CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 2
on the case-law of the Court
January 1999

STATISTICAL INFORMATION

I.	Judgments delivered			5
II.	Applications declared admissible:			
	Section I		1	
	Section II		8	
	Section III		3	
	Section IV		9	
	Total			21
III.	Applications declared inadmissible:			
	Section I	- Chamber	5	
		- Committee	20	
	Section II	- Chamber	4	
		- Committee	7	
	Section III	- Chamber	7	
		- Committee	38	
	Section IV	- Chamber	13	
		- Committee	59	
	Total			153
IV.	Applications struck off the list:			
	Section I	- Chamber	0	
		- Committee	1	
	Section II	- Chamber	1	
		- Committee	0	
	Section III	- Chamber	2	
		- Committee	0	
	Section IV	- Chamber	0	
		- Committee	0	
	Total			4

Total number of decisions (not including partial decisions): 178

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

Section I	38
Section II	13
Section III	11
Section IV	30
Total number of applications communicated:	92

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

INHUMAN TREATMENT
Ill-treatment of a foreign national in police custody: *hearing*.

DENMARK - TURKEY (Nº 34382/97)
[Section I]

This application concerns the alleged ill-treatment of a Danish citizen of Kurdish origin, who was detained in Turkey from 8 July to 16 August 1996. The Section decided to hold a hearing at the end of April.

INHUMAN TREATMENT
Deportation to a country where the applicant claims to be a slave: *inadmissible*

OULD BARAR - Sweden (Nº 42367/98)
Decision 16.1.99 [Section I]

The applicant, a citizen of Mauritania, arrived in Sweden in 1997 and applied for asylum, claiming he had left his country to escape slavery. In the course of a hearing held by the authorities, he asserted, *inter alia*, that his father was a slave, but that he had grown up with his mother in the capital where he had later set up a business. Nonetheless, his father's master owned him too, which implied that he report to him every year and perform various minor tasks on that occasion. He had obtained a visa for Sweden through his uncle, who held a high post within the Olympic movement. He further claimed that if expelled to Mauritania he might be severely punished by his master, to whom he had failed to report; he could expect no protection from the authorities, which, he said, supported the system of slavery. His application was rejected and his expulsion ordered. His appeal was to no avail but the enforcement of the expulsion order was stayed until examination of the case by the Court.
Inadmissible under Article 3: Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, an expulsion order may give rise to an issue under the present provision and hence engage the responsibility of the State where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled. A mere possibility of ill-treatment is not sufficient. Furthermore, the expulsion of a person to a country where there is an officially recognised regime of slavery might, in certain circumstances, raise an issue under this provision. Although slavery is officially prohibited by law in Mauritania, it has been reported by various international organisations that this practice still exists and that the Government has not taken the necessary steps against it. In the circumstances of this case, the applicant has apparently lived an independent life in the capital and has not had to perform slave labour; he has not taken part in political activities or received any threats from the authorities, his clan or his father's master. Overall, there are no substantial grounds for believing that the applicant faces a real risk of being subjected

to treatment contrary to this provision upon his return to Mauritania: manifestly ill-founded.

INHUMAN TREATMENT
Conditions of detention of a Thalidomide victim: *information requested*.

PRICE - United Kingdom (Nº 33394/96)
[Section III]

The applicant, a four-limb deficient Thalidomide victim who also has kidney problems, complains that insufficient arrangements were made for her disability during her detention for several days in 1995, in particular with regard to food, liquids and hygiene. The Government claim that the applicant was kept in a cell specially adapted for disabled prisoners and that a nurse was employed for the final night to take care of the applicant.
The Section decided to request the Government to submit all relevant documents in their possession, including custody and medical records, as well as evidence that a nurse was employed and evidence as to the action taken by the nurse to care for the applicant.

ARTICLE 5

Article 5(1)(c)

LAWFUL ARREST OR DETENTION
Detention of applicant after expiry of an order prolonging his detention on remand: *communicated*.

LAUMONT - France (Nº 43626/98)
[Section II]

Following an armed robbery on the premises of a company, an employee, who was questioned on the matter, admitted that the applicant had paid him for supplying information and that he had recognised him at the time of the robbery. On 19.1.95 the applicant was remanded in custody for one year. His custody was then prolonged three times, each time for a period of 4 months. Before the final order prolonging his detention on remand expired, the investigating judge took the necessary steps so that the applicant could be sent for trial before the Assize Court. A supplementary investigation was, however, requested. As the final order prolonging his detention expired on 19.1.97, and as no further order was issued, on 20.1.97 the applicant asked to be immediately released, claiming that he was being arbitrarily detained since the initial detention order was no longer valid. The Indictments Division refused his request on the grounds that the decision to order a supplementary investigation had been issued in due time and that, as the Division had not yet ruled on the facts of the case, the detention order continued to be valid. The applicant then lodged an appeal with the Court of Cassation, which upheld the decision on the grounds that the initial

detention order of 19.1.95 was lawful and remained valid until the Indictments Division referred the case to the Assize Court. The applicant alleges that he has been remanded in custody without a valid detention order since 20.1.97. Although the applicant used the words "detention order" before the domestic courts, he actually meant "the order prolonging his detention".
Communicated under Article 5(1)(c) and (4).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE
First appearance before a judge 16 days after initial detention following an inspection of a vessel on the high seas: *inadmissible*.

RIGOPOULOS - Spain (Nº 37388/97)
Decision 12.1.99 [Section IV]

Acting on the orders of the Spanish courts, Spanish customs officers inspected, on the open Atlantic, a ship sailing under the Panamanian flag, as part of an investigation into international drug trafficking. While searching the ship, the customs officers discovered a large quantity of cocaine on board. Several crew members put up a certain amount of resistance to the Spanish authorities, thus delaying the ship's escort to the nearest Spanish port in the Canary Islands. The applicant, the ship's captain, was first placed under police supervision. His detention on remand was ordered by the investigating judge 3 days later. The time-limit under Spanish law for holding a person in police custody was thus complied with. The decision ordering his detention on remand was served on him on his arrival in port, 16 days after the inspection of the ship. The same day he was transferred to Madrid and brought before the judicial authorities. He lodged several unsuccessful appeals asking for annulment of the proceedings and his release, on the grounds that an excessive amount of time had elapsed before he was brought before the Spanish courts.
Inadmissible under Article 5(3): The question of whether the requirement of being "promptly" brought before a judge, set forth in this article, has been met must first be considered in the light of the relevant domestic provisions. The *Audiencia Nacional* and the Spanish Constitutional Court held that the applicant had been lawfully remanded in custody, in compliance with the relevant legislation. A period of 16 days cannot, however, be considered to be compatible with the requirement of promptness; only exceptional circumstances could justify such a long period of time. In the instant case, the inspection was carried out on the high seas, more than 5,500 km from the Spanish coast, and it took 16 days to reach the nearest Spanish port. The applicant admits that the crew's resistance made it impossible to set course for the port until 43 hours later. It was therefore technically impossible for the Spanish authorities to bring the applicant before the investigating judge within a shorter period of time: manifestly ill-founded.

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Administrative proceedings brought by a worker employed by the State, pending before the *Conseil d'Etat*: *communicated*.

GRASS - France (N° 44066/98)
[Section II]

In 1992, the Prefect regraded the applicant, who had been employed as a maintenance worker for a public industrial and commercial undertaking since 1974, as a grade B foreman. The applicant applied to the administrative authorities to reconsider this decision, alleging that it effectively meant that he had been demoted since he was entitled to be a grade A foreman. The authorities informed him that his request could not be allowed. The applicant made a further application to the administrative authorities but received no reply. These applications having been unsuccessful, he lodged an appeal with the Administrative Court asking it to set aside the implicit decision rejecting his application. The Court dismissed his appeal on the grounds that it was out of time, as he should have appealed against the explicit decision rejecting his application; the second application did not extend the time-limit for bringing proceedings. He therefore lodged an appeal with the *Conseil d'Etat* in March 1993 and the case is still pending before this court. His complaint concerns the length of the proceedings.
Communicated under Article 6(1) (applicability and reasonable time).

FAIR HEARING
Failure of appeal court to reply to arguments: *no violation*.

GARCIA RUIZ - Spain (Nº 30544/96)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix I).

REASONABLE TIME
Length and fairness of civil proceedings: *communicated*.

DINDAROGLU and others - Turkey (N° 26519/95)
[Section I]

In December 1988 the applicants brought an action before the courts in which they sought compensation for the death of one of their next of kin, which they claimed had occurred because the Turkish electricity board (TEK) had failed to take appropriate measures to prevent such accidents. In 1994 the court ordered TEK to pay the applicants a sum of money to cover the pecuniary and non-pecuniary damage suffered and to pay the legal costs and court fees. The applicants complain about the length of

the proceedings and contend that the 1994 judgment was not served and enforced until November 1998 when they themselves paid the fees which had still not been paid by the other party.
Communicated under Article 6(1) (length and fairness).

CIVIL RIGHTS AND OBLIGATIONS
Proceedings relating to regularisation of the position of a foreigner: *partly communicated and partly inadmissible*.

MAAOUIA - France (N° 39652/98)
Decision 12.1.99 [Section III]

The applicant, a Tunisian national, arrived in France in 1980 at the age of 22. Since 1983 he has been living with a French citizen whom he married in 1992. In 1998 he was sentenced to 6 years' imprisonment for assault. In 1991 a deportation order was issued against him. This order was later annulled. As he refused to leave the country, he was sentenced to 1 year's imprisonment and forbidden to reside on French territory for 10 years. The applicant secured the lifting of this measure. He then requested the regularisation of his position and a residence permit. His request was turned down and the case is still pending before the appeal court. In July 1998 the applicant was given a one-year residence permit. He complains of the length of the proceedings and of an infringement of his right to respect for his private and family life.
Inadmissible under Article 8: As the applicant holds a temporary residence permit, he can no longer claim to be a victim: manifestly ill-founded.
Communicated under Article 6(1).

Article 6(1) [criminal]

FAIR HEARING
Effect of transmission of a television programme and publication of a book on the fairness of criminal proceedings: *communicated*.

DEL GIUDICE - Italy (N° 42351/98)
[Section II]

In June 1991 the body of a young man, F., was discovered and the same day the applicant was questioned without the assistance of a lawyer. He allegedly confessed to having murdered F. The applicant claims that he was forced to sign the statement following threats by the police officers. When later questioned by the judge with a lawyer present, he admitted that he had killed F. following a violent fight and in self-defence. A national television channel broadcast a programme describing the circumstances of F.'s death, including interviews with numerous persons and a re-enactment of the murder during which the actor portraying the applicant approached the victim in a threatening manner and killed him. The applicant was sentenced to 22 years' imprisonment. In the appeal proceedings, the case was transferred from one division of the Assize Court to another. In a judgment dated February 1997, this

division reduced the applicant's sentence to 17 years, 9 months and 15 days. Meanwhile, in 1994, the same national television channel had published a book containing details of the applicant's case. The applicant lodged an appeal with the Court of Cassation which, in June 1997, reduced his sentence to 17 years and 9 months but dismissed the remainder of his appeal. The applicant specifically complains of the contents of the television programme and the allegations published by the national channel which, in his opinion, led to his conviction and violated the principle of the presumption of innocence. He alleges that these circumstances, and the fact that his case was transferred from one division to another, prove that the proceedings were not fair and that the court was not impartial. He also complains of the length of the proceedings.
Communicated under Article 6(1) (fair trial, impartial tribunal and length of proceedings) and (2).
The Government have also been asked to supply a copy of the television programme concerning the applicant's case.

IMPARTIAL TRIBUNAL
Judge formerly an active member of the communist party: *communicated*.

LEŠNÍK - Slovakia (Nº 35640/97)
[Section II]

The applicant requested that criminal proceedings be brought against H.. He informed the police that he had received a letter of threat and that a window of his flat had been smashed. He related these acts to articles he had written on former members of the communist party. The request was rejected. Criminal proceedings were later brought against him for having stolen goods from H. He objected, claiming that some information had been obtained through unlawful telephone tapping. In a letter sent to the public prosecutor, he compared the prosecutor's working methods to those of the former State Security and considered him responsible for the refusal to institute proceedings against H., the introduction of criminal proceedings against the applicant and the unlawful telephone tapping. The applicant also wrote to the General Prosecutor, accusing the public prosecutor of having exceeded his powers. A penal order was issued on the ground of offence to a public official. It was established before the hearing that the judge in charge of the case had once been an active member of the communist party. However, he was not removed and the court imposed a suspended four months' prison sentence on the applicant, whose appeals were unsuccessful.
Communicated under Articles 6(1) (independent and impartial tribunal) and 10.

Article 6(2)

PRESUMPTION OF INNOCENCE
Confiscation order based on presumed proceeds of drug trafficking*: communicated.*

PHILLIPS - United Kingdom (Nº 41087/98)
[Section IV]

In 1996, the applicant was sentenced to nine years' imprisonment for being involved in the importation of drugs. An inquiry was carried out into his means pursuant to the Drug Trafficking Act 1994. In determining what the applicant had received by way of the proceeds of "drug trafficking" over the preceding six years, the judge applied a statutory presumption that assets were realised with the proceeds of "drug trafficking" unless the defendant could prove the contrary. A confiscation order was subsequently imposed. The applicant was refused leave to appeal against conviction and sentence, including the imposition of the confiscation order.
Communicated under Article 6(2) in respect of the statutory presumption.

Article 6(3)(c)

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

VAN GEYSEGHEM - Belgium (Nº 26103/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix II).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity in criminal proceedings to examine the victim: *inadmissible*.

S.E. - Italy (N° 36686/97)
Decision 12.1.99 [Section I]

In the context of criminal proceedings brought against the applicant and two other persons on charges of rape, the victim, M., and four police officers who had taken statements from M., were summoned to appear for questioning. The victim and one of the police officers did not appear at the hearing. The court ordered that M.'s statements and those made by the defendants be read out in court. At the end of the trial, the court sentenced the applicant and his co-defendants to 4 years' imprisonment. Its decision was based on a range of evidence, in particular the police officers' reports and the substantial degree of correspondence between the victim's

statements and the confession made by one of the applicant's co-defendants, C. The appeal court upheld the judgment, save in the case of C. The applicant and the other co-defendant lodged an appeal with the Court of Cassation. As not all the procedural safeguards had been respected, the Court of Cassation held that the statements made by the victim and C. could not be used. Nevertheless, the Court upheld the judgment against the applicant and the other co-defendant, on the grounds that it was justified by other evidence and consequently dismissed the defendants' appeals.
Inadmissible under Article 6 paras. 1 and 3(d): The applicant had the opportunity to question three of the police officers who had taken the victim's statements and investigated the case. It would have been preferable to hear the victim, but her absence at the trial did not bring the proceedings to a standstill. In any event, M.'s statements were held to be «unusable» and were not taken into account in the final judgment against the applicant, which was, on the contrary, based on other evidence: manifestly ill-founded.

ARTICLE 7

CRIMINAL OFFENCE
Compulsory registration for an indeterminate period of sexual offenders after their release: *inadmissible*.

ADAMSON - United Kingdom (Nº 42293/98)
Decision 26.1.99 [Section III]

In July 1995, the applicant was convicted of indecent assault and sentenced to five years' imprisonment, his release being scheduled for October 1998. In September 1997, the Sex Offenders Act 1997 entered into force. Pursuant to this Act, the applicant would be required to register with the police for an indefinite period following his release from prison. The applicant expressed his fear that such a registration might put him and his family at risk.
Inadmissible under Article 7: The concept of "penalty" in this provision is an autonomous one. The issue was whether the passing of the Act and its impact on the applicant could be considered as a "penalty". The starting point of the determination of a "penalty" is whether it was imposed following conviction for a "criminal offence". The other criteria are the characterisation under domestic law, its nature and purpose, the procedure involved in its making and implementation and its severity. In the present case, there was a link between the conviction and the impugned Act, given that at the time of its entry into force the applicant was serving a prison sentence for a sexual offence. As to the domestic characterisation, the Act specifies that the requirements do not go beyond the mere obligation to give the authorities information. The purpose of these measures is to lower the rate of reoffending, since a person's knowledge that he is registered may dissuade him from committing further offences knowing that with this register the police may easily trace suspected reoffenders. The measures at stake are imposed as a matter of law, with no additional procedure, following conviction of a sexual offence. The obligation to notify the police of the information required by the Act cannot be regarded in itself as being severe, and the applicant has not provided any evidence to suggest that he would be put at risk that way. Overall, it cannot be said that the measures imposed

amounted to a "penalty", given that these measures operate completely separately from the ordinary sentencing procedures, and the fact that they do not require more than mere registration: incompatible *ratione materiae*.
Inadmissible under Article 8: The requirement on the applicant to provide information to the police amounts to an interference with his private life. These measures pursue legitimate aims, namely the prevention of crime and the protection of the rights and freedoms of others. The Act requires the applicant to inform the police upon release from prison of *inter alia* his names, the other names he may use, his date of birth and his home address, and during an indefinite period, to notify them of any subsequent changes of name or home address within 14 days. Taking into consideration the gravity of the harm that might be caused to victims of sexual offences and the fact that States have a duty to take the necessary measures to protect individuals from such grave forms of violence, the requirement to provide information cannot be deemed disproportionate to the aims pursued: manifestly ill-founded.

ARTICLE 8

PRIVATE LIFE
Alleged secret surveillance: *struck off (friendly settlement)*.

TSAVACHIDIS - Greece (Nº 28802/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix III).

PRIVATE LIFE
Denial of citizenship to a person born of foreign parents of uncertain citizenship: *inadmissible.*

KARASSEV - Finland (Nº 31414/96)
Decision 12.1.99 [Section IV]

The applicant's parents and brother, who were citizens of the former Soviet Union, went to Finland in August 1991 and applied for asylum following the attempted *coup d'état* in the Soviet Union. The authorities rejected their application, refused to grant them residence permits and later ordered their expulsion. The applicant was born in December 1992. The various attempts of the applicant's family to have him recognised as a Finnish citizen or obtain residence permits were unsuccessful. The competent authorities asserted that the applicant's parents had automatically acquired citizenship of the Russian Federation in February 1992, time of the entry into force of the Russian Citizenship Act. The applicant himself had thus obtained Russian citizenship by birth. The Russian Embassy certified on several occasions in 1996 and 1997 that pursuant to the same relevant Act none of the members of the applicant's family had Russian citizenship. The Russian authorities declared in 1996 that they would not accept them back on their territory, their passports not being valid any more. The Citizenship Commission of the President of the Russian Federation, whose opinion was sought by the Finnish authorities through diplomatic channels, stated in 1997 that the family no longer had Russian citizenship as their ties with the Russian

Federation had become looser after 5 years in Finland and they had not expressed the wish to restore them. The applicant was eventually registered by the authorities as resident in Finland but stateless, and his parents and brother were granted alien passports and temporary residence permits. The applicant did not ask for these documents as he was still claiming Finnish citizenship. The Supreme Administrative Court ruled that he had not obtained Finnish citizenship since his parents had not lost citizenship of the Russian Federation at the time he was born. As far as social benefits are concerned, he was not registered at birth as being entitled to Finnish social security benefits, but was granted municipal day care from June 1996 and was entitled to a child allowance from May 1997.

Inadmissible under Article 8: Even though the Convention and its Protocols do not guarantee any right to citizenship, it is not excluded that an arbitrary denial of citizenship may in certain circumstances raise issues under this provision given the impact such a denial may have on an individual's private life. According to the Finnish Citizenship Act, a child born in Finland will receive Finnish citizenship if it does not receive by birth the citizenship of another country. The authorities found that the applicant had not received Finnish citizenship by birth since he had received Russian citizenship at birth through his parents. The Court concluded that this interpretation was not in contradiction with the opinion of the Citizenship Commission of the President of the Russian Federation and thus not arbitrary. As regards the threats that could have arisen from this denial, the applicant and his family are no longer threatened with expulsion; his parents and brother have residence permits and alien passports, and similar documents could be obtained for him. Moreover, his mother now receives allowances, the applicant having been finally included in their assessment. Even taking into account the fact that he did not enjoy benefits from the outset, it cannot be found that the consequences of the refusal to recognise him as a Finnish citizen could be considered as sufficiently serious to raise an issue under this provision: manifestly ill-founded.

PRIVATE LIFE

Registration of sex offenders: *inadmissible*.

ADAMSON - United Kingdom (Nº 42293/98)
Decision 26.1.99 [Section III]
(See Article 7, above).

PRIVATE LIFE
Use of maiden name on its own as legal family name: *communicated*.

TEKELİ - Turkey (Nº 29865/96)
[Section I]

The applicant, who was a trainee lawyer when she married in 1990, took her husband's surname in compliance with the Civil Code. She continued using her maiden name in front of her husband's surname since she was known to the public by her maiden name. The legal proceedings she instituted in February 1995 to be allowed to bear her maiden name were unsuccessful. In May 1997, the relevant provision of the Civil Code was amended, and accordingly married women were granted the right to have their maiden name mentioned before their family name. However, the applicant now wishes to bear only her maiden name as legal family name.
Communicated under Article 8 and 14.

FAMILY LIFE
Lengthy cohabitation constituting family life within the meaning of Article 8.

SAUCEDO GOMEZ - Spain (N° 37784/97)
Decision 19.1.98 [Section IV]
(See Article 14, below).

FAMILY LIFE
Refusal of residence permits for applicants' children: *communicated*.

KWAKYE-NTI and DUFIE - Netherlands (N° 31519/96)
[Section I]

The applicants, nationals of Ghanaian origin, arrived in the Netherlands in 1987. They asked to be granted refugee status or a residence permit on humanitarian grounds. In 1992 they obtained a residence permit and accordingly asked for a residence permit for their three sons. In 1993 they obtained Dutch nationality. Their applications for residence permits for their sons were refused, on the specific grounds that the children were living with their aunt and therefore no longer formed part of their parents' family unit. The applicants contend that they have maintained very close links with their children by regularly sending money, writing and phoning to them. They complain that there has been a violation of their right to respect for their family life.
Communicated under Article 8.

FAMILY LIFE
Refusal of residence permit for applicants' child: *communicated*.

SEN - Netherlands (N° 31465/96)
[Section I]

The first applicant, a Turkish national, settled in the Netherlands in 1977 and has a residence permit. In 1982 he married the second applicant in Turkey. In 1983 the third applicant, their daughter, was born in Turkey. In 1986 the first applicant's wife joined him in the Netherlands, after having entrusted her sister with the care of their daughter. She obtained a residence permit and a second child was born in 1990. In 1992 the first applicant asked for a temporary residence permit for his daughter, but this was refused. The applications for a residence permit were refused on the grounds that she was living with the second applicant's sister and therefore no longer formed part of her parents' family unit. The parents complain that there has been a violation of their right to respect for their family life.
Communicated under Article 8.

FAMILY LIFE
Temporary residence prohibition - separation of family members: *communicated*.

JANKOV - Germany (N° 35112/97)
[Section IV]

The first applicant, a Croatian national, was born and raised in Germany. He married a German citizen, by whom he had a child, also of German nationality. He has been sentenced, for drug trafficking, to 3 year's imprisonment, one year of which is a suspended sentence, and forbidden to reside on German territory for 10 years. The applicants complain that there has been a violation of their right to respect for their private and family life.
Communicated under Article 8.

FAMILY LIFE
Request by father for access to children abroad during school holidays: *inadmissible*.

HOLDRY - Germany (Nº 29565/95)
Decision 12.1.99 [Section IV]

The applicant, a French national, married a German national in France. Two children were born of the marriage. A few years later, the couple separated and divorce proceedings were instituted before both German and French courts. While the German court granted the mother custody of the children, the French court granted the applicant custody. The latter applied to the competent German court for a right of access to his children in France during school holidays and for an interim injunction. The court rejected his claims on the ground that there was a risk that he would not return the children at the end of the holiday given, *inter alia*, the legal situation in France. The Court of Appeal dismissed his appeal without examining the possibility

of the applicant having access to his children in Germany, since he had expressly rejected this idea. The Federal Constitutional Court refused to admit his constitutional complaint, noting that the possibility of visiting the children in Germany had not been excluded.
Inadmissible under Article 8: The German courts aimed at preserving the children's well-being and for this purpose took into account their personal situation and the parents' conduct in the course of the divorce proceedings. They carefully balanced the conflicting interests and the reasons they gave were relevant and sufficient; moreover, there is no indication of a lack of proportionality. The applicant was involved in the decision-making to a degree sufficient to provide him with the requisite protection of his rights; in particular, the children were heard by the court and expert psychological opinions were taken into consideration. Thus, the German courts did not exceed their margin of appreciation in dismissing the applicant's request for access: manifestly ill-founded.

ARTICLE 9

FREEDOM OF RELIGION
Alleged secret surveillance of Jehovah's Witnesses: *struck off (friendly settlement)*.

TSAVACHIDIS - Greece (N° 28802/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix III).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for handling unlawfully obtained photocopies: *violation*.

FRESSOZ and ROIRE - France (N° 29183/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix IV).

FREEDOM OF EXPRESSION
Conviction for insulting municipal guards: *no violation*.

JANOWSKI - Poland (Nº 25716/94)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix V).

ARTICLE 13

EFFECTIVE REMEDY
Lack of effective remedy to challenge the content of a collective agreement: *communicated*.

SCHETTINI and others - Italy (Nº 29529/95)
[Section II]

The applicants, all of them teachers, belong to an independent trade union open to public school employees. The three most representative trade unions and the competent authorities entered into negotiations to reach a collective agreement concerning employment and work conditions in public schools. Other trade unions, including the one to which the applicants belong, were excluded from discussions. A referendum was organised at the initiative of some dissenting trade unions. The majority expressed its opposition to the agreement adopted. A new agreement was found which included a number of amendments proposed by the dissenting trade unions. The amended collective agreement was finally endorsed, and acquired legal force *erga omnes*.
Communicated under Article 13 in conjunction with Articles 1 of Protocol Nº 1, 14 and 11.

ARTICLE 14

DISCRIMINATION (Article 8)
Refusal to grant the family home to the applicant on her separation from her partner, on the ground that the right she claimed could only arise where the couple were married: *inadmissible*.

SAUCEDO GOMEZ - Spain (N° 37784/97)
Decision 19.1.98 [Section IV]

The applicant, who was already married, and A.R. cohabited from 1974 to 1992. She could not marry him because, at that time, divorce was not allowed in Spain. The applicant, her daughter and A.R. lived in accommodation belonging to A.R. Following the breakdown of the relationship, the applicant lodged an application in which she asked the judge to declare her separated from her partner and to grant her the use of the family home and pecuniary provision. The judge dismissed her requests, stating that the relevant legislation did not provide for cohabitation based solely on the will of the parties concerned. The applicant lodged an appeal which was dismissed by the appeal court on the grounds that the right claimed by the applicant could only arise where a couple was married and that cohabitation could not be equated with marriage, particularly as no children had been born of this cohabitation and because the applicant could have regularised her marital situation, following the entry into force in 1981 of a law authorising divorce. Her subsequent appeals were also dismissed. The applicant contends that the reasons for which the judge refused to

grant her the right to use the family home constitute discriminatory treatment and infringe her right to respect for her family life.
Inadmissible under Article 8 in conjunction with Article 14: There is no doubt that the existence of a family life may be assumed in the case of a couple who lived together for 18 years. The differences of treatment between spouses and cohabitees with regard to the granting of the family home pursue a legitimate aim and can be objectively and reasonably justified (protection of the traditional family). The applicant had more than 10 years in which to seek a divorce from her estranged husband between the introduction of divorce in Spain and her separation from A.R. The court of first instance dismissed the applicant's request that she be granted the family home on the grounds that she did not provide evidence to justify such a measure, and the application for pecuniary provision was dismissed on the grounds that she had failed to show that the separation had resulted in an economic imbalance in favour of A.R. It is true that the appeal court departed from this line of reasoning and cited other grounds for dismissing the appeal, but it did accept the facts and grounds on which the decision appealed against was based. Even if discrimination had taken place at this level, it would not have been disproportionate, especially since the applicant freely decided not to benefit from the advantages inherent in the status of spouse by not regularising her situation with A.R. It is not for the Court to dictate or indicate to states the measures that should be taken with regard to the existence of stable relationships between men and women who live together as a couple without being married. This is a question on which states enjoy a margin of discretion: they are free to decide what measures to take provided they meet the requirement of respect for family life. The decisions complained of did not result in discriminatory interference in the applicant's family life: manifestly ill-founded.

ARTICLE 35(1)

EXHAUSTION OF DOMESTIC REMEDIES

Complaint raised in substance: *rejection of preliminary objection.*

FRESSOZ and ROIRE - France (N° 29183/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix IV).

FINAL DOMESTIC DECISION

Amparo appeal declared inadmissible on the ground that the right of property invoked by the applicant is not among those in respect of which such an appeal can be made: *inadmissible*.

DE PARIAS MERRY - Spain (N° 40177/98)
Decision 19.1.99 [Section IV]

The applicant had been ordered to deposit (with the *Cámara Oficial de la Propiedad Urbana*) a sum corresponding to the statutory deposits paid by his tenants, in accordance with the regulations in force. As he had omitted to do so, he was also ordered to pay a penalty equivalent to 100% of the sum in question. The

Administrative Court dismissed his appeal in a judgment dated October 1996, which was served on him in November 1996. He then lodged an *amparo* appeal with the Constitutional Court, alleging that his right to peaceful enjoyment of his possessions had been violated. The Constitutional Court dismissed his appeal and pointed out, with regard to his complaint concerning peaceful enjoyment of his possessions, that the right of property was not among those in respect of which such an appeal could be made. The applicant complains of a violation of his right to peaceful enjoyment of his possessions.
Inadmissible under Article 1 of Protocol No. 1: As an *amparo* appeal cannot be lodged in respect of the right of property, the final domestic decision in this case was the judgment handed down in October 1996 and served on the applicant in November 1996, i.e. well over 6 months before he had lodged his application in November 1997: out of time.

ARTICLE 37

Article 37(1)

FRIENDLY SETTLEMENT
Alleged secret surveillance of Jehovah's Witnesses: *friendly settlement*.

TSAVACHIDIS - Greece (N° 28802/95)
Judgment of 21.1.99 [Grand Chamber]
(See Appendix III).

ARTICLE 1 OF PROTOCOL N° 1

POSSESSIONS
Verification of electoral expenses in presidential campaign: *inadmissible*.

CHEMINADE - France (N° 31599/96)
Decision 19.1.99 [Section III]

The applicant, who had collected the required 500 signatures from elected representatives, entered as a candidate in the 1995 presidential elections in France. The Constitutional Council accepted his candidature and paid him an advance of one million francs on the amount repayable on his election expenses. The applicant obtained 0.28% of the votes cast. He submitted his campaign accounts, showing that his election expenses amounted to just over FRF 4 700 000. The applicable legislation stipulates that a sum equal to 8% of the maximum refundable amount shall be reimbursed, as a lump sum, to each candidate who fails to obtain more than 5% of the total number of votes cast during the first round. This reimbursement cannot, however, exceed the total amount of the candidate's expenses. The Constitutional Council rejected the candidate's election expenses on the grounds that 21 of the loans granted to him had been concluded after the statutory time-limit for collecting funds

and did not mention interest rates, which meant that they could be regarded as donations. The applicant therefore did not obtain the reimbursement of his expenses and was ordered to refund the one million francs paid to him in advance by the State. The Treasury had an attachment order drawn up with a view to the sale of his movable property and issued two orders for the attachment of sums in his bank accounts. He complains of the unfairness of the proceedings, discriminatory infringement of his freedom of expression and infringement of his right to peaceful enjoyment of his possessions.

Inadmissible under Article 6(1): Proceedings under election law do not fall within the scope of this provision and, in the instant case, the aim of the proceedings complained of was to verify the lawfulness of the applicant's election expenses. The right to stand for election is a political not a civil right and disputes concerning election expenses regulations fall outside the scope of this article. The possible pecuniary repercussions of proceedings concerning the conditions under which a political right can be exercised do not confer a civil character on such proceedings : incompatible *ratione materiae*.

Inadmissible under Articles 10 and 14: The applicant was given every opportunity to set forth his ideas to his fellow citizens and was able to avail himself of the freedom of expression to which he was entitled. There was no infringement of this freedom as, on the contrary, the French state takes positive measures to enable all citizens who wish to stand for election to the presidency to do so: the relevant legislation stipulates that election expenses shall be met from public funds, even in the case of candidates who obtain less than 5% of the vote. In refusing to reimburse the applicant's election expenses, the Constitutional Court did not seek to penalise the applicant but to verify compliance with the rules concerning the financing of election campaigns. There was therefore no interference in the applicant's right to freedom of expression: manifestly ill-founded.

Inadmissible under Article 1 of Protocol No. 1: The law which provides for the financing of election expenses from public funds cannot be interpreted as making the applicant a creditor of the state, as its provisions are perfectly clear: expenses are only reimbursed to candidates whose election expenses are approved by the Constitutional Council. Proceedings in which the state, as a creditor, seeks to obtain reimbursement of a sum which has been wrongly received do not constitute interference in the debtor's right to peaceful enjoyment of his/her possessions, as a debt does not constitute a "possession". The same line of reasoning can be applied to reimbursement by the applicant of the personal loan he took out and the various other loans granted to him: incompatible *ratione materiae*.

TRANSITIONAL PROVISIONS - ARTICLE 5(4) OF PROTOCOL Nº 1

CASES REFERRED TO THE GRAND CHAMBER

The Panel of the Grand Chamber has decided to refer the following 13 cases to the Grand Chamber:

IMMOBILIARE SAFFI v. Italy (Nº 22774/93) concerning the impossibility for the applicant to secure enforcement of an eviction order, due to the Prefect's exercise of his authority to stay the grant of police assistance.

Arnold NILSEN and Jan Gerhard JOHNSEN v. Norway (Nº 23118/93) concerning an award against the applicants, two police representatives, in respect of their criticism of a book on police brutality.

Joseph HASHMAN and Wanda HARRUP v. the United Kingdom (Nº 25594/94) concerning a binding over order in respect of behaviour *contra bonos mores*.

Alain ESCOUBET v. Belgium (Nº 26780/95) concerning the temporary withdrawal of a driving licence following a road traffic accident.

Andy ATHANASSOGLOU and others v. Switzerland (Nº 27644/95) concerning alleged lack of access to a court to contest the renewal of an operating permit for a nuclear power station.

H.A. v. Switzerland (Nº 27798/95) concerning secret surveillance and the keeping of information about the applicant in a card-index.

Dan BRUMARESCU v. Romania (Nº 28342/95) concerning the annulment by the Supreme Court of Justice of a final decision recognising the applicant's title to his parents' house, nationalised in 1950.

Gilles PELLEGRIN v. France (Nº 28541/95) concerning the length of proceedings relating to the applicant's contractual employment by the State.

Abdelaziz DOUIYEB v. the Netherlands (Nº 31464/96) concerning a clerical error in the specification of the criminal charge on which the applicant's detention was based.

C.C. v. the United Kingdom (Nº 32819/96) concerning the automatic refusal of bail in the case of certain serious offences when the accused has a previous conviction for one of those offences.

Ernst BEYELER v. Italy (Nº 33202/96) concerning the exercise by the State of a right of pre-emption over a Van Gogh painting of which the applicant claims to be the true owner.

Jeanine GONZALEZ and others v. France (Nos. 34165/96, 34166/96, 34167/96, 34168/96, 34169/96, 34170/96, 34171/96, 34172/96 and 34173/96) concerning the rejection of the applicants' civil claims as a result of the adoption of amending legislation during the proceedings.

Dolorata SCOZZARI and Carmela GIUNTA v. Italy (Nos. 39221/98 and 41963/98) concerns the taking of children into care, the refusal to consider placing them in the care of their grandmother, restrictions on the mother's access to them and the decision to place the children in a children's home run by persons previously convicted of sexual abuse.

APPENDIX I

Case of García Ruiz v. Spain - extract from press release

Facts: The applicant, Mr Faustino-Francisco García Ruiz, a Spanish national, was born in 1941 and lives at Alcorcón (Madrid). He is a lawyer. Having lost his case at first instance in an action against M., a client, for the recovery of fees owed to him for certain non-contentious services performed in the context of foreclosure proceedings before Judge Nº 19 of the Madrid Court of First Instance, the applicant appealed to the Madrid *Audiencia Provincial*. The first instance court had held that he had not proved that he had performed the services in question. His appeal was dismissed on 17 March 1995. The *Audiencia Provincial* ruled in its judgment that there was no proof that the applicant had acted as counsel in the foreclosure proceedings before Judge Nº 19 of the Madrid Court of First Instance, "although he [might] have carried out non-contentious work". Relying in particular on Article 24 of the Spanish Constitution, the applicant then lodged an appeal *de amparo* with the Constitutional Court arguing that the judgment of the *Audiencia Provincial* gave no reply whatsoever to his arguments. In his appeal the applicant emphasised that he had indeed not acted as counsel in the foreclosure proceedings before Judge Nº 19 of the Madrid Court of First Instance, but solely as M.'s agent, providing non-contentious services, advice and assistance. On 11 July 1995 the appeal was dismissed.
Mr Garcia Ruiz complained that he had not had a fair hearing in the appeal proceedings before the Madrid *Audiencia Provincial*, since that court had not replied to his submissions, contrary to Article 6 § 1 of the European Convention on Human Rights.
Law: The Court first reiterated that, according to its established case-law, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. However, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. In the present case the Court noted that at first instance judge Nº 12 of the Madrid Court of First Instance had taken into account in his decision the defendant's statements denying the facts alleged by the applicant in his claim. It had held that the evidence of a witness called by the applicant was not conclusive and ruled that the applicant had not proved that he had performed the services for which he was claiming a fee. On appeal the *Audiencia Provincial* had first stated that it accepted and deemed to be reproduced in its own decision the statement of the facts set out in the judgment at first instance. It had gone on to say that it likewise endorsed the legal reasoning of the impugned decision in so far as it was not incompatible with its own findings. On that point, it had held that there was not the slightest evidence in the case file to prove that the applicant had acted as counsel in the foreclosure proceedings, although he might have performed non-contentious services. It had therefore dismissed the appeal and upheld the judgment delivered at first instance. The case had then been referred to the Constitutional Court, which, in its judgment of 11 July 1995, had dismissed the applicant's appeal *de amparo* on the grounds that, according to the trial courts, the applicant had not established that he had rendered the professional services for which he was claiming a

fee and that assessment of the facts was a matter over which the Constitutional Court did not have jurisdiction. In so far as the applicant's complaint might be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterated that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts. The Court noted that the applicant had had the benefit of adversarial proceedings. At the various stages of those proceedings he had been able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance decision dismissing his claim had been set out at length. In the judgment at the appeal stage the *Audiencia Provincial* had endorsed the statement of the facts and the legal reasoning set out in the judgment at first instance in so far as they did not conflict with its own findings. The applicant could not therefore validly argue that this judgment lacked reasons, even though in the present case a more substantial statement of reasons might have been desirable. In conclusion, the Court considered that, taken as a whole, the proceedings in issue had been fair for the purposes of Article 6 § 1 of the Convention and that there had been no violation of that provision.
Conclusion : No violation (unanimous).

APPENDIX II

Case of Van Geyseghem v. Belgium - extract from press release

Facts: The applicant, Mrs Nicole Van Geyseghem, a Belgian national, was born in 1942 and lived at Hoeilaart (Belgium) at the material time. In 1987 the applicant was prosecuted in the Belgian criminal courts for her involvement on three occasions in an international cocaine-trafficking ring in which her role was to import drugs from Brazil into Belgium. After being convicted at first instance by the Brussels Criminal Court, she appealed. She did not attend the first hearing of her appeal, and subsequently applied, as she was entitled to do under Belgian law, to set aside the Court of Appeal's judgment delivered *in absentia*, in which her conviction and sentence to three years' imprisonment and a fine of 60,000 Belgian francs had been upheld. That application brought the case back before the Court of Appeal for a further hearing. The applicant did not attend that hearing either. Her counsel appeared and stated that he was representing his client and would be making submissions to the effect that the prosecution had become time-barred. The Court of Appeal refused him leave to represent his client and in a judgment of 4 October 1993 declared her application void. Mrs Van Geyseghem's appeal to the Court of Cassation was dismissed on 4 May 1994.
Mrs Van Geyseghem complained that the Brussels Court of Appeal had refused to grant her counsel leave to defend her in her absence at the hearing of her appeal against a lower court's refusal of her application to set aside a judgment. She alleged a breach of paragraphs 1 and 3 (c) of Article 6 of the Convention.
Law: The Court reiterated the principles laid down in the cases of Poitrimol v. France (judgment of 23 November 1993, Series A Nº 277) and Lala and Pelladoah v. the

Netherlands (judgment of 22 September 1994, Series A Nº 297-A and B) which concerned situations comparable to the one considered in the instant case. In the first of those three cases it had held that it was of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests needed to be protected – and of the witnesses. The legislature accordingly had to be able to discourage unjustified absences. In the other two cases, it had stated, however, that it was also "of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal, the more so if, as is the case under Netherlands law, no objection may be filed against a default judgment given on appeal". The Court had added that the latter interest prevailed and that consequently the fact that a defendant, in spite of having been properly summoned, did not appear, could not – even in the absence of an excuse – justify depriving him of his right under Article 6 § 3 of the Convention to be defended by counsel. It was for the courts to ensure that a trial was fair and, accordingly, that counsel who attended trial for the apparent purpose of defending the accused in his absence was given the opportunity to do so. The Court could not accept the Belgian Government's argument that the finding that there was no possibility of applying to set aside a conviction *in absentia* had been decisive in the reasoning of the Lala and Pelladoah judgments. The clause beginning with the adverbial phrase "the more so" had been added as a secondary consideration. On the contrary, the Court had stated that the interest in being adequately defended prevailed. The right of everyone charged with a criminal offence to be effectively defended by a lawyer was one of the basic features of a fair trial. An accused did not lose this right merely on account of not attending a court hearing. Even if the legislature had to be able to discourage unjustified absences, it could not penalise them by creating exceptions to the right to legal assistance. The legitimate requirement that defendants had to attend court hearings could be satisfied by means other than deprivation of the right to be defended. The principle established in the Lala and Pelladoah cases applied in the instant case. Even if Mrs Van Geyseghem had had several opportunities of defending herself, it had been the Brussels Court of Appeal's duty to allow her counsel, Mr Verstraeten, – who had attended the hearing – to defend her, even in her absence. That had been particularly true in the instant case since the defence which Mr Verstraeten had intended to put forward had concerned a point of law. Mr Verstraeten had intended to plead statutory limitation, an issue which the Court had described as crucial. Even if, as the Government had maintained, the Court of Appeal must have examined of its own motion the issue of statutory limitation, the fact remained that counsel's assistance was indispensable for resolving conflicts and his role was necessary in order for the rights of the defence to be exercised. Furthermore, it did not appear from the judgment of 4 October 1993 that any ruling had been given on the issue. In conclusion, there had been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention.

Conclusion: Violation (16 votes to 1).

Application of Article 41 of the Convention: Mrs Van Geyseghem claimed 4,332,000 Belgian francs (BEF) for pecuniary damage. The Court held that it could not speculate as to the conclusion the Court of Appeal would have reached if it had granted the applicant leave to appear by counsel. Furthermore, no causal link had been established between the violation of the Convention found in this case and the various heads of the alleged pecuniary damage (due in part, to the applicant's absconding). It therefore dismissed the claims under that head. As regards the non-pecuniary damage, the Court

considered that it had been sufficiently compensated by the finding of a violation of Article 6. The applicant also requested an undertaking from the Belgian State not to enforce the sentence passed on her by the Brussels Court of Appeal. The Court reiterated that the Convention did not give it jurisdiction to require any such undertaking from the Belgian State. Lastly, Mrs Van Geyseghem claimed BEF 412,781 for the costs and expenses incurred in the domestic proceedings and before the Strasbourg institutions. The Court held that the applicant was entitled to seek payment of the costs and expenses of the proceedings before the Commission and the Court. Under those heads the Court, making its assessment on an equitable basis in the light of the information before it, awarded Mrs Van Geyseghem BEF 300,000.

APPENDIX III

Case of Tsavachidis v. Greece - extract from press release

Facts: The applicant, Mr Gabriel Tsavachidis, a Greek national, was born in 1941 and lives at Kilkis in Greece. He is a Jehovah's Witness. He was charged with having opened a place of worship without the necessary permission from the local church authorities and the Minister of Education and Religious Affairs and was committed for trial at the Kilkis Criminal Court. A week before the trial on 7 April, the defence learned that an anonymous report dated 7 March 1993 and bearing the words "Highly confidential" – containing detailed information about the Jehovah's Witnesses' activities and naming the applicant as their leader – had been placed in the case file. At the beginning of the trial the applicant challenged the validity of the indictment, on the ground that the report could not be used as evidence against him as it was unsigned. The court dismissed the objection but decided not to admit the report in evidence as it was anonymous, and acquitted the applicant on the same day. The Kilkis public prosecutor refused requests by the applicant to send him the original report so that it could be subjected to forensic examination and to open an inquiry in order to determine who had written it.

On 4 November 1998 the Court received from the Agent of the Government the text of a friendly settlement concluded by the Government and the applicant, under which the Government undertook to pay the applicant 1,500,000 drachmas and to state that "the Jehovah's Witnesses are not subject to secret surveillance on account of their religious beliefs and will never be subject such surveillance in the future". The applicant's lawyer had confirmed the agreement.

The applicant complained that the Greek intelligence services kept him under surveillance on account of his religious beliefs. He relied on Articles 8 (right to respect for private life), 9 (right to freedom of religion) and 11 (right to freedom of association) of the European Convention on Human Rights, taken individually or together with Article 14 (prohibition of discrimination).

Grounds for decision: The Court took formal note of the agreement reached by the Government and Mr Tsavachidis and noted also that the agreement afforded the applicant satisfaction. It pointed out that in a number of earlier cases it had had to consider systems of secret surveillance in States other than Greece and to ascertain, under Article 8 of the Convention, that there were adequate and effective safeguards against abuses of such systems. Furthermore, in the cases of Kokkinakis v. Greece and Manoussakis and Others v. Greece – in which the facts had, however, been

different from those of the instant case – the Court had had to rule under Article 9 of the Convention on the application of the relevant Greek legislation to the Jehovah's Witnesses. In so doing, it had clarified the nature and extent of the Contracting States' obligations in that regard. It followed that the case should be struck out of the list.

APPENDIX IV

Case of Fressoz and Roire v. France - extract from press release

Facts: The applicants, Mr Roger Fressoz and Mr Claude Roire, who are both French nationals, were born in 1921 and 1939 respectively and lived in Paris at the material time. In September 1989, against the background of an industrial dispute in the Peugeot company following the rejection of pay claims by management, *Le Canard enchainé* published an article by the second applicant referring to salary increases awarded to Mr Jacques Calvet, the company's Chairman and Managing Director. The article, which was accompanied by photocopies of extracts from Mr Calvet's last three tax assessments, carried the headline "Mr Calvet turbo-charges his salary – his tax forms reveal more than he does. The boss has given himself a 45.9% rise over the last two years". Following a complaint by Mr Calvet, criminal proceedings were brought against the applicants for handling photocopies of his tax assessments which had been obtained through a breach of professional confidence by an unidentified tax official. After acquittal at first instance, the Paris Court of Appeal convicted the applicants of handling the photocopies. Mr Fressoz was fined 10,000 French francs (FRF) and Mr Roire FRF 5,000. Their appeal on points of law was dismissed by the Court of Cassation in April 1995.
The applicants had complained that their conviction by the Paris Court of Appeal infringed their right to freedom of expression guaranteed under Article 10 of the Convention. They had also alleged a violation of their right to be presumed innocent on the ground that they had not been proved guilty according to law within the meaning of Article 6 § 2 of the Convention.
Law: Article 10 of the Convention - The Court dismissed the Government's objection of failure to exhaust domestic remedies and examined the merits of the complaint. The Court considered, firstly, that the applicants' conviction was an "interference" with the exercise of their right to freedom of expression. It found that, as required by paragraph 2 of Article 10, the interference was "prescribed by law" and was intended to protect the reputation or rights of others and to prevent the disclosure of information received in confidence. It therefore had to consider whether the interference had been "necessary" in a democratic society in order to achieve those aims. After reiterating the fundamental principles under its case-law, the Court examined whether relevant and sufficient reasons existed to justify the applicants' conviction for the purposes of paragraph 2 of Article 10. The Court was unconvinced by the Government's argument that the information was not a matter of general interest. The article had been published during an industrial dispute – widely reported in the press – at one of the major French car manufacturers. The article showed that the company chairman had received large pay increases during the period under consideration while at the same time opposing his employees' claims for a rise. It had not been intended to damage Mr Calvet's reputation but to contribute to the more general debate on a topic that interested the public. An interference with the

exercise of press freedom could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. While recognising the vital role played by the press in a democratic society, the Court stressed that journalists could not, in principle, be released from their duty to obey the ordinary criminal law on the basis that Article 10 afforded them protection. Indeed, paragraph 2 of Article 10 defined the boundaries of the exercise of freedom of expression. It fell to be decided whether, in the particular circumstances of the case, the interest in the public's being informed outweighed the "duties and responsibilities" the applicants had as a result of the suspect origin of the documents that had been sent to them. The Court had in particular to determine whether the objective of protecting fiscal confidentiality, which in itself was legitimate, constituted a relevant and sufficient justification for the interference. Although publication of the tax assessments had in the case before the Court been prohibited, the information they contained had not been confidential. Indeed, the remuneration of people who, like Mr Calvet, ran major companies was regularly published in financial reviews and the second applicant had said, without it being disputed, that he had referred to information of that type in order to check roughly how much Mr Calvet was earning. Accordingly, there was no overriding requirement for the information to be protected as confidential. If, as the Government had accepted, the information about Mr Calvet's annual income was lawful and its disclosure permitted, the applicants' conviction merely for having published the documents in which that information had been contained, namely the tax assessments, could not be justified under Article 10. In essence, that Article left it for journalists to decide whether or not it was necessary to reproduce such documents to ensure credibility. It protected journalists' rights to divulge information on issues of general interest provided that they were acting in good faith and on an accurate factual basis and furnished "reliable and precise" information in accordance with the ethics of journalism. In the case before it, the Court noted that neither Mr Fressoz and Mr Roire's account of the events nor their good faith had been called into question. Mr Roire, who had verified the authenticity of the tax assessments, had acted in accordance with the standards governing his profession as a journalist. The extracts from each document had been intended to corroborate the terms of the article in question. The publication of the tax assessments had thus been relevant not only to the subject matter but also to the credibility of the information supplied. In sum, there had not, in the Court's view, been a reasonable relationship of proportionality between the legitimate aim pursued by the journalists' conviction and the means deployed to achieve that aim, given the interest a democratic society had in ensuring and preserving freedom of the press. There had therefore been a violation of Article 10 of the Convention.

Conclusion: Violation (unanimous).

Article 6 § 2 of the Convention - The applicants had argued that the national courts had failed to apply the presumption of innocence in two respects. The Court held that, in the light of its finding of a violation of Article 10 and the matters it took into account in so finding, no separate issue arose under Article 6 § 2 of the Convention.

Conclusion: No separate issue (unanimous).

Article 41 of the Convention : The Court found that there was a causal link between the FRF 10,001 that Mr Fressoz and Mr Roire had been ordered by the Paris Court of Appeal to pay Mr Calvet and the violation of Article 10, such that the applicants should recover that sum. It was therefore appropriate to award the amount claimed. That apart, the finding of a breach made in the judgment constituted just satisfaction for any other damage. As regards costs and expenses, the Court, ruling on an

equitable basis and on the basis of the information it had before it, awarded the applicants FRF 60,000.

APPENDIX V

Case of Janowski v. Poland - extract from press release

Facts: The applicant, Mr Józef Janowski, a Polish national, was born in 1937 and lives in Zduńska Wola, Poland. He is a journalist. On 2 September 1992 he noticed two municipal guards ordering street vendors to leave a square in Zduńska Wola. The vendors were told to move their stands to a nearby marketplace and were fined. The applicant intervened and remonstrated with the guards. On 29 April 1993 the Zduńska Wola District Court convicted the applicant of insulting the municipal guards. He was sentenced to eight months' imprisonment suspended for two years and fined 1,500,000 old zlotys. The applicant was also ordered to pay 400,000 old zlotys to charitable institutions and court costs of 346,000 old zlotys. He appealed against this judgment. On 29 September 1993 the Sieradz Regional Court quashed the part of the judgment imposing a prison sentence and the order to pay 400,000 old zlotys to charitable institutions. The Regional Court upheld the fine of 1,500,000 old zlotys but reduced the court costs to 150,000 old zlotys. It considered that although the judgment of the trial court did not mention the abusive words used by the applicant, there was nevertheless sufficient evidence in the case file to conclude that the applicant had in fact insulted the guards by calling them "oafs" and "dumb" (*ćwoki* and *głupki*).
Law: It was common ground that the applicant's conviction amounted to an interference with the exercise of his right to freedom of expression and was "prescribed by law". The Court saw no reason to conclude otherwise. Furthermore, it concluded that the conviction of the applicant had been intended to pursue the legitimate aim of the prevention of disorder. The Court noted that the applicant had been convicted of insulting the municipal guards by calling them "oafs" and "dumb" during an incident which took place in a square arising out of the actions of the guards who insisted that street vendors trading in the square move to another venue. The applicant's remarks did not therefore form part of an open discussion of matters of public concern and did not involve the issue of freedom of the press. The applicant clearly acted as a private individual and not a journalist on this occasion. The Court was not persuaded by the applicant's claim that his conviction was widely considered as an attempt by the authorities to restore censorship and constituted discouragement of the expression of criticism in future. Limits of acceptable criticism might in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. However, it could not be said that civil servants knowingly laid themselves open to close scrutiny of their every word and deed to the extent to which politicians did and should therefore be treated on an equal footing with the latter when it came to the criticism of their actions. Civil servants had to enjoy public confidence if they were to be successful in performing their tasks and it might therefore be necessary to protect them from offensive verbal attacks when on duty. The Court accepted that the applicant had resorted to abusive language out of genuine concern for the well-being of fellow citizens in the course of a heated discussion. This language was directed at law enforcement officers who had been trained how to respond to it. However, he insulted the guards in a public place, in

front of a group of bystanders, while they were carrying out their duties. The actions of the guards did not warrant resort to offensive and abusive verbal attacks. The Court was satisfied that the reasons adduced by the national authorities were "relevant and sufficient" for the purposes of paragraph 2 of Article 10 and that the interference with the applicant's freedom of expression was proportionate to the legitimate aim pursued. It also noted that the applicant's sentence was substantially reduced on appeal. In sum, it could not be said that the national authorities overstepped the margin of appreciation available to them in assessing the necessity of the contested measure.

Conclusion: No violation of Article 10 (12 votes to 5).

Articles of the European Convention of Human Rights and Protocols Nos. 1, 4, 6 and 7

Convention

Article 2	:	Right to life
Article 3	:	Prohibition of torture
Article 4	:	Prohibition of slavery and forced labour
Article 5	:	Right to liberty and security
Article 6	:	Right to a fair trial
Article 7	:	No punishment without law
Article 8	:	Right to respect for private and family life
Article 9	:	Freedom of thought, conscience and religion
Article 10	:	Freedom of expression
Article 11	:	Freedom of assembly and association
Article 12	:	Right to marry
Article 13	:	Right to an effective remedy
Article 14	:	Prohibition of discrimination
Article 34	:	Applications by person, non-governmental organisations or groups of individuals

Protocol No. 1

Article 1	:	Protection of property
Article 2	:	Right to education
Article 3	:	Right to free elections

Protocol No. 2

Article 1	:	Prohibition of imprisonment for debt
Article 2	:	Freedom of movement
Article 3	:	Prohibition of expulsion of nationals
Article 4	:	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

Article 1	:	Procedural safeguards relating to expulsion of aliens
Article 2	:	Right to appeal in criminal matters
Article 3	:	Compensation for wrongful conviction
Article 4	:	Right not to be tried or punished twice
Article 5	:	Equality between spouses