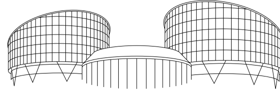

Information Note on the Court's case-law

No. 127 February 2010

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ARTICLE 2

Life
Positive obligations

Lack of police intervention to prevent fatal shooting of a prosecution witness by defendant in criminal proceedings: *communicated*

Van Colle v. the United Kingdom - 7678/09
[Section IV]

The applicants' son was a key witness for the prosecution in a criminal trial against a former employee on theft charges. Shortly before he was due to give evidence, he was shot dead by the defendant. He had earlier informed the investigating officer in the case that he had received threatening phone calls from a man he believed to be the defendant. Another prosecution witness had also informed the same officer that he had been offered money not to give evidence at the trial. In separate incidents, not all of which were reported to the police, property belonging to the applicants' son and to the other prosecution witness had been set on fire. Following the shooting, a police disciplinary panel found the investigating officer guilty of failing to perform his duties conscientiously and diligently in connection with the intimidation of both witnesses. The applicants brought an action in damages against the police under the Human Rights Act 1998 alleging, *inter alia*, a breach of the positive obligation under Article 2 of the Convention to take preventive measures to protect an individual whose life was at risk from the criminal acts of another. This claim ultimately failed, however, when the House of Lords rejected the view that had been expressed by the courts below that a lower test than the "real and immediate risk" test propounded in *Osman*[1] was appropriate where a threat to an individual's life derived from the State's decision to call him as a witness. The House of Lords considered that the *Osman* test was a constant and invariable one and had not been met in the circumstances of the case.

Communicated under Articles 2 and 8.

Effective investigation

Inadequacy of rules on forensic medical reports: *violation*

1. *Osman v. the United Kingdom* judgment ([GC], no. 23452/94, 28 October 1998).

Eugenia Lazăr v. Romania - 32146/05
Judgment 16.2.2010 [Section III]

Facts – One night in July 2000 the applicant took her son to the county hospital as he was showing signs of suffocation. He was admitted to the emergency ward at 2.30 a.m., before being transferred to a specialist department, where Dr C. gave him a cortisone injection. At about 2.45 a.m. C. sent for another doctor, who decided to perform a tracheotomy on the young man in order to clear his respiratory tract. At about 3.15 a.m. the two doctors operated on the applicant's son, who suffered respiratory arrest, could not be resuscitated and died at about 5 a.m. At the request of the prosecution service, the Higher Forensic Medical Board – the supreme national authority on forensic medical examinations – gave its opinion on the conclusions of two previous reports and found that the doctors had not committed any medical errors. Following appeals by the applicant, fresh expert reports were ordered, but the three forensic medical institutes which had previously submitted reports refused to do so again, in the first two institutes' case because the Higher Forensic Medical Board had already given its opinion and in the case of the Board itself because no new evidence had emerged. The proceedings were therefore discontinued and none of the other remedies used by the applicant against the medical profession were successful.

Law – Article 2: The Court examined whether the domestic remedies were adequate in relation to the procedural obligation implicit in Article 2. It considered the criminal remedy first of all, before looking at the other types of remedy.

(a) *The criminal remedy used*: The Court first examined the length of the investigation before addressing the question of its effectiveness.

(i) *Length of the criminal investigation* – A requirement of promptness and reasonable expedition was implicit in cases of medical negligence examined under Article 2. That requirement had not been satisfied in the present case, since the proceedings had lasted approximately four years and five months for two levels of jurisdiction and the investigation by the prosecution service had taken nearly four years.

(ii) *Effectiveness of the criminal investigation* – The Court noted two significant shortcomings in the conduct of the investigation: firstly, a lack of cooperation between the forensic medical experts and the investigating bodies and, secondly, the lack of reasons given in the experts' opinions.

(α) *Lack of cooperation*: The investigating bodies had been incapable of providing a coherent and scientifically based answer to the questions arising, such as the fundamental question whether the applicant's son's death had occurred accidentally during the tracheotomy, a factor that would have determined whether or not there had been medical negligence and whether the medical staff concerned could be held criminally liable. The prosecuting authorities had met with resistance from the forensic medical institutes, which had refused to answer their questions, citing a Government ordinance which in their view prevented them from carrying out fresh expert examinations if the supreme national authority on forensic medicine had given its opinion and/or no new evidence had emerged. The conclusion reached by the court of final instance – namely that evidence acquired probative value where it could no longer be replaced by fresh evidence or be refuted by other evidence of equal scientific value – was contrary to Article 2, which required the national authorities to take steps to produce a complete record and an objective analysis of clinical findings. The Higher Forensic Medical Board had avoided answering the requests which the judicial authorities had sent it with a view to obtaining the information they needed to reach fully informed decisions based on objective reasons. The very existence in domestic law of provisions authorising the forensic medical institutes responsible for issuing opinions to ignore requests by the judicial authorities and thus to refuse to cooperate with them whenever the needs of the investigation so dictated was scarcely compatible with the State's primary duty to secure the right to life by putting in place an appropriate legal and administrative framework to establish the cause of death of an individual under the responsibility of health professionals.

(β) *Lack of reasons for forensic medical opinions*: The forensic medical laboratory that had issued the first report had clearly noted that there had been flaws in the hospital's emergency medical assistance protocol, which had resulted in a delay in performing the surgery. That conclusion had been confirmed, at least in part, following the review by the second forensic medical institute. However, the Higher Forensic Medical Board, whose function was to issue opinions solely on the basis of the reports by lower-level institutes without conducting on-the-spot visits, had simply rejected the conclusion without explaining why. The Court considered that only a detailed and scientifically substantiated report containing reasons for any contradictions between the lower institutes' opinions and answers to the questions put by the prosecuting authorities would have been capable of inspiring public confidence in the administration of justice and assisting the judicial authorities in discharging their duties. The obligation to state reasons for scientific opinions was especially important in the present case since, by virtue of the provisions of domestic law governing forensic medical reports, the formulation of an opinion by the supreme national authority in the field prevented lower institutes from producing fresh reports or supplementing previous ones. Moreover, the national courts and litigants had been – and were still – unable to rely, in evidence, on scientific opinions issued by independent establishments other than the State forensic medical institutes listed in a Government ordinance. The issue of whether the power to conduct forensic medical examinations should be extended to private establishments and/or other independent experts duly authorised by law had been raised at domestic level.

In those circumstances, the domestic rules on forensic reports should include sufficient safeguards to preserve their credibility and efficacy, in particular by requiring experts to state reasons for their opinions and to cooperate with the judicial authorities whenever the needs of the investigation so dictated.

(b) *Other types of remedy*: The authorities had displayed excessive formalism in the disciplinary proceedings brought unsuccessfully by the applicant. Furthermore, an appeal to the joint committees – composed of doctors and civil servants appointed by the Ministry of Justice, and not independent and impartial judicial authorities – would not have been effective since the forensic medical institutes were authorised by law not to produce a report once the highest authority had issued its opinion. Lastly, a civil action for damages would have been very uncertain to succeed in the absence of a finding of medical negligence.

Conclusion: violation (unanimously).

Article 41: EUR 20,000 in respect of non-pecuniary damage.

ARTICLE 3

Inhuman or degrading treatment

Refusal to provide dentures to toothless and impecunious detainee: *violation*

V.D. v. Romania - 7078/02
Judgment 16.2.2010 [Section III]

Facts – In 2002 the applicant was sentenced to a term of imprisonment by a district court for, among other offences, raping his grandmother. The court's decision was based mainly on the statements made by the latter. The applicant lodged several appeals, without success. In addition, as he had virtually no teeth left, the applicant needed dentures, but was unable to obtain them as he did not have the means to pay.

Law – Article 3: As far back as 2002 medical diagnoses had been available to the authorities stating the need for the applicant to be fitted with dentures, but none had been provided. As a prisoner, the applicant could obtain them only by paying the full cost himself. As his insurance scheme did not cover the cost and he lacked the necessary financial resources – a fact known to and accepted by the authorities – he had been unable to obtain the dentures. These facts were sufficient for the Court to conclude that the rules on social cover for prisoners, which laid down the proportion of the cost of dentures which they were required to pay, were rendered ineffective by administrative obstacles. The Government had also failed to provide a satisfactory explanation as to why the applicant had not been provided with dentures in 2004, when the rules in force had provided for the full cost to be met by the State. Hence, despite the concerns about his health the applicant had still not been fitted with dentures, notwithstanding new legislation enacted in January 2007 making them available free of charge.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 3 (d): Although the statements made by the applicant's grandmother had not been the only evidence on which the court had based its decision to convict, they had been the decisive element. The fact that the victim had been very old and senile undoubtedly qualified her for increased protection. However, given that the complainant had died before she could be questioned in court, sufficient guarantees should have been put in place to safeguard the rights of the defence. The only statement by the victim submitted to the public prosecutor's office had been made to a police officer before the applicant was charged and without his having the opportunity to request clarification. The statement had been taken down in writing and had not been recorded. It had not been read out to the accused at any point in the criminal proceedings, nor had any other steps been taken to enable him to challenge the victim's statements or her credibility. In such circumstances, a DNA test would have made it possible either to confirm the victim's version of events or to provide the applicant with substantial information so as to undermine the credibility of her account. However, the courts had refused to grant the requests by the applicant and his lawyers to obtain this evidence, without ruling explicitly on its relevance by means of decisions giving sufficient reasons. Finally, the investigation at the scene had been inadequate as the police had not taken the trouble to search for traces of assault, which might have lent greater substance to the allegations against the applicant. Accordingly, the courts had failed in their duty to order investigative measures in order to give the applicant an opportunity to defend his case.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage.

ARTICLE 4

Forced labour

Alleged kidnapping of a Bulgarian Roma girl in Italy: *communicated*

M. and Others v. Italy and Bulgaria - 40020/03
[Section II]

The applicants are Bulgarian nationals of Roma origin. At the material time the first applicant was still a minor. The second and third applicants are her father and mother, and the fourth applicant her sister-in-law. In 2003 the first, second and third applicants arrived in Italy, where they had been offered work by X, a Serbian Rom. X accommodated them in his house and after a few days informed them that his nephew wished to marry the first applicant. The second and third applicants refused. They allege that they were subsequently beaten, threatened with a gun and forced to return to Bulgaria. During the following month, the first applicant was also allegedly beaten, threatened and repeatedly raped. She was kept under constant surveillance and forced to steal. At some point she appears to have been treated in hospital for her injuries. Some time later, the third applicant returned to Italy, accompanied by the fourth applicant, and lodged a complaint with the Italian

police alleging that the first applicant had been kidnapped and injured. The police raided X's house, where they found the first applicant, and made several arrests. They questioned the first applicant, but the applicants allege that they treated her roughly and threatened that she would be accused of perjury. She was then allegedly forced to state that she did not wish to have her kidnappers prosecuted and to sign certain documents in Italian without any translation. Rejecting these allegations, the Italian Government submit that the police had come into possession of certain photographs that indicated that the first applicant's marriage had been a pre-arranged marriage for which the second applicant had received payment. The police had therefore seen no reason to investigate the alleged kidnapping and had instead instituted proceedings against the first and third applicants for perjury and libel, which were ultimately discontinued. The applicants later returned to Bulgaria and submitted written requests to both the Bulgarian and Italian authorities to conduct a criminal investigation.

Communicated to the Italian and Bulgarian Governments under Articles 3, 4 and 14, with a specific question relating to the Council of Europe Convention on Action against Trafficking in Human Beings.

ARTICLE 5

Article 5 § 4

Take proceedings

Refusal to reopen criminal proceedings: *communicated*

Hulki Güneş v. Turkey - 17210/09
[Section II]

In March 1994 the National Security Court found the applicant guilty of the criminal offences with which he was charged and sentenced him to death, commuted to life imprisonment. In May 1995 the applicant applied to the European Commission of Human Rights. The application was subsequently referred to the European Court, which declared it admissible in October 2001. In June 2003 it found a violation of Article 3 and Article 6 §§ 1 and 3 (d)[1].

In the meantime, a law had been enacted in January 2003 providing for the reopening of criminal proceedings following a finding of a violation by the Court. However, a transitional provision of the law limited that possibility to twosets of circumstances: where the Court had delivered a final judgment prior to the law's entry into force, and where it had delivered a final judgment on an application lodged after the law's entry into force. In October 2003, relying on the Court's judgment and the Turkish Constitution, the applicant applied to the National Security Court for a retrial. In October 2003 the court rejected his application, holding that he was unable to avail himself of the law in question because he had applied to the Strasbourg institutions in May 1995 and the Court had given judgment after the law had come into force. Various attempts by the applicant to obtain a retrial were unsuccessful.

Communicated under Article 5 §§ 1 and 4.

ARTICLE 6

Article 6 § 1 (civil)

Applicability

Inability to access or secure rectification of personal data in Schengen database: *Article 6 § 1 inapplicable; inadmissible*

Dalea v. France - 964/07
Decision 2.2.2010 [Section V]

Facts –The applicant, a Romanian national, was denied a visa in 1997 for a visit to Germany, and the following year for a visit to France, on the ground that he had been reported by the French authorities to the Schengen Information System for the purposes of being refused entry. The applicant applied to the French National Data-Protection Commission ("the CNIL") seeking access to his personal data in the French Schengen database and the rectification or deletion of that data. The CNIL carried out the requested checks and then indicated that the procedure before it was now exhausted. The applicant brought an action for judicial review before the *Conseil d'Etat*, which found that he had received information concerning his data entry in the French Schengen database and that his action had therefore become devoid of object. The *Conseil*

1. See the *Hulki Güneş v. Turkey* judgment (no. 28490/95, 19 June 2003, Information Note no. 54).

d'Etat further found that, on the basis of the investigation carried out, it was impossible to ascertain the reasons for the applicant's inclusion in the database and that it could not therefore be assessed whether the CNIL's denial of his request for rectification or deletion had been lawful. The CNIL indicated that the applicant had been reported to the Schengen Information System at the request of the French Security Intelligence Agency ("the DST"), which alone could provide the relevant information to enable the *Conseil d'Etat* to ascertain whether or not the applicant's request for rectification of his data had been well-founded. In 2006 the *Conseil d'Etat* observed that, having regard to all the material in the case file, the grounds given by the CNIL for its decision not to rectify or delete the data concerning the applicant provided valid justification for that decision. Accordingly, the applicant's action for the annulment of the CNIL's decision had been ill-founded.

Law – Article 6 § 1: Decisions regarding the entry, residence and expulsion of aliens did not concern civil rights or obligations or a criminal charge, within the meaning of Article 6 § 1. Accordingly, the measure preventing the applicant from entering France – regardless of its reasons, consequences or duration – did not fall within the scope of that provision. The procedure at issue, whereby individuals were allowed under French law to access their personal data in the Schengen Information System and, if necessary, to have that data rectified or deleted, was closely connected to the regulation of the entry and residence of aliens, and related in particular to the issuance of visas. It was when the French or German authorities had refused to issue him with a visa that the applicant had been informed of his inclusion in the Schengen Information System. Moreover, it was apparent from the case file that, by lodging his applications with the CNIL and the *Conseil d'Etat*, the applicant's aim had ultimately been to enter the Schengen area and travel within it. Accordingly, since the proceedings in question were connected with a subject-matter falling outside the scope of Article 6, they did not have the purpose of determining civil rights or obligations or a criminal charge within the meaning of that provision.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 8: The Convention did not as such guarantee the right of an alien to enter or to reside in a particular country. In so far as the applicant's professional relations, especially with French and German companies and with figures from political and economic circles in France, could be regarded as constituting "private life" within the meaning of Article 8, the interference with this right caused by the reporting of the applicant by the French authorities to the Schengen Information System had been in accordance with the law and had pursued the legitimate aim of protecting national security. The applicant had not shown how he had actually suffered as a result of his inability to travel in the Schengen area. He had merely referred, without giving particulars, to a considerable loss on account of the effect on his company's performance, and had pointed out that he had not been able to go to France for surgery that he had ultimately obtained in Switzerland, but this had not apparently had any particular consequences for his state of health. The French authorities' interference with the applicant's right to respect for his private life had therefore been proportionate to the aim pursued and necessary in a democratic society. In so far as the applicant had complained of interference with his private life solely on account of his inclusion in the Schengen Information System for a long period, the Court reiterated that everyone affected by a measure based on national security grounds had to be guaranteed protection against arbitrariness. Admittedly, his inclusion in the database had barred him access to all countries that applied the Schengen Agreement. However, in the area of entry regulation, States had a broad margin of appreciation in taking measures to secure the protection against arbitrariness that an individual in such a situation was entitled to expect. The applicant had been able to apply for review of the measure at issue, first by the CNIL, then by the *Conseil d'Etat*. Whilst the applicant had never been given the opportunity to challenge the precise grounds for his inclusion in the Schengen database, he had been granted access to all the other data concerning him and had been informed that considerations relating to State security, defence and public safety had given rise to the report on the initiative of the DST. The applicant's inability to gain personal access to all the information he had requested could not in itself prove that the interference was not justified by national security interests. The French authorities' interference with the applicant's right to respect for his private life had therefore been proportionate to the aim pursued and necessary in a democratic society.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 § 1 (criminal)

Applicability

Admissions made by suspect during roadside spot check: *Article 6 § 1 applicable*

Aleksandr Zaichenko v. Russia - 39660/02
Judgment 18.2.2010 [Section I]

(See below)

Determination of a criminal charge
Fair hearing

Conviction on basis of admissions made to police prior to the administration of a caution: *violation*

Aleksandr Zaichenko v. Russia - 39660/02
Judgment 18.2.2010 [Section I]

Facts – On 21 February 2001 the applicant was stopped on his way home from work by police officers investigating allegations of the theft of fuel from his employer. After finding two cans of fuel in the applicant's car and without administering a caution, the officers questioned him on the spot and got him to sign a record of inspection in which he acknowledged that the fuel had come from his service vehicle. The applicant was subsequently asked to sign a written statement admitting that he had taken the fuel for his personal use and acknowledging that he had been informed of his right not to incriminate himself. The record of inspection and the statement were then sent to an inquirer, who reported to his superior that there was evidence of an offence. On 2 March 2001 the applicant was charged with theft and signed an act of accusation in which he acknowledged that he had been informed of the nature of the accusation and of his rights, and stated that he did not require legal representation. At his trial, the applicant, who was by now represented by a lawyer, produced an invoice which he alleged proved that he had in fact purchased the fuel. However, the trial court ruled the invoice inadmissible on the ground that it should have been produced earlier. It also rejected testimony by two defence witnesses whom it considered too closely connected to the applicant to be reliable. The applicant was convicted and given a suspended prison sentence. His conviction was upheld on appeal.

In his application to the European Court, the applicant complained that he had not had access to a lawyer during the pre-trial stage of the proceedings (Article 6 § 3 (c)) and that the trial court should not have convicted him on the basis of his pre-trial statements (Article 6 § 1).

Law – Article 6: *Applicability* – Article 6 was applicable to the events on 21 February 2001 as, although the applicant had not at that stage been accused of any criminal offence, the proceedings on that date had "substantially affected" his situation. The Court reiterated, however, that the manner in which the guarantees of Article 6 §§ 1 and 3 (c) were to be applied in pre-trial proceedings depended on the special features of those proceedings and the circumstances of the case assessed in relation to the entire domestic proceedings.

Article 6 § 1 – The Court considered that the police must have suspected the applicant of theft from the moment he was unable to produce any proof of purchase of the cans of fuel that had been found in his car. They had therefore been under an obligation to inform him of his rights not to incriminate himself and to remain silent. Although he was informed of his right to remain silent before he signed the written statement admitting that he had taken the fuel, he had by then already made a self-incriminating statement in the record of inspection. The Court was not satisfied that the applicant had validly waived the privilege against self-incrimination before or during the drawing up of the record of inspection and, given the weight accorded to his admission at the trial, did not need to determine the validity of his subsequent waiver of that privilege in his written statement, which derived from his earlier admission.

As to whether the use made of the applicant's pre-trial admission had affected the fairness of the proceedings, the Court considered that the detriment he had suffered through the breach of due process in the pre-trial proceedings was not remedied at the trial. To begin with, the trial court had expressly referred to the self-incriminating statements the applicant had made to the police, both in the record of inspection and subsequently. Further, the domestic courts had not given sufficient reasons for dismissing his arguments challenging the admissibility of those statements. Lastly, the trial court had rejected the testimony of the defence witnesses on account of their close relationship with the applicant and had refused to accept in evidence the invoice which allegedly showed that he had purchased the fuel. In sum, the trial court had based the conviction on the

statement the applicant had given to the police without being informed of his right not to incriminate himself.

Conclusion: violation (unanimously).

Article 6 § 3 (c): Although the applicant had not been free to leave when he was stopped on 21 February the circumstances of the case disclosed no significant curtailment of his freedom of action sufficient to activate a requirement for legal assistance at that stage. The police's role had been to draw up a record of inspection of the car and to hear the applicant's explanation as to the origin of the cans. That information had then been passed to an inquirer who had in turn compiled a report on the basis of which his superior had decided to open a criminal case against the applicant. At that stage (2 March 2001) the applicant was apprised of his right to legal assistance, but voluntarily and unequivocally agreed to sign the act of accusation and waived his right to legal assistance, indicating that he would defend himself at the trial. Accordingly, the absence of legal representation on 21 February and 2 March 2001 had not violated the applicant's right to legal assistance.

Conclusion: no violation (six votes to one).

Article 41: EUR 3,000 in respect of non-pecuniary damage; reopening of the proceedings considered the most appropriate form of redress.

Fair hearing

Voluntary and unequivocal waiver of right to assistance of a lawyer while in police custody: *no violation*

Yoldaş v. Turkey - 27503/04
Judgment 23.2.2010 [Section II]

Facts – The applicant was held in police custody from 18 to 24 December 2003 on charges of membership of an illegal organisation. He was then brought before a judge who remanded him in custody. After several hearings before a National Security Court and following the abolition of these courts, the applicant's case was referred for trial to the Assize Court, which in 2006 sentenced him to life imprisonment. That judgment was upheld by the Court of Cassation.

In his application to the European Court the applicant complained that he had not been assisted by a lawyer while in police custody.

Law – Article 5: The Court did not accept that it had been necessary to detain the applicant for six days before bringing him before a judge.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 3 (c): Unlike in the case of *Salduz v. Turkey* ([GC], no. 36391/02, 27 November 2008, Information Note no. 113), the absence of a lawyer during the applicant's time in police custody had not resulted from systematic application of the relevant legal provisions. A law enacted in July 2003 had lifted the restriction on the accused's right to be assisted by a lawyer in proceedings before the National Security Courts. Hence, the applicant had been entitled in principle to request the assistance of a lawyer. Furthermore, the police had drawn up a report setting out his rights while in police custody and in particular his right to be assisted by a lawyer. After the report had been read, the applicant had been given a copy signed by him. Accordingly, despite having the right to be assisted by a lawyer while in police custody and having been reminded of that right, the applicant had refused assistance. It was clear from the statements obtained from him while in police custody that his decision to waive his right was to be regarded as free and voluntary. Accordingly, the waiver of his rights had been unequivocal and attended by the minimum safeguards. Furthermore, the applicant had given the same testimony before the judge and the public prosecutor, without denying the charges against him or the content of his testimony. In its judgment in 2006, the Assize Court had also taken into account the applicant's change of stance, after he had denied some of the charges. It had excluded six offences from the case file on the ground that they were based solely on the applicant's testimony and were not backed up by any other evidence. Accordingly, it had convicted the applicant on the basis of the remaining charges, which were corroborated and supported by evidence. The trial court had therefore scrupulously protected the applicant's defence rights and nothing in the proceedings gave grounds to suspect that the waiver by the applicant of his right to be assisted by a lawyer while in police custody had not been free and unequivocal. Accordingly, the applicant had not been deprived of a fair trial within the meaning of Article 6 § 1 taken in conjunction with Article 6 § 3 (c).

Conclusion: no violation (four votes to three).

Article 41: EUR 1,000 in respect of non-pecuniary damage.

Article 6 § 3 (c)

Defence through legal assistance

Absence of legal assistance during police spot check at roadside: *no violation*

Aleksandr Zaichenko v. Russia - 39660/02
Judgment 18.2.2010 [Section I]

(See Article 6 § 1 (criminal) above, page 12)

Voluntary and unequivocal waiver of right to assistance of a lawyer while in police custody: *no violation*

Yoldaş v. Turkey - 27503/04
Judgment 23.2.2010 [Section II]

(See Article 6 § 1 (criminal) above, page 13)

Article 6 § 3 (d)

Examination of witnesses

Inability of defendant in criminal proceedings to cross-examine main prosecution witness or challenge her evidence: *violation*

V.D. v. Romania - 7078/02
Judgment 16.2.2010 [Section III]

(See Article 3 above, page 8)

ARTICLE 8

Applicability

Claim for damages against a third party arising out of the death of the applicant's fiancée: *Article 8 inapplicable; inadmissible*

Hofmann v. Germany - 1289/09
Decision 23.2.2010 [Section V]

Facts – The applicant's fiancée died in 2002 after giving birth to the couple's second child by caesarean section. The applicant claimed damages from the gynaecologist who had performed the operation. In 2005 a regional court dismissed his claim on the grounds that, even though they raised their children together, the deceased had not been obliged by law to provide maintenance to the applicant, as such an obligation only arose between lineal relatives, spouses, former spouses following a divorce and partners of registered same-sex partnerships. The applicant appealed unsuccessfully.

Law – Article 14 in conjunction with Article 8: Family life did not consist only of social, moral or cultural relations, for example in the sphere of children's education; it also comprised interests of a pecuniary nature. This was shown by, among other things, obligations in respect of maintenance and the institution of the reserved portion of an estate that existed in the domestic legal systems of the majority of the Contracting States. The Court observed, however, that it had never held that the notions of "family life" or "private life" covered a claim for damages against a third party. The cases concerning intestate succession or voluntary dispositions concerned the pecuniary aspects of existing family ties. The Court was of the opinion that the applicant's claim for damages did not concern existing ties, including the pecuniary aspects thereof, between himself and his late fiancée. It only concerned his relationship with the respondent doctor. The latter relationship did not raise issues of "family life" within the meaning of Article 8 or an issue of "private life" seen in terms of personal identity. Article 8 was therefore not applicable in the instant case and Article 14 could not be relied on.

Conclusion: inadmissible (incompatible *ratione materiae*).

Private life

Requirement for first names in official documents to be spelt only with letters from official Turkish alphabet: *no violation*

Kemal Taşkın and Others v. Turkey - 30206/04 et al.
Judgment 2.2.2010 [Section II]

Facts – The applicants, who are of Kurdish origin, brought proceedings before a district court seeking to have their forenames changed. Their requests were refused on the grounds that the names they had chosen contained characters other than the twenty-nine letters of the official alphabet set out in the Law on the Adoption and Application of the Turkish alphabet. The Court of Cassation upheld the first-instance judgments.

Law – Article 8: The refusal to allow the applicants to spell the names they had requested using letters

not contained in the Turkish alphabet had amounted to interference with the exercise of their right to respect for their private life. The interference had been based on the Law requiring the Turkish alphabet to be used in all official documents. Provided they respected the rights protected by the Convention, the Contracting States were free to require their official language or languages to be used in identity papers and other official documents and to lay down rules for that purpose. Consequently, the interference had been aimed at preventing disorder and protecting the rights of others. As to the allegation made by two of the applicants that the refusal in question had been damaging to their ethnic identity, the Court noted at the outset that the persons concerned were allowed to use Kurdish forenames and surnames. Furthermore, it did not appear from the explanations provided that, when the forenames in question were spelt using the letters of the Turkish alphabet, they had a vulgar or ridiculous meaning which might have caused the applicants inconvenience socially or made it in any way difficult to identify them personally. Under the Turkish system, it was also possible to have names containing sounds which had no precise equivalent in the Turkish alphabet transcribed phonetically in the civil register. In that regard, Convention No. 14 of the International Commission on Civil Status (ICCS)[1], which was aimed at ensuring some degree of uniformity in the matter, provided for several systems for transposing surnames and forenames, including phonetic transposition. However, it was clear from the case file that, with one exception, the applicants had not opted for that approach. Admittedly, the transposition of the forenames requested by the applicants using the letters of the Turkish alphabet could cause phonetic difficulties. However, similar difficulties existed in other languages. In that connection, both the choice of a national alphabet and the difficulty of transcribing names in order to reproduce the desired sound were areas where differences between countries were particularly marked and where there was virtually no common ground between the systems used by the Contracting States. Furthermore, it could not be said that such difficulties arose very frequently or were any more significant than those experienced by a large number of people in modern-day Europe, where movement of people between countries and language areas was becoming more and more commonplace. In addition, with regard to the recording in the civil register of surnames and forenames of persons whose papers had been drawn up by other States in accordance with their own rules, using characters which did not feature in the Turkish alphabet, this practice was based on the above-mentioned ICCS Convention, which required names to be recorded literally, that is to say, with all the letters which made up the name being reproduced without any alteration. In that regard it did not appear, either, that the conditions of implementation of the international instruments concerned were contrary to the requirements of the European Convention. Accordingly, the Turkish authorities had not overstepped their margin of appreciation in the matter.

1. Convention No. 14 of 13 September 1973 on the recording of surnames and forenames in civil status registers.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 8: At the relevant time there had been no legal obstacle to choosing a Kurdish forename or surname, provided they were spelt in accordance with the rules of the Turkish alphabet. Furthermore, there was nothing to suggest that the Turkish authorities would have ruled differently had the requests been made by persons of non-Kurdish origin. The Court had already found reasoning based on linguistic uniformity in dealings with the administrative authorities and public services to be objective and reasonable. Lastly, the recording in the civil registers of the surnames and forenames of persons whose civil-status papers had been drawn up by other States in accordance with their own rules, using characters not contained in the Turkish alphabet, was based on an international convention aimed at ensuring some degree of uniformity in the matter. Such an aim could not be said to be unreasonable. In addition, the Court was not convinced that the applicants, as individuals wishing to change their forenames, were in a comparable situation to persons whose civil status papers had been drawn up by other States in accordance with their own rules.

Conclusion: no violation (unanimously).

ARTICLE 9

Freedom of religion

Indication of religion on identity cards: *violation*

Sinan Işık v. Turkey - 21924/05
Judgment 2.2.2010 [Section II]

Facts – The applicant was a member of the Alevi religious community. In 2004 he applied to the courts requesting that his identity card feature the

word "Alevi" rather than "Islam", but his applications were unsuccessful.

Law – Article 9: A law of 2006 which made it possible to request that the "religion" entry on an identity card be left blank or deleted had not changed the applicant's situation. When identity cards provided for an indication of religion, the mere fact of leaving the relevant entry blank would inevitably have a specific connotation. The bearer of an identity card without any information concerning his or her religion would be distinguished, against his or her will, on account of interference by the authorities, from individuals whose religious beliefs were indicated. Moreover, the fact of requesting the authorities to leave the box blank was closely linked to the bearer's most personal convictions. The disclosure of one of the most intimate aspects of the individual was therefore still at issue. That situation was undoubtedly at odds with the principle of freedom not to manifest one's religion or belief. That being said, the breach in question had arisen not from a refusal to indicate the applicant's faith on his identity card but from the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional. Accordingly, the applicant could still claim to be a victim of a violation, even after the law of 2006.

Conclusion: violation (six votes to one).

Article 46: The breach of the applicant's right under Article 9 of the Convention had arisen from the fact that his identity card contained an indication of religion, whether obligatory or optional. In this connection, the Court found that the deletion of the "religion" box on identity cards could be an appropriate form of reparation to put an end to the breach.

Manifest religion or belief

Criminal conviction for wearing religious attire in public: *violation*

Ahmet Arslan and Others v. Turkey - 41135/98
Judgment 23.2.2010 [Section II]

Facts – The applicants belong to a religious group. In October 1996 they met for a religious ceremony held at the mosque and toured the streets of the city wearing the distinctive dress of their group. Following various incidents on the same day, they were arrested and taken into police custody. In the context of criminal proceedings brought against them for breaching anti-terrorism legislation, they appeared before the National Security Court in January 1997 dressed in their group's religious attire. Following that hearing, they were prosecuted for, among other things, refusing to remove their turbans after being warned by the bench. They were convicted in March 1997 and their appeals were unsuccessful.

Law – Article 9: The applicants had been convicted under legislation prohibiting the wearing of certain clothing in public areas that were open to everyone, and the time and place of the offences were not limited to the incidents during the hearing in the National Security Court, but mainly corresponded to an earlier period between October 1996 and January 1997. The Court thus found it established that the applicants had not received criminal convictions for indiscipline or lack of respect before the National Security Court, but rather for their manner of dressing in public areas that were open to everyone (such as the public highway). As members of a religious group, the applicants believed that their religion required them to dress in that manner. Their conviction for having worn the clothing in question fell within the ambit of Article 9. Accordingly, the Turkish courts' decisions had amounted to interference with the applicants' freedom of conscience and religion, the legal basis for which was not contested (the law on the wearing of headgear and regulations on the wearing of certain clothing in public). In so far as the interference was meant to ensure respect for secular and democratic principles, it pursued a number of legitimate aims: the protection of public safety, the prevention of disorder and the protection of the rights and freedoms of others. However, the applicants were ordinary citizens. Not being representatives of the State engaged in public service, they could not be bound, on account of any official status, by a duty of discretion in the public expression of their religious beliefs. Moreover, the applicants had been punished for wearing particular clothing in public areas that were open to all, such as the public highway. Regulations on the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion, did not therefore apply. In addition, there was nothing in the case file to suggest that the manner in which the applicants had manifested their beliefs by their specific attire represented or might have represented a threat for public order or a form of pressure on others. Nor had it been shown that they had sought to exert inappropriate pressure on passers-by on the public highway in order to promote their religious beliefs. In the opinion of the Religious Affairs Directorate,

their movement was limited in size and was merely a curiosity, and the clothing worn by them did not represent any religious power or authority that was recognised by the State. Accordingly, the necessity for the disputed restriction had not been convincingly established. The interference with the applicants' freedom to manifest their beliefs had not been based on sufficient reasons for the purposes of Article 9.

Conclusion: violation (six votes to one).

Article 41: EUR 10 to each of the applicants in respect of pecuniary damage; finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage.

ARTICLE 10

Freedom of expression

Seizure of translation of erotic literary work and conviction of publisher: *violation*

Akdaş v. Turkey - 41056/04
Judgment 16.2.2010 [Section II]

Facts – In June 1999 the applicant, a publisher, published the Turkish translation of the erotic novel *Les Onze Mille Verges* ("The Eleven Thousand Rods") by the French writer Guillaume Apollinaire. The novel contains graphic descriptions of scenes of sexual intercourse, with various practices such as sadomasochism, vampirism and paedophilia. In October 1999 the prosecuting authorities sought the applicant's conviction for publishing obscene or immoral material liable to arouse and exploit sexual desire among the population. In September 2000 the court sentenced the applicant to a heavy fine and ordered the seizure and destruction of all copies of the book. At final instance, the Court of Cassation quashed the order to destroy copies of the publication, further to a 2003 legislative amendment, and upheld the fine, which could be converted into a prison sentence in the event of non-payment. The fine was paid in full by the applicant in November 2004.

Law – Article 10: The seizure of the translation of an erotic novel by a world-famous author and the applicant's criminal conviction had constituted interference with the right to freedom of expression. The interference had been prescribed by law and had pursued the legitimate aim of protecting morals. Although the Court, taking into account the relative nature of moral conceptions in the European legal sphere, afforded States a certain margin of appreciation in such matters, in this particular case it could not underestimate the significance of the fact that more than a century had passed since the book's initial publication in France in 1907, it had been published in various languages in a large number of countries and it had gained recognition through publication in the prestigious "La Pléiade" series in 1993, some ten years before the seizure of the book in Turkey. The scope of the margin of appreciation thus afforded – in other words acknowledgment of the cultural, historical and religious particularities of the Council of Europe's member States – could not extend so far as to prevent public access in a particular language, in this instance Turkish, to a work belonging to the European literary heritage. Those factors formed a sufficient basis to conclude that the application of the legislation in force at the time of the events had not been intended to meet a pressing social need. In addition, the interference with the applicant's rights, in the form of a heavy fine and the seizure of all copies of the book, had not been proportionate to the legitimate aim pursued and had thus not been necessary in a democratic society.

Conclusion: violation (unanimously).

ARTICLE 34

Hinder the exercise of the right of petition

Destruction of tape recordings from a court hearing before the expiry of the six-month time-limit for lodging an application with the Court: *inadmissible*

Holland v. Sweden - 27700/08
Decision 9.2.2010 [Section III]

Facts – In 2005 the applicant was convicted of harassment. His conviction was upheld on appeal in February 2006. In April 2006 the Supreme Court refused the applicant leave to appeal and he lodged an application with the European Court, complaining that the criminal trial against him had been unfair. In October 2006 he requested the tape recordings from the oral hearing before the court of appeal and was informed that they had been destroyed in May 2006 in accordance with domestic law, which required them to be kept only for two months following the judgment in the case or, if the judgment was appealed against, until final judgment was rendered. In June 2007 the European Court, sitting in a Committee of three judges,

declared his application inadmissible as manifestly ill-founded. In September 2007 the applicant unsuccessfully complained to the Chancellor of Justice that the destruction of the tapes before the expiry of the six-month time-limit established by the European Convention had hindered him from effectively exercising his right of petition contrary to Article 34 of that Convention and was not in accordance with Sweden's obligations under Article 35. In May 2008 he lodged the present application with the Court raising this issue.

Law – Article 34: The tape recordings had not been destroyed until some three to six weeks after the final decision in the case had been given by the Supreme Court on 12 April 2006. The destruction had consequently been in accordance with Swedish law. Moreover, the applicant had lodged his previous application with the European Court concerning the criminal trial in April 2006, that is, when the tape recordings still existed. He could therefore have requested a copy if he considered that the content of the tapes was of importance to his application before the Court, but he had not done so. Nor had he specified what he intended to do with the tape recordings or what he wanted to prove by producing them before the Court. Furthermore, the essential parts of the statements given during the oral hearing had been recorded in the court of appeal's judgment and a copy of that judgment had been submitted to the Court and included in the case file. The Court further took into account the fact that the applicant had been informed in October 2006 of the destruction of the tapes, at which point his previous application before the Court was still pending. In the Court's view, the applicant could reasonably have been expected to have informed the Court of the destruction of the tapes and to have invoked Article 34 at the time, if they were considered essential to his application. However, he had not done this either. In fact, he had lodged the present application only in May 2008, almost one year after his original application had been declared inadmissible and more than seven months after the Chancellor of Justice had replied to his complaint. To the Court, this tended to indicate that the applicant had not considered the tape recordings to be essential to his application. In these specific circumstances, the Court found that the destruction of the tape recordings in May 2006 had not hindered the applicant from effectively exercising his right of petition.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 46

Execution of a judgment – General measures

Respondent State required to take prompt measures to close legislative gap preventing victims of Soviet political repression from effectively asserting their rights to compensation

Klaus and Iouri Kiladze v. Georgia - 7975/06
Judgment 2.2.2010 [Section II]

(See Article 1 of Protocol No. 1 below, page 19)

Respondent State required to remove details of religious affiliation from identity cards

Sinan Işık v. Turkey - 21924/05
Judgment 2.2.2010 [Section II]

(See Article 9 above, page 15)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Collective bargaining agreement modifying rights to supplementary retirement pension acquired under an earlier collective agreement: *no violation*

Aizpurua Ortiz and Others v. Spain - 42430/05
Judgment 2.2.2010 [Section III]

Facts – On taking early retirement, and under the terms of a collective agreement concluded in 1983 between the company which employed them and representatives of the workforce, the fifty-six applicants received a supplementary annual pension payable in the form of an annuity until the age of sixty-five and thereafter on a variable-rate basis. In 1994 the company stopped paying the supplementary pension. The applicants brought actions before the courts, which found in their favour. Under a new collective agreement which entered into force in 2000, the conditions governing payment of the supplementary benefits were modified to reflect the significant change in economic conditions since 1983. This agreement repealed all previous agreements granting entitle-

ment to a supplementary pension. Employees who had been in receipt of such a pension were henceforth eligible for a one-off payment only. In 2005 the Supreme Court found that the company had been entitled to stop paying the pensions in question and dismissed the applicants' claims.

Law – Article 1 of Protocol No. 1: Given that the applicants had had at least a legitimate expectation of continuing to receive the supplementary pension provided for by the 1983 collective agreement, this pension entitlement constituted an asset falling within the scope of Article 1 of Protocol No. 1.

The modification or abolition of the right to a supplementary retirement pension based on the collective agreement concluded in 2000 and validated by a final ruling of the Supreme Court in 2005 had amounted to interference with the applicants' property rights. The issue at stake concerned a collective agreement concluded between private individuals, which had been incorporated in subsequent collective bargaining agreements. The latter had binding effect within the Spanish legal system. The Supreme Court had found that, unless otherwise provided, the rights conferred by an earlier collective agreement could cease to be effective if they were revised by a later collective agreement. It had given its ruling after hearing evidence from the interested parties, on the basis of its case-law established in a judgment of 16 July 2003. Furthermore, as it had observed in its 2005 ruling, the impugned clause of the collective agreement had not done away with the applicants' entitlements, but had replaced them with payment of a lump sum. The Supreme Court had also found that the change in the applicants' entitlements had resulted from the company's financial difficulties. Accordingly, the interference complained of had pursued an aim in the general interest, namely to secure the finances of companies and their creditors, to protect employment and to ensure respect for the right to collective bargaining. Lastly, as the Supreme Court had also noted, the change to the applicants' entitlements had not been discriminatory, given that the company's active workforce had waived their entitlement to a supplementary pension under the terms of a 1995 collective agreement. Those reasons could not be said to be unreasonable or disproportionate. There was no evidence to suggest that the Supreme Court ruling had been arbitrary or had imposed a disproportionate burden on the applicants on account of the change to their supplementary pension rights.

Conclusion: no violation (six votes to one).

Legislative gap preventing victims of Soviet political repression from effectively asserting their rights to compensation: *violation*

Klaus and Iouri Kiladze v. Georgia - 7975/06
Judgment 2.2.2010 [Section II]

Facts – The applicants, who had been recognised as victims of Soviet political repression, brought an action seeking compensation for pecuniary and non-pecuniary damage on the basis of the Law of 11 December 1997 ("the 1997 Law") on recognition of victim status and social welfare arrangements for persons subjected to political repression. A regional court held, *inter alia*, that the applicants' claims could not be allowed because the laws to which the relevant sections of the 1997 Law referred had not yet been enacted. In 2005 the Supreme Court dismissed an appeal on points of law by the applicants.

Law – Article 1 of Protocol No. 1

(a) *Admissibility* – The Government raised two preliminary objections: one concerning the compatibility *ratione temporis* of the applicants' complaint and the other, divided into two parts, concerning its compatibility *ratione materiae*.

(i) *Compatibility* ratione temporis: the 1997 Law had entered into force on 1 January 1998 and no legislation had been enacted since then in relation to the sections of relevance in the instant case. The absence of legislative measures after 7 June 2002, the date of entry into force of Protocol No. 1 in respect of Georgia, did not lend the 1997 Law the character of an instantaneous act for the purposes of Article 1 of Protocol No. 1. The applicants' entitlement under the 1997 Law had subsisted at the time Protocol No. 1 was ratified and on 22 February 2006, the date on which they had lodged their application with the Court. Accordingly, the Court could assess from the standpoint of Article 1 of Protocol No. 1 the ongoing failure to legislate, which had persisted well beyond 7 June 2002 and which continued to affect the applicants. While it was true that it did not have jurisdiction *ratione temporis* to examine the situation prior to 7 June 2002, the Court nevertheless had to take that period into account in examining the complaints before it.

Conclusion: preliminary objection dismissed (six votes to one).

(ii) *Compatibility* ratione materiae

(α) *Right to restoration of property rights (section 8(3) of the 1997 Law)* – Only with the enactment of a

subsequent law would the applicants be able to assess whether and to what extent they were eligible for restoration of the rights referred to in the relevant section of the 1997 Law. There were therefore no grounds to conclude that, at the time they applied to the domestic courts in 2005 under the section concerned, there had existed a proprietary interest in their favour which was sufficiently established to be enforceable. The section in question did not by itself give rise to a real and enforceable claim to which a legitimate expectation could be attached.

Conclusion: preliminary objection allowed (six votes to one).

(β) *Right to compensation for non-pecuniary damage resulting from detention and exile (section 9 of the 1997 Law)* – The right to compensation for non-pecuniary damage asserted by the applicants had a legal basis in domestic law (any Georgian citizen found to have been a victim of political repression occurring on the territory of the former Soviet Union between February 1921 and October 1990 was entitled to monetary compensation) and the applicants satisfied the necessary conditions. Furthermore, the Supreme Court had upheld the applicants' entitlement. At the time they applied to the domestic courts the applicants had had, by virtue of the section referred to above, a debt in their favour which was sufficiently established to be enforceable and which they could validly seek to recover from the State. Article 1 of Protocol No. 1 was therefore applicable to this part of their action.

Conclusion: preliminary objection dismissed (six votes to one).

(b) *Merits* – In so far as the omission by the State was based on the 1997 Law, which deferred enactment of the law referred to in section 9 *in fine* until a later stage, the infringement or restriction of the applicants' right to peaceful enjoyment of their possessions could be said to have been provided for by law. In the absence of observations from the parties, the Court could only assume that in the instant case, as far as the authorities were concerned, the general interest consisted in the significant political and financial implications which determination of the amount of compensation due to the applicants for non-pecuniary damage was likely to have. In any event, even assuming that the State's inaction – whether it was to be characterised as interference or as a failure to act – had pursued a legitimate aim, there were no grounds for finding that a fair balance had been struck between the competing interests of the individual and of society as a whole. There was no reason why the State, which had had over eleven years in which to act, should have completely omitted to take any steps towards passing the legislation referred to in section 9 of the 1997 Law, for instance by establishing the exact number of victims, commissioning an economic, financial and social cost-benefit analysis concerning the different sections of society affected by the process and assessing the losses sustained by each category of victims. The Government had not put forward any convincing and reasoned argument to explain their complete failure to act. Having made a moral and financial decision in favour of Georgian citizens persecuted by the Soviet regime, the State had a duty, at least once Protocol No. 1 had come into force in respect of Georgia, to consider the issue and take action so that the applicants were not left in a state of uncertainty for an indefinite period, a situation in respect of which, moreover, they had no effective domestic remedy. Added to this was the fact that the State was apparently still unwilling to embark upon this process, thus depriving the elderly applicants of any prospect of benefiting in their lifetime from the rights vested in them under section 9 of the 1997 Law. In the circumstances the complete lack of action over a period of several years, which was attributable to the State and deprived the applicants of effective enjoyment of their right to payment of compensation for non-pecuniary damage within a reasonable time, had imposed a disproportionate and excessive burden on them which could not be justified by the authorities' supposed pursuit of a legitimate general interest in the instant case.

Conclusion: violation (six votes to one).

Article 46 of the Convention: the issue of a gap in the legislation raised by this application did not just affect the applicants. The number of persons affected could be anywhere between 600 and 16,000, and the situation was likely to give rise to numerous applications to the Court. General measures needed to be taken at national level in order to execute the judgment. The authorities therefore needed to act swiftly to adopt legislative, administrative and budgetary measures so that the persons concerned by section 9 of the Law of 11 December 1997 could effectively avail themselves of the rights guaranteed by that provision.

Article 41: EUR 4,000 in respect of non-pecuniary damage unless general measures were taken within six months.

Deprivation of property

Legislative amendment with retrospective effect to rate of default interest applicable to public-procurement contracts: *no violation*

Sud Parisienne de Construction v. France - 33704/04
Judgment 11.2.2010 [Section V]

Facts – In 1986 Assistance publique-Hôpitaux de Paris (AP-HP) approved the applicant company as a subcontractor in construction work on a hospital. An agreement provided, among other things, that, if the administrative authorities delayed payment for the work performed, default interest would be payable at a rate of 17%. In 1987 the subcontract was terminated. On 3 June 1997 AP-HP was ordered to pay the applicant company directly the principal sums due and the contractual default interest for the work performed before the subcontract was terminated. In the course of the proceedings in the administrative courts concerning the dispute between the applicant company and AP-HP over the execution of the payment order, a Budget Amendment Act was passed and the statutory rate of default interest was reduced and standardised for all public-procurement contracts, not only for future contracts but also for those concluded before 1993. In 1998 the applicant company applied to the Administrative Court of Appeal, seeking the execution of the judgment of 3 June 1997. The court reduced the interest payable to the applicant company to the new statutory level of 11.5% and the *Conseil d'Etat* upheld that position.

Law – Article 1 of Protocol No. 1: The applicant company had had a pecuniary interest in the form of the principal debt and the contractual default interest payable on it. The method for calculating interest for late payment had been amended shortly before the judgment of 3 June 1997 had been delivered. Accordingly, the applicant company had a possession within the meaning of the first sentence of Article 1 of Protocol No. 1, which was thus applicable in the present case. The principal debt, which had been paid, had not been affected in any way by the Act in question. With regard to the default interest, however, the Act had resulted in interference by the State on account of its retrospective effect. The reasons given by the Government to justify the legislative amendment appeared relevant, sufficient and convincing; the main purpose of the Act in question had been to rectify an anomaly caused by external economic circumstances, and to standardise, by means of a uniform interest rate, the method for calculating outstanding interest, irrespective of the date on which the public-procurement contract had been signed. The Act in question had therefore been justified on compelling grounds in the general interest. The interference had been in the public interest. However, the rate of default interest had been set with retrospective effect. The Court had previously held that the passing of legislation with retrospective effect was disproportionate where it had the consequence of destroying the substance of the case and thus settling the issue in dispute before the courts. It considered, however, that the present case concerned a different situation. The interference had concerned only part of the interest payable to the applicant company for delayed payment, since it had related solely to the setting of the interest rate. The legislative provision in question had not impeded the execution of the judgment of 3 June 1997, in so far as the national courts dealing with the case had found in the applicant company's favour as regards the principal sum. As to the default interest payable, the Act had not undermined the applicant company's right to compensation for the loss sustained as a result of the delayed payment but had rectified, at a rate reasonably linked to inflation, a deviation resulting from the intervening change in monetary conditions. The measure in issue had therefore not impaired the very essence of the applicant company's right of property. The interference with its possessions had been proportionate and had not upset the fair balance between the demands of the general interest and the requirements of the protection of the individual's fundamental rights.

Conclusion: no violation (unanimously).