CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 15
on the case-law of the Court
February 2000

[* = non-final judgment]

Statistical information[1]

		February	2000
I. Judgments delivered			
Grand Chamber		5	6
Chamber I		8	12(14)
Chamber II		19	24
Chamber III		13	45
Chamber IV		8	11(20)
Total		**53**	**98(109)**
II. Applications declared admissible			
Section I		35(120)	54(192)
Section II		3	6
Section III		36(37)	50(51)
Section IV		5(6)	37(39)
Total		**79(166)**	**147(288)**
III. Applications declared inadmissible			
Section I	- Chamber	8	13
	- Committee	89	154
Section II	- Chamber	3	14
	- Committee	37	100
Section III	- Chamber	10	25(26)
	- Committee	31	117
Section IV	- Chamber	4(5)	11(12)
	- Committee	67	217
Total		**249(250)**	**651(653)**
IV. Applications struck off			
Section I	- Chamber	0	0
	- Committee	0	0
Section II	- Chamber	3	15
	- Committee	0	2
Section III	- Chamber	1	3
	- Committee	0	2
Section IV	- Chamber	0	3
	- Committee	0	5
Total		**4**	**30**
Total number of decisions[2]		**332(420)**	**828(971)**
V. Applications communicated			
Section I		66	85(86)
Section II		11	39
Section III		14	33
Section IV		10	16
Total number of applications communicated		**101**	**173(174)**

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

ARTICLE 3

INHUMAN TREATMENT
Conditions of detention pending expulsion: *admissible*.

DOUGOZ - Greece (N° 40907/98)
Decision 8.2.2000 [Section III]

The applicant, a Syrian national, was allegedly sentenced to death *in absentia* in Syria. He had fled to Greece, where he was arrested and sentenced to imprisonment on several occasions, notably for drug-related offences. While in Greece, he was granted refugee status by the UNHCR. In June 1997, while serving a prison sentence, he asked to be sent back to Syria and claimed that he had been granted a reprieve there. In July 1997, following a decision ordering his release on licence and his expulsion to Syria, he was released and placed in police detention pending his expulsion. He claimed that the conditions of his detention pending expulsion were appalling, referring to, *inter alia*, overcrowding, poor hygiene and lack of room for physical exercise. He then applied for the expulsion order to be lifted and complained about his continued detention. In April 1998, he was transferred to the police headquarters where the conditions of detention remained very bad, as confirmed by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment in a recent report. The courts refused to lift the expulsion order, on the ground that the applicant had previously claimed that he was no longer subject to persecution in Syria, but no express ruling was made concerning the lawfulness of his continued detention. In December 1998, the applicant was eventually expelled to Syria, where he was reportedly placed in detention upon arrival.
Admissible under Articles 3, 5(1)(f) and (4).

EXPULSION
Refusal of residence permit for Zambian national infected by HIV: *inadmissible*.

S.C.C. - Sweden (N° 46553/99)
Decision 15.2.2000 [Section I]

The applicant, a Zambian national, was the wife of a diplomat of the Zambian embassy in Stockholm and lived in Sweden from 1990 to early 1994. She returned to Sweden later in 1994, after her husband's death in Zambia. She applied for a residence permit, alleging that her husband's relatives threatened her life and that she had been offered a job at the Zambian embassy. The immigration authorities, however, rejected her application. She lodged an appeal against this refusal, relying on the fact that she had contracted HIV and claiming that she should therefore be granted a residence permit on humanitarian grounds. The doctor she had visited several times reported that no treatment could be started unless she was given a long term residence permit. However, the applicant's appeal and further applications were all rejected. Her doctor delivered a certificate stating that her condition had deteriorated to such an extent that treatment had been started.
Inadmissible under Articles 2 and 3: Complaints under Article 3 are subject to close scrutiny when the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public

authorities of that country, or which, taken alone, do not in themselves infringe the standards of this Article. All the circumstances surrounding the case are to be scrupulously examined, especially the applicant's personal situation in the deporting State. However, aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a contracting State in order to continue to benefit from medical, social or other forms of assistance provided by that State. Only in exceptional circumstances will the implementation of a decision to remove an alien result in a violation of Article 3 by reason of compelling humanitarian considerations. In the instant case, the applicant's medical status was diagnosed in 1995 and her anti-HIV treatment only recently started. The Swedish health authorities rightly concluded that, when assessing the humanitarian aspects of a case like this, an overall evaluation of the infected alien's state of health should be made rather than letting the HIV diagnosis in itself be decisive. According to the Swedish embassy, AIDS treatment is available in Zambia. Furthermore, the applicant's children and most of her relatives live there. Taking into consideration the conjunction of all these elements, the applicant's situation was not such that her deportation would have amounted to ill-treatment: manifestly ill-founded.

ARTICLE 5

Article 5(1)(c)

LAWFUL ARREST OR DETENTION
Allegedly unlawful detention on remand: *friendly settlement*.

RAIŠELIS - Lithuania
Judgment 29.2.2000 [Section III]

The applicant was arrested on 16 June 1997 under former Article 50-1 of the Code of Criminal Procedure concerning preventive detention. It was stated that his custody was warranted as he might "commit a dangerous act" of banditism, criminal association, or terrorising a person. On 19 June 1997 he appealed against his preventive detention. The appeal was dismissed by a judge on 23 June 1997. No further appeal lay. The applicant was released on 30 June 1997 as the preventive detention rule ceased to exist.
The parties have reached a friendly settlement providing for payment to the applicant of 12,000 Lithuanian litai (LTL).

Article 5(1)(f)

PREVENT UNAUTHORISED ENTRY INTO COUNTRY
Detention following refusal of entry due to lack of required visa: *inadmissible*.

ASLAN - Malta (N° 29493/95)
Decision 3.2.2000 [Section II]

The applicant, a Turkish national, was working in Libya. He and some colleagues decided to go over to Malta for a short holiday and took a ferry from Tripoli to Malta. At the passport checkpoint, the authorities told them that there was a problem with their return visa to Libya and denied them entry into Malta. The applicant alleged that one of the police officers insulted them for being Muslims and Turkish, making references to long past conflicts

between their respective countries. He further contended that the police acted violently towards them. They were placed in a cell pending their return to Libya and were told that they were being sent back there on the ground that they did not have the required return visa. The applicant claimed that they were not given anything to eat or drink during their detention and that access to toilet facilities was restricted. He also submitted that his requests to make a telephone call and have the Turkish consulate informed about his detention were refused. The applicant and his colleagues were eventually embarked on a ferry sailing back to Libya after 10 hours of detention.
Inadmissible under Article 5(1)(f): The applicant's detention was prescribed by the relevant immigration legislation. The port officials considered on the basis of the documentation produced by the applicant at the border that there were sufficient grounds for refusing him leave to enter. In this respect, Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including Articles 8 and 3, to control the entry, residence and expulsion of aliens. It was not necessary to address the applicant's argument that the sole reason for refusing him leave to appeal and detaining him pending his return to Libya was on account of his nationality or religion: manifestly ill-founded.
Inadmissible under Article 3: The making of racist or other provocative utterances by State officials during border controls cannot be condoned. However, and without pre-judging whether any such remarks were directed against the applicant, the conduct described by the applicant did not amount to degrading treatment: manifestly ill-founded.
Inadmissible under Article 8: There was no interference as such by the port police with the applicant's exercise of his rights. In the circumstances of the case, including the limited duration of the detention and the absence of a Convention right to enter the territory of the respondent State, there was no appearance of any breach of a positive obligation on the part of the authorities to provide the applicant with access to communication or correspondence facilities. Finally, this Article does not as such guarantee the right to honour and dignity in the absence of any prejudice to an applicant's right to respect for his private life. The applicant did not substantiate any such prejudice: manifestly ill-founded.

EXPULSION
Length and lawfulness of detention pending expulsion: *admissible*.

DOUGOZ - Greece (N° 40907/98)
Decision 8.2.2000 [Section III]
(See Article, above).

Article 5(3)

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER
Automatic refusal of bail: *violation*.

CABALLERO - United Kingdom (Nº 32819/96)
Judgment 8.2.2000 [Grand Chamber]
(See Appendix I).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Absence of possibility of challenging lawfulness of detention pending expulsion: *admissible*.

DOUGOZ - Greece (N° 40907/98)
Decision 8.2.2000 [Section III]
(See Article, above).

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Appeals lodged by association to challenge building permits: *Article 6 not applicable*.

ASSOCIATION DES AMIS DE SAINT-RAPHAEL ET DE FREJUS and others - France (N° 45053/98)
Decision 29.2.2000 [Section III]

The object of the applicant association was "the protection of the environment, quality of life [and] aesthetic character" of Saint-Raphaël and Fréjus. The other applicants were all members of that association. The said association was against the creation of a special planning area (SPA) for the realisation of a construction project for a tourist complex near Saint-Raphaël. The applicant association had been unsuccessful in legal proceedings in the administrative courts, in particular in the *Conseil d'Etat*, against the ministerial decree setting up the SPA, the prefectoral decision approving the development plan of the SPA and several municipal decisions granting building permits to the promoters. The application related to three sets of proceedings for annulling some of these building permits. In the first set of these proceedings, *the Conseil d'Etat* ordered the applicant association to pay the irrecoverable costs of the promoter who had been granted the planning permission.
Inadmissible under Article 8 and Article 1 of Protocol No. 1: The conditions under Article 34 relating to the status of victim were such that each applicant had to be able to show that he or she was directly concerned by the alleged violation or violations. An association such as the first applicant could therefore not claim to be itself a victim of the measures which infringed its members' rights under the Convention: incompatible *ratione personae.*
As for the other applicants, the facts show that only the applicant association had been a party to the legal proceedings and, in this instance, had not raised the issue that the granting of the building permits had infringed the rights of the other applicants as safeguarded by the above-mentioned articles of the Convention. Therefore, domestic remedies had not been exhausted: manifestly ill-founded.
Inadmissible under Article 6(1): The association's object was the defence of the general interest. As for the other applicants, they had not been individual parties to the legal proceedings and the association had not raised the question of respect for their individual rights in the courts. The mere fact that the applicant association had been ordered to pay the irrecoverable costs in the first set of proceedings did not bring them within the scope of this

Article. Moreover, there were no indications that this order had been made to sanction the association for a vexatious action. Even if this had been the case, this sanction would have been purely procedural and would not have involved a determination of civil rights or obligations. Furthermore, such a sanction could not have given rise to the issue of access to the civil courts as the proceedings in which it had been ordered fell outside the scope of Article 6. Finally, in general terms, when a court ordered a sanction for vexatious proceedings, it was not making a decision on the merits of a criminal charge. In the light of all of these elements taken together, Article 6 did not apply in this case: incompatible *ratione materiae*.

CIVIL RIGHTS AND OBLIGATIONS
Proceedings concerning applicant's right to cultivate his land: *Article 6 applicable*.

THERY - France (N° 33989/96)
*Judgment 1.2.2000 [Section III]

Facts: The applicant is the joint owner of agricultural land which forms a part of an estate of 250 hectares. In 1971 this property was leased for nineteen years. In 1988 the owners gave notice to the tenants of the repossession of the property by the applicant. Since repossession would have had the effect of considerably reducing the tenants' farmable land, the applicant was subject to the regulations in force requiring him to make a prior application to the relevant administrative authority for a cultivation permit. He obtained authorisation in the form of a prefectoral decision, but in September 1988 the tenants lodged an appeal with the administrative court to have it set aside. In December 1992 the administrative court set aside the prefectoral decision. In March 1993 the applicant lodged an appeal against this decision. In May 1996, the *Conseil d'Etat* delivered its judgment in which it dismissed the applicant's appeal.
Law: Article 6(1) : *Applicability* - The proceedings concerned a "dispute" which related to the applicant's "arguable right" to use his farmland to carry on his occupation in accordance with a given practice and the legislation in force. However, a right relating to the "manner" in which the right of property is "exercised" was a "civil" right within the meaning of Article 6. Consequently, the outcome of the proceedings had been decisive as to the applicant's right to cultivate the farmland which he held in ownership in common. This conclusion was not invalidated by the fact that the applicable law had been based on public interest and the refusal to grant the permit had been justified by regional planning considerations. Article 6 therefore applied to this case.
Length of proceedings - The period to be considered started with the lodging of the appeal with the administrative court in September 1988 and ended with the decision of the *Conseil d'Etat* in May 1996 (almost seven years and eight months). Neither the complexity of the case nor the conduct of the parties justified this length.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 30,000 French francs (FRF) for non-pecuniary damages and FRF 10,000 for costs and expenses.

CIVIL RIGHTS AND OBLIGATIONS
Tax proceedings: *Article 6 not applicable*.

CHARALAMBOS - France (N° 49210/99)
BASSAN - France (N° 49289/99)
Decisions 8.2.2000 [Section III]

The two applicants received additional income tax demands. The first applicant first filed a complaint with the director of the tax department, the rejection of which, the applicant claimed, was never communicated to him. He later lodged an application with the Lyons Administrative Court to have a decision to place a charge on his property - which had been served on him - declared premature. The Court rejected this application. Both the Lyons Administrative Court of Appeal and, later, the *Conseil d'Etat* rejected the appeals which had been lodged by the applicant. The second applicant had lodged an application with the same Administrative Court for a release from additional contributions. The Court and, later, the Administrative Court of Appeal rejected this application but the *Conseil d'Etat*, overturning part of the Court of Appeal's decision, had awarded the applicant a partial release from additional contributions.
Inadmissible under Article 6: This provision was not generally applicable to tax proceedings. Aside from fines imposed as "criminal sanctions", it was not enough to show that proceedings had been of a "pecuniary nature" for them to fall under the heading of "civil rights and obligations", in particular when the pecuniary obligation was a result of tax legislation: incompatible *ratione materiae*.

ACCESS TO COURT
Non-payment of compensation ordered by a court: *friendly settlement*.

PETROTOS - Greece (Nº 43597/98)
Judgment 29.2.2000 [Section II]

The Platykampos Waterworks Association, a local administrative authority, was ordered under two decisions to pay the applicant compensation for having unlawfully interfered with his riparian rights to a watercourse on his farmland. These decisions had become final in July 1994 and January 1997 respectively, but the compensation in question had not been paid to the applicant.
The parties reached a friendly settlement providing for the sum of fifteen million drachmas for all damage suffered to be paid the applicant in three equal instalments: the first has already been paid; the second and third are to be paid respectively on 30 May 2000 and 31 October 2000.

ACCESS TO COURT
Dismissal of appeal due to non-consignation, as a result of failure to deal with appellant's legal aid request: *violation*.

GARCIA MANIBARDO - Spain (Nº 38695/97)
*Judgment 15.2.2000 [Section IV]

Facts: Florencia Garcia Manibardo, the applicant, was a Spanish national born in 1957 and residing in Vila Seca. On 10 October 1990 her husband had died in a road accident. The

insurance company of Mr P., who appeared to have been driving the vehicle involved in the accident, paid the applicant the sum of 18,250,000 pesetas (ESP) in compensation for the death of her husband.
The widow and children of the presumed driver of the vehicle were also paid compensation; however, having found the amount inadequate, Mrs P., acting in her own name and that of her two minor children, lodged an application for the recovery of damages with the Amposta Investigating Judge no. 1 against the heirs of the applicant's husband, those of the owner of the vehicle, who had also died in the accident, and the insurers of the vehicle.
The applicant, acting in her own name and that of her minor children, and represented by a lawyer who took on the case "as if appointed under the legal aid regime", had orally challenged the claim against her referring to "the facts and reasons in the attached document(s)". In these documents, which had been mentioned in the transcripts of her appearance on 5 July 1994, the applicant gave written answers to the plaintiff's arguments and requested legal aid.
Having found that it had been the deceased spouse of the applicant who had been driving the vehicle at the time of the accident and not the plaintiff's husband, the Amposta Court of First Instance no. 1 declared the heirs of the applicant's spouse and the insurers of the vehicle involved in the accident to be jointly and severally liable, and in default, the heirs of the owner of the vehicle, to pay eighteen million pesetas (ESP) to Mr. P's widow and his children.
All the parties appealed against this decision. The same first instance judge required the applicant to make an advance deposit of the amount she had been ordered to pay in the first instance court's judgment as a precondition for her lodging an appeal. The applicant lodged an appeal in *reposición* against this decision on the ground of the impossibility of making an advance deposit of the sum ordered by the *Audiencia provincial*. Her appeal was ruled admissible and the applicant was released from the obligation to make a prior payment into court of the amount stipulated.
The Tarragona *Audiencia provincial* upheld the judgment of the first instance court and found the applicant's appeal to be inadmissible on the ground that she had not paid the requisite amount into court or shown that she had tried to discharge that obligation in other ways.
The applicant then lodged a *recurso de amparo* with the Constitutional Court which was dismissed in a decision of 10 March 1997 for having no constitutional basis.
In the interim the Amposta First Instance Court had ordered, in the context of the enforcement of the Tarragona *Audiencia provincial*'s judgment, the seizure of the property of the applicant and the insurers of the vehicle involved in the accident to cover payment of the compensation awarded to Mrs P.
On 7 January 1997 the applicant submitted a pleading to the to the Amposta First Instance Court in which she requested examination of an application for legal aid she had made on 23 June 1994. On 16 January 1997 the court decided to admit the examination of the applicant's request. The Amposta Court of First Instance no. 1 granted her legal aid in a decision of 15 April 1997. No appeals were lodged against this decision.
The applicant complained of the fact that the Tarragona *Audiencia provincial* had ruled her appeal inadmissible on the ground that she had not deposited in advance the sum she had been ordered to pay in the first instance decision at a time when no decision had been taken on her entitlement to legal aid. She invoked Article 6(1) of the Convention.
Law: The Court noted that both Article 30(3) of the Code of Civil Procedure in force at the time, and the case-law of the Constitutional Court allowed a litigant's economic situation to be taken into consideration, and, in particular, for him or her to be discharged of the obligation to make an advance deposit when he or she had been granted legal aid. In this case, even though the applicant had fulfilled all of the requirements, she had not been granted the said legal aid in the requisite time.
The applicant's appeal had however been ruled inadmissible for failure to deposit the requisite amount with the court. In this respect, the Court found that requiring the applicant to deposit in advance the damages ordered under the first judgment had prevented her from using an existing and available appeal so that she had been subjected to disproportionate

interference with her right of access to a court. As a result, there had been a violation of Article 6(1).
Conclusion: Violation (unanimous).
The Court awarded the applicant the amount claimed for costs and expenses before the Constitutional Court and the institutions of the Convention, that is ESP 520,572.

EQUALITY OF ARMS
Non-notification of submissions of the *commissaire du Gouvernement*: *admissible.*

KRESS - France (N°39594/98)
Decision 29.2.2000 [Section III]

While in hospital in Strasbourg, after undergoing an operation under a general anaesthetic, the applicant suffered vascular complications resulting in ninety per cent disability and a shoulder burn. On an application for the appointment of an expert; the President of the Strasbourg Administrative Court appointed a doctor who found no medical malpractice. In 1987 the applicant lodged an appeal with the Administrative Court for compensation for damage caused by the hospital. In May 1990 the Administrative Court ordered a new expert opinion and in September 1991 the Court delivered its opinion in which it ordered compensation only for the damage resulting from the shoulder burn. In April 1993 the Nancy Administrative Court of Appeal dismissed the applicant's appeal. She lodged an appeal on points of law with the *Conseil d'Etat*. She had no knowledge of the submissions of the *commissaire du Gouvernement* before he delivered them at the hearing, at a time when the applicant no longer had the right to address the court. She nevertheless made a final point in a note sent to the court while it was deliberating and before it reached a decision. The *Conseil d'Etat* rejected the appeal in its decision of 30 July 1997.
Admissible under Article 6(1) (fair hearing and within a reasonable time) and relinquishment of jurisdiction in the case in favour of the Grand Chamber subject to the parties' agreement. (Relinquishment of jurisdiction in favour of the Grand Chamber is recommended not only because of the importance of the decision for France but also because of the particular interest of the complaint in terms of European law. Since the post of Advocate-General of the European Court of Justice is an office which has been greatly inspired by the French *commissaire du Gouvernement* system, it would also be exposed to the same criticism. However the ECJ, in a decision of 4 February 2000 dismissed a complaint similar to the one in this case relating to the role of its Advocate-General.).

REASONABLE TIME
Length of civil proceedings: *friendly settlement*.

ERDOKOVY - Italy (Nº 40982/98)
Judgment 1.2.2000 [Section II]

The case concerns the length of proceedings relating to a claim for compensation for detention, following acquittal. The parties have reached a friendly settlement providing for payment to the applicant of 17 million lire (ITL) (12 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses).

REASONABLE TIME
Length of civil proceedings: *friendly settlement*.

ROSELLI (no. 2) - Italy (Nº 39131/98)
Judgment 15.2.2000 [Section III]

The case concerns the length of civil proceedings instituted in 1982 and still pending. The parties have reached a friendly settlement providing for payment to the applicant of 40 million lire (ITL) (35 million lire in respect of damage and 5 million lire in respect of costs and expenses).

REASONABLE TIME
Length of civil proceedings: *violation*.

KURT NIELSEN - Denmark (Nº 33488/96)
*Judgment 15.2.2000 [Section II]

The case concerns the length of civil proceedings which began in February 1988 and ended in September 1996 (8 years, 6 months and 13 days for two levels of jurisdiction).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 70,000 Danish kroner (DKK) in respect of non-pecuniary damage.

REASONABLE TIME
Length of proceedings before the administrative courts: *friendly settlement*.

BACQUET - France (Nº 36667/97)
Judgment 1.2.2000 [Section III]

The case concerns the length of proceedings brought by the applicant before the administrative courts. The parties have reached a friendly settlement providing for payment to the applicant of 60,000 francs (FRF).

REASONABLE TIME
Length of proceedings before the administrative courts: *violation*.

FERNANDES MAGRO - Portugal (Nº 36997/97)
*Judgment 29.2.2000 [Section IV]

The case concerns the length of proceedings before the administrative courts. The proceedings lasted 7 years and 3 months, including 5 years and 9 months before the Supreme Administrative Court.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 900,000 escudoes (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

CAPOCCIA - Italy (Nº 41802/98)
PUPILLO - Italy (Nº 41803/98)
*Judgment 8.2.2000 [Section I]

The cases concern the length of different civil proceedings:
Capoccia - more than 11 years and 4 months (one level of jurisdiction) and still pending;
Pupillo - more than 11 years and 10 months (one level of jurisdiction).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the following amounts in respect of non-pecuniary damage:
Capoccia - 32 million lire (ITL);
Pupillo - 13 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

DELICATA - Italy (Nº 41821/98)
SCUDERI - Italy (Nº 41822/98)
PARISSE - Italy (Nº 41825/98)
GHEZZI - Italy (Nº 41826/98)
BERRETTARI - Italy (Nº 41827/98)
CAMPOMIZZI - Italy (Nº 41829/98)
RAGLIONE - Italy (Nº 41830/98)
PIO - Italie/Italy (Nº 41831/98)
*Judgments 8.2.2000 [Section II]

The cases concern the length of different proceedings before the Audit Court:
Delicata - more than 14 years and 8 months (one level of jurisdiction);
Scuderi - more than 16 years and 3 months (one level of jurisdiction);
Parisse - more than 15 years and 4 months (one level of jurisdiction);
Ghezzi - more than 28 years and 5 months (one level of jurisdiction), of which 26 years and 2 months were after the coming into force of Italy's recognition of the right of individual petition;
Berrettari - around 19 years (two levels of jurisdiction) ;
Campomizzi - more than 15 years and 2 months (two levels of jurisdiction) and still pending;
Raglione - more than 16 years and 7 months (one level of jurisdiction);
Pio - more than 27 years and 9 months (one level of jurisdiction), of which 23 years and 10 months were after the coming into force of Italy's recognition of the right of individual petition;
Conclusion : Violation (unanimous).
Article 41 : The Court awarded the following amounts in respect of non-pecuniary damage:
Delicata - 50 million lire (ITL);
Scuderi - 60 million lires (20 million lires to each heir);
Parisse - 51 million lire (17 million lire to each heir);
Ghezzi - 100 million lire;
Berrettari - 35 million lires to each of the four applicants;
Campomizzi - 50 million lire;
Raglione - 52,500,000 lire;
Pio - 85 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

QUINCI - Italy (Nº 41819/98)
CHIERICI - Italy (Nº 41835/98)
TROTTA - Italy (Nº 41837/98)
*Judgments 8.2.2000 [Section IV]

The cases concern the length of different proceedings before the Audit Court :
Quinci - 25 years and 11 months (one level of jurisdiction and still pending), of which 22 years and 9 months were after the coming into force of Italy's recognition of the right of individual petition;
Chierici - more than 20 years and 2 months (one level of jurisdiction);
Trotta - 16 years and 4 months (one level of jurisdiction).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the following amounts in respect of non-pecuniary damage:
Quinci - 81 million lire (ITL);
Chierici - 73 million lire;
Trotta - 57 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

RANDO - Italy (Nº 38498/97)
GUAGENTI - Italy (Nº 31924/98)
ITALIANO - Italy (Nº 39894/98)
PADALINO - Italy (Nº 40570/98)
VICARI - Italy (Nº 40599/98)
Judgments 15.2.2000 [Section II]

The cases concern the length of different civil proceedings:
Rando - more than 4 years and 4 months (one level of jurisdiction), the Committee of Ministers having already found a violation of Article 6(1) in a previous case in respect of the period from 26 November 1982 to 29 October 1994;
Guagenti - more than 15 years and 2 months (seven levels of jurisdiction);
Italiano - around 9 years and 4 months (one level of jurisdiction);
Padalino - more than 14 years and 9 months (one level of jurisdiction);
Vicari - more than 12 years and 3 months (two levels of jurisdiction).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the following amounts in respect of non-pecuniary damage:
Rando - 12 million lire (ITL);
Guagenti - 15 million lire;
Italiano - 5 million lire;
Padalino - 45 million lire;
Vicari - 25 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

DESCHAMPS - Italy (Nº 38469/97)
SAVONA - Italy (Nº 38479/97)
ROSELLI (no. 1) - Italy (Nº 38480/97)
I.R. - Italy (Nº 39116/98)
Judgments 15.2.2000 [Section III]

The cases concern the length of different civil proceedings:
Deschamps - more than 16½ years and apparently still pending;
Savona - more than 7 years and 2 months (one level of jurisdiction);
Roselli - more than 17 years and 10 months and still pending;
I.R. - more than 16 years and 11 months.
Article 41: The Court awarded the following amounts in respect of non-pecuniary damage:
Deschamps - 28 million lire (ITL);
Savona - 28 million lire, covering also pecuniary damage ;
Roselli - 45 million lire;
I.R. - 40 million lire.

REASONABLE TIME
Length of administrative proceedings: *violation*.

ZEOLI and 34 other applicants - Italy (Nº 41814/98)
MONTI - Italy (Nº 41815/98)
A.B. - Italy (Nº 41809/98)
MOSCA - Italy (Nº 41810/98)
*Judgments 8.2.2000 [Section I]

The cases concern the length of different proceedings in the administrative courts:
Zeoli and others - between more than 5 years and 3 months and 6 years and 2 months (one level of jurisdiction) and still pending;
Monti - almost 15 years and 10 months (one level of jurisdiction) and still pending;
A.B. - more than 5 years and 6 months (one level of jurisdiction);
Mosca - more than 6 years and 2 months (two levels of jurisdiction).
Conclusion: Violation (unanimous, except in A.B. - 6 votes to 1).
Article 41: The Court awarded the following sums in respect of non-pecuniary damage:
Zeoli and others - 12 million lire (ITL) to the first applicant;
Monti - 48 million lire;
A.B. - 10 million lire;
Mosca - 10 million lire.

REASONABLE TIME
Length of administrative proceedings: *violation*.

PARADISO - Italy (Nº 41816/98)
CALIRI - Italy (Nº 41817/98)
*Judgments 8.2.2000 [Section IV]

The cases concern the length of different proceedings in the administrative courts:

Paradiso - around 13 years and 3 months (two levels of jurisdiction);
Caliri - 6 years and 10 months (one level of jurisdiction).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the following amounts in respect of non-pecuniary damage:
Paradiso - 32 million lire (ITL);
Caliri - 10 million lire.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Independence and impartiality of the Bailiff in Guernsey: *violation*.

McGONNELL - United Kingdom (Nº 28488/95)
Judgment 8.2.2000 [Section III]

Facts: In 1982 the applicant purchased a vinery in Guernsey. He was refused planning permission for residential use but in 1986 he moved into a converted packing shed on the land. He made representations at a planning inquiry concerning a detailed development plan (DDP), but in his report the planning inspector concluded that a dwelling on the applicant's land would be an intrusion into the agricultural/horticultural hinterland. The plan was adopted by the island's legislature, the States of Deliberation, in 1990 and the applicant's retrospective application for planning permission to convert the shed to a dwelling was rejected by the Island Development Committee (IDC), as the site was zoned as "developed glasshouse area" on which residential development was not permitted. He was subsequently convicted of illegal change of use and fined £100 and in June 1993 the IDC's application for permission to carry out the necessary work to remedy the breach of planning legislation was granted by the Royal Court, comprising the Bailiff, who determines questions of law, and three Jurats, who determine matters of fact. As well as being head of the island's administration and president of the States of Deliberation, the Bailiff presides the Royal Court and the Court of Appeal. Moreover, the Court of Appeal has found in a separate case that there is no structural conflict between the Bailiff's duties in the Royal Court and the States of Deliberation. In this particular case, he had in fact presided over the States as Deputy Bailiff at the adoption of the DDP in 1990. In October 1994 a further application for change of use was rejected by the IDC and in June 1995 the Royal Court, comprising the Bailiff and seven Jurats, unanimously dismissed his appeal, without giving reasons.
Law: Government's preliminary objection (non-exhaustion): The Government's submissions were not raised before the Commission and the Government are therefore estopped from relying on them.
Article 6(1): Given the clear statement of the Court of Appeal that the Bailiff's constitutional functions in connection with the States do not impinge on his judicial independence and the fact that a domestic challenge was not only not pursued by the applicant but was not raised by the Government until a late stage, the applicant's failure to challenge the Bailiff cannot be said to have been unreasonable and cannot amount to a tacit waiver of his right to an independent and impartial tribunal. As to the role of the Bailiff, the sole question is whether he had the required "appearance" of independence or the required "objective" impartiality (there being no allegation of subjective bias). The Bailiff's functions are not limited to judicial matters and the Court does not accept that when he acts in a non-judicial capacity he merely occupies positions rather than exercising functions - even a purely ceremonial role must be classified as a "function". The Bailiff in this case had personal involvement, firstly as Deputy Bailiff when the DDP was adopted and subsequently when he presided over the Royal Court in determining the applicant's planning appeal. Any direct involvement in the passage of legislation or of executive rules is likely to be sufficient to cast doubt on the judicial impartiality of a person later called on to determine a dispute over whether reasons exist to permit a variation from the wording of the legislation or rules. The mere fact that the Deputy Bailiff presided over the States of Deliberation when the DDP was adopted is capable of casting doubt on his impartiality when he subsequently determined, as sole judge of the law in the case, the planning appeal. The applicant

thus had legitimate grounds for fearing that the Bailiff may have been influenced by his prior participation and that doubt, however slight its justification, is sufficient to vitiate the impartiality of the Royal Court.
Conclusion: Violation (unanimous).
Article 41: The Court considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered. It made an award in respect of costs.

Article 6(1) [criminal]

APPLICABILITY
Constitutional Court proceedings: *Article 6 applicable.*

GAST and POPP - Germany (Nº 29357/95)
Judgment 25.2.2000 [Section I]

Facts: The applicants were arrested in 1990 on suspicion of espionage on behalf of the former German Democratic Republic and convicted in separate criminal proceedings in 1992. The lodged constitutional complaints with the Federal Constitutional Court in August 1992, but processing of the complaints was suspended because the Second Division of the court envisaged rendering a leading decision in certain test cases. In March 1994 it ordered the preparation of an expert opinion on questions of public international law. It rendered its decision in May 1995, concluding in particular that the prosecution after reunification of those who had spied for the German Democratic Republic in the Federal Republic was unobjectionable. As a result, the court refused to admit the applicants' complaints. The applicants, who had been released in 1994, were notified in June 1995. They complained about the length of the Constitutional Court proceedings.
Law: Article 6(1): *Applicability* - The proceedings were directly related to the question of the accusations of espionage being well-founded. In the event of a successful constitutional complaint, the Constitutional Court quashes the impugned decision and refers the matter back to the competent court and if legislation is declared void a reopening of criminal proceedings is permissible. In this case, the constitutional proceedings were a further stage of the criminal proceedings and the consequences could be decisive for the convicted persons. While the applicants' complaints were rejected in preliminary proceedings, the court could only do so after having given its decision in the test cases. Article 6 therefore applies.
Compliance - The proceedings before the Constitutional Court lasted about two years and ten months and two years and nine months respectively. The legal issues examined in the test leading decision were on the whole complex. The applicants did not cause any delays. As for the court, the duty of the State to organise the judicial system to ensure that the courts can meet the requirements of Article 6 applies to a Constitutional Court but cannot be construed in the same way as for an ordinary court: a Constitutional Court's role as guardian of the Constitution makes it particularly necessary for it sometimes to take into account considerations other than mere chronological order of cases, such as the nature of a case and its importance in political and social terms. It was reasonable for the Federal Constitutional Court to have grouped cases dealing with espionage and to have given priority to certain other cases with serious political and social implications. Although the applicants were serving their prison sentences, their punishment did not cause them prejudice to such an extent as to impose on the court concerned a duty to deal with the cases as a matter of very great urgency. Moreover, they were released in 1994. Any delays that occurred do not appear substantial enough for the length of the proceedings to have exceeded a "reasonable time", having regard to the fact that the earlier proceedings had lasted only about one year and ten months and two years and three months respectively.

CRIMINAL CHARGE
Appeals lodged by association to challenge building permits: *Article 6 not applicable*.

ASSOCIATION DES AMIS DE SAINT-RAPHAEL ET DE FREJUS and others - France (N° 45053/98)
Decision 29.2.2000 [Section III]
(See above).

FAIR HEARING
Non-disclosure by prosecution on grounds of public interest immunity: *violation*.

ROWE and DAVIS - United Kingdom (Nº 28901/95)
FITT - United Kingdom (Nº 29777/96)
JASPER - United Kingdom (Nº 27052/95)
Judgments 16.2.2000 [Grand Chamber]
(See Appendix II).

EQUALITY OF ARMS
Non-communication of the submissions of the *avocat général* at the Court of Cassation: *violation*.

VOISINE - France (N°27362/65)
Judgment 8.2.2000 [Section III]

Facts: The applicant was ordered by a court of summary jurisdiction to pay a fine of 1,500 French francs (FRF) and had his driving-licence suspended for seven days for speeding. The Court of Appeal increased the fine to FRF 3,000 and the suspension of the licence to one month. The applicant lodged an appeal on points of law and filed pleadings which he had drafted unaided. He had no knowledge of either the *avocat général's* submissions to the Court of Cassation or the date of the hearing. The Court of Cassation dismissed the applicant's appeal on the ground that the pleadings had been filed out of time; this rendered them inadmissible and the Court of Cassation therefore could not consider their contents.
Law: Article 6(1): The applicant had not had the benefit of the practice by which the *avocat général* at the Court of Cassation informs the advisers of the parties of the contents of his submissions before the date of the hearing so that they may reply to them. This practice is reserved exclusively for the barristers at the Court of Cassation; however, the applicant had chosen, as was within his rights, to defend himself without the benefit of being represented by a barrister at the Court of Cassation. As a consequence, the applicant had not had access to the submissions of the *avocat général* and it followed that it had been impossible for him to reply to them before the Court of Cassation rejected his appeal. Accordingly, the applicant's right to *inter partes* proceedings had been infringed. Even though the applicant had not applied for legal aid so that he could be defended by a specialist lawyer, it did not mean that he had waived the benefit of the safeguards relating to *inter partes* proceedings. Moreover, the specificity of the proceedings in the Court of Cassation could not justify depriving an appellant who had decided to defend himself, as he was entitled to do, of the procedural safeguards protecting the right to a fair trial.
Conclusion: Violation (5 votes to 2).
Article 41: As to costs, the Court found that no amount should be awarded for costs incurred in the domestic proceedings. By contrast, the Court awarded FRF 10,000 for the costs

incurred before the institutions of the Convention. The judges Costa and Jungwiert expressed the same dissenting opinion.

ORAL HEARING
Lack of oral hearing before the trial judge: *violation*.

STEFANELLI - San Marino (N°35396/97)
*Judgment 8.2.2000 [Section II]

Facts: The applicant was questioned and detained in connection with proceedings relating to the unlawful marketing of products. The investigation was entrusted to a commissioner. The witnesses were examined and the defence pleadings filed. The commissioner held public hearings for examining witnesses. Having neither held a public hearing nor seen the applicant, the first instance judge sentenced her to four years and six months' imprisonment and ordered a protective measure of supervision because she was considered dangerous. The applicant lodged an appeal against this decision. The same commissioner handled the case for the investigation on appeal. The appeal judge upheld the applicant's conviction; reduced the sentence to three years and lifted the preventive measure of supervision.
Law: Article 6(1): According to the Government; hearings dedicated to the examination of witnesses had been held at first instance and were subject to appeal had the applicant wished to lodge one. However, at first instance these hearings had been held before the commissioner, who had only investigative duties. The same had apparently occurred on appeal. As a result, the proceedings had taken place without a hearing at first instance and on appeal before the judicial officer called upon to take a decision on the merits.
Conclusion: Violation (unanimous)
Article 41: The Court found that the applicant had undoubtedly suffered non-pecuniary damage and awarded her the sum of 10,000,000 Italian lire (ITL). In respect of costs and expenses, the Court awarded her ITL 9,000,000. (The applicant's claim was expressed in euros.)

REASONABLE TIME
Length of Constitutional Court proceedings: *no violation*.

GAST and POPP - Germany (Nº 29357/95)
Judgment 25.2.2000 [Section I]
(See above).

REASONABLE TIME
Length of criminal proceedings: *violation*.

MAJARIC - Slovenia (Nº 28400/95)
Judgment 8.2.2000 [Section I]

Facts: In December 1991 the applicant was charged with sexual assault of a minor and abduction of minors. Further charges of a similar nature were brought in July 1992 and October 1993 and in March 1995 the District Court decided to deal with all the charges in the same proceedings. In July 1997 it convicted the applicant on several counts and in February 1998 the High Court increased the sentence imposed. The applicant's constitutional complaint was dismissed by the Constitutional Court in June 1998 and his plea of nullity was rejected by the Supreme Court in September 1998. Following a further constitutional complaint, the Constitutional Court refused in December 1998 to remit the case for a new examination.
Law: Government's preliminary objection: The Government did not raise non-exhaustion when admissibility was being examined by the Commission and are therefore estopped from raising it before the Court.
Article 6(1) : The relevant period began in June 1994 when Slovenia ratified the Convention and accepted the right of individual petition, although the Court can take into account the state of the proceedings at that time. The period ended in December 1998 and the proceedings therefore lasted over 4 years 5 months. The case had some complexity because of the additional charges being brought but this could not justify the length, and there is no indication that the applicant contributed to the length. As for the conduct of the judicial authorities, by June 1994 the case had been pending at first instance for almost 2 years 7 months; the District Court took a procedural decision nine months after the Convention entered into force for Slovenia and started to deal with the case one year and 10 months later. These delays were mainly attributable to the conduct of the courts.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 300,000 Slovenian tolars in respect of non-pecuniary damages.

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

GALLONI - Italy (Nº 39453/98)
Judgment 29.2.2000 [Section II]

The case concerns the length of criminal proceedings. The parties have reached a friendly settlement providing for payment to the applicant of 31 million lire (ITL), composed of 26 million lire in respect of damage and 5 million lire in respect of costs.

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

AGGIATO - Italy (Nº 39453/98)
Judgment 29.2.2000 [Section II]

The case concerns the length of criminal proceedings. The parties have reached a friendly settlement providing for payment to the applicant of 11 million lire (ITL) in respect of non-pecuniary damage.

IMPARTIAL TRIBUNAL
Judges having rejected at the investigation stage appeals lodged by the accused, subsequently deciding on the merits of the case: *communicated*.

PEROTE PELLON - Spain (N° 45238/99)
Decision 10.2.2000 [Section IV]

Between 1983 and 1991 the applicant, a regular soldier, was a head of section at CESID, the Spanish military intelligence headquarters, a position making him responsible for a number of classified documents. In 1995 the Director of CESID lodged a complaint against the applicant before the military courts for revealing secrets or information relating to national defence and security. Investigation proceedings were started against him in which was charged and placed in detention on remand. He was found guilty by the Central Military Court, sentenced to seven year's imprisonment and dismissed from the armed forces. However, two of the judges of the Division of the Central Military Court which had found the applicant guilty, namely the President and a reporting judge, had previously sat on a bench of judges of the same court which had upheld the order of notice of prosecution and other investigative measures such as the extension of the length of time of detention on remand.
Communicated under Article 6(1) (impartial tribunal).

Article 6(3)(c)

DEFENCE IN PERSON
Refusal to allow appellant to attend hearing of appeal against sentence: *violation*.

COOKE - Austria (Nº 25878/94)
Judgment 8.2.2000 [Section III]

Facts: The applicant was convicted of murder by a jury which also found that he was criminally responsible. He was sentenced to 20 years' imprisonment, the court taking into account as mitigating circumstances his diminished responsibility. The applicant lodged a plea of nullity and also an appeal against sentence, in which he invoked further mitigating circumstances; the prosecution also appealed against the sentence, requesting a life sentence. The Supreme Court issued a summons for the hearing on the plea of nullity and the appeals, indicating that, in respect of the plea of nullity the applicant, being incarcerated, could only appear through his official defence counsel and that, in respect of the appeals, he would not be brought before the court as the relevant conditions were not satisfied. The applicant was informed a few days before the hearing that S. had been appointed as his counsel and he immediately wrote to the court requesting permission to attend the hearings as an observer. He was informed that this was not possible. The hearing was held in his absence. The Supreme Court rejected the plea of nullity and upheld the sentence imposed by the trial court.
Law: Government's preliminary objection: The Court decided to join to the merits the Government's preliminary objection, in which they claimed that the applicant had failed to make an explicit request to be brought before the Supreme Court, as opposed to his request to attend as an observer.

Article 6(1) and (3)(c): The Austrian Supreme Court in nullity proceedings deals primarily with questions of law arising in relation to the conduct of the trial and other matters, and the presence of the appellant is not generally required by these provisions. In this case, the applicant's plea of nullity related to procedural and legal matters and his general apprehensions are not sufficient to cast doubt on the effectiveness of his representation at the hearing. There were thus no special circumstances warranting his personal presence, and there was no violation of Article 6 in that respect. However, with regard to the appeals against sentence, the court was called on to examine whether the sentence should be increased or reduced and in this respect it had to consider the applicant's personality and character, including his state of mind at the time of the offence, his motive and his aggressiveness in general. Taking into account what was at stake, the case could not be properly examined without gaining a personal impression of the applicant and it was essential that he be present and afforded an opportunity to participate. Moreover, although the defence counsel did not request that the applicant be summoned, the State was in the circumstances under a positive duty to ensure his presence, and there had no therefore been a failure to exhaust domestic remedies.
Conclusion: Violation (unanimous).
Article 34 (former Article 25(1)): The Court has jurisdiction under this provision to examine incidents which occurred partly before and partly after the Commission's decision on admissibility, notwithstanding the fact that the Commission did not examine the issue. However, the Government's approach to the applicant's former representative, while undesirable, cannot be regarded as pressure on the applicant to withdraw or modify his complaint or as designed to dissuade or discourage him from pursuing it. Furthermore, the applicant has not provided any proof in respect of alleged overhearing of telephone conversations or opening of letters by the prison authorities and there is nothing to show that he was in any way frustrated in the exercise of his right of petition.
Conclusion: No violation (unanimous).
Article 41: The Court awarded the applicant GBP 1,000 in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

DEFENCE IN PERSON
Refusal to allow appellant to attend hearing of plea of nullity and appeal: *no violation*.

PRINZ - Austria (Nº 23867/94)
Judgment 8.2.2000 [Section III]

Facts: The applicant's detention in an institution for mentally ill offenders was ordered by the Regional Court, which found that he had threatened various people with murder but could not be held responsible because he was suffering from mental illness. The applicant, assisted by official defence counsel, lodged a plea of nullity and an appeal. Defence counsel did not file any grounds of appeal and did not request that the applicant be permitted to attend the hearing. The applicant personally filed submissions and maintains that he also unsuccessfully requested leave to attend the hearing. The Supreme Court hearing was held in his absence and both the plea of nullity and the appeal were rejected. While noting that the applicant had not submitted any grounds of appeal, the court examined the trial court's findings regarding the dangerous nature of the applicant in the future, which he had submitted in his plea of nullity.
Law: Government's preliminary objection: The Court decided to join to the merits the Government's preliminary objection, in which they claimed that the applicant had failed to make an explicit request to be brought before the Supreme Court, as opposed to his request to attend as an observer.
Article 6(1) and (3)(c): The hearing on the plea of nullity, relating only to questions of law, did not necessitate the applicant's presence. In this case, the applicant's plea of nullity related to procedural and legal matters and there were no special circumstances warranting his personal presence, in particular no indication that defence counsel did not effectively ensure

the applicant's defence. There was thus no violation of Article 6 in that respect. With regard to the appeals against sentence, the court examined whether the conditions for placement in a psychiatric institution were met, but no new factual elements were adduced and the court's task was limited to a review of the findings of the lower court which had obtained expert evidence and heard the applicant directly. He had not been convicted and since the prosecution had not appealed the court had no power to convict and impose a regular prison sentence, so that there was no risk of an increase in sentence. Moreover, placement in a psychiatric institution is a preventive measure, the necessity of which has to be reviewed at least annually. Having regard to the limited jurisdiction of the Supreme Court in the case and to what was at stake for the applicant, it was not essential that he be present at the hearing in person. The Supreme Court could adequately review the lower court's decision on the basis of the case-file, including the expert evidence and in the absence of a formally valid request for leave to attend the hearing, the court was not under a positive obligation to ensure the applicant's presence. There were special features justifying the applicant not being present.
Conclusion: No violation (unanimous).

ARTICLE 7

CRIMINAL OFFENCE
Foreseeability of offence defined by law as "activities inspired by National Socialist ideas": *inadmissible*.

SCHIMANEK - Austria (N° 32307/96)
Decision 1.2.2000 [Section I]
(See Article 10, below).

ARTICLE 8

PRIVATE LIFE
Storing of personal data in security card index: *violation*.

AMANN - Switzerland (Nº 27798/95)
Judgment 16.2.2000 [Grand Chamber]
(See Appendix III).

CORRESPONDENCE
Interception and recording of telephone call: *violation*.

AMANN - Switzerland (Nº 27798/95)
Judgment 16.2.2000 [Grand Chamber]
(See Appendix III).

ARTICLE 10

FREEDOM OF EXPRESSION
Dismissal of television presenter following criticism of management: *violation*.

FUENTES BOBO - Spain (Nº 39293/98)
*Judgment 29.2.2000 [Section IV]
(See Appendix IV)

FREEDOM OF EXPRESSION
Conviction for being involved in activities inspired by the National Socialist ideology: *inadmissible*.

SCHIMANEK - Austria (N° 32307/96)
Decision 1.2.2000 [Section I]

The applicant was arrested on suspicion of having been involved in activities inspired by the National Socialist ideology. The Assize Court convicted him on the basis of section 3a (2) of the National Socialism Prohibition Act and sentenced him to fifteen years' imprisonment. It was established that the applicant, as leader of a pro-Nazi group, had been involved in the recruitment of new members and had organised meetings where the Third Reich was glorified and the existence of the systematic killing by the use of toxic gas in concentration camps was denied. He was also found to have contributed to the distribution of pamphlets promoting this ideology. Upon the applicant's plea of nullity and appeal against sentence, the Supreme Court confirmed the conviction while reducing the sentence to eight years' imprisonment in view of confessions he had made at the trial.
Inadmissible under Article 3: The Convention does not in general provide a basis for contesting the length of a sentence lawfully imposed by a competent court. Only in exceptional circumstances will the length of a sentence raise doubts as to its compatibility with this Article. In the present case, the applicant was found guilty of a serious political offence, namely of having played an active role in an association which aimed at, *inter alia*, undermining the autonomy and independence of the Austrian Republic or subverting public order by the promotion of National Socialist ideas. Having regard to the careful examination of the applicant's sentence by the Supreme Court, there were no circumstances that could raise doubts as to the length of the prison sentence: manifestly ill-founded.
Inadmissible under Article 7: When using the broad notion of "activities inspired by National Socialist ideas" in section 3a (2) of the Prohibition Act the legislator's intention was to outlaw all National Socialist activities. Moreover, the scope of the provision is limited to the National Socialist concept as a historical ideology, frequently referred to in Austria and elsewhere, which can be considered to be a sufficiently precise concept. Finally, the case-law and doctrine in Austria have developed further criteria making the applicable law sufficiently accessible and foreseeable and enabling the jury to distinguish clearly between the applicant's activities and those which could not be considered as National Socialist activities: manifestly ill-founded.

Inadmissible under Article 10: The prohibition against activities involving the expression of National Socialist ideas is prescribed by Austrian law and, in view of the historical past forming the immediate background of the Convention itself, can be justified as being necessary in a democratic society in the interests of national security and territorial integrity as well as for the prevention of crime. Section 3a (2) of the Prohibition Act prohibits the founding or leading of groups which aim at undermining public order or the autonomy or independence of the Austrian Republic through its members' activities which echoed National Socialist precepts. The applicant was found guilty of having held a leading position within such a group. National Socialism is a totalitarian doctrine incompatible with democracy and human rights and hence its adherents pursue aims of the kind referred to in Article 17. Therefore, the applicant's conviction was necessary in a democratic society: manifestly ill-founded.

ARTICLE 14

DISCRIMINATION (Article 1 of Protocol No. 1)
Discrimination against children of adulterous relationships with regard to inheritance rights: *violation*.

MAZUREK - France (N° 34406/97)
Judgment 1.2.2000 [Section III]

Facts: The applicant's mother had a first child in 1936 who was legitimated by the marriage she entered into in 1937. The applicant was born in 1942, at a time when the marriage still existed, but was registered only under the name of his mother as the couple had separated. After the mother's death, the elder son applied to the TGI for the division of her estate and for a declaration that the applicant, as the child of an adulterous union, could only claim, under Article 760 of the French Civil Code, one quarter of the estate. The applicant, arguing *inter alia* that this provision was incompatible with the Convention, lodged an application to have the same rights granted to him as to a legitimate child. The court found that the purpose of the discrimination being to ensure the minimal respect for obligations entered into in a marriage, it was necessary for respect of the rights of others and was therefore not contrary to the Convention. Appeals lodged by the applicant against that decision were not successful.
Law: Article 1 of Protocol No.1 and Article 14: Protection of the traditional family, which formed the basis of the discrimination under the law, could be considered a legitimate purpose. Nevertheless, international developments in family law, as well as debate taking place in France itself, tended towards the abolition of discrimination with respect to adulterine children. Interpretation of the Convention being necessarily evolutive, it had to take these developments into account. In this case, there was no justification for the different treatment of an adulterine child in the division of the estate, since such discrimination would have the effect of penalising the child for events which were not his fault.
Conclusion: Violation (unanimous).
In the light of this conclusion, the Court did not find it necessary to examine the complaint under Article 8 in conjunction with Article 14.
Article 41: As the applicant had sought, he was awarded as pecuniary damage the difference between the sum he had received and the sum he would have received had he been placed on a equal footing with his half-brother, that is FRF 376,034.61. In addition, he was awarded FRF 20,000 for non-pecuniary damage and a sum in compensation for costs incurred both before the French courts and before the Convention institutions.

ARTICLE 17

DESTRUCTION OF RIGHTS AND FREEDOMS
Conviction for being involved in activities inspired by the National Socialist ideology: *inadmissible*.

SCHIMANEK - Austria (N° 32307/96)
Decision 1.2.2000 [Section I]
(See Article 10, above).

ARTICLE 34

VICTIM
Applicant complaining of gynaecological examination of his wife following police custody: *admissible*.

FIDAN - Turkey (N° 24209/94)
Decision 29.2.2000 [Section I]

The applicant and his wife were taken into police custody on suspicion of being linked to the PKK. Before being brought before the public prosecutor and released, the applicant's wife had to undergo a gynaecological examination although she allegedly strongly refused it. The public prosecutor did not take into consideration her complaint about her allegedly forced examination. Criminal proceedings were initiated against the applicant and his wife which came to an end with their being acquitted for lack of evidence. Several police officers involved in the police custody were later charged with having, *inter alia*, violated the private life of the applicant's wife by obliging her to undergo the gynaecological examination. The Assize Court acquitted the police officers notably of having interfered with the private life of the applicant's wife on the ground that the gynaecological examination had been meant to prevent a possible accusation of rape. The applicant's appeal was to no avail.
Admissible under 8: The applicant submitted a statement of his wife, through which she complained of having been forced to undergo a gynaecological examination and claimed that it had infringed her right to respect for her private life. It was open to the applicant, as close relative to the victim, to raise a complaint founded on allegations by her of violations of the Convention.

VICTIM
Appeals lodged by association to challenge building permits: *inadmissible*.

ASSOCIATION DES AMIS DE SAINT-RAPHAEL ET DE FREJUS and others - France (N° 45053/98)
Decision 29.2.2000 [Section III]

(See above).

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):

ARVOIS - France (Nº 38249/97)
Judgment 23.11.99 [Section III]
(See Information Note Nº 12)

MARQUES GOMES GALO - Portugal (Nº 35592/97)
Judgment 23.11.99 [Section IV]
(See Information Note Nº 12)

GALINHO CARVALHO MATOS - Portugal (Nº 35593/97)
Judgment 23.11.99 [Section IV]
(See Information Note Nº 12)

Article 44(2)(c)

On 11 February 2000, the Panel of the Grand Chamber rejected a request for revision of the following judgment, which has consequently become final:

REASONABLE TIME
Length of criminal proceedings: *violation*.

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

The case concerns the length of criminal proceedings against the applicants. The proceedings began in 1994 and were still pending in May 1999 (4 years, 4 months, 21 days).
Conclusion: Violation (unanimous).
Article 41 - The Court awarded each of the applicants 8 million lire (ITL). It also awarded a global sum of 1,500,000 lire for costs and expenses.

TRANSITIONAL PROVISIONS
ARTICLE 5(4) OF PROTOCOL Nº 11

CASES REFERRED TO THE GRAND CHAMBER
The Panel of the Grand Chamber has decided to refer the following 5 cases to the Grand Chamber:

COSTER v. the United Kingdom (Nº 24876/94), **BEARD v. the United Kingdom** (Nº 24882/94), **SMITH v. the United Kingdom** (Nº 25154/94), **LEE v. the United Kingdom** (Nº 25289/94), and **VAREY v. the United Kingdom** (Nº 26662/95) concerning the refusal of the authorities to allow gypsies to live in caravans on their own land.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Discrimination against children of adulterous relationships with regard to inheritance rights: *violation*.

MAZUREK - France (N° 34406/97)
Judgement 1.2.2000 [Section III]
(See Article 14, above).

DEPRIVATION OF PROPERTY
Seizure of vehicle of applicant suspected of having driven it without a valid driving licence: *communicated*.

SCHMELZER - Germany (N° 45176/99)
[Section IV]

Criminal proceedings were instituted against the applicant on suspicion of having driven a car without holding a valid driving licence. Seizure of the vehicle was ordered at the investigation stage by the district court, considering the suspicion weighing on the applicant. A few months later, while the investigations were still pending, the court ordered that the car be sold, the costs of storage having got to a point where they far exceeded its value. The applicant's appeal against this decision was dismissed. Although the proceedings were later discontinued, the court decided that the sale should take place on the ground that suspicion against the applicant had not been dissipated. The applicant's appeal to the Regional Court against this last decision was to no avail. The car was eventually sold.
Communicated under Article 1 of Protocol N°1.

APPENDIX I

Case of Caballero v. the United Kingdom - Extract from press release

Facts: The applicant, Clive Caballero, a Jamaican national, was born in 1926 and is currently in prison in HMP Brixton, the United Kingdom. In 1987 the applicant was convicted of manslaughter. The naked body of the victim, a neighbour, was discovered outside of the door of her apartment wrapped in a bedspread after a drinking session with the applicant, during which he had sexually interfered with her. He was sentenced to four years' imprisonment and released in August 1988. On 2 January 1996 the applicant was arrested by the police on suspicion of attempted rape of his next-door-neighbour. He maintained that he had had sexual intercourse with the woman with her consent and the woman claimed that the incident had taken place after she had blacked-out from drinking. He was brought before the Magistrates' Court on 4 January 1996. The applicant instructed his solicitor to apply for bail on his behalf, but no bail application was made in view of section 25 of the Criminal Justice and Public Order Act 1994, which had the effect that he could not be granted bail because of his previous conviction. The record of the hearing of 4 January 1996 refers to section 25 of the 1994 Act as the reason for the refusal of bail. The applicant was remanded in custody by the magistrate on 4 and 11 January 1996, the second appearance being necessary in view of the possibility (later abandoned) of the prosecution amending the charge against the applicant. The applicant was convicted of attempted rape and of assault occasioning actual bodily harm in October 1996. On 17 January 1997 he was sentenced to four years' imprisonment for the assault conviction and to life imprisonment for the attempted rape conviction. The trial court deducted the period of his pre-trial detention from the sentence imposed pursuant to section 67 of the Criminal Justice Act 1967. On 11 July 1997 the Court of Appeal rejected his appeal against sentence.

Law:

(a) The complaints and the parties' submissions before the Court

Before the Commission, the applicant complained that section 25 of the Criminal Justice and Public Order Act 1994 (which has been subsequently amended) meant that he was automatically detained prior to his trial, in violation of Article 5 §§ 3 and 5 and Article 14 of the European Convention on Human Rights. He also complained under Article 13 that he did not have an effective domestic remedy as regards these alleged violations.

Before the Court, the applicant made the same complaints except he did not pursue his complaint under Article 13. The Government conceded that there had been a violation of Article 5 §§ 3 and 5 and agreed with the Commission's conclusions on the applicant's complaints under Articles 13 and 14.

(b) Decision of the Court on the merits (unanimous)

As to Article 5 §§ 3 and 5, the Court decided to accept the Government's concession that there has been a violation of Article 5 §§ 3 and 5 of the Convention in the case, with the consequence that it was empowered to make an award of just satisfaction to the applicant under Article 41, but it did not consider it necessary, in the particular circumstances, to examine the issues of interpretation of Article 5 §§ 3 and 5 raised in the applicant's complaint.

Since the applicant did not pursue his complaint under Article 13 before the Court, the Court saw no cause to examine it of its own motion. In view of the Court's acceptance of the Government's concession in connection with Article 5 § 3 of the Convention, the Court did not find it necessary to consider the applicant's complaint about section 25 of the 1994 Act under Article 14.

(c) Article 41 of the Convention (unanimous)

The applicant did not allege any pecuniary damage. However, he sought an unspecified amount of compensation for non-pecuniary damage, arguing that a decision not to make such an award would strip Article 5 § 5 of any effectiveness. He also submitted an affidavit of a solicitor in the United Kingdom who had practised since 1985 exclusively in criminal law and advocacy in the criminal courts. The affidavit detailed why, according to the deponent, the applicant would have had a good chance of being granted bail prior to his trial had section 25 of the 1994 Act not been in force.

The Court recalled that in certain cases which concerned violations of Article 5 §§ 3 and 4 it had made relatively small awards in respect of non-pecuniary damage but, in more recent cases, it had declined to make any such award. It was noted that in some of these recent judgments the Court had stated that just satisfaction could be awarded only in respect of damage resulting from a deprivation of liberty that the applicant would not have suffered if he or she had had the benefit of the guarantees of Article 5 § 3 and that the Court had concluded, according to the circumstances of those cases, that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered.

However, taking into account the affidavit evidence and the applicant's claim that if he had been released on bail prior to his trial it could have been his last days of liberty given his age, ill-health and the long sentence he was serving, the Court awarded him, on an equitable basis, GBP 1,000 compensation for non-pecuniary damage.

As to costs and expenses, the applicant claimed a total of GBP 32,225.09 in legal costs and expenses (inclusive of value added tax). This claim comprised the costs and expenses of two different legal representatives together with counsel's fees. The Court noted that costs and expenses are recoverable under Article 41 of the Convention when it has been established that they were actually and necessarily incurred and reasonable as to quantum. It found that there had been considerable duplication of work by the applicant's two representatives and that the number of hours for which counsel charged appeared to be excessively high. Making its assessment on an equitable basis, the Court awarded the applicant, in legal costs and expenses, GBP 15,250 inclusive of VAT but less the amounts received in legal aid from the Council of Europe (4,100 French francs).

Separate opinions were expressed by Judge Palm who was joined by Judges Bonello, Tulkens and Sir Robert Carnwath, and Judge Casadevall joined by Judge Greve. Both opinions are annexed to the judgment.

APPENDIX II

Cases of Rowe and Davis, Jasper and Fitt v. the United Kingdom - Extract from press release

Facts: The cases concern three applications brought by four British nationals. Eric Jasper, who was born in 1933, Raphael Rowe and Michael Davis, who were born in 1968 and 1966 respectively, and Barry Fitt, who was born in 1933. Mr Rowe and Mr Davis are currently serving sentences for murder and other offences committed in 1988. They were convicted in February 1990 and their appeals were finally determined in 1993. Their case has now been remitted to the Court of Appeal by the Criminal Cases Review Commission. Mr Jasper is in Maidstone Prison for fraudulent evasion of the prohibitions on importing cannabis in 1993, and Mr Fitt is in Whitemoor Prison for conspiracy to rob and possession of a firearm and a prohibited weapon in 1993. They were both convicted in 1994. During the criminal proceedings against all four applicants, relevant evidence was withheld from the defence on the ground of public interest immunity.

The applicants complain that the non-disclosure by prosecution of relevant evidence on the ground of public interest immunity meant they were denied a fair trial in breach of Article 6 § 1 and 3 (b) and (d) of the European Convention on Human Rights.
Law:

a. Case of Rowe and Davis v. the United Kingdom

The Court noted that, in accordance with the law as it stood at the time, it was in this case the prosecution, without the knowledge or approval of the judge, who decided that the evidence in question should not be disclosed. In the light of the requirements of Article 6 § 1 - that the prosecution should disclose to the defence all material evidence in their possession for or against the defence, and that difficulties caused to the defence must be sufficiently counterbalanced by the procedures followed by the judicial authorities - it found that such a procedure was not compatible with the right to a fair trial. The Court of Appeal, which had itself considered the material on two occasions, was not able to remedy the position as it had not seen the witnesses give their evidence, and it had to rely on transcripts of the Crown Court hearings and on the prosecution for its understanding of the relevance of the material.
Conclusion: Violation (unnaimous).
Article 41 - The Court made an award of £25,000 for costs, less FF 15,233.40 already paid by way of legal aid, and dismissed the remainder of the applicant's claims for just satisfaction.

b. Cases of Jasper v. the United Kingdom and Fitt v. the United Kingdom

By the time the events relevant to these two applications took place, the law had changed. Under the new regime, the prosecution were required to make an application to the trial judge for authority not to disclose the evidence in question. The amount of information given to the defendant depended on the category of information involved.
The Court again noted the importance of disclosure of the prosecution case, and the need for any difficulties caused to the defence by limitations on defence rights to be sufficiently counterbalanced by the procedures followed by the judicial authorities. However, it then noted that in each case, the defence had been told that an application for non-disclosure had been made, and in the case of Fitt they were told of the category of information, and were also given an edited summary of the information. In each case the defence had been able to outline the defence case to the judge. In these circumstances, where the trial judge took the decision on whether it was permissible for the prosecution not to disclose material, and where the material was not put before the jury, the Court found that the defence had been kept informed so far as was possible without revealing the material which the prosecution sought to keep secret on public interest grounds. The fact that the trial judge had kept the need for disclosure under assessment throughout the trial added a further safeguard.
Conclusion: No violation (9 votes to 8).

APPENDIX III

Case of Amann v. Switzerland - Extract from press release

Facts: The applicant, Hermann Amann, a Swiss national, was born in 1940 and lives in Berikon (Switzerland). In the early 1980s the applicant, who is a businessman, imported depilatory appliances into Switzerland which he advertised in magazines. On 12 October 1981 a woman telephoned the applicant from the former Soviet embassy in Berne to order a "Perma Tweez" depilatory appliance. That telephone call was intercepted by the Federal Public Prosecutor's Office ("the Public Prosecutor's Office"), which then requested the Intelligence Service of the police of the Canton of Zürich to carry out an investigation into the applicant. In December 1981 the Public Prosecutor's Office filled in a card on the applicant for its national security card index on the basis of the report drawn up by the Zürich police. In particular, the card indicated that the applicant had been "identified as a contact with the Russian embassy" and was a businessman. It was numbered (1153:0) 614, that code meaning

"communist country" (1), "Soviet Union" (153), "espionage established" (0) and "various contacts with the Eastern block" (614). In 1990 the applicant learned of the existence of the card index kept by the Public Prosecutor's Office and asked to consult his card. He was provided with a photocopy in September 1990, but two passages had been blue-pencilled.
After trying in vain to obtain disclosure of the blue-pencilled passages, the applicant filed an administrative-law action with the Federal Court requesting, *inter alia*, 5,000 Swiss francs in compensation for the unlawful entry of his particulars in the card index kept by the Public Prosecutor's Office. In a judgment of 14 September 1994, which was served on 25 January 1995, the Federal Court dismissed his action on the ground that the applicant had not suffered a serious infringement of his personality rights.
The applicant complained that the interception of the telephone call on 12 October 1981 and the creation by the Public Prosecutor's Office of a card on him and the storage of that card in the Confederation's card index had violated Article 8 of the European Convention on Human Rights. He also complained that he had not had an effective remedy within the meaning of Article 13 of the Convention to obtain redress for the alleged violations.
Law: Article 8 of the Convention
(a) as regards the telephone call
The Court considered that the measure in question, namely the interception by the Public Prosecutor's Office of the telephone call of 12 October 1981, amounted to an interference with the applicant's exercise of his right to respect for his private life and his correspondence. The Court pointed out that such interference breached Article 8 unless it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 of that provision and was, in addition, necessary in a democratic society to achieve those aims.
In determining the issue of lawfulness, the Court had to examine whether the impugned measure had a legal basis in domestic law and whether it was accessible and foreseeable to the person concerned. A rule was "foreseeable" if it was formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate their conduct. With regard to secret surveillance measures, the Court reiterated that the "law" had to be particularly detailed.
The Court noted in the instant case that Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office and section 17(3) of the Federal Criminal Procedure Act ("FCPA"), on which the Government relied and according to which the Public Prosecutor's Office "shall provide an investigation and information service in the interests of the Confederation's internal and external security", were worded in terms too general to satisfy the requirement of "foreseeability". As regards sections 66 et seq. FCPA, which governed the monitoring of telephone communications, the Government were unable to establish that the conditions of application of those provisions had been complied with. The Court went on to observe that, in the Government's submission, the applicant had not been the subject of the impugned measure, but had been involved "fortuitously" in a telephone conversation recorded in the course of a surveillance measure taken against a third party. The primary object of sections 66 et seq. FCPA was the surveillance of persons suspected or accused of a crime or major offence or even third parties presumed to be receiving information from or sending it to such persons, but those provisions did not specifically regulate in detail the case of persons not falling into any of those categories.
The Court concluded, in the light of the foregoing, that the interference had not been "in accordance with the law". Accordingly, there had been a violation of Article 8 of the Convention.
Conclusion: Violation (unanimous).
(b) as regards the card
The Court reiterated firstly that the storing of data relating to the "private life" of an individual fell within the application of Article 8 § 1 of the Convention. It pointed out in this connection that the term "private life" must not be interpreted restrictively.
In the present case the Court noted that a card had been filled in on the applicant on which it was stated, *inter alia*, that he was a businessman and a "contact with the Russian embassy".

The Court found that those details undeniably amounted to data relating to the applicant's "private life" and that, accordingly, Article 8 was applicable.
The Court then reiterated that the storing by a public authority of data relating to an individual amounted in itself to an interference within the meaning of Article 8. The subsequent use of the stored information had no bearing on that finding and it was not for the Court to speculate as to whether the information gathered was sensitive or not or as to whether the person concerned had been inconvenienced in any way.
The Court noted that in the present case it had not been disputed that a card containing data on the applicant's private life had been filled in by the Public Prosecutor's Office and stored in the Confederation's card index. There had therefore been an interference with the applicant's exercise of his right to respect for his private life.
Such interference breached Article 8 unless it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was, in addition, necessary in a democratic society to achieve those aims.
The Court observed that in the instant case the legal provisions relied on by the Government, in particular the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, the Federal Criminal Procedure Act and the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration, did not contain specific and detailed provisions on the gathering, recording and storing of information. It also pointed out that domestic law, particularly section 66(1*ter*) FCPA, expressly provided that documents which were no longer "necessary" or had become "purposeless" had to be destroyed; the authorities had failed to destroy the data they had gathered on the applicant after it had become apparent, as the Federal Court had pointed out in its judgment of 14 September 1994, that no criminal offence was being prepared.
The Court concluded, in the light of the foregoing, that there had been no legal basis for the creation of the card on the applicant and its storage in the Confederation's card index. Accordingly, there had been a violation of Article 8 of the Convention.
Conclusion: Violation (unanimous).
Article 13 of the Convention - The Court reiterated that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. That provision did not, however, require the certainty of a favourable outcome. The Court noted that in the instant case the applicant was able to consult his card as soon as he asked to do so in 1990. It also observed that the applicant had complained in his administrative-law action in the Federal Court that there had been no legal basis for the interception of the telephone call and the creation of his card and, secondly, that he had had no effective remedy against those measures. In that connection the Court reiterated that the Federal Court had had jurisdiction to rule on those complaints and had duly examined them. The Court concluded, in the light of the foregoing, that the applicant had therefore had an effective remedy under Swiss law. Accordingly, there had not been a violation of Article 13 of the Convention.
Conclusion: No violation (unanimous).
Article 41 of the Convention - The applicant did not allege any pecuniary damage. However, he claimed 1,000 Swiss francs (CHF) for non-pecuniary damage. The Court held that the non-pecuniary damage had been adequately compensated by the finding of violations of Article 8 of the Convention. The applicant also claimed CHF 7,082.15 in respect of his costs and expenses for the proceedings before the Convention institutions. The Court considered that the claim for costs and expenses was reasonable and that it should be allowed in full.

APPENDIX IV

Case of Fuentes Bobo v. Spain - Extract from press release

Facts: The applicant, Bernardo Fuentes Bobo, a Spanish national, was born in 1940 and lives in Madrid (Spain). At the material time, he had been employed by the Spanish State television company (TVE) since 1971 as a producer. At the end of 1992 the programme he presented was dropped and no replacement post was offered to him, although he was required to complete his daily working hours.

Following a demonstration by the staff in October 1993 about the way TVE was managed, the applicant and a colleague co-authored an article in the newspaper *Diario 16* criticising certain of the management's actions. At the beginning of November 1993 the applicant received a letter informing him where he should report for work until such time as he was offered a post. However, he was not given an office. An exchange of correspondence and a document circulated by the applicant among other members of staff resulted in disciplinary proceedings that ended in January 1994 with the applicant being suspended without pay, first for 16 days and later for 60 days. Identical penalties were imposed on one L.C.M. The applicant lodged an appeal with the Madrid Labour Court (no. 10); that appeal was dismissed, whereas Madrid Labour Court (no. 34) set aside the penalty imposed on L.C.M. The applicant then appealed to the Madrid High Court (*Tribunal Superior de Justicia)*, which overturned the lower court's judgment and set aside the disciplinary penalty stating that it was necessary to do so to avoid inconsistent court decisions and because no penalty had been imposed on the 276 colleagues who had shown support for L.C.M.'s and the applicant's article. In the meantime, the applicant had commented on the penalties and TVE's actions in two radio programmes during which he made remarks about TVE's managers that were considered offensive. Those remarks led to fresh disciplinary proceedings being taken which ended with the applicant's dismissal on 15 April 1994.

Following an appeal by the applicant, the Madrid Labour Court (no. 4) ruled that there had been a procedural defect and that the dismissal was unlawful. However that decision was overturned by the Madrid High Court, which held that the dismissal was lawful under the rules governing the employees' status. The Supreme Court declared inadmissible an appeal on points of law that had been lodged with a view to harmonising the case-law. In a decision of 25 November 1997 the Constitutional Court, which was the final appellate court, dismissed an *amparo* appeal by the applicant on the ground that there had been no violation of his right to freedom of expression.

The applicant complained that his dismissal infringed his right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights; he relied, too, on Article 14 of the Convention alleging that he had been a victim of discrimination.

Law: Article 10 of the Convention - The Government had submitted that there had been no interference by the State in the applicant's freedom of expression and that the State could not be held responsible for the applicant' dismissal, as TVE was a private-law undertaking. The Court pointed out, however, that Article 10 also applied when the relations between employer and employee were governed by private law and, moreover, the State had a positive obligation in certain cases to protect the right to freedom of expression. Furthermore, the Court considered that even though the interference concerned had been "prescribed by law" and pursued a legitimate aim, namely the "protection of the reputation or rights of others", it did not on the facts of the case before it and in view of the severity of the penalty imposed on the applicant, meet a "pressing social need". It noted that the statements in issue had been made in the context of a labour dispute and that the failings of the public entity denounced by the applicant were of a general nature. The Court added that the "offensive" remarks attributed to the applicant, which – as the Constitutional Court had said – appeared to have been provoked, had first been used by radio-show hosts in exchanges that had been both lively and spontaneous. In addition, it noted that there was nothing in the case file to suggest that TVE or the supposed targets of the remarks had taken any legal action against the applicant. The Court concluded that notwithstanding the national authorities' margin of

appreciation, the relation between the penalty and the legitimate aim pursued was not reasonably proportionate. A majority of the Court therefore held that there had been a violation of Article 10 of the Convention.
Conclusion: Violation (5 votes to 2).
Article 14 of the Convention - In the light of its finding under Article 10 of the Convention the Court decided, unanimously, that it was unnecessary to examine the issue under Article 14 of the Convention.
Article 41 of the Convention - The applicant sought an amount of ESP 279,519,584 as compensation for his pecuniary and non-pecuniary damage. Having regard to the precariousness of the applicant's position at TVE (even before the disciplinary proceedings had begun), the fact that the applicant had not shown that he had used reasonable endeavours to find work and the fact that, in view of the applicant's celebrity it was difficult to dissociate the pecuniary damage from the non-pecuniary damage, the Court decided to award him an overall amount of ESP 1,000,000 plus ESP 750,000 for costs and expenses less FRF 6,600 that he had already received in legal aid before the Court.
Judges Caflisch and Makarczyk expressed a dissenting opinion and this is annexed to the judgment.

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