CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 27
on the case-law of the Court
February 2001

The summaries are prepared by the Registry and are not binding on the Court.

Statistical information[1]

		February	2001
I. Judgments delivered			
Grand Chamber		0	6
Chamber I		43(45)	77(79)
Chamber II		1	7
Chamber III		14(17)	47(50)
Chamber IV		3	3
Total		**61(66)**	**140(145)**
II. Applications declared admissible			
Section I		7(10)	16(23)
Section II		47	52
Section III		50	64(65)
Section IV		3(4)	10(12)
Total		**107(111)**	**142(152)**
III. Applications declared inadmissible			
Section I	- Chamber	2	9
	- Committee	48	210
Section II	- Chamber	8	16
	- Committee	33	121
Section III	- Chamber	4	19
	- Committee	129	284(285)
Section IV	- Chamber	6	15(25)
	- Committee	113	287
Total		**343**	**961(972)**
IV. Applications struck off			
Section I	- Chamber	1	1
	- Committee	1	7
Section II	- Chamber	1	1
	- Committee	0	3
Section III	- Chamber	1	3
	- Committee	1	5
Section IV	- Chamber	1	1
	- Committee	0	2
Total		**6**	**23**
Total number of decisions[2]		**456(460)**	**1126(1147)**
V. Applications communicated			
Section I		40	58(59)
Section II		63(64)	81(82)
Section III		11(14)	44(46)
Section IV		17	49(50)
Total number of applications communicated		**131(135)**	**232(237)**

[1] The statistical information is provisional.
[2] Not including partial decisions .

Judgments delivered in February 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	41(43)	2	0	0	43(45)
Section II	1	0	0	0	1
Section III	12(15)	1	1	0	14(17)
Section IV	3	0	0	0	3
Total	**57(62)**	**3**	**1**	**0**	**61(66)**

Judgments delivered January-February 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5	0	0	1[1]	6
Section I	68(70)	8	1	0	77(79)
Section II	7	0	0	0	7
Section III	43(46)	3	1	0	47(50)
Section IV	3	0	0	0	3
Total	**126(131)**[2]	**11**	**2**	**1**	**140(145)**

[1] Just satisfaction.
[2] Of the 121 judgments on merits delivered by Sections, 10 were final judgments

[* = judgment not final]

ARTICLE 2

LIFE
Disappearance and lack of effective investigation: *violation*.

ÇIÇEK - Turkey (Nº 25704/94)
*Judgment 27.2.2001 [Section I]

Facts: The applicant claims that security forces came to her village in 1994 and took away several men, including her two sons. The other men were later released. They believed that the applicant's sons had already been released. However, the applicant's sons have not been seen since. The Government deny that any military operation took place in the village and deny that any of the men concerned were ever detained; there is no record of such detentions. The applicant further claims that her sixteen year-old, partially sighted grandson has disappeared since being taken from the family garden by security forces. Again, the Government deny that he was detained. The applicant's daughter lodged several petitions but was told verbally that none of her three relatives was in custody.
A delegation of the European Commission of Human Rights took evidence from witnesses, some of whom confirmed that they had been in custody with the applicant's sons. However, contrary to the applicant's allegations, the witnesses stated that they had not been subjected to any ill-treatment in custody.
Law: The Court was satisfied that the villagers who had given evidence had given a truthful and essentially accurate account of the incident, whereas it could not accept the testimony of the officials who had given evidence. It therefore accepted that several men, including the applicant's sons, had been detained by security forces. It further considered that the absence of any record of their detention did not prove that they had not been held in custody, given the inaccuracy and unreliability of custody records which it had already found in previous cases, while the evidence of those who claimed also to have been in custody was well-balanced, detailed and consistent. It did not accept it as an established fact that the two men had been released.
Article 2 (with regard to the applicant's two sons) – In view of the time which has passed and the fact that it has been established that the two men were held in custody by authorities for whom the State is responsible, as well as the fact that they were not released with the other detainees – suggesting that they were under suspicion – they must be presumed dead following an unacknowledged detention. The State is responsible and has not provided any explanation of what occurred after the men were taken into detention or attempted to justify the lethal use of force. There has thus been a violation of Article 2 in that respect. Moreover, given the time it took before an official investigation was instigated and the manner in which relevant information was ignored by the authorities, the investigation was inadequate and in breach of the State's procedural obligations. There has therefore been a violation of Article 2 also in that respect.
Conclusion: violation (6 votes to 1).
Article 3 (with regard to the applicant's two sons) – The Court was not satisfied that the disappearance of the applicant's sons could be categorised in terms of this provision. The evidence of the witnesses was that they had not been ill-treated and the applicant had not provided any further specific evidence, nor was it substantiated that her sons were the victims of an officially tolerated practice.
Conclusion: no violation (unanimously).
Article 5 – The failure to log the detentions and absence of official trace of the subsequent whereabouts of the detainees is a most serious failing, since it enables those responsible for the deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to

escape accountability. The absence of holding data is incompatible with the very purpose of Article 5. In particular, there was a practice – not recognised in domestic law – of holding for a "period of observation" prior to placing in proper custody. In addition, the public prosecutor did not carry out a proper investigation. The authorities have failed to offer any credible and substantiated explanation for the whereabouts and fate of the applicant's two sons after they were detained and no meaningful investigation was conducted. The authorities have thus failed to discharge their responsibility to account for the two detainees who, it must be accepted, were held in unacknowledged detention in the complete absence of safeguards.
Conclusion: violation (unanimously).
Article 3 (with regard to the applicant) – The applicant has had no news of her sons for almost six years and has been living with the fear that they are dead. Moreover, the authorities have not given serious consideration to her claims. The uncertainty, doubt and apprehension over a prolonged and continuing period of time has undoubtedly caused her severe mental distress and anguish. Having regard also to the fact that she is the mother of victims of grave human rights violations as well as herself the victim of the authorities' complacency, there has also been a breach of Article 3 in respect of the applicant.
Conclusion: violation (unanimously).
Article 13 – The applicant's complaint was never taken seriously and the superficial approach taken by the public prosecutor cannot be regarded as compatible with his duties of investigation under Turkish law. Furthermore, it undermined the effectiveness of any other possible investigations.
Conclusion: violation (unanimously).
Article 14 in conjunction with Articles 2, 3 and 5 – The applicant has not produced any evidence to substantiate her claim that the treatment of her sons was due to their ethnic origin.
Article 14 in conjunction with Article 13 – As to the applicant's complaint that no account was taken by the authorities of the fact that she does not speak Turkish, the law provides for an interpreter in such circumstances and the applicant has not maintained that she asked for such assistance. Moreover, her daughter had the assistance of a lawyer from the Diyarbakır Human Rights Association.
Conclusion: no violation (unanimously).
Article 18 – The Court found it unnecessary to examine this complaint separately, since the allegations had been examined under Articles 2 and 3.
Conclusion: not necessary to examine (unanimously).
Article 3 (with regard to the applicant's grandson) – The evidence relating to the disappearance of the applicant's grandson is inconsistent and she was unable to give the names of witnesses who had told her about his purported arrest. There is thus no evidence to substantiate the alleged detention.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded the applicant, in respect of each of her sons, £5,000 (GBP) for pecuniary damage and £20,000 for non-pecuniary damage, to be held by her for their heirs. It awarded the applicant herself £10,000 in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 3

INHUMAN TREATMENT
Mental suffering due to disappearance of applicant's sons: *violation*.

ÇIÇEK - Turkey (Nº 25704/94)
*Judgment 27.2.2001 [Section I]
(See Article 2 above).

EXPULSION
Expulsion of a schizophrenic and alleged risk of deterioration due to lack of adequate care in the country of destination: *no violation*.

BENSAID - United Kingdom (Nº 44599/98)
*Judgment 6.2.2001 [Section III]

Facts: The applicant, an Algerian national, is schizophrenic. He arrived in the United Kingdom as a visitor in 1989 and was granted leave to remain for studies. Further leave was refused in 1992, but the applicant married a British national in 1993 and was granted leave to remain as a foreign spouse. However, after he returned from a visit to Algeria in 1996, he was refused leave to enter (having been granted temporary admission), as the authorities considered that his marriage was a marriage of convenience. He was served with notice of intention to remove him. He was refused leave to apply for judicial review but appealed to the Court of Appeal, submitting medical reports in support of his contention that his removal would entail a high risk of psychotic symptoms returning. The Government maintained that appropriate care was available at a psychiatric hospital around 80 km from the applicant's village and that the journey to the hospital presented no danger. The applicant's appeal was dismissed on that basis.
Law: Article 3 – The medication which the applicant currently takes would be available to him if he was admitted as an inpatient in Algeria and would potentially be available on payment as an outpatient; moreover, other medication is likely to be available. The suffering associated with a deterioration in his mental illness, possibly with hallucinations and psychotic delusions involving harm to self and others, as well as restrictions in social functioning, could in principle fall within the scope of Article 3. However, there is a risk of relapse even if he remains in the United Kingdom and, while the differences in available personal support and accessibility of treatment which removal would entail will arguably increase the risk, the fact that his circumstances would be less favourable than those he enjoys in the United Kingdom is not decisive. The risk of deterioration and the alleged lack of adequate support or care is to a large extent speculative: the information provided does not indicate that travel to the hospital is effectively prevented by the situation in the region and the applicant is not himself a likely target of terrorist activity. Having regard to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm, there is not a sufficiently real risk that the applicant's removal would be contrary to the standards of Article 3.
Conclusion: no violation (unanimously).
Article 8 – Treatment which does not reach the severity of Article 3 treatment may nonetheless breach the right to respect for private life when there are sufficiently adverse effects on physical and moral integrity and mental health must be regarded as a crucial part of private life associated with the aspect of moral integrity; the preservation of mental stability is an indispensable precondition to effective enjoyment of the right to respect for private life. In the present case, in view of the finding that the risk of damage to the applicant's health is based on largely hypothetical factors and that it is not substantiated that he would suffer

inhuman and degrading treatment, it has not been established that his moral integrity would be substantially affected to a degree falling within the scope of Article 8. Even assuming the dislocation caused by removal from the United Kingdom, where he has lived since 1989, would affect his private life, in the context of his relationships and support framework, such an interference may be regarded as "necessary in a democratic society" for the protection of the economic well-being of the country and the prevention of disorder and crime.
Conclusion: no violation (unanimously).
Article 13 – The domestic courts give careful and detailed scrutiny to claims that expulsion would expose an individual to a risk of inhuman and degrading treatment and the Court of Appeal did so in this case. The fact that this scrutiny takes place against the background of the criteria applied in judicial review of administrative decisions, namely rationality and perverseness, does not deprive the procedure of its effectiveness. The substance of the applicant's complaint was examined by the Court of Appeal, which had power to afford him the relief he sought. The fact that it did not do so is not a material consideration, since the effectiveness of a remedy for the purposes of Article 13 does not depend on a favourable outcome.
Conclusion: no violation (unanimously).

ARTICLE 5

Article 5(1)

SECURITY OF PERSON
Disappearances: *violation*.

ÇIÇEK - Turkey (Nº 25704/94)
*Judgment 27.2.2001 [Section I]
(See Article 2, above).

LAWFUL DETENTION
Sentence of life imprisonment imposed after two serious offences: *communicated*.

KELLY - United Kingdom (N° 54942/00)
[Section III]

In 1979, the applicant, aged eighteen at the time, was involved in three robberies and an attempted robbery. During one of the robberies, he fired at two persons and wounded them. He was sentenced to 14 years' imprisonment and was released in 1988. In 1998, he was found guilty of wounding with intent to cause grievous bodily harm after having been involved in a fight. According to section 2 of the Crimes (Sentences) Act 1997, a sentence of life imprisonment shall be imposed where an adult is convicted of a second serious offence committed after the entry into force of the Act, unless "exceptional circumstances" justify not imposing a life sentence. The trial judge considered that the requirements of section 2 of the 1987 Act had been met and imposed a life sentence on the applicant. The trial judge rejected six factors which, according to the applicant, constituted "exceptional circumstances" and as such should have prevented the judge from imposing a life sentence on him: his youth at the time of the initial conviction, the gap in time and substantive difference between the offences, his good record since his release from prison in 1988, the fact that the second offence was not serious and the lack of evidence that he constituted a continuing danger to the public. The minimum period (the "tariff") to be served by the applicant was fixed at four years. The Court

of Appeal rejected his subsequent appeal against sentence but allowed his appeal as regards the length of the minimum period to be served.
Communicated under Article 5(1) and (5).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Failure to exame appeal against detention pending deportation: *admissible*.

AL-NASHIF and others - Bulgaria (N° 50963/99)
Decision 25.1.2001 [Section IV]

In 1992, the first applicant, a stateless person of Palestinian origin, and Mrs S. arrived in Bulgaria. Their two children, the second and third applicant, were born in Sofia in 1993 and 1994 respectively. In 1995, the first applicant obtained a permanent residence permit. He married a Bulgarian national in a religious ceremony, but the marriage had no legal effect under Bulgarian law. He nonetheless asserted that he was living "on a permanent basis" with Mrs S. and their children. In 1997, he participated in an Islamic religious seminar. In 1999, a police inquiry took place on the suspicion that he was teaching religion, namely Islam, without due authorisation. Following a police report, the Passport Department of the Ministry of the Interior issued an order revoking the applicant's permanent resident permit. The revocation was based on a provision of the Aliens Act according to which permanent residence permits may be revoked if the person "poses a threat to the security or the interests of the Bulgarian State"; however, no reasons were given for the decision. In April 1999, the order was transmitted to the police and served on the first applicant, who was supported by the official Muslim authorities. In June 1999, the National Police Directorate issued orders for the first applicant's deportation, his detention pending deportation and his exclusion from the territory. He was arrested and transferred to a detention centre. He was detained for 26 days in complete isolation, no visits being allowed and, in July 1999, was deported to Syria. In May 1999, he had lodged appeals with the Ministry of the Interior and the Supreme Administrative Court against the order revoking his residence permit. The Ministry and the court rejected his appeals on the ground that, in accordance with the Aliens Act, orders concerning matters of national security were not subject to review. His other appeals, notably against his detention and the order for his detention and deportation, were not examined.
Admissible under Articles 5(4), 8, 9 and 13.

PROCEDURAL GUARANTEES OF REVIEW
Refusal of access to prosecution's file in connection with continuation of detention on remand: *violation*.

GARCIA ALVA - Germany (Nº 23541/94)
Judgment 13.2.2001 [Section I]

Facts: The applicant was arrested on suspicion of drug trafficking. He was brought before a judge who, after a hearing, issued an arrest warrant. The applicant was orally informed of the contents of the warrant, which was based on the statements of K., a convicted drug trafficker against whom separate proceedings had been brought. The applicant's lawyer requested access to the prosecution's file and was given certain documents. However, the prosecution refused access to other documents, on the ground that it would endanger the purpose of the investigation. Subsequently, the applicant's new lawyer repeated the request and applied for

review of the detention on remand. The prosecution again refused full disclosure. The District Court, which had a copy of the file, ordered the continuation of the detention on remand, having regard in particular to K.'s statements. The Regional Court, which also had a copy of the file, dismissed the applicant's appeal and the Court of Appeal dismissed a further appeal. Full access was later granted, as a result of which the Constitutional Court decided not to examine the applicant's constitutional complaint.
Law: Article 5(4) – Proceedings under this provision must be adversarial and ensure equality of arms but equality of arms is not ensured if access to documents in the investigation file which are essential to challenge the lawfulness of detention effectively is denied. Given the dramatic impact of deprivation of liberty on the fundamental rights of the individual, proceedings under Article 5(4) should in principle meet the basic requirements of a fair trial under Article 6 and in particular should ensure that the detainee is aware that observations have been filed and has a real opportunity to comment on them. In this case, the applicant was informed in general terms of the evidence against him and the grounds for his detention, but he was denied access to the investigation file, and in particular K.'s statements. The District Court, however, took its decision on the basis of the file including, to a large extent, these statements, and both the Regional Court and the Court of Appeal also had a copy of the file at their disposal. The contents of the investigation file, and in particular the statements, thus appear to have played a key role in the decision to prolong the applicant's detention on remand, yet their precise content had not at that stage been brought to the applicant's or his counsel's knowledge. Consequently, they had no opportunity to challenge adequately the findings referred to by the prosecution and the court. An accused must be given a sufficient opportunity to take cognizance of statements and other pieces of evidence underlying them, irrespective of whether he is able to provide any indication as to their relevance for his defence. While there is a need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the detainee's lawyer. Given the importance in the courts' reasoning of the contents of the investigation file in this case, the procedure before them did not comply with Article 5(4).
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

LIETZOW - Germany (Nº 24479/94)
Judgment 13.2.2001 [Section I]

This case raises the same issue as that addressed in the Garcia Alva v. Germany judgment, above. The Court followed similar reasoning in concluding that there had been a violation of Article 5(4).

SCHÖPS - Germany (Nº 25116/94)
Judgment 13.2.2001 [Section I]

Facts: The applicant was arrested on suspicion of several offences, including fraud. The warrant referred to several witness statements. The applicant claims that an initial request by his lawyer for access to the investigation file was rejected by the prosecution in March 1993, although there is no record of this. The arrest warrant was amended in September 1993, when the applicant's lawyer again requested access to the file. However, no action was taken in this respect, since the duplicate had already been forwarded to the Court of Appeal and the original was still required for the investigation. The prosecution subsequently applied for the

applicant's detention to be prolonged and his lawyer asked the Court of Appeal for access to the file. The parties disagree as to whether the applicant's lawyer agreed to proceed without such access. The Court of Appeal prolonged the detention in November 1993. The prosecution then decided to grant access to the file, although only 22 of the 24 files were made available. By the time the prosecution requested a further prolongation of the detention in February 1994, there were 69 volumes, but the applicant's lawyer had not been able to consult the additional ones. After the indictment had been served, copies of the file were sent to the applicant's lawyer for consultation in June 1994. The Court of Appeal again prolonged the applicant's detention. He was later convicted.

Law: Article 5(4) – While an accused complaining of denial of access to the investigation files must in principle have duly applied for such access, the mere absence of any record of a request is not sufficient proof in itself that the request was not made. Whatever the date of the applicant's first request, the request of September 1993 was not followed by immediate action on the part of the authorities since the original was needed for the investigation and the duplicate had been sent to the Court of Appeal. In this respect, it is for the judicial authorities to organise their procedure so as to meet the procedural requirements of Article 5(4), which does not appear to have been too difficult in the present case, as there was ample time to facilitate the consultation of the files by the defence. As regards the contention that the lawyer agreed to the review proceedings being held without access to the files, given the doubts and having regard to the importance of the hearing before the Court of Appeal, it cannot be said that the right to consult the files was waived expressly or in an unequivocal manner. As a result, when the Court of Appeal held its hearing, the applicant's lawyer had not been able to inspect the investigation files. Since the prosecution's request for prolongation of the detention was based on the contents of the investigation file, the elements in the file appear to have been essential to the issue of the applicant's continued detention. The information provided on the basis of the warrant and amended warrant was only an account of the facts as construed by the District Court on the basis of the information made available by the prosecution, and it is hardly possible for an accused to challenge properly the reliability of such an account without being made aware of the evidence on which it is based. This requires that he be given a sufficient opportunity to take cognisance of statements and other pieces of evidence underlying them, irrespective of whether he is able to provide any indication as to the relevance for his defence of the pieces of evidence which he seeks to be given access to. It was thus essential for the defence to inspect the files prior to the hearing before the Court of Appeal, in order to be able to challenge effectively the lawfulness of the applicant's detention. As regards the ensuing proceedings, the applicant was granted access to the file only in November 1993. However, when the prosecution asked for another prolongation of the detention in February 1994, further volumes had been added to the file and had not been made available to the applicant's lawyer. Consequently, when the hearing took place, the lawyer had been able to consult only a limited part of the file which was before the Court of Appeal. While under German law access to the file is dependent on a request by the defence, in the particular circumstances an effective opportunity to inspect the additional files ought to have been offered to the defence in a situation where, by its previous requests for full access to the file, the defence had indicated the urgency of its interest in being kept informed about the contents of the file and a renewed request for the applicant's continued detention had been made. In view of this, it is over-formalistic and disproportionate to require yet another request for access to the numerous new volumes in the file. Regard being had to the findings of the Court of Appeal, it was essential for the defence to inspect the voluminous file in order to be able to challenge effectively the lawfulness of the arrest warrant, as amended, and in the absence of such an opportunity, this stage of the proceedings did not comply with the basic requirements of judicial proceedings. As to the proceedings leading to the third review hearing, all the files were forwarded in June 1994 to the applicant's lawyer, who had them for at least two weeks before the Court of Appeal's decision on the applicant's continued detention. Consequently, he was given an opportunity of acquainting himself with the

essential parts of the admittedly voluminous files and of presenting the applicant's defence in an appropriate manner.
In sum, the proceedings held in November 1993 and March 1994 for the review of the lawfulness of the applicant's detention did not satisfy the requirements of Article 5(4).
Conclusion: violation (unanimously).
Article 41 – The applicant did not lodge any claims for just satisfaction.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning costs: *Article 6 applicable.*

BEER - Austria (Nº 30428/96)
Judgment 6.2.2001 [Section III]

Facts: The applicant brought a successful action against her employer, who was ordered to reimburse her costs. The employer appealed against the costs order. The applicant was not notified of the appeal, which was granted by the Court of Appeal.
Law: Article 6(1) – The Court saw no reason to disagree with the Commission's conclusion that this provision applies to costs proceedings if the costs at issue were incurred in the determination of civil rights and obligations, as in this case. While it is understandable that in ancillary matters, such as the determination of the cost of proceedings, the national authorities should have regard to the demands of efficiency and economy, this does not justify disregarding the fundamental principle of adversarial proceedings. In this case, the applicant was not informed of the appeal and thus had no possibility of reacting to it. This non-communication of the appeal and absence of any opportunity to reply constituted an infringement of the principle of equality of arms.
Conclusion: violation (unanimously).
Article 41 – The Court found that there was no causal link between the violation and the pecuniary loss claimed by the applicant. Moreover, it considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

CIVIL RIGHTS AND OBLIGATIONS /
Disciplinary proceedings leading to dismissal of judge: *Article 6 not applicable.*

PITKEVICH - Russia (Nº 47936/99)
Decision 8.2.2001 [Section II]
(See Article 10, below).

CIVIL RIGHTS AND OBLIGATIONS
Existence of a right to fish for the applicants or the association to which they belong, within areas owned by the applicants: *communicated*.

ALATULKKILA and others - Finland (N° 33538/96)
[Section IV]

The applicants were fishermen and owners of water areas attached to their real property. They belonged to either a local fishing co-operative or an association for joint ownership. In accordance with the Fishing Regulations for the Tornio River Area, the Finnish-Swedish Frontiers Commission issued a decision prohibiting all fishing of salmon and salt-water trout in open sea from 1 May to 5 July in 1996 and 1997. Fishing salmon and salt-water trout in the river was also prohibited from 15 September to 15 November 1996 and 1997. The Supreme Administrative Court dismissed a request lodged against this decision by, *inter alia*, an association represented by some of the applicants. It found that the decision had been lawfully incorporated into domestic law by decree and that those seeking the annulment of the decision had been able to submit written opinions on the fishing prohibitions when being considered by the Finnish-Swedish Frontiers Commission. In conformity with the 1961 Water Act, the commission's decision aimed at preserving the future stocks of salmon and sea-water trout. The court concluded that the decision in issue had breached neither Article 6 of the Convention nor the Constitution. The applicants complain that they could not have the commission's decision reviewed by a tribunal and that the fishing prohibitions violated their property rights and led to discrimination against them in comparison to fishermen in adjacent areas.
Communicated under Articles 6(1) (civil right, access to court) and 14 and Article 1 of Protocol No. 1 (and also under Article 35(1) (six months) in respect of one applicant).

ACCESS TO COURT
Conseil d'Etat referring to the Foreign Ministry the appraisal of the reciprocity condition for the application of an international convention: *communicated*.

CHEVROL - France (N° 49636/99)
[Section I]

In 1987 the applicant, who qualified as a doctor in Algeria, applied to the Bouches-du-Rhône *département* council of the *ordre des médecins* (Medical Association) for registration as a member of the *ordre*. The *département* council rejected her application, citing the relevant provisions of the Public Health Code, but she reapplied in 1995, relying on Article 5 of the Government Declarations of 19 March 1962 (the so-called Evian Agreements), which provides for mutual recognition of qualifications obtained in France and Algeria under the same conditions. The *département* council again rejected her application. Its decision was upheld by the Provence-Alpes-Côte d'Azur-Corsica regional council of the *ordre des médecins* in December 1995 and by the *ordre*'s national council in March 1996. The applicant applied to the *Conseil d'Etat* for judicial review of the national council's decision. The Ministry of Foreign Affairs, which was requested by the *Conseil d'Etat* to give a preliminary opinion on the matter, held that the constitutional requirement of reciprocity for the application of the provisions of Article 5 was not satisfied and that these provisions could not therefore be applied in the applicant's favour. In April 1999 the *Conseil d'Etat* dismissed the applicant's application for judicial review. It pointed out that it was not for the administrative courts to determine whether the requirement of reciprocity for the application of the agreements was satisfied and, on the basis of the Ministry of Foreign Affairs' submissions, found that the applicant was not justified in relying on the provisions of Article 5 of the Evian Agreements.

Communicated under Article 6(1).

ACCESS TO COURT
Autonomy of courts dealing with texts previously interpreted by the Foreign Ministry : *inadmissible*.

TEYTAUD and others - France (Nº 48754/99, 49720/99, 49721/99, 49723-30/99)
Decision 25.1.2001 [Section IV]

The applicants or their ascendants owned immovable property in Algeria but were dispossessed of it when the country gained its independence. Under legislation promulgated by the French authorities, they were awarded a lump sum as partial compensation. In 1992 they wrote to the State Secretary for Social Affairs requesting payment of the remaining value of the property that had passed into State ownership, with interest. They complained that they had only been partly compensated, even though – in their view – the "Evian Agreements" and written undertakings such as a 1962 booklet issued by the French High Commission in Algeria placed France under an obligation to pay fair compensation to persons dispossessed of their property. In June 1994 the Paris Administrative Court dismissed their application to set aside the State Secretary's implicit decisions to refuse their request. This judgment was upheld by the Paris Administrative Court of Appeal in June 1996 and subsequently by the *Conseil d'Etat*, which dismissed the applicants' appeals on points of law in November 1998. The applicants complained that they had not been compensated in full. They also alleged that they had been discriminated against in relation to other repatriates who had been compensated in full because the value of their property was lower than the ceiling set on the level of compensation. Lastly, they complained that the domestic courts had considered themselves bound by the Ministry of Foreign Affairs' interpretation of the Evian Agreements.
Inadmissible under Article 1 of Protocol No. 1: The applicants' first complaint regarding the deprivation of their property as such had to be declared inadmissible *ratione personae* because it was the Algerian State which had dispossessed them. It remained to be determined whether the "Evian Agreements" and the High Commission booklets had given the applicants title to a substantive interest protected by Article 1 of Protocol No. 1. It was pointed out that no practical steps had been taken by either Algeria or France to implement the Evian Agreements with regard to the property rights of French nationals. The Act of 8 April 1962 (passed by means of a referendum) empowering the French President to enact legislation to implement the Agreements had not specified any right to compensation. The Agreements had consequently not entailed a right to compensation for the applicants. Nor had the booklets issued by the High Commission – which had been nothing more than declarations of intent – afforded repatriates the right to compensation. Consequently, the applicants' alleged entitlement to compensation from the French authorities did not constitute a possession within the meaning of Article 1 of Protocol No. 1: manifestly ill-founded.
Inadmissible under Article 14 taken together with Article 1 of Protocol No. 1: The aim of limiting public spending, especially as the claim for compensation had derived from an act of despoliation by a foreign State, served as objective and reasonable justification for imposing a ceiling on compensation: manifestly ill-founded.
Inadmissible under Article 6: The domestic courts' decisions had not made any reference to the Ministry's interpretation; the fact that the courts' conclusion had been similar to that reached by the Ministry and in the *Conseil d'Etat*'s Moraly judgment did not mean that they had considered themselves bound by that interpretation. The applicants were condemning a practice which was no longer current and of which they could not claim to be victims: manifestly ill-founded.

Article 6(1) [criminal]

ACCESS TO COURT
Impossibility of lodging an *amparo* appeal to the Constitutional Court by post: *admissible*.

RODRÍGUEZ VALÍN- Spain (N° 47792/99)
Decision 8.2.2001 [Section IV]

The applicant, a lawyer, was fined for a minor offence and ordered to pay damages. The appeal court upheld this decision in a judgment of 2 July 1997 which was served on the applicant on 20 September 1997. He decided to lodge an *amparo* appeal against the judgment with the Constitutional Court. The appeal had to be filed within a statutory time-limit of twenty working days following service of the judgment. On 14 October 1997, the date on which this period expired, the applicant lodged his appeal in a registered letter posted from his place of residence in Galicia. The appeal was received at the registry of the Constitutional Court on 15 October. The Constitutional Court dismissed the appeal as being out of time, holding that it was established case-law that in order to be valid, *amparo* appeals had to be filed at the seat of the Constitutional Court in Madrid or, in exceptional cases, at the seat of the Madrid duty court.
Admissible under Articles 6(1) and 14.

ACCESS TO COURT
Decision of Senate resulting in discontinuation of criminal proceedings against a senator: *communicated*.

CORDOVA - Italy (N° 40877/98)
[Section II]

At the material time the applicant was employed as a public prosecutor. In that capacity, he conducted an investigation in respect of a person who had had dealings with a former President of Italy who had been appointed "senator for life". The former President subsequently sent the applicant letters written in an ironic tone, as well as presents in the form of children's games. The applicant regarded the posting of these items as injurious to his honour and reputation and lodged a complaint against the sender. Proceedings were brought against the senator for insulting a member of the legal service and the applicant applied to join the proceedings as a civil party. However, the Senate held that the offence allegedly committed by the senator amounted to the expression of opinions in the course of his parliamentary duties and was therefore covered by the Constitution. The Speaker of the Senate communicated this decision to the magistrate dealing with the case, who took note thereof and ordered the proceedings to be discontinued. The applicant requested the public prosecutor to appeal against the decision to discontinue the proceedings, this being a necessary step if he were to retain the possibility of referring a jurisdictional dispute to the Constitutional Court at a later stage. The prosecutor refused, finding that the reasons given by the Senate for rejecting the complaint were neither illogical nor manifestly arbitrary.
Communicated under Article 6(1).

FAIR TRIAL
Non-disclosure of criminal investigation file: *communicated*.

ALEKER - Germany (N° 51288/99)
[Section IV]
(see below).

EQUALITY OF ARMS
Non-communication of appeal in respect of costs: *violation*.

BEER - Austria (Nº 30428/96)
Judgment 6.2.2001 [Section III]
(See above).

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

AYDIN TATLAV - Turkey (Nº 50692/99)
[Section IV]
(see Article 10, below).

REASONABLE TIME
Length of criminal investigation: *communicated*.

ALEKER - Germany (N° 51288/99)
[Section IV]

In 1996 the Stuttgart Public Prosecutor's Office began a judicial investigation in respect of the applicant, a lawyer suspected of having committed economic offences. In May 1997, after a search had been carried out and documents seized at the applicant's home and office, the applicant's representative asked the public prosecutor's office to hand over the case file. The public prosecutor's office refused on the ground that the police were still in possession of the file and had yet to complete their investigation, but added that it would hand over the file in due course. A second investigation in respect of the applicant was opened in 1998. The Esslingen District Court ordered a further search in connection with the two investigations by means of a warrant issued in April 1998 backed up by a seizure order in June 1998. The applicant objected to the search, arguing that the seizure order was imprecise. The District Court upheld the seizure order and, at last instance, the Federal Constitutional Court dismissed an appeal by the applicant against the court's decisions to issue the search warrant and seizure order. Meanwhile, in August 1998, the public prosecutor's office discontinued the second investigation. The applicant complains of the length of the judicial investigation begun in 1996, which is still pending, and of the fact that the public prosecutor's office has still not handed over the investigation file, thereby preventing him from preparing his defence in the event of proceedings being brought against him.
Communicated under Articles 6(1), 6(3)(b) and 35(1).

DEFENCE THROUGH LEGAL ASSISTANCE
Refusal to allow representation of an absent appellant: *violation*.

KROMBACH - France (N° 29731/96)
*Judgment 13.02.2001 [Section III]

Facts: In July 1982 the applicant and his wife invited the latter's daughter from a previous marriage with a French national to stay with them near Lake Constance. One morning the fourteen-year-old girl was found dead. The evening before, the applicant had injected her with a substance containing iron, which was intended for the treatment of anaemia. On finding her dead, he attempted to resuscitate her by administering various injections. The German police immediately opened an investigation against a person or persons unknown in connection with the girl's death. In the light of the post-mortem findings, the Kempten Public Prosecutor's Office decided to take no further action. The investigation was reopened three times on the initiative of the victim's father, and on each occasion it was decided not to prosecute. The final decision not to prosecute was upheld by the Principal Public Prosecutor at the Munich Court of Appeal in May 1986 and in a subsequent decision of the Munich Court of Appeal in September 1987. Meanwhile, in January 1984, the victim's father had lodged a complaint against a person or persons unknown with the Paris investigating judge, alleging manslaughter and applying to join the proceedings as a civil party. Following the completion of the investigation in February 1991, the applicant was charged with the offence of unintentionally causing death by violence. In March 1993 the applicant and his counsel failed to appear at the hearing in the Indictment Division. In a decision of 8 April 1993 the Indictment Division of the Paris Court of Appeal committed the applicant to stand trial for murder at the Paris Assize Court and issued a warrant for his arrest. On 4 May 1993 the applicant was notified of the decision by service of the judgment on the German prosecuting authorities. The applicant did not comply with any of the summonses to undergo a preliminary examination to establish his identity. He appealed on points of law against the decision to commit him for trial, alleging in particular that there had been a breach of the principles of *non bis in idem* and *res judicata*. In a judgment of 21 September 1993 the Court of Cassation dismissed the applicant's appeal on the ground that it was based on a new argument: the applicant had not maintained in the Indictment Division that the German authorities had decided not to prosecute him for the same acts. The applicant's French lawyer was duly informed of the date of the hearing in the Assize Court and, assisted by a German colleague, filed pleadings, seeking leave to represent the applicant in his absence and to submit argument in support of the *res judicata* objection; he also requested the court to rule on that objection of its own motion and to order an extension of the investigation with a view to obtaining the file on the investigation conducted by the German authorities and determining the scope of the decisions not to prosecute. In a judgment delivered *in absentia* in March 1995 the Assize Court found the applicant guilty of intentionally inflicting violence on his stepdaughter, thereby unintentionally causing her death, and sentenced him to fifteen years' imprisonment, stating that if he had appeared in court, the trial *in absentia* would have been discontinued and he would have had the opportunity to submit any arguments that might have been beneficial to his case. It also reminded the applicant's lawyers, who were present at the hearing, that under Article 630 of the Code of Criminal Procedure, an absent defendant was not entitled to representation, and declared their submissions inadmissible. In a civil judgment, also delivered *in absentia*, the Assize Court ordered the applicant to pay damages to the victim's father. In June 1995, pursuant to Article 636 of the Code of Criminal Procedure, the President of the Court of Cassation ruled that the applicant's appeals on points of law against the Assize Court's judgments were inadmissible.

Law: Preliminary objection (non-exhaustion) – Although conviction *in absentia* was not final, subsequent retrial could not be regarded as a "remedy" in the usual sense, since it might be entirely contingent on an objective circumstance, namely the arrest of the accused, which by definition was not a deliberate act on his part. The accused could also be retried following conviction *in absentia* if he gave himself up; however, complying with this requirement for the reopening of proceedings did not amount to the normal exercise of a domestic remedy. Moreover, a retrial would not have the effect of eliminating or redressing any violations that had occurred during the trial *in absentia*, such violations being precisely in issue in this application. Lastly, retrials following conviction *in absentia* were not subject to any procedural requirements or time-limits and might ultimately be hypothetical if the accused was not arrested or did not give himself up before the expiry of the time-limit for enforcing the sentence. The Government's preliminary objection should therefore be dismissed.
Article 6(1) taken together with Article 6(3)(c) – The applicant's situation was comparable to that examined by the Court in the cases of Poitrimol v. France (Series A no. 277-A), Lala and Pelladoah v. the Netherlands (Series A no. 297-A and B) and Van Geyseghem v. Belgium (ECHR 1999-I), in which it had found that the defendant's failure to appear, in spite of his having been properly summoned, could not – even in the absence of an excuse – justify depriving him of his right under Article 6(3)(c) of the Convention to be defended by counsel. There did not appear to be any reason to depart from that approach on the ground that the case concerned proceedings in an assize court, rather than a court dealing with less serious offences. The holding of a retrial following conviction *in absentia* only had an impact on the accused's right to a fair hearing if he was arrested. In such an eventuality, the authorities were under a positive obligation to afford him the right to have a full re-examination of his case in his presence. However, there could be no question of forcing an accused person to give himself up in order to secure the right to be tried in accordance with the requirements of Article 6. It remained to be determined whether, in the case under consideration, the fact that the applicant's defence lawyers had been prevented from submitting argument on his behalf at the hearing in the Paris Assize Court had breached his right to a fair trial. It followed from the wording of Article 630 of the Code of Criminal Procedure that the prohibition on any defence representation in the accused's absence was an absolute one and could not be disregarded by the Assize Court. The Court nonetheless found that the Assize Court, sitting without a jury, should have been entitled to authorise the applicant's lawyers to put forward his case at the hearing, even in his absence, since the grounds of defence which they intended to raise were concerned with a point of law, namely an objection based on the principles of *res judicata* and *non bis in idem*. Indeed, the Government had not argued that, even if the Assize Court had permitted the applicant's lawyers to raise that objection, it would not have had jurisdiction to consider it. Lastly, the applicant's lawyers had not been permitted to represent their client at the Assize Court hearing concerning the civil claim either. Penalising the applicant's failure to attend the hearing by imposing such an absolute prohibition on any defence representation appeared manifestly disproportionate.
Conclusion: violation (unanimously).
Article 2 of Protocol No. 7 – By derogation from the general provisions of criminal law which had been in force at the material time and which satisfied the requirements of Article 2 of Protocol No. 7, Article 636 of the Code of Criminal Procedure expressly provided that an accused who had been tried in his absence had no right of appeal to the Court of Cassation. Accordingly, no "appeal" to a court in the usual sense lay against the applicant's conviction *in absentia* after the case had been considered at only one level of jurisdiction. The point at issue was the impossibility of lodging an appeal on points of law in respect of the shortcomings of trial *in absentia* itself. The possibility of a retrial following conviction *in absentia* was not decisive in this regard, since its fundamental purpose was to ensure observance of the adversarial principle and the right of all persons accused of a criminal offence to due process. For the applicant, this had entailed both putting forward his case on the merits and raising a preliminary procedural objection. He had not been able to secure a review, at least by the Court of Cassation, of the lawfulness of the Assize Court's refusal to allow the defence

lawyers to make submissions. Pursuant to Articles 630 and 639 of the Code of Criminal Procedure taken together, the applicant could neither be defended by counsel in the Assize Court nor appeal to the Court of Cassation because, having been convicted *in absentia*, he had been deprived of the right to be defended at first instance and the right to have his conviction reviewed by a higher court.
Conclusion: violation (unanimously).
Article 41 – No causal link had been established between the alleged pecuniary damage and the violations found. Furthermore, the non-pecuniary damage had been sufficiently made good by the findings of violations. The Court awarded a specified sum for costs and expenses incurred in the domestic proceedings and before the Convention institutions.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction on the basis of statements made by a witness relying on the right not to incriminate himself: *violation*.

LUCÀ - Italy (N° 33354/96)
*Judgment 27.2.2001 [Section I]

Facts: N. and C. were found in possession of cocaine and arrested. N. told the police that he and C. had gone to the home of the applicant, who had agreed to supply them with cocaine. N. was initially treated as a witness, but was later classed as a suspect and questioned by the public prosecutor as such. The applicant and C. were committed for trial on drug-trafficking charges; separate proceedings were instituted against N. for possession of drugs. N. was called to give evidence at the applicant's trial as a "person accused in connected proceedings" but chose to remain silent as he was entitled to do under Italian law. As a result, the applicant did not have the opportunity to examine him or to have him examined. The court noted that N.'s refusal to give evidence was lawful. It therefore availed itself of the possibility – deriving from the case-law of the Constitutional Court – of using the oral statements made by persons accused in connected proceedings. Consequently, the record of N.'s statements to the public prosecutor was read out at the hearing. The applicant was convicted and sentenced to more than eight years' imprisonment and a fine. The court noted that the main evidence against the accused had been the statements made by N. to the public prosecutor. The applicant lost an ordinary appeal and an appeal on points of law, in both of which he had complained, *inter alia*, that there had been a breach of the adversarial principle. Although the relevant domestic legislation is currently being amended, the former rules continue to apply in trials that are already under way.
Law: Articles 6(1) and 6(3)(d) – Evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There may be exceptions to this principle, provided that they do not infringe the rights of the defence. Although it may be necessary to refer to depositions made during the investigation, particularly when the persons concerned refuse to repeat them in public owing to fears for their safety, the accused must have a proper opportunity to challenge such statements during the investigation or at his trial. Where a conviction is based solely or to a decisive degree on depositions made by a person whom the accused has had no opportunity to examine or to have examined, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6. The term "witness" used in Article 6(3)(d) has an autonomous meaning in the Convention system. The safeguards laid down by this provision apply to depositions made either by a co-accused or by a witness in the strict sense, in so far as such depositions may serve to a material degree as the basis for a conviction. In this case, the domestic court had relied solely on the

statements made by N. before the trial, whereas neither the applicant nor his lawyer had been given an opportunity at any stage of the proceedings to question him. The applicant had therefore not been given a proper opportunity to contest the statements on which his conviction had been based.
Conclusion: violation (unanimously).
Article 41: The Court refused to speculate as to what the outcome of the proceedings might have been if they had complied with Article 6. It therefore dismissed the claim for compensation of the damage caused by the applicant's allegedly unfair imprisonment as a result of his conviction. It awarded a sum in respect of the non-pecuniary damage sustained and in respect of costs and expenses.

ARTICLE 7

HEAVIER PENALTY
Imposition of a penalty heavier than that applicable at the time of commission of the offence: *violation*.

ECER and ZEYREK - Turkey (Nº 29295/95 and Nº 29363/95)
*Judgment 27.2.2001 [Section I]

Facts: The applicants were arrested in September 1993 on suspicion of aiding and sheltering members of the PKK. During their interrogation, they allegedly confessed to involvement with the PKK since 1988. When questioned by the public prosecutor and when subsequently brought before the Magistrates' Court, they denied any involvement with the PKK. In October 1993 the Chief Public Prosecutor at the State Security Court lodged an indictment in which the applicants were accused of having assisted and sheltered members of the PKK between 1988 and 1989. The applicants maintained their innocence, denying that they had confessed during their interrogation. In May 1994 the State Security Court convicted them. It considered a sentence of three years to be appropriate but increased this by half in application of S. 5 of the Prevention of Terrorism Act 1991, and then reduced it by one sixth pursuant to a provision of the Criminal Code. The applicants' appeals were rejected by the Court of Cassation.
Law: Article 7(1) – Since the applicants complain that a heavier penalty was imposed on them than that applicable at the time of commission of the offence, the relevant principle is *nulla poena sine lege*, the only question being whether the 1991 Act was applied to offences committed before it came into force. With regard to the Government's assertion that the offence was a continuing one and that the reference to 1988-89 related only to the commencement of the offences, the principle of legal certainty requires that the acts which make up a continuing offence be set out clearly in the indictment and the court's decision must also make clear that the conviction and sentence are based on a finding that the elements of a continuing offence have been made out by the prosecution. In this case, since the indictment referred to offences committed "between 1988 and 1989" and the State Security Court's judgment stated the applicants were convicted for acts committed "in 1988 and 1989", it appears that the applicants were tried in respect of offences committed in that period and the dates cannot be regarded merely as the starting point of continuing offences. The Government's reference to the introduction of evidence of a continuing offence is inconsistent with the very terms of the indictment. It can reasonably be considered that the applicants prepared their defence only in relation to the offence as specified in the indictment and moreover it does not appear that any offences they may have committed after that time constituted the basis of their conviction by the State Security Court. Consequently, the applicants were subjected to the imposition of a heavier sentence than the one to which they were exposed at the time of commission of the offences.

Conclusion: violation (unanimously).
Article 41 – The Court awarded each of the applicants $7,500 (USD) in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 8

PRIVATE LIFE
Expulsion of a schizophrenic and alleged risk of deterioration due to lack of adequate care in the country of destination: *no violation*.

BENSAID - United Kingdom (Nº 44599/98)
*Judgment 6.2.2001 [Section III]
(See Article 3, above).

FAMILY LIFE
Deportation from country where close family lives: *admissible*.

AL-NASHIF and others - Bulgaria (N° 50963/99)
Decision 25.1/15.2.2001 [Section IV]
(See Article 5(4), above).

FAMILY LIFE
Applicant no longer at risk of expulsion: *struck out*.

ABDOUNI - France (N° 37838/97)
*Judgment 27.2.2001 [Section III]

Facts: The applicant, an Algerian national, has lived in France since he was six months old and has founded a family there with a Portuguese national. In December 1996 the Blois Criminal Court found him guilty of drug trafficking and sentenced him to thirty months' imprisonment and five years' exclusion from French territory. The Orléans Court of Appeal dismissed two applications by the applicant to have the exclusion order lifted. While the first application was still pending the Prefect of the Loir-et-Cher *département*, in a decision of November 1997, designated Algeria as the country to which the applicant would be sent. On an appeal by the applicant, in January 2000, the Orléans Administrative Court set that decision aside, relying, *inter alia*, on the applicant's right to a normal family life, as enshrined in Article 8 of the Convention. In April 2000 the applicant requested the Minister of the Interior to impose a compulsory residence order so that a fresh application to have the exclusion order lifted would be admissible. In his letter to the Minister, he observed that as a result of the Administrative Court's decision he could no longer be deported to Algeria or to any other country. No action was taken on the above request.
Law: To date, no steps had been taken to enforce the impugned exclusion order. Moreover, the Administrative Court's decision, which was final, had set aside the Prefect's decision designating Algeria as the country to which the applicant would be deported, thereby depriving the exclusion order of any legal force. As the applicant had himself noted in his letter to the Minister of the Interior, the Administrative Court's decision meant that he could no longer be deported to Algeria or to any other country. A fresh decision to designate a country for the applicant's deportation would infringe the principle of *res judicata* if the country chosen was Algeria or any other country with which the applicant's family had no connection. In addition, various remedies and safeguards would be available to the applicant

if such a decision were issued. Consequently, the matter had been resolved within the meaning of Article 37(1)(b) and there was no need to continue the examination of the application.
Conclusion: struck out.

ARTICLE 9

FREEDOM OF RELIGION
Prohibition on nurse wearing Islamic shawl during practical exercises in nursing school: *communicated*.

TEKİN - Turkey (N° 41556/98)
[Section II]

In 1998 the Turkish Higher Education Council issued a ban on the wearing of headscarves in higher-education establishments. The applicant, a student nurse, was reprimanded for wearing a Muslim headscarf instead of the regulation cap during practical training. She nonetheless continued to wear the headscarf and was excluded from classes for two weeks. The university authorities explained that she was not expected to comply with any dress requirements except during practical training, when all students had to wear uniform. The Administrative Court dismissed an appeal lodged by the applicant against the penalty imposed on her. She appealed to the Supreme Administrative Court, which upheld the Administrative Court's decision.
Communicated under Article 9 of the Convention and Article 2 of Protocol No. 1.

FREEDOM OF RELIGION
Deportation for having taught Islam allegedly without due authorisation: *admissible*.

AL-NASHIF and others - Bulgaria (N° 50963/99)
Decision 25.1/15.2.2001 [Section IV]
(See Article 5(4), above).

MANIFEST RELIGION
Teacher prohibited form wearing the islamic veil while on duty: *inadmissible*

DAHLAB - Switzerland (N° 42393/98)
Decision 15.2.2001 [Section II]

The applicant has been a teacher since 1989. In September 1990 she was appointed as a primary-school teacher with responsibility for pupils aged between four and eight. In March 1991 she converted to Islam and consequently began wearing a Muslim headscarf at work. Between 1992 and 1994 she took two periods of maternity leave. In May 1995 the district schools inspector informed the primary-education department that the applicant had regularly worn a headscarf at school without attracting any comment from the pupils' parents. The department requested the applicant to stop and then issued a ban on Muslim employees wearing headscarves, on the ground that by doing so teachers were breaking the law and "imposing a conspicuous sign of identity on pupils" and that this was "all the more unacceptable in a public, secular education system". The Geneva *Conseil d'Etat* dismissed an appeal by the applicant against the ban. That judgment was upheld by the Federal Court, which, noting that the applicant's job made her a representative of the State, held that the headscarf constituted a powerful symbol of religious allegiance and that the ban was

necessary in order to safeguard the principles of denominational neutrality and gender equality within the school.
Inadmissible under Article 9: The impugned measure was provided for by law and pursued the legitimate aims of protecting the rights and freedoms of others and securing public safety and order. In order to determine whether the measure was also necessary in a democratic society, the requirements of protecting the rights and freedoms of others had to be weighed against the applicant's conduct. The Federal Court had found that the ban on headscarves at work was justified by the likely interference with pupils' religious beliefs and with the principle of denominational neutrality within the school. It had held that the role of state-school teachers as representatives of both the education authorities and the State required them to tolerate proportionate restrictions on their freedom of religion. The applicant had worn a headscarf for about three years without prompting any reaction from either the education authorities or the parents, a fact which suggested that her teaching had been unaffected and that she had not sought to profit in any way from this manifestation of her beliefs. While it was difficult to assess the impact of such symbols on the freedom of conscience and religion of children aged between four and eight, it could not be denied that they might have some sort of proselytising effect at an age when children were easily influenced. Moreover, the fact that only women were required to wear a headscarf was hard to reconcile with the principle of gender equality and with the message of freedom, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society should convey to their pupils. In the circumstances, and having regard to the age of the pupils in the applicant's care, the authorities had not overstepped their margin of appreciation: manifestly ill-founded.
Inadmissible under Article 14: The ban on the applicant's wearing of a Muslim headscarf while teaching had not been imposed because she was a woman but had pursued the legitimate aim of ensuring the neutrality of State primary education. A similar ban could be imposed on a man wearing clothes that identified him as a member of a particular religious denomination: manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of journalist for using insulting words in relation to the wife of a well-know politician: *no violation*.

TAMMER - Estonia (Nº 41205/98)
*Judgment 6.2.2001 [Section I]

Facts: The applicant, a journalist and editor of a daily newspaper, published an interview with another journalist who had previously published an account of the life of the wife of a prominent politician. She had been the politician's assistant when he was Prime Minister and later Minister of the Interior, and had had his child while he was still married to his first wife; she had left the child's upbringing to her parents. She had referred to these matters in her memoirs. In the newspaper interview, the applicant described the woman as a marriage breaker (*abielulõhkuja*) and an unfit and careless mother (*rongaema*). She brought a private prosecution against the applicant, who was convicted of insulting her and fined 220 kroons (EEK). His appeals were dismissed.
Law: Article 10 – While Article 130 of the Criminal Code is worded in rather general terms, it cannot be regarded as so vague and imprecise as to lack the quality of "law" and the interference was therefore "prescribed by law". As to the necessity of the interference, the domestic courts found the use of the words "*rongaema*" and "*abielulõhkuja*" to be offensive,

considering that they constituted value judgments in abusive terms and that their use was not necessary in stating a negative opinion. Moreover, it is not established that the use of the terms in relation to the woman's private life was justified by considerations of public concern or that they bore on a matter of general importance. The domestic courts properly balanced the various interests involved and, taking into account the State's margin of appreciation, they were entitled to interfere with the exercise of the applicant's right. The amount of the fine imposed was limited and the applicant's conviction and sentence were not disproportionate to the legitimate aim pursued; the reasons given by the domestic courts were sufficient and relevant to justify the interference, which could reasonably be considered necessary in a democratic society.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Injunction prohibiting municipal councillor from repeating statements about sects: *violation*.

JERUSALEM - Austria (Nº 26958/95)
*Judgment 27.2.2001 [Section III]

Facts: The applicant was a member of Vienna Municipal Council, which also acts as the Regional Parliament. During a council debate on the granting of subsidies to associations assisting parents whose children had become involved in sects, the applicant, in her capacity as a councillor, made a speech in which she referred to the totalitarian character and fascist tendencies of "psycho-sects". She went on to refer to a particular sect – the IPM – which she maintained had gained influence on the drugs policy of the Austrian People's Party and criticised the cooperation between the sect and the party. The IPM brought civil proceedings against the applicant and the Regional Court granted an injunction prohibiting the applicant from repeating her statements that the IPM was a sect of a totalitarian character. It also ordered that she retract the statements and that the retraction be published in several newspapers. The court considered that the statements were not value judgments but statements of fact which the association's statutes and other evidence showed to be untrue. The applicant appealed to the Court of Appeal, which upheld the injunction but quashed the other orders. It considered that the evidence proposed by the applicant was irrelevant, since she had offered only to show that the association was a sect and not to justify her definition of a psycho-sect. The Supreme Court declared inadmissible the applicant's further appeal on points of law, although it confirmed that statements such as "fascist tendencies" or "totalitarian character" were statements of fact which the applicant had failed to prove.
Law: Article 10 – The interference with the applicant's freedom of expression was prescribed by law and pursued the legitimate aims of protecting the rights and reputation of others. As to necessity, the applicant was an elected politician and freedom of expression is especially important for elected representatives of the people. On the other hand, private individuals and associations lay themselves open to scrutiny when they enter the arena of public debate, and since the IPM was active in a field of public concern and had cooperated with a political party, it should have shown a higher degree of tolerance to criticism. The applicant's statements were made in the course of a political debate and, although not covered by immunity as they would have been in a session of the Regional Parliament, the forum was comparable to Parliament as far as the public interest in protecting the participants' freedom of expression is concerned and therefore very weighty reasons are needed to justify an interference. The purpose of the speech was to highlight the necessity of subsidising anti-sect groups and, without mentioning the IPM at that stage, the applicant expressed the opinion that sects have a totalitarian character; only later in the speech did she criticise the cooperation between the IPM and the People's Party. The Austrian courts qualified the comments as

statements of fact, but in the Court's view they were value judgments and the question is whether there was a sufficient factual basis for them. The applicant had offered documentary evidence which might have been relevant in showing a *prima facie* case that the value judgments were fair comment, but the Court of Appeal refused to take further evidence, regarding it as irrelevant. However, the distinction which it drew was artificial and disregarded the true nature of the debate, and by requiring the applicant to prove the truth of her statements, while at the same time depriving her of an effective opportunity to produce evidence to support them, the Austrian courts overstepped the margin of appreciation. The injunction thus amounted to a disproportionate interference.
Conclusion: violation (unanimously).
Article 6(1) – In view of the above conclusion, the Court considered it unnecessary to examine this complaint.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs.

FREEDOM OF EXPRESSION
Judge dismissed for allegedly having abused her office to proselytise: *inadmissible*.

PITKEVICH - Russia (Nº 47936/99)
Decision 8.2.2001 [Section II]

The applicant is a member of the Living Faith Church, which belongs to the Russian Union of Evangelical Christian Churches. She worked as a judge at the Noyabrsk City District Court. In February and March 1997 she stood for mayor of Noyabrsk. The candidate who was later to be elected accused her during the campaign of belonging to a sect. After his election, he requested the dismissal of the applicant from the judiciary. Disciplinary proceedings were instituted against her by an association of judges before the Judiciary Qualification Panel, composed of four judges. The applicant maintains that the Panel refused to call several witnesses in her favour. She was eventually dismissed on the grounds that she had "damaged her reputation as a judge" and abused her office for proselytism. She unsuccessfully appealed to the Supreme Judiciary Qualification Panel of the Russian Federation. She alleged that her representative had not been allowed to attend the hearing. The Supreme Court rejected her other appeal. She claimed that she was not present at the hearing because the date had been changed without her being informed.
Inadmissible under Article 6(1): (i) Insofar as the Government claim that the applicant has failed to exhaust domestic remedies, the re-examination of a case through "supervisory review" cannot be started by an individual but only upon the discretionary special appeal of the authorities. Moreover, at the material time, there was no statutory provision permitting an appeal on the merits against the judgment of the Supreme Court. No action for reinstatement of the time-limit for an appeal was open to her at the time either. No other remedy was available to the applicant by way of ordinary judicial review and she has therefore exhausted domestic remedies. (ii) As to the applicability of Article 6(1) to the proceedings, although the judiciary is not a civil service as such it can be considered nonetheless as a public service of paramount importance. A judge has specific responsibilities in the field of administration of justice, a sphere in which States exercise sovereign powers. Thus, judges participate directly in the exercise of powers conferred by public law and perform duties designed to safeguard the general interest of the State. Therefore, the dispute regarding the applicant's dismissal from the judiciary did not concern her civil rights or obligations within the meaning of this Article, which was consequently not applicable: incompatible *ratione materiae*.
Inadmissible under Article 10: The applicant was dismissed for having expressed her religious belief whilst performing her judicial functions, which constituted an interference with her

freedom of expression. However, the measure was prescribed by law and pursued the legitimate aims of protecting the rights of others and maintaining the authority of the judiciary. As to whether it was necessary in a democratic society, by expressing herself on the morality of a party a judge may give the impression of being biased unless such an opinion appears to be necessary to resolve the case and substantiate the forthcoming judgment. Concerning the proportionality of the interference in the present case, the applicant's case was examined in her presence at two instances, including a disciplinary panel of 23 judges. The panel's conclusion was confirmed later by the Supreme Court. Nothing in the case-file suggests that the authorities lacked competence or good faith in the establishment of the facts. On the basis of numerous testimonies and complaints by State officials and private persons, it was established that the applicant had, *inter alia*, recruited colleagues of the same religious persuasion, prayed openly during hearings and promised certain parties to proceedings a favourable outcome of their cases if they joined her religious community; moreover, those activities had resulted in delayed cases and a number of challenges against her. Such behaviour was found to be incompatible with the requirements of judicial office and prompted her dismissal. The grounds for her dismissal related exclusively to her official activities and not the expression of her views in private. Moreover, she was not prevented from running as a candidate in the local elections and thus expressing her political opinion. The fact that the mayor and local officials criticised her serving on the judiciary during the disciplinary proceedings did not result in an interference with her freedom to express her political views. Overall, it clearly appeared that the applicant had breached her statutory duties as a judge and had jeopardised the image of impartiality which a judge must give to the public. Thus, allowing a certain margin of appreciation in this respect, the reasons adduced by the authorities were sufficient to justify the interference: manifestly ill-founded.

FREEDOM OF EXPRESSION
Dismissal from employment for having participated in "referendum" for Serbian autonomy in Croatia: *communicated*.

JOVANOVIĆ - Croatia (N° 59109/00)
[Section IV]

The applicant worked in a prison as an agricultural mechanic. In 1992, he was dismissed due to his alleged participation in the "referendum" for Serbian autonomy in Croatia in August 1990. His appeal to the Disciplinary Board of the prison was unsuccessful. He lodged a civil complaint with the Municipal Court, which rejected it, and his appeal was dismissed by the County Court. His subsequent request for revision was rejected by the Supreme Court and a constitutional complaint in which he challenged the constitutionality of these decisions was also unsuccessful.
Communicated under Article 10.

FREEDOM OF EXPRESSION
Conviction for having published a critical study on a religion : *communicated*

AYDIN TATLAV - Turkey (N° 50692/99)
[Section IV]

From 1992 onwards the applicant published a five-volume work entitled *The Truth About Islam*. In 1996 the fifth edition of the first volume of the study was published, containing a critical analysis of the Koran. In 1997 the applicant was charged with insulting the Muslim faith in the new edition of the book, even though no proceedings had been brought in respect of the first four editions. The district court dealing with the case ordered him to pay a fine of 2,640,000 Turkish liras. The applicant appealed on points of law against that decision. He did not receive a copy of the submissions filed by Principal State Counsel at the Court of Cassation. The Court of Cassation upheld the impugned decision.
Communicated under Articles 6(1) and 10.

ARTICLE 11

FORM AND JOIN TRADE UNIONS
Court injunction prohibiting strike: *communicated*.

UNISON - United Kingdom (N° 53574/99)
[Section III]

The applicant is a trade union for public service employees. In 1998, the University College Hospital in London (UCLH) was negotiating to transfer part or parts of its business to private companies which were to erect and run a new hospital for it. The taking over of this activity by private companies involved most of the employees of UCLH being transferred to these companies. The applicant union tried to obtain from UCLH an assurance that the private companies would offer to the transferred employees the same protection and rights as those existing for UCLH personnel, but UCLH refused to accede to this request. The applicant union called a strike but the High Court, on an application by UCLH, issued an injunction prohibiting the strike. The court noted, *inter alia*, that the dispute related to future terms and disputes with an unidentified future employer which as such were not covered by the relevant legislation on strikes. The appeal lodged by the applicant union was unsuccessful and the House of Lords rejected its petition for leave to appeal.
Communicated under Article 11 and 13.

ARTICLE 13

EFFECTIVE REMEDY
Absence of effective investigation into disappearances: *violation*.

ÇIÇEK - Turkey (Nº 25704/94)
*Judgment 27.2.2001 [Section I]
(See Article 2, above).

EFFECTIVE REMEDY
Judicial review of expulsion: *no violation*.

BENSAID - United Kingdom (Nº 44599/98)
*Judgment 6.2.2001 [Section III]
(See Article 3, above).

ARTICLE 30

RELINQUISHMENT OF JURISDICTION BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
Responsibility of Russia and Moldova for events in a region of Moldova which has seceded (Transnistria) and where Russian troops were stationed and accused of supporting the separatists: *proposed relinquishment*.

ILASCU and others - MOLDOVA and RUSSIA (N° 48787/99)
[Section I]

The applicants, who are of Moldovan nationality, are detained in Transdniestria, a region of Moldova which has seceded from Moldova. In 1992, after violent confrontations between Moldovan forces and Transdniestrian separatists, the Moldovan authorities accused the Russian army of supporting the separatists. The Moldovan Parliament denounced Russia's interference in its domestic affairs; it complained of the Russian army's presence in Transdniestria and of its support for the separatists. To date the dispute between Moldova and Russia over the withdrawal of Russian troops from Moldova has not been resolved. In 1992 the applicants were arrested by the authorities of the self-proclaimed Republic of Transdniestria and accused of having fought against "the lawful State of Transdniestria". They were brought before the Supreme Court of the self-styled Republic of Transdniestria, which convicted them following a trial during which, in particular, they were only allowed to consult their legal representatives in the presence of armed police. The first applicant was sentenced to death; the other applicants were given long prison sentences and their assets were ordered to be confiscated. The Supreme Court of Moldova dealt with the matter of its own motion and quashed that judgment; it held that the Supreme Court of the self-proclaimed Republic of Moldova was not constitutional and ordered that the applicants be released. In 1995 the Moldovan Parliament instructed the Moldovan Government to act expeditiously to secure the applicants' release. The applicants also complain of the conditions of their detention, and refer to numerous and repeated instances of ill-treatment, ranging from deprivation of food and light to mock executions. Last, they complain of the inertia of the Moldovan authorities in enforcing the judgment of the Supreme Court of Moldova ordering their release. Moldova, which ratified the Convention on 12 September 1997, recorded in its instrument of ratification to the effect that it was unable to ensure compliance with the provisions of the Convention as regards the acts and omissions of the organs of the self-styled Republic of Transdniestria in the territory actually controlled by those organs until the dispute had been definitively resolved. Russia ratified the Convention on 5 May 1998.

ARTICLE 34

GOVERNMENTAL ORGANISATION
Application brought by town council: *inadmissible*

AYUNTAMIENTO DE MULA - Spain (N° 55346/00)
Decision 1.2.2001 [Section IV]

The applicant, a municipality, complained of a Supreme Court judgment granting a private individual ownership rights over a property which allegedly belonged to the municipality itself.
Inadmissible under Article 6(1): Local authorities had consistently been regarded by the Convention institutions as public-law bodies performing tasks entrusted to them by the Constitution or by statute. As such, they were "governmental organisations", a term used to designate any national authority – whether central or decentralised – that discharged public duties. Nor could a municipality be treated as a person or a group of individuals. Such an interpretation would be incompatible with the distinction drawn in Article 34 between non-governmental organisations and persons or groups of individuals. Lastly, the fact that municipalities, like natural persons or non-governmental organisations, were entitled to take part in court proceedings to protect their property rights was not a sufficient reason to afford them equivalent treatment where Article 34 was concerned: inadmissible *ratione personae*.

ARTICLE 35

EXHAUSTION OF DOMESTIC REMEDIES (Germany)
Effective remedies to complain about the length of criminal investigations and non-communication of the case-file : *communicated*.

ALEKER - Germany (N° 51288/99)
[Section IV]
(see Article 6(1) [criminal], above).

EXHAUSTION OF DOMESTIC REMEDIES (France)
Arrest by or surrender to the authorities after having been tried *in abstentia* not considered as a remedy to be exhausted : *preliminary objection rejected*.

KROMBACH - France (N° 29731/96)
*Judgment 13.02.2001 [Section III]
(see Article 6(3)(c), above).

ARTICLE 37

Article 37(1)(b)

MATTER RESOLVED
Applicant no longer at risk of expulsion : *struck out*.

ABDOUNI - France (N° 37838/97)
*Judgment 27.2.2001 [Section III]
(see Article 3, 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) (see Information Note No. 24):

LACOMBE - France (N° 44211/98)
Judgment 7.11.2000 [Section I]

GAUDINO - Italy (N° 45873/99)
PITTONI - Italy (N° 45874/99)
IL MESSAGGERO S.A.S. - Italy (N° 45876/99)
PICCIRILLO - Italy (N° 45878/99)
TURCHINI - Italy (N° 45879/99)
AR.GE.A. S.N.C. in liquidation - Italy (N° 45881/99)
COSSU - Italy (N° 45884/99)
IANNELLI - Italy (N° 45885/99)
GRATTERI - Italy (N° 45886/99)
ROMA - Italy (N° 45887/99)
GIARRATANA - Italy (N° 45888/99)
P.G.V. - Italy (N° 45889/99)
D'ANTONI - Italy (N° 45890/99)
PICCOLO - Italy (N° 45891/99)
FEFFIN - Italy (N° 45892/99)
PERNICI - Italy (N° 45894/99)
SANTINI - Italy (N° 45895/99)
GUIDI - Italy (N° 45896/99)
FORTE - Italy (N° 45897/99)
DI TEODORO and others - Italy (N° 45898/99)
Judgments 7.11.2000 [Section III]

JÓRI - Slovakia (N° 34753/97)
GRASS - France (N° 44066/98)
ZIRONI - Italy (N° 37079/97)
SPURIO (no. 2) - Italy (N° 39705/98)
F. S.p.a. - Italy (N° 39164/98)
I.F. - Italy (N° 40968/98)
BELTRAMO - Italy (N° 40977/98)
COBIANCHI (no. 1) - Italy (N° 43434/98)
COBIANCHI (no. 2) - Italy (N° 45852/99)
LO CICERO - Italy (N° 45853/99)
Fr.C. - Italy (N° 45855/99)
COMELLA - Italy (N° 45857/99)
TESCONI - Italy (N° 45862/99)
GIUSEPPINA CARUSO - Italy (N° 45859/99)
GIUSEPPE, NICOLÀ and LUCIANO CARUSO - Italy (N° 45860/99)
CAVALLARO - Italy (N° 45861/99)
FILIPPELLO - Italy (N° 45868/99)
CHIAPPETTA - Italy (N° 45869/99)
FERRAZZO and others - Italy (N° 45870/99)
D'ANNIBALE - Italy (N° 45872/99)
Judgments 9.11.2000 [Section II]

YAŞAR and others - Turkey (N° 27697/95 and N° 27698/95)
Judgment 14.11.2000 [Section I]

RIEPAN - Austria (N° 35115/97)
ANNONI DI GUSSOLA and DESBORDES and OMER - France
(N° 31819/96 and N° 33293/96)
PIRON - France (N° 36436/97)
Judgments 14.11.2000 [Section III]

BIELECTRIC S.R.L. - Italy (N° 36811/97)
BACIGALUPI - Italy (N° 45856/99)
S.A. SOTIRIS and NIKOS KOUTRAS - Greece (N° 39442/98)
VACCARO - Italy (N° 41852/98)
ROJAS MORALES - Italy (N° 39676/98)
Judgments 16.11.2000 [Section II]

MARTINS and GARCIA ALVES - Portugal (N° 37528/97)
Il MESSAGGERO S.a.s. - Italy (no. 2) (N° 46516/99)
Il MESSAGGERO S.a.s. - Italy (no. 3) (N° 46517/99)
Il MESSAGGERO S.a.s. - Italy (no. 4) (N° 46518/99)
Il MESSAGGERO S.a.s. - Italy (no. 5) (N° 46519/99)
DORIGO - Italy (N° 46520/99)
CICCARDI - Italy (N° 46521/99)
NOLLA - Italy (N° 46522/99)
LONARDI - Italy (N° 46523/99)
F, T. and E. - Italy (N° 46524/99 and N° 46525/99)
CARBONI - Italy (N° 46526/99)
CORSI - Italy (N° 46527/99)
GIANNALIA - Italy (N° 46528/99)
IULIO - Italy (N° 46530/99)
GIOVANNANGELI - Italy (N° 46531/99)
GASPARE CONTE - Italy (N° 46532/99)

F.L.S. - Italy (N° 46533/99)
BURGHESU - Italy (N° 46534/99)
D.C. - Italy (N° 46536/99)
CERULLI and ZADRA - Italy (N° 46537/99)
COSTANTINI - Italy (N° 46538/99)
TOR DI VALLE COSTRUZIONI S.p.a. - Italy (no. 7) (N° 46539/99)
MMB DI BELOLI LUCIANO & C. S.n.c. and BELOLI - Italy (N° 46540/99)
CALBINI - Italy (N° 46541/99)
LANINO - Italy (N° 46542/99)
G.S. and L.M. - Italy (N° 46543/99)
Judgments 16.11.2000 [Section IV]

D'ARRIGO and GARROZZO - Italy (N° 40216/98)
SENESE - Italy (N° 43295/98)
CECCHINI - Italy (N° 44332/98)
MIELE - Italy (N° 44338/98)
PISCOPO - Italy (N° 44357/98)
DI MURO - Italy (N° 44363/98)
CALVANI - Italy (N° 44365/98)
PAGLIACCI - Italy (N° 44366/98)
G.G. - Italy (N° 44367/98)
SAPIA - Italy (N° 44368/98)
P.C. - Italy (N° 44369/98)
D'INNELLA - Italy (N° 44370/98)
CANZANO - Italy (N° 44371/98)
PEROSINO - Italy (N° 44372/98)
PARESCHI - Italy (N° 44373/98)
ARQUILLA - Italy (N° 44374/98)
IORIO - Italy (N° 44375/98)
D.G. - Italy (N° 46507/99)
TEOFILI - Italy (N° 46508/99)
CATALANO - Italy (N° 46510/99)
SPARANO - Italy (N° 46512/99)
ROTIROTI - Italy (N° 46513/99)
MURRU - Italy (N° 46514/99)
Judgments 21.11.2000 [Section I]

THURIN - France (N° 32033/96)
LUCAS - France (N° 37257/97)
LECLERCQ - France (N° 38398/97)
SIEGEL - France (N° 36350/97)
BOURIAU - France (N° 39523/98)
Judgments 28.11.2000 [Section III]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Supplementary compensation claimed on the basis of the Evian Agreements in respect of properties nationalised by Algeria: *inadmissible*.

TEYTAUD and others - France (N° 48754/99, 49720/99, 49721/99, 49723-30/99)
Decision 25.01.2001 [Section IV]
(see Article 6(1), above).

POSSESSIONS
Guarantor's claim reduced drastically by court order on account of debtor's critical financial situation: *communicated*.

BÄCK - Finland (N° 37598/97)
[Section IV]

In 1988 and 1989, the applicant was a guarantor for a bank loan granted to N. As the latter could not meet the reimbursement requirements, the applicant had to pay FIM 113,000 (EUR 19,000) to the bank. In 1995, in accordance with the 1993 Act on the Adjustment of the Debts of Individuals, N. applied for debt readjustment. In 1996, the District Court granted N. debt readjustment and adopted a payment schedule of five years. The applicant's claim against N. was reduced to approximately FIM 2,000 (about EUR 330). The court held that as guarantees always involved a precarious element, the applicant's claim based on his recourse against N. could not be considered the applicant's property for the purposes of the Convention. In view of N.'s financial situation, the court considered that the entry into force of the payment schedule should not be postponed. In his appeal, the applicant contended that the almost complete extinction of his claim against N. violated his property rights under the Convention. Moreover, the writing off of his claim discriminated against him as a private creditor who, unlike public creditors, would receive no compensation from the State. The Court of Appeal dismissed his appeal and he was refused leave to appeal to the Supreme Court.
Communicated under Articles 14 and 1 of Protocol N° 1.

PEACEFUL ENJOYMENT OF POSSESSIONS
Restrictions on fishing rights: *communicated*.

ALATULKKILA and others - Finland (N° 33538/96)
[Section IV]
(See Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Prolonged restriction on use of property: *violation*.

PILIAPOULOS and others - Greece (Nº 37095/97)
*Judgment 15.2.2001 [Section II]

Facts: The applicants bought a plot of land and applied for a permit for a shopping centre. A prohibition on new building permits for commercial premises was then issued, although premises in respect of which a "complete" file had already been opened were exempted. In

March 1988 the prefect decided to change the use of the applicants' plot from development land to park land. The planning authorities decided that the municipality should pay the compensation and this was confirmed by the prefect and by the relevant Ministry in January 1989. The first instance civil court provisionally awarded the applicants compensation of over 730 million drachmas. In July 1991 the Court of Appeal acceded to the applicants' request to declare the prefect's decision of March 1988 revoked *ipso jure*, since compensation had not been paid within the prescribed period. In the meantime, the Ministry had approved a new town plan, which the prefect had decided to amend in May 1990, providing that the applicants' plot could only be used as a park and for underground parking. In 1992 the Council of State quashed the Ministry's decision of January 1989, adding that notwithstanding the decision of the Court of Appeal the administration remained under an obligation to revoke formally the expropriation decision of March 1988. In 1993 the municipality made a further request for expropriation of the plot. However, the prefect decided to free part of the plot for development. The municipality sought judicial review and the Council of State quashed the decision. It also officially revoked the first expropriation decision. The municipality again requested expropriation of the plot in July 1996. The applicants' further applications for building permits were refused, with reference to the prefect's decision of May 1990.
Law: Article 1 of Protocol No. 1 – The Government's argument that the May 1990 decision only became an expropriation decision in 1995 is not convincing. The measures did not constitute a deprivation of property or a control of use, but fall to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, since they undoubtedly restricted the applicants' rights to use their possessions. There is no doubt that the measures aimed at protecting the environment and town planning in an area overburdened by heavy construction. However, the applicants are correct in arguing that they have been unable to enjoy their property since 1987 without any compensation. No reasonable balance has been struck between their rights and the general interest.
Conclusion: violation (unanimously).
Article 6(1) – Despite two subsequent expropriations, the original one still remains in force, since it has not been officially revoked by the prefect. The authorities have thus failed in their obligation to comply with the decision of the Court of Appeal.
Conclusion: violation (unanimously).
Article 13 – It is unnecessary to rule on this complaint.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court considered that the applicants could not claim compensation in respect of the initial period, during which there was a building prohibition, as they had not challenged the prohibition. Otherwise, it reserved the question of just satisfaction.

PEACEFUL ENJOYMENT OF POSSESSIONS
Rejection of claim for restitution of coins confiscated under the Communist regime: *admissible*.

KOPECKÝ - Slovakia (N° 44912/98)
Decision 1.2.2001 [Section II]

In 1992 the judgment by which the applicant's father had been convicted in 1959 for possessing gold and silver coins was quashed by the Supreme Court. In accordance with the Extra-Judicial Rehabilitation Act 1991, the applicant lodged a claim for restitution of the coins which had been confiscated. The Ministry of the Interior, to which the coins had been transferred after their confiscation, was ordered by the District Court to restore them. The Ministry appealed to the Regional Court, which found that the applicant had not shown where the coins were, as required by the Extra-Judicial Rehabilitation Act, and had thus failed to provide evidence establishing that the Ministry had the coins in its possession. The applicant's appeal to the Supreme Court was dismissed.

Admissible under Article 1 of Protocol N° 1.

DEPRIVATION OF PROPERTY
Properties nationalised by Algeria: incompatible *ratione personae*.

TEYTAUD and others - France (Nº 48754/99, 49720/99, 49721/99, 49723-30/99)
Decision 25.01.2001 [Section IV]
(see Article 6(1), above).

DEPRIVATION OF PROPERTY
Disposal by local authority of land which it no longer owned: *communicated*.

ERI (Estudos e Realizações Imobiliárias) - Portugal (N° 51411/99 and N° 51417/99)
[Section IV]

In the 1960s the applicant company purchased several plots of land from a municipality, with the intention of developing a tourist complex. In 1992 the municipality granted a concession over part of the land to third parties, built facilities and brought an action to declare void the applicant's purchase of the land. The applicant filed a cross-action for a declaration recognising its title. Its action was successful and the action brought by the municipality was dismissed, in a judgment upheld both on appeal and by the Supreme Court. The applicant took legal proceedings to recover the plots of land over which the municipality had wrongly assumed the right of disposal. Although the court had found in favour of the applicant, the municipality did not return the plots of land.
Communicated under Article 1 of Protocol No. 1.

CONTROL OF THE USE OF PROPERTY
Owners of water areas deprived of income from the sale of fishing permits: *inadmissible*.

ASCHAN and others - Finland (N° 37858/97)
Decision 15.2.2001 [Section IV]

The applicants were owners of water areas and local fishing associations. According to the Fishing Act as amended in 1997, fishing with hand-held tackle became a public right, anyone having paid the fishing fee to the State being entitled to fish with hand-held tackle even in private water areas. As a result of the amendment, owners of water areas lost the exclusive right to control fishing and fishing permits on their property. Whereas fees for permits used to be paid directly to them, the amendment provided that they fees would thereafter be paid to the State, which would partly reimburse owners as a form of compensation. Some individual applicants were professional fishermen who feared that their income would be drastically reduced as everyone became allowed to fish in their fishing waters; others lost the income which they used to derive from selling fishing permits or renting out their water areas to fishing associations. The applicant associations lost their income by losing their right to receive payments for fishing permits.
Inadmissible under Article 1 of Protocol N° 1: The introduction of the 1997 amendment and its effects constituted an interference with the applicants' right to peaceful enjoyment of their possessions. This interference constituted a control of their property and not a deprivation as they retained the title to it. Their right to fish was also preserved. The opinion of Parliament, according to which the amendment was in the general interest given the importance of fishing as a leisure activity, could not be considered as transgressing the margin of appreciation left to States in such matters. Although the applicants lost part of the profit pertaining to their

possessions, such a loss caused by general legislation did not necessarily call for a full compensation on the basis of this provision. Given the wide margin of appreciation of States in this domain, the interference with the applicants' property rights could not be held to be disproportionate. Therefore, the State was entitled to consider necessary the enactment of the 1997 amendment: manifestly ill-founded.
Inadmissible under Article 6(1): This provision does not require that there be a national court with competence to invalidate or override national law. The control of the use of property was enacted by an amendment to the Act on Fishing. A Finnish court could only examine a claim of a breach of the Constitution Act if it had competence to invalidate or set aside a law adopted by Parliament. However, Article 6(1) does not guarantee access to court for such a claim: incompatible *ratione materiae*.
Inadmissible under Article 13: This provision does not guarantee a remedy whereby the laws of a Contracting State as such can be challenged before a national authority on the ground of their being contrary to the Convention or to corresponding domestic legal norms. The applicants' allegations of violations of their rights under the Convention and the Protocols were directed at the effects of the Act on Fishing as amended in 1997. Article 13 does not entitle them to any remedy for such allegations: incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Exclusion of cassation appeal following conviction *in absentia*: *violation*.

KROMBACH - France (N° 29731/96)
*Judgment 13.02.2001 [Section III]
(see Article 6(3)(c), above).

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Examination of assurances obtained by State wishing to extradite: *refusal to lift interim measure (rule 39 of the Rules of Court)*.

PEÑAFIEL SALGADO - Spain (N° 65964/01)
[Section IV]

The applicant was formerly a banker in Ecuador. In September 1998 he emigrated to Spain when the banks came under scrutiny for their role in the outbreak of the recession affecting Ecuador. At the time of his departure, a warrant had been issued for his detention on remand. As the recession worsened, the Ecuadorian authorities blamed the banking community for the country's problems and decided to request the extradition of those bankers who had fled. The applicant, alarmed by some political leaders' populist calls for revenge against him, decided to seek political asylum in Spain. After the Spanish authorities had been contacted to that end, the applicant was arrested in Lebanon while on a business trip. Ecuador requested his extradition from Lebanon. Although he had filed an application for asylum with the Spanish Embassy in Beirut and the UNHCR had granted him refugee status for a twelve-month period, the Lebanese authorities proceeded to extradite him. During a stopover in Paris, he took the opportunity to reapply for political asylum in Spain and was transferred to that country to have his application examined. In October 2000 his refugee status was declared invalid by the UNHCR and the Spanish authorities rejected his application for asylum. The

Ecuadorian authorities then requested the Spanish Government to continue the extradition proceedings following the interruption caused by the asylum application. On 5 February 2001 the *Audencia Nacional* approved that request. However, the applicant successfully applied to the Spanish authorities for an interim order to stay the proceedings until 12 February 2001. On that date he requested the Court to apply Rule 39. On 15 February the Spanish Government sent the Court a document setting out the guarantees which they had obtained from the Ecuadorian authorities, arguing that such guarantees would eliminate any risk of inhuman treatment or an unfair trial. The Court nonetheless decided to apply Rule 39, to invite the applicant to submit observations on the guarantees provided by the Spanish Government and to re-examine the matter in the very near future.

RULE 41 OF THE RULES OF COURT /

PRIORITY CASE
Disappearance of two people last seen entering the premises of the gendarmerie: *request for information (article 54 §3-a of the Rules of Court) and priority granted*.

TANIS and DENIZ - Turkey (N° 65899/01)
[Section I]

The applicants are relatives of Serdar Taniş and Ebubekir Deniz, local officials of the People's Democracy Party (HADEP) who are alleged to have received death threats from two gendarmerie officers – a commander and a regiment commander – on account of their political activities. On 25 January 2001 three men claiming to be police officers are said to have attempted to order Serdar Taniş into a car. He refused, saying that he was awaiting an official summons. It is alleged that he then received a telephone call from the gendarmerie commander and went to the gendarmerie station, accompanied by Ebubekir Deniz. Three people are said to have witnessed them entering the building. One hour later, relatives and lawyers who had been trying to contact the two men were told by the gendarmerie commander that they had not gone to the station or been placed in police custody. The authorities later admitted that Taniş and Deniz had indeed gone to the gendarmerie station but said that they had left after half an hour. Since 25 January nothing has been heard of either of them.
The Court requested the Government to submit factual information (Rule 54 § 3(a)) and decided to give priority to the application (Rule 41).

List of other judgments delivered in February

Article 5(3)

GOMBERT and GOCHGARIAN - France (N° 39779/98 and N° 39781/98)
*Judgment 13.2.2001 [Section III]

The case concerns the length of detention on remand – violation.

Articles 5(3) and/et 6(1)

RICHET - France (Nº 34947/97)
*Judgment 13.2.2001 [Section III]

SZELOCH - Poland (Nº 33079/96)
*Judgment 22.2.2001 [Section IV]

The cases concern the length of detention on remand and the length of criminal proceedings – violation.

Article 6(1)

FERNANDES CASCÃO - Portugal (Nº 37845/97)
*Judgment 1.2.2001 [Section IV]

KURZAC - Poland (Nº 31382/96)
*Judgment 22.2.2001 [Section IV]

GALATÀ and others - Italy (Nº 35956/97)
GIAMPETRO - Italy (Nº 37170/97)
CIOTTA - Italy (Nº 41804/98)
ARIVELLA - Italy (Nº 41805/98)
ALESIANI and 510 others - Italy (Nº 41806/98)
COMITINI - Italy (Nº 41811/98)
PETTIROSSI - Italy (Nº 44380/98)
CORNAGLIA - Italy (Nº 44385/98)
LIBERATORE - Italy (Nº 44394/98)
VISENTIN - Italy (Nº 44395/98)
G.B. - Italy (Nº 44397/98)
VALENTINO - Italy (Nº 44398/98)
SALZANO - Italy (Nº 44404/98)
M. S.R.L. - Italy (Nº 44406/98)
TAGLIABUE - Italy (Nº 44417/98)
SBROJAVACCA-PIETROBON - Italy (Nº 44419/98)
MAURI - Italy (Nº 44420/98)

MARZINOTTO - Italy (Nº 44422/98)
MICHELE TEDESCO - Italy (Nº 44425/98)
BELUZZI - Italy (Nº 44431/98)
BERLANI - Italy (Nº 44435/98)
BUFFALO S.R.L. - Italy (Nº 44436/98)
BOCCA - Italy (Nº 44437/98)
TRASPADINI - Italy (Nº 44439/98)
BEVILACQUA - Italy (Nº 44442/98)
MARCHI - Italy (Nº 44443/98)
W.I.E. S.N.C. - Italy (Nº 44445/98)
IANNITI and others - Italy (Nº 44447/98)
ADRIANI - Italy (Nº 46515/98)
GIANNI - Italy (Nº 47773/98)
CONTI - Italy (Nº 47774/98)
ILARDI - Italy (Nº 47777/98)
*Judgments 27.2.2001 [Section I]

DONNADIEU - France (Nº 39066/97)
CULTRARO - Italy (Nº 45880/99)
*Judgments 27.2.2001 [Section III]

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

MILAZZOTTO - Italy (Nº 35345/97)
Judgment 27.2.2001 [Section I]

SANTELLI - France (Nº 40717/98)
Judgment 27.2.2001 [Section III]

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

R. - Belgium (Nº 33919/96)
Judgment 27.2.2001 [Section III]

The case concerns the length of proceedings brought by an army reserve officer seeking a pension in respect of injuries allegedly sustained in an accident – Article 6 not applicable [Pellegrin case-law applied].

ADOUD and BOSONI - France (Nº 34595/97 and Nº 35237/97)
*Judgment 27.2.2001 [Section III]

The case concerns the non-communication of the observations of the *avocat général* at the Court of Cassation to an unrepresented appellant in criminal proceedings.

CANKOÇAK - Turkey (Nº 25182/94 and Nº 26956/95)
*Judgment 20.2.2001 [Section I]

The case concerns the length of criminal proceedings – violation.

WILKINSON and ALLEN - United Kingdom
(Nº 31145/96 and Nº 35580/97)
Judgment 6.2.2001 [Section III]

The case concerns the independence and impartiality of courts martial – violation.

Article 8

EZZOUHDI - France (Nº 47160/99)
*Judgment 13.2.2001 [Section III]

The case cocerns the threatened expulsion of a foreigner from the country where he has lived for most of his life – violation.

Article 1 of Protocol No. 1

İSMİHAN ÖZEL and others - Turkey (Nº 31963/96)
*Judgment 27.2.2001 [Section I]

The case concerns the delay in payment of additional compensation awarded following expropriation, and in particular the inadequacy of the rate of interest compared to the rate of inflation – violation.

ALPAY - Turkey (Nº 30947/96)
Judgment 27.2.2001 [Section I]

The case concerns the delay in payment of additional compensation awarded following expropriation, and in particular the inadequacy of the rate of interest compared to the rate of inflation – friendly settlement.