was born in 1936 and lives in Nicosia. He is a retired civil servant. On 1 May 1967 the applicant rented a house from the Government under the terms of a tenancy agreement which had many of the features of a typical landlord-tenant agreement for the lease of property. On 3 December 1986 the Ministry of Finance, his employer, gave him notice to quit the property by 30 April 1987. The applicant refused to do so claiming that he was a protected tenant within the meaning of the Rent Control Law 1983. On 5 February 1992 the District Court of Nicosia upheld the Government's request for a possession order and ordered the applicant to vacate the premises before 30 June 1992. On 22 May 1995 the Supreme Court dismissed the applicant's appeal against the judgment of the District Court. The applicant has been threatened with imminent eviction ever since.

The applicant complains that as a Government tenant living in an area regulated by the Rent Control Law 1983 he has been unlawfully discriminated against in the enjoyment of his right to respect for his home. He maintained that, unlike a private tenant living in accommodation in such an area rented from a private landlord, he was not protected from eviction at the end of his lease. He alleges a breach of Article 14 of the Convention in conjunction with both Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Law: Article 14 of the Convention in conjunction with Article 8: The Court noted that the applicant could rely on Article 14 of the Convention since the facts of the case fell within the ambit of Article 8 having regard in particular to the judgment of the District Court of Nicosia ordering him to leave his home. The Court observed in this respect that it was irrelevant for the purposes of the applicability of Article 14 that the applicant had not contended that there had been a breach of Article 8 or that he had not yet been evicted from his home. What was important was the fact that the 1983 Law had been applied to his detriment since he and his family have been living with the threat of eviction since the start of the eviction proceedings. As to the merits of the applicant's complaint, the Court recalled that, in accordance with its established case law, a difference in treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. Against the background of that statement of principles, the Court rejected the Government's argument that the applicant could not be considered to be in a relevantly similar situation to that of a private individual renting from a private landlord. For the Court it was clear from the terms of the tenancy agreement that the property in question had not been leased to the applicant in his capacity of civil servant and that the Government had acted not in a public-law but in a private-law capacity when signing the tenancy agreement. The Court observed that the respondent State had sought to justify the difference in treatment in the instant case by relying on the duties which the Constitution imposes on the authorities as regards the administration of State property. However, it considered that in the applicant's case the respondent Government had not provided any convincing explanation of how the general interest would be served by evicting him. While it

accepted that public interest considerations may justify treating differently persons in a relevantly similar situation, the Court noted that the Government had not adduced any preponderant interest which would warrant the withdrawal from the applicant of the protection accorded to other tenants under the 1983 Law. As to the Government's contention that they could not be equated to a private landlord when disposing of State property, the Court recalled that the authorities had leased the house to the applicant acting as a party to a private-law transaction. It also observed that a decision not to extend the protection of the 1983 Law to Government tenants living side-by-side with tenants in privately-owned dwellings in a regulated area requires specific justification, more so since the Government are themselves protected by that Law when renting property from private individuals. For these reasons the Court concluded that the Government had not adduced any reasonable and objective justification for treating the applicant differently. In conclusion, there had been a violation of Article 14 taken together with Article 8 of the Convention.
Conclusion: Violation (unanimous).
Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1: Having regard to its earlier conclusion the Court considered that it was not necessary to give separate consideration to the applicant's complaint under this head.
Conclusion: Not necessary to examine (unanimous).
Application of Article 41 of the Convention: The applicant claimed compensation for pecuniary and non-pecuniary damage and reimbursement of legal costs and expenses. The Court dismissed his claim for pecuniary damage since he had not established any causal connection between the breach of his Convention rights and the damage allegedly suffered. On the other hand, the Court awarded him the sum of 3,000 Cyprus pounds (CYP) given that he (and his family) have lived with the threat of eviction since 1986 and can reasonably be considered to have suffered stress and anxiety brought on by the uncertainty of losing a home which he had occupied since 1967. The Court awarded the applicant CYP 5,000 by way of compensation for legal costs and expenses.
Judge Cabral Barreto expressed a separate concurring opinion, which is annexed to the judgment.

APPENDIX VII

Case of Matthews v. the United Kingdom - extracts from press release

Facts: The applicant, Ms Denise Matthews, a British citizen, is a resident of Gibraltar. She was born in 1975. In April 1994 she applied to be registered as a voter in the elections to the European Parliament. She was told that under the terms of the EC Act on Direct Elections of 1976 Gibraltar was not included in the franchise for those elections.
The applicant claimed that the absence of elections in Gibraltar to the European Parliament was in violation of her right to participate in elections to choose the legislature under Article 3 of Protocol No. 1 to the Convention. She also alleged a violation of Article 14 of the Convention (freedom from discrimination in the enjoyment of Convention rights) on the ground that she was entitled to vote in European Parliament elections anywhere in the European Union where she lived except in Gibraltar.

Law: It was common ground that Article 3 of Protocol No. 1 applied in Gibraltar. The Court first considered whether the United Kingdom could be held responsible for the lack of elections to the European Parliament in Gibraltar. It noted that acts of the European Community as such could not be challenged before it as the European Community was not a Contracting Party. However, notwithstanding the transfer of competences to the European Community, Contracting States remained responsible for ensuring that Convention rights were guaranteed. Contracting States were responsible under the Convention and its Protocols for the consequences of international treaties entered into subsequent to the applicability of the Convention guarantees. Moreover legislation emanating from the legislative process of the European Community affected the population of Gibraltar in the same way as legislation which entered the domestic legal order exclusively via the Gibraltar House of Assembly. There was accordingly no reason why the United Kingdom should not be required to secure the rights set out in Article 3 of Protocol No. 1 in respect of European legislation. It followed that the United Kingdom was responsible for securing the rights guaranteed by Article 3 of Protocol No. 1 regardless of whether the elections were purely domestic or European. The Court then considered whether Article 3 of Protocol No. 1 was applicable to an organ such as the European Parliament and whether that body had the characteristics of a "legislature" in Gibraltar. The Court observed that the word "legislature" in Article 3 did not necessarily mean the national Parliament and that elections to the European Parliament could not be excluded from the ambit of Article 3 merely on the ground that it was a supranational, rather than a purely domestic representative organ. The Court examined the powers of the European Parliament in the context of the European Community and concluded that the Parliament was sufficiently involved both in the specific legislative processes leading to the passage of certain types of legislation and in the general democratic supervision of the activities of the European Community to constitute part of the legislature of Gibraltar for the purposes of Article 3 of Protocol No. 1. The Court finally addressed the question whether the absence of European Parliamentary elections in Gibraltar was compatible with Article 3. It emphasised that the choice of the electoral system by which the free expression of the opinion of the people in the choice of the legislature was ensured was a matter in which States enjoyed a wide margin of appreciation. However, in the case before it the applicant had been denied any opportunity to express her opinion in the choice of members of the European Parliament, despite the fact that, as the Court had found, legislation that emanated from the European Community formed part of the legislation in Gibraltar and the applicant was directly affected by it. The very essence of the applicant's right to vote to chose the legislature, as guaranteed under Article 3 of Protocol No. 1, had been denied. There had accordingly been a violation of that provision. The Court was of the view that it was not necessary to consider the complaints under Article 14 of the Convention, and awarded the applicant approximately £45,000 by way of fees and expenses.

Conclusion: Violation (15 votes to 2) of Article 3 of Protocol No. 1. Not necessary to examine under Article 14.

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