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

INFORMATION NOTE No. 14
on the case-law of the Court
January 2000

[* = non-final judgment]

Statistical information[1]

		January	2000
I. Judgments delivered			
Grand Chamber		1	1
Chamber I		4(6)	4(6)
Chamber II		5	5
Chamber III		32	32
Chamber IV		3(12)	3(12)
Total		**45(56)**	**45(56)**
II. Applications declared admissible			
Section I		19(72)	19(72)
Section II		3	3
Section III		14	14
Section IV		32(33)	32(33)
Total		**68(122)**	**68(122)**
III. Applications declared inadmissible			
Section I	- Chamber	5	5
	- Committee	65	65
Section II	- Chamber	11	11
	- Committee	63	63
Section III	- Chamber	15(16)	15(16)
	- Committee	86	86
Section IV	- Chamber	7	7
	- Committee	150	150
Total		**402(403)**	**402(403)**
IV. Applications struck off			
Section I	- Chamber	0	0
	- Committee	0	0
Section II	- Chamber	12	12
	- Committee	2	2
Section III	- Chamber	2	2
	- Committee	2	2
Section IV	- Chamber	3	3
	- Committee	5	5
Total		**27**	**27**
Total number of decisions[2]		**552**	**552**
V. Applications communicated			
Section I		19(20)	19(20)
Section II		28	28
Section III		19	19
Section IV		6	6
Total number of applications communicated		**72(73)**	**72(73)**

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

ARTICLE 3

INHUMAN TREATMENT
Conditions of detention in high security prisons: *communicated*.

LORSE and others - Netherlands (N° 52750/99)
Decision 18.1.2000 [Section I]
VAN DER DEN - Netherlands (N° 50901/99)
[Section I]

The first applicant was convicted of drugs and firearms offences and sentenced to imprisonment. He was detained successively in two high security prisons: the Temporary Extra Security Institution (TEBI) and the Extra Security Institution (EBI). The other applicants in the first application are relatives of his. The applicant in the second application was been charged with a number of serious offences and has been in detention on remand in the TEBI since October 1997. They both complain about the overly severe conditions of detention in these institutions, conditions which have been considered by the Committee of Prevention of Torture to amount to inhuman treatment.
Communicated under Articles 3, 6 (applicability, access to information) and 8 (respect for private and family life). The Government were invited to submit observations within four weeks instead of the usual twelve.
[Application N° 52750/99 was declared inadmissible with regard to one of the applicant's relatives.]

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Calculation error by the judicial authorities in fixing the length of a prison sentence: *communicated*.

PEZONE - Italy (N° 42098/98)
[Section II]

The applicant, who had been convicted after several sets of criminal proceedings, was released in April 1992 after having served the consecutive sentences. He was arrested again some months later as the judicial authorities had realised that he actually had not served one of these sentences. In February 1994 he lodged an appeal with the public prosecutor challenging the lawfulness of the new arrest and claiming that the time he had been held in detention on remand had not been considered in fixing the total length of the consecutive sentences. He was accordingly released and initiated an action in damages for the length of time he had been unlawfully imprisoned against the judges who, in his opinion, were responsible for the calculation error. His appeal was rejected on the ground that detention on the basis of a calculation error was not one of the cases of unlawful deprivation of liberty for which a judge could be liable. The court moreover found that the error was not the result of negligence. The court also emphasised that the applicant waited until February 1994 to challenge the lawfulness of his detention and found the remedy he chose to be inappropriate

in so far as his appeal had been lodged with the public prosecutor instead of a judge responsible for the execution of sentences. As a result, the court found that the applicant had not exhausted all the remedies available to challenge his detention and his application for compensation was therefore inadmissible. The Court of Cassation, while noting that the remedy used by the applicant was an alternative to an appeal to the judge responsible for the execution of sentences, held that the legislation however gave preference to the latter remedy. The appeal on a point of law was rejected.
Communicated under Article 5.

Article 5(5)

COMPENSATION
Symbolic amount awarded as compensation for unlawful arrest: *communicated*.

ATTARD - Malta (Nº 46750/99)
[Section II]

The applicant was arrested for aggravated theft and brought before the Court of Magistrates. He applied for bail to obtain release pending trial. The prison sentence to which he was liable being over three years, his application had to be communicated to the Attorney General. He was kept in detention until the Court of Magistrates received the Attorney General's opinion. Only then did the court order his release. Having finally been acquitted, the applicant sought compensation for his arrest before the Civil Court, which found that there had been no reasonable suspicion, within the meaning of Article 5(1)(c) of the Convention, justifying his arrest and thus awarded him MTL 100. The applicant appealed against this decision, considering the sum awarded excessively small. In rejecting his appeal, the Constitutional Court reaffirmed the symbolic character of the sum the applicant had been awarded as compensation.
Communicated under Article 5(5).

ARTICLE 6

Article 6(1) [civil]

DETERMINATION
Proceedings concering the annulment of an interim measure: *Article 6 inapplicable*.

APIS a.s. - Slovakia (Nº 39754/98)
Decision 10.1.2000 [Section II]

The applicant, a limited liability company, claimed before the City Court that it was entitled to 51% of the shares of another limited liability company and asked the court to issue an interim measure to order the defendant company not to sell the shares at stake pending the outcome of the proceedings. The City Court issued such an interim measure and rejected the defendant company's subsequent request to annul it. However, the Supreme Court, upon the defendant company's appeal, quashed the interim measure without hearing the parties. The applicant company's appeal before the Constitutional Court was to no avail.
Inadmissible under Article 6(1): The alleged violation occurred in the course of interlocutory proceedings relating to an interim injunction. The Supreme Court's quashing of the interim measure was not a decision on the merits of the case, which was dealt with at the time by the City Court. Therefore the interlocutory proceedings complained of did not involve the "determination" of the applicant's civil rights within the meaning of the Article in issue: incompatible *ratione materiae*.

DETERMINATION
Preliminary procedural issue: *Article 6 applicable*.

QUADRELLI - Italy (N° 28168/95)
Judgment 11.1.2000 [Section II]
(See below).

ACCESS TO COURT
Calculation of time-limits to challenge a decision in the absence of notification: *violation.*

MIRAGALL ESCOLANO and others - Spain
(N° 38366/97, 38688/97, 40777/98, 41400/98, 41446/98, 41484/98, 41487/98, 41509/98)
*Judgment 25.1.2000 [Section IV]

Facts: The National Order of Pharmacists challenged the validity of a decree changing the profit margins of pharmacists. The Supreme Court annulled that decree. Its decision was served three days later on the National Order of Pharmacists but not on the applicants who were not parties to the proceedings. The decision was published some months later in the *Official Gazette.* The applicants filed applications with the public authority for compensation for the damage caused to them by the annulled decree. Since the public authority did not respond, the applicants commenced proceedings in the High Court. The High Court rejected the applicants' claims on the ground that their applications for compensation had been filed with the public authority one year and two days after the delivery of the decision quashing the decree and were, as a result, out of time. The applicants argued in the *recurso de amparo*

which they lodged with the Constitutional Court that the day on which time should have starting running was the date of publication of the decision in the *Official Gazette* or at least the date of notification of the decision to the National Order of Pharmacists. Despite State Counsel's support for the applicants' arguments and the dissenting opinion of some of its judges, the Constitutional Court rejected the applications. It held that it could in fact be assumed, in the light of the interest they had in the question, that the applicants had had knowledge "in good time" of the High Court's decision and that the Council of the Order had moreover informed its members of the adoption of that decision.
Law: Article 6(1) - While recalling the limited scope of the Court's review of the domestic courts' application of procedural rules, the Court noted that interpretation of the provisions governing the time for entering an appeal should not have the effect of depriving the public of the remedies available. In this case, it was highly unlikely that the applicants "had knowledge of a decision which was not addressed to them and delivered in a case in which they were not parties". In this context, the High Court's decision to reject their appeal on points of law for being out of time on the ground that the appeal should have been lodged within the time-limit of one year running from the date of publication of the court's decision bore witness to an unreasonable interpretation of a procedural requirement and infringed the right to effective judicial protection. The date on which time started to run for the purpose of calculating final dates for appeals must be the date on which the public could actually have learned of the court decisions which concerned them. The purpose of notification was to allow the parties to be informed of the court's decision so that, should the need arise, they could exercise their right of appeal.
Conclusion : Violation (6 votes to 1).
Article 41 - Question of just satisfaction not ready for decision. Parties allowed three months for observations.

ACCESS TO COURT
Refusal to deal with an appeal on points of law due to failure to execute a decision of a court of appeal *: admissible*.

DESBORDES and OMER - France (N° 33293/96)
Decision 6.1.2000 [Section III]

One of the applicants took out a loan for the purpose of purchasing a motor vehicle with a corporation specialising in such loans. The other applicant, his spouse, guaranteed the loan. The debtor lost his employment and as a result the applicants were unable to make all of the scheduled monthly repayments. As a result, the credit corporation seized the property and sold it. The credit corporation also brought proceedings against the applicants to recover the outstanding amount plus interest. The trial court found that the failure to include a statutory clause in the contract made the loan offer unlawful and, as a result, that the corporation had forfeited its right to interest. The Court of Appeal set aside that judgment and ordered the applicants to pay the amount claimed. With the help of legal aid, the applicants lodged an appeal on points of law against the court of appeal's decision. Their appeal was however taken off the court list by the representative of the President of the Court of Cassation, upon an application by the credit corporation on the ground of failure to execute the Court of Appeal's decision. Under French legislation, an appeal on points of law in a civil case is an extraordinary remedy without any suspensive effect and the failure to execute the decision appealed against on points of law may result in the appeal being taken off the list. That rule applies provided the decision does not have manifestly excessive results. The judge in this case found that the foreseeable consequences of executing of the court of appeal's decision were not excessive. At the time when the case was taken off the list the amount owed by the applicants was 80,000 French francs (FRF); the monthly income of the applicants - who had two dependant children - was minus FRF 862.
Admissible under Article 6(1).

ANNONI DI GUSSOLA - France (N° 31819/96)
Decision 6.1.2000 [Section III]

The applicant bought a motor vehicle with a loan entered into for that purpose with a bank. He later refused to make the full repayment due to the bank on the ground that the vehicle had manufacturing defects. The bank then seized the vehicle, sold it and initiated proceedings against the applicant for the difference between the amount of the loan and the proceeds of the sale. The trial court ordered the applicant to pay an amount approximately equal to that difference. At about that time he lost his job and became entitled to the State minimum subsistence allowance. He lodged an appeal against the first instance decision claiming that the bank had made an error in selling the vehicle for a nominal sum and therefore owed him damages in an amount equal to his debt. The Court of Appeal reduced the amount owed by the applicant but found that he had failed to prove fault on the part of the bank. The applicant therefore appealed against the judgment on points of law but his appeal was taken off the Court of Cassation's list at the request of the bank on the ground that he had failed to execute the Court of Appeal's decision. Under French legislation, an appeal on points of law in a civil case is an extraordinary remedy without any suspensive effect and the failure to execute the decision appealed against on points of law may result in the appeal being taken off the list. That rule applies provided the decision does not have manifestly excessive results. The representative of the President of the Court of Cassation, who ordered the withdrawal of the appeal from the court list found that in this case the execution of the decision would not lead to excessive results. At the time of the appeal's withdrawal from the list, the amount owed by the applicant under the Court of Appeal's decision was 150,000 French francs (FRF). The applicant and his family have now been evicted and he receives a monthly retirement pension of approximately FRF 2,500. Since no further procedural steps have been taken since the withdrawal of the case from the list, the strict time-limit for reactivating proceedings before the Court of Cassation has expired.
Admissible under Article 6(1).

ACCESS TO COURT
Legal aid lawyer prevented from defending his client : *communicated*

BENNOUR - France (N° 48991/98)
[Section IV]

The applicant was sentenced to fifteen years' imprisonment by an assize court. He lodged an appeal on points of law. The Code of Criminal Procedure provides that the Court of Cassation must receive the appellants' statement of the grounds of appeal at the latest one month after the date when notice of the appeal was lodged unless the President of the Criminal Division has granted an exemption from this rule. The applicant made an application for legal aid after the expiry of the time-limit under that provision. He was provisionally granted legal aid and a lawyer was appointed to defend him. Some time later the lawyer informed the applicant that his appointment had been ruled out of time and that he would not be able to defend him. He stated that it was true that exemptions had been granted until then to allow lawyers to be appointed under the legal aid scheme after the lapse of the statutory time-limit, but this practice was no longer being observed as a result of the appointment of a new President of the Criminal Division, and his application for an exemption had been rejected. The applicant filed a pleading he had written unaided, to which he attached an application for an exemption. The Court of Cassation found his appeal on points of law to be inadmissible as his statement of the grounds of appeal had been filed after the lapse of the time-limit.
Communicated under Article 6(1).

ACCESS TO COURT
Non-enforcement of judgments on account of defendant State-owned company's insolvency: *admissible*.

KAYSIN – Ukraine (N° 46144/99)
Decision 27.1.2000 [Section IV]

The applicants who worked for a mining combine contracted an occupational disease which developed into a disability. Since the company did not pay the disability pensions to which they were entitled, the applicants started proceedings in the Court of First Instance for payment of these pensions. The CFI allowed their actions in judgments it delivered between July 1997 and February 1998. However, in September 1998, the President of the CFI informed the applicants that the judgments would remain unenforced because the public authority upon which the combine was dependent was no longer in a position to pay out the funds required for its functioning. In January 1999 the President of the CFI ordered the combine to execute the judgments. In October 1999 the First Deputy of the President of the Supreme Court suspended the execution proceedings relating to the judgment in favour of the first applicant. Some days later, it transpired from the Justice Ministry's internal correspondence that execution of a number of other judgments had also been suspended. Even though the Supreme Court then informed the combine that in fact only execution of the judgment in favour of the first applicant had been suspended, none of the judgments was executed.
Admissible under Article 6(1).

FAIR HEARING
Appeal on points of law dismissed without examination of the applicant's submissions: *violation*.

QUADRELLI - Italy (N° 28168/95)
Judgment 11.1.2000 [Section II]

Facts: The applicant, an employee of the Italian Chamber of Commerce in Madrid, was dismissed. He originally challenged his dismissal before the Spanish courts. Finding the resulting conciliation award to be unsatisfactory, he decided to challenge it, only this time before the Italian labour courts. When the first-instance court threw out his application, he lodged an appeal. His appeal was also found to be inadmissible. The applicant therefore lodged an appeal on points of law and was later advised that State Counsel had submitted that this was inadmissible. In accordance with the Code of Civil Procedure, he later filed a pleading in reply to State Counsel's unfavourable submissions. However, his appeal on points of law was ruled inadmissible for being lodged after the expiry of the time-limit; no reference was made to the arguments he had put forward in his pleading.
Law: Article 6(1) - Since the case related to a challenge to a conciliation award regarding a dismissal, Article 6 applied *a priori*. However, according to the Government, Article 6 did not apply to proceedings limited to resolving a preliminary procedural question. The applicant's appeal on points of law was not however limited to a procedural question but also attacked the lawfulness of the decision rejecting the appeal. Had the Court of Cassation accepted the applicant's arguments, it would have been able to find the appeal admissible and as a result would have also been able to examine the merits of the case. The applicability of Article 6 is therefore not excluded. Even if the proceedings had been limited to a preliminary procedural question, this would have not been enough according to the J.J. v. Netherlands judgment - contrary to the arguments put forward by the Government - to exclude the applicability of Article 6. As to the fairness of the examination of the applicant's appeal on points of law, the

parties' right to make observations secured by this article could only be a real one if their observations had been truly "heard", that is, duly examined by the tribunal dealing with the case. In this case, the applicant had the right to file a pleading for the purposes of the proceedings. The Government's argument that the Court of Cassation had considered that pleading but failed to refer to it in its decision to dismiss the appeal was not founded. Furthermore, the general principle of domestic law that "any claim that has not been examined is to be considered rejected" did not satisfy the guarantee of a fair trial set forth in Article 6. It followed from this provision that the court must make a real examination of the arguments and evidence of the parties, while assessing their relevance to the decision to be delivered. Moreover, since the Government indicated that they had found no trace of the applicant's pleading in the Court of Cassation's file, it seemed unlikely that the Court of Cassation had considered it. Taking into account what was at stake for the applicant in the proceedings and the nature of State Counsel's submissions, the failure to examine the applicant's pleading was an infringement of his right to *inter partes* proceedings. In principle this included the right of the parties to legal proceedings to have any documents and observations which were submitted to the court with a view to influencing its decision produced and discussed.
Conclusion : Violation (unanimous).
Article 41 : The Court found that as to the non-pecuniary damage claimed by the applicant, the finding of a violation in itself constituted adequate just satisfaction and awarded the applicant 10,000,000 Italian lire (ITL) in respect of costs and expenses.

FAIR TRIAL
Communication of judge rapporteur's report and draft judgment to the *avocat général*, but not to appellant prior to appeal hearing: *violation.*

SLIMANE-KAÏD - France (N° 29507/95)
*Judgment 25.1.2000 [Section III]

Facts: The applicant was the director of two public limited companies which entered into contractual relations with a third enterprise, the IVECO company. The latter made a complaint and the applicant was prosecuted, notably for fraud causing losses to IVECO. The Regional Criminal Court, while finding the applicant guilty of various offences, found IVECO's application to join the proceedings as a civil party inadmissible on the ground that the applicant was under receivership. The decision of inadmissibility was upheld on appeal but the Criminal Division of the Court of Cassation overturned that part of the decision. The Court of Cassation referred the case back to a second court of appeal which found IVECO's application admissible and ordered the applicant to pay IVECO over twenty million French francs. An appeal on points of law against that decision was rejected by the Criminal Division. The applicant complains that during the course of the second set of proceedings before the Court of Cassation, neither the judge rapporteur's report nor the *avocat général*'s conclusions were communicated to him before the hearing.
Law: Article 6(1) - In the Reinhardt and Slimane-Kaïd v. France (DR 1998-II) judgment, the Court found a violation of Article 6 on the basis of the same complaints - in that case regarding the first appeal on points of law and the criminal part of the proceedings. The Court held that communication of the judge rapporteur's report and draft judgment to the *avocat général* only, in the light of the influence that the latter could have over the former, created an imbalance to the detriment of the applicants which was incompatible with the rule of fair trial. The Court moreover criticised the fact that the *avocat général's* conclusions were not communicated to the applicants. The Court found that there appeared to be no development in the proceedings in the Criminal Division and therefore found no grounds to depart from the conclusions it had reached in the above-mentioned judgment.
Conclusion : Violation (unanimous).

Article 41 - The applicant claimed reimbursement of the sum he was ordered to pay to the civil party. The Court noted that it was not its task to speculate as to what the outcome would have been of proceedings which complied with the provisions of Article 6. It also noted that a causal link between the alleged damage and a violation had not been established. As to the non-pecuniary damage suffered by the applicant, the Court's finding of a violation in itself constituted just satisfaction.

REASONABLE TIME
Length of civil proceedings: *violation*.

PADERNI - Italy (Nº 35994/97)
PETIX - Italy (Nº 40923/98)
L. s.r.l. - Italy (Nº 40924/98)
D'ONOFRIO - Italy (Nº 40925/98)
F. - Italy (Nº 40926/98)
R. - Italy (Nº 40927/98)
BATTISTELLI - Italy (Nº 40928/98)
SCARANO - Italy (Nº 40929/98)
GIORGIO - Italy (Nº 40930/98)
M. - Italy (Nº 40931/98)
MORESE - Italy (Nº 40932/98)
TARSIA - Italy (Nº 40933/98)
S. - Italy (Nº 40934/98)
VINCI - Italy (Nº 40935/98)
CECERE - Italy (Nº 40936/98)
BINELIS and NANNI - Italy (Nº 40937/98)
MANCA - Italy (Nº 40938/98)
M. - Italy (Nº 40940/98)
GLEBE VISCONTI - Italy (Nº 40941/98)
GIANNETTI and DE LISI - Italy (Nº 40942/98)
SALVATORI and GARDIN - Italy (Nº 40943/98)
ADAMO - Italy (Nº 40944/98)
SIEGA and 7 others - Italy (Nº 40945/98)
TRIPODI - Italy (Nº 40946/98)
ABBATE - Italy (Nº 40947/98)
RONZULLI - Italy (Nº 40948/98)
NARDONE - Italy (Nº 40949/98)
LIDDO and BATTETA - Italy (Nº 40950/98)
CAPPELLARO - Italy (Nº 40951/98)
*Judgments 25.1.2000 [Section III]

The cases concern the length of various civil proceedings:
Paderni - more than 7 years 11 months (two levels of jurisdiction);
Petix - more than 19 years 2 months (one level of jurisdiction);
L. s.r.l. - more than 17 years 6 months (one level of jurisdiction);
D'Onofrio - more than 18 years 6 months (one level of jurisdiction);
F. - 20 years 4 months (pending);
R. - 16 years 11 months (one level of jurisdiction);
Battistelli - more than 14 years 7 months (one level of jurisdiction);
Scarano - more than 15 years 5 months (one level of jurisdiction);
Giorgio - almost 15 years 6 months and still pending (one level of jurisdiction);
M. - more than 13 years 8 months (one level of jurisdiction);
Morese - almost 14 years 3 mois and still pending (one level of jurisdiction);
Tarsia and others - 13 years 2 months and still pending (one level of jurisdiction);

S. - more than 12 years 4 months (one level of jurisdiction);
Vinci - more than 12 years 9 months and still pending (one level of jurisdiction);
Cecere - more than 11 years (one level of jurisdiction);
Binelis and Nanni - more than 11 years 10 months and still pending (one level of jurisdiction);
Manca - more than 11 years 6 months and still pending (one level of jurisdiction);
M. - more than 8 years 3 months (one level of jurisdiction);
Glebe Visconti - 11 years 11 months and still pending (one level of jurisdiction);
Giannetti and de Lisi - more than 11 years 7 months and still pending (one level of jurisdiction);
Salvatori and Gardin - more than 11 years 7 months and still pending (one level of jurisdiction);
Adamo - more than 9 years 8 months (one level of jurisdiction);
Siega and others - more than 9 years 3 months (one level of jurisdiction);
Tripodi - more than 10 years 11 months and still pending (one level of jurisdiction);
Abbate - more than 8 years 10 months (one level of jurisdiction);
Ronzulli - more than 10 years 4 months and still pending (one level of jurisdiction);
Nardone - more than 10 years 6 months and still pending;
Liddo and Batteta - more than 10 years 11 months and still pending (one level of jurisdiction);
Cappellaro - 10 years 10 months and still pending (two levels of jurisdiction).
Conclusion: Violation (unanimous).
[In the Gianetti and de Lisi case, not necessary to examine under Article 1 of Protocol No. 1, and in the Tripodi case not necessary to examine under Article 13 or Article 1 of Protocol No. 1.]
Article 41 - The Court awarded the following amounts to the applicants in respect of pecuniary and/or non-pecuniary damage:
Paderni - no claim;
Petix - 69 million lire;
L. s.r.l. - no claim in respect of non-pecuniary damage; claim in respect of pecuniary damage rejected due to lack of causal link;
D'Onofrio - 30 million lire;
F. - 35 million lire;
R. - 50 million lire;
Battistelli - 44 million lire;
Scarano - 48 million lire;
Giorgio - 48 million lire;
M. - 40 million lire;
Morese - 44 million lire;
Tarsia and others - 40 million lire;
S. - 36 million lire;
Vinci - 36 million lire;
Cecere - 24 million lire;
Binelis and Nanni - 32 million lire to each applicant;
Manca - 11 million lire to each of the two applicants;
M. - 24 million lire to each of the two applicants;
Glebe Visconti - 37 million lire;
Giannetti and de Lisi - no claim;
Salvatori and Gardin - 32 million lire to each applicant;
Adamo - 24 million lire;
Siega and 7 others - 20 million lire to each applicant;
Tripodi - 28 million lire;
Abbate - 28 million lire;
Ronzulli - 28 million lire to each of the two applicants;
Nardone - 28 million lire to each of the two applicants;
Liddo and Batteta - 28 million lire to each of the three applicants;
Cappellaro - 20 million lire.

REASONABLE TIME
Length of civil proceedings: *violation*.

RODRIGUES CAROLINO - Portugal (Nº 36666/97)
*Judgment 11.1.2000 [Section IV]

The case concerns the length of proceedings brought by the applicant in June 1994 and still pending. The proceedings have therefore lasted around 5 years 6 months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 600,000 escudos (PTE) in respect of non-pecuniary damage and 250,000 escudos in respect of costs and expenses.

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

SEIDEL - France (Nº 31430/96)
*Judgment 11.1.2000 [Section IV]

The case concerns the length of proceedings brought by the applicant before the administrative courts in May 1988. The proceedings ended in July 1996 and therefore lasted around 8 years and 2 months.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 5,000 francs (FRF) in respect of non-pecuniary damage. It also made an award of 4,400 francs in respect of costs.

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

BLAISOT - France (Nº 33207/96)
*Judgment 25.1.2000 [Section III]

The case concerns the length of proceedings before the administrative courts relating to land consolidation. The proceedings began in November 1983 and ended in May 1996 (12 years, 5 months and 15 days).
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicants 40,000 francs (FRF) in respect of non-pecuniary damage and 10,000 francs in respect of costs and expenses.

Article 6(1) [criminal]

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

MARTINELLI - Italy (Nº 33827/96)
Judgment 11.1.2000 [Section II]

The case concerns the length of criminal proceedings brought against the applicant in June 1991 and still pending on appeal. The parties have reached a friendly settlement providing for the payment to the applicant of 25 million lire (ITL) to cover any pecuniary and non-pecuniary damage (20 million lire) and legal costs (5 million lire).

REASONABLE TIME
Length of criminal proceedings: *violation*.

PALMIGIANO - Italy (Nº 37507/97)
*Judgment 11.1.2000 [Section II]

The case concerns the length of criminal proceedings brought against the applicant in October 1985. The proceedings ended in February 1997 and therefore lasted over 11 years and 4 months for one level of jurisdiction.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 32 million lire (ITL) in respect of non-pecuniary damage and 5 million lire for costs.

REASONABLE TIME
Length of criminal proceedings: *violation*.

AGGA - Greece (Nº 37439/97)
*Judgment 25.1.2000 [Section II]

The case concerns the length of criminal proceedings which began at the latest in July 1989. The applicant was convicted in March 1991 and the conviction was upheld in March 1996. His cassation appeal was rejected in February 1997. The proceedings therefore lasted 7 years, 6 months and 22 days.
Law: Article 6(1) - The case was not complex and although some delays were due to the applicant's illness, the State was responsible for the delays resulting from the failure of prosecution witnesses to appear and from industrial action by clerks of court. There was a period of inactivity of around 3 years 10 months, and while the Government referred to a lawyers' strike they did not provide any information in that respect. Even assuming the strike took place and the State was not responsible for the resultant delays, the Government did not claim that the strike had resulted in any particular hearing being delayed. Moreover, delays related to the backlog resulting from such a strike come within the State's responsibility and the period of inactivity must be attributed to the State. The same applies to a subsequent delay of 18 months due to industrial action by clerks of court and the failure of prosecution witnesses to appear.
Conclusion: Violation (unanimous).

Article 41: The Court awarded the applicant 20 million drachmas (GRD) in respect of non-pecuniary damage and 300,000 drachmas in respect of costs.

IMPARTIAL TRIBUNAL

Judge lodging an appeal and appointing the judges that will decide upon it: *admissible*.

DAKTARAS - Lithuania (Nº 42095/98)
Decision 11.1.2000 [Section III]

The applicant was twice convicted of affray in the 1970's and had to serve a prison sentence for robbery until the early 1990's. In 1996, with the authorisation of a Deputy Prosecutor General, he was arrested under the Code of Criminal Procedure, which at the time of arrest permitted preventive detention in matters relating to organised crime. Two sets of criminal proceedings were instituted against him, one for array and the other on suspicion of his being involved in claiming and obtaining a ransom of USD 7,000 for a stolen car. His detention on remand was ordered in respect of the ransom case and he was charged on four counts, notably for having obtained property by threats of force. After the closure of the pre-trial investigations in the ransom case, the applicant presented his pleadings to the prosecutor who, in an interlocutory decision in October 1996, declared that the evidence gathered clearly demonstrated his guilt. In February 1997 he was convicted by the Regional Court, on two of the four counts, and notably as a principal offender in obtaining property by threats of force. He was, *inter alia*, sentenced to seven years and six months' imprisonment, being referred to in the judgment as being "one of the leaders of the underworld" following the testimonies of several witnesses. The applicant lodged an appeal with the Court of Appeal which found that he should only be convicted as a secondary party with regard to the offence of obtaining property by threats of force; the prison sentence was confirmed. He lodged a further appeal with the Supreme Court. The judge who had delivered the first instance judgment asked the president of the Criminal Division of the Supreme Court to lodge a cassation petition to have the appeal judgment quashed and the Regional Court judgment upheld. The president of the Criminal Division did so and also appointed the three judges of the Criminal Division who were to examine the case. The Supreme Court eventually quashed the appeal judgment and upheld the Regional Court's decision. The applicant, who had been depicted as a "Mafia boss" in the media since the early 1990s, was submitted to even closer attention from the media after these criminal proceedings were brought against him. High ranking officials, including the Deputy Prosecutor General who had approved his arrest, repeatedly described him in the press as a leader in organised crime.
Admissible under Article 6(1) (impartial tribunal) and (2) as regards the prosecutor's declaration in his decision of October 1996.
Inadmissible under Article 6(2): Bearing in mind the right to receive and impart information, this provision cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary to preserve the presumption of innocence. A distinction has to be made between statements which convey the idea that the accused is guilty and those that merely evoke a "state of suspicion". In this case, firstly, the reference by the Regional Court to the applicant as "one of the leaders of the underworld" merely reflected the evidence given by several witnesses and as such did not imply that the applicant was guilty of any specific offence. Secondly, the statements made by several high ranking officials and prosecutors in the media were not official declarations but were made in a political context with the aim of providing the public with an explanation for the applicant's arrest and were referring implicitly to his criminal past without encouraging the readers to believe him guilty in the proceedings in issue or prejudging the assessment of the facts. When a virulent press campaign surrounds a trial, what should be considered decisive is not the subjective apprehensions of a suspect of the negative impact of the press coverage on the trial courts' appraisal of his guilt, but whether, in the particular circumstances of the case, his fears can be

held to be objectively justified. In the present circumstances, the press had presented the applicant as a "*Mafia* boss" throughout the 1990s. The charges against him however were to be determined by professional judges who were less likely to be influenced by the media coverage of the case than a jury. The first instance judge took due account of the particular circumstances of the case and assessed the evidence carefully, convicting the applicant on two counts only out of the four that had been brought against him. Thus, the applicant's fears of prejudice by the courts based on the negative media campaign could not be objectively justified: manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Statement by prosecutor in interlocutory decision that he considers the accused guilty: *admissible*.

DAKTARAS - Lithuania (Nº 42095/98)
Decision 11.1.2000 [Section III]
(See Article 6(1), above).

PRESUMPTION OF INNOCENCE
Statements by high-ranking officials in connection with pending criminal proceedings: *admissible*.

DAKTARAS - Lithuania (Nº 42095/98)
Decision 11.1.2000 [Section III]
(See Article 6(1), above).

PRESUMPTION OF INNOCENCE
Impact of media campaign on criminal proceedings: *inadmissible*.

DAKTARAS - Lithuania (Nº 42095/98)
Decision 11.1.2000 [Section III]
(See Article 6(1), above).

PRESUMPTION OF INNOCENCE
Refusal of compensation, following the discontinuation of criminal proceedings against a company, for damage resulting from the action of the authorities: *inadmissible*.

AANNEMERSBEDRIJF GEBROEDERS VAN LEEUWEN B.V. - Netherlands (N° 32602/96)
Decision 25.1.2000 [Section I]

In 1982 the administration of the applicant company, a limited liability company, was seized by the authorities on the suspicion that the company had been drawing up false invoices in order to defraud the tax and social security authorities. Without its accounts, the company was forced out of business and it was later declared bankrupt. In 1985 the prosecution was discontinued on account of the excessive time that had elapsed since the alleged offences had been committed. Despite repeated requests by the bankruptcy trustee, the authorities did not return the administration of the company until 1987. In 1990 the trustee initiated civil

proceedings against the State on behalf of the company, claiming that its bankruptcy had been caused by a criminal investigation which had been retrospectively invalidated by the decision not to proceed. His claims having been rejected, the trustee lodged an appeal. The Court of Appeal held in an interlocutory judgement that the State was in principle liable to pay damages, but that this liability could be mitigated or even removed entirely by circumstances which could be blamed on the company itself. The State submitted statements made to the police by the applicant company's managing directors in which they admitted committing the suspected offences. In 1994 the Court of Appeal accordingly confirmed the Regional Court's refusal.
Inadmissible under Article 6(2): Assuming Article 6 applies to legal persons in the same way as it does to individuals, the refusal to pay compensation for damage caused by the authorities in the course of criminal proceedings which are subsequently discontinued does not in itself amount to a penalty or measure that would be tantamount to a penalty. In addition, neither this provision nor any other of the Convention and its Protocols forces the Contracting States, where a prosecution has been discontinued, to indemnify a person "charged with a criminal offence" for any detriment he may have suffered. In the circumstances, the applicant company claimed from the State compensation for the damage caused by measures taken during criminal proceedings directed against the company itself. In refusing to award compensation, the Court of Appeal had regard to the unequivocal admission made by the managing directors during the criminal investigations of the use of forged invoices. This clear admission of guilt was enough to rebut the presumption of innocence and provided sufficient justification for the Court of Appeal's relying on this admission: manifestly ill-founded.
Inadmissible under Article 6(1): Assuming Article 6 applies to legal persons in the same way that it does to individuals (the company having been charged with a criminal offence), the applicant company was afforded the requisite guarantees and was able to exercise the rights of defence during the whole pre-trial proceedings. It is not decisive that the case never went to trial, the decision whether to proceed to trial being one which it is not for the Court to question: manifestly ill-founded.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Lack of possibility to have complainant cross-examined: *communicated*.

PERNA - Italy (N° 48898/99)
[Section II]

The applicant, a journalist by trade, published an article which purported to be a profile of the Palermo Principal Public Prosecutor. Reporting proceedings initiated by the PPP against a known politician, the applicant presented the PPP as a man who had pledged allegiance to the communist party and who used his profession to further this party's plans, in particular, to the detriment of the politician against whom proceedings had been brought. The PPP made a complaint and the applicant was found guilty of libel. During the proceedings, the applicant made unsuccessful requests to cross-examine the complainant and to have documents capable of proving the truth of the facts reported in his article filed in the documents file. On appeal, the applicant alleged that the prosecutor's political allegiance was a fact, like other statements in his article, which could easily have been proved had the trial court granted his requests. Moreover, he claimed that, being a columnist, when writing the profile complained against he had merely exercised his right to report and comment. The Court of Appeal found the article in question to be clearly libellous on account of the way in which the applicant had presented the facts and the PPP's conduct. It also held that the applicant's requests to cross-examine the complainant and evidence adduced before the trial court were not pertinent in that they related

to the non-libellous parts of the article, the truth of which did not need to be shown. The Court of Cassation upheld the decision of the Court of Appeal.
Communicated under Articles 6(3)(d) and 10.

ARTICLE 8

PRIVATE LIFE
Deportation after lengthy residence: *communicated*.

VELASQUEZ - United Kingdom (N° 39352/98)
[Section III]

In 1977 the applicant, a Colombian national, arrived in the United Kingdom and was given a 12 month leave to enter as an au pair. Her leave was extended for another year but her following application for leave to remain as a domestic employee was refused, no appeal lying against this refusal. Despite this decision, the applicant stayed in the United Kingdom. She found employment and paid both her social security contributions and income tax, but was never traced by the immigration authorities. She developed close contacts with a group of Jehovah's Witnesses and severed all links with her home country. A notice of intention to deport her was issued and although she was untraceable it was considered, in accordance with the standard practice at the time, to have been served on her. In 1983 a deportation order against her was signed. In 1994 the applicant, unaware of the existence of this deportation order, applied for indefinite leave to remain. In 1995 the deportation order was served on her; the Secretary refused to revoke it. The applicant unsuccessfully requested leave to apply for judicial review of this refusal. A psychological report revealed that the applicant had been subjected to sexual abuse as a child and could not establish a sexual relationship with men and therefore her friends, work and religious support structure were of paramount importance in her life. She had no support network in her country of origin and would face psychic trauma if deported. The psychologist drew the conclusion that there was a clinical compelling case for the applicant to remain in the United Kingdom.
Communicated under Article 8.

PRIVATE LIFE
Deportation after lengthy residence: *communicated*.

SLIVENKO - Latvia (N° 48321/99)
[Section II]
(See Article 3 of Protocol No. 4, below).

FAMILY LIFE
Adequacy of measures taken by authorities to enforce court decisions ordering return of children to their mother: *violation*.

IGNACCOLO-ZENIDE - Romania (Nº 31679/96)
Judgment 25.1.2000 [Section I]
(See Appendix I)

FAMILY LIFE
Deportation after lengthy residence: *communicated*.

OUARCHARGUI - France (N° 51456/99)
[Section II]

The applicant, a Moroccan national born in 1961, arrived in France in 1980 and married a Moroccan woman who had been living in France since the age of five. They have three young children. The applicant was convicted at first instance of handling stolen goods and given him a suspended sentence of eighteen months. However, on appeal, the sentence was increased to two years imprisonment accompanied by an order for deportation. The Court of Cassation rejected an appeal on points of law lodged by the applicant. The court of appeal did not admit his application to have the order of deportation lifted. The applicant's appeal on points of law against this decision is still pending.
Communicated under Article 8 and under Article 35(1).

CORRESPONDENCE
Control of prisoner's correspondence: *friendly settlement*.

MONI - Italy (Nº 35748/97)
Judgment 11.1.2000 [Section II]

The case concerns the control of the applicant's correspondence while he was in detention under a special regime. The parties have reached a friendly settlement providing for payment to the applicant of 7 million lire (ITL) to cover both non-pecuniary damage and costs incurred by him. Furthermore, in order to avoid in the future situations similar to those of which the applicant complained, the Government submitted to the Senate on 23 July 1999 a draft law (no. 4172) to make a number of amendments to Law no. 354 of 26 July 1975, in particular in respect of the provisions relating to the control of prisoners' correspondence.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal to allow interview of former terrorist before outcome of trial: *inadmissible*.

HOGEFELD - Germany (N° 35402/97)
Decision 20.1.00 [Section IV]

The applicant is a former member of a left-wing terrorist organisation, the Red Army Fraction. In 1992, the organisation announced that it was suspending its terrorist activities. In 1993, the applicant was arrested and placed in detention on remand. A warrant of arrest was issued against her on the ground, *inter alia*, that she might engage in further terrorist acts. While the trial was taking place in the Court of Appeal, the applicant made several declarations on her role in the terrorist group and its crimes and more generally on the history of the movement. She made critical comments of the group's past strategy and denounced certain terrorist acts, but emphasised how much she had been involved in these activities. In addition, she declared, *inter alia*, that "[their] fight for a different world [was] at any time

well-founded and justified" and that what the organisation had done should serve as a lesson for "future fights". In November 1996, she was sentenced to life imprisonment. In the course of her trial, the Court of Appeal allowed only one interview of the applicant, on the condition that no reference would be made to either the Red Army Fraction or her trial. All other requests from the media were turned down by the court, which considered that it would be contrary to the aim of her detention under section 119(3) of the Code of Criminal Procedure in the sense that it would allow her to support the terrorist cause by means of the interviews. Her objections to the refusals were rejected by the Court of Appeal and the Federal Constitutional Court refused to entertain her constitutional complaint, holding that her right to freedom of expression, embodied in the Fundamental Law, had not been infringed.
Inadmissible under Article 10: The fact that the applicant was prevented by the authorities from expressing herself on the Red Army Fraction and her trial in the media constituted an interference with her right to freedom of expression. However, it was prescribed by law and fighting against terrorism is a legitimate aim for any State and can take various forms such as measures preventing terrorist organisations from using the media to spread their ideology and recruit new members. The Court of Appeal relied on the declarations the applicant made during the trial in order to refuse that any interviews be made. Her declarations had proved ambiguous since on the one hand she had criticised the movement's past activities and on the other had clearly demonstrated her attachment to the movement's ideology. These statements could not on their own be taken as a promotion of terrorism, but in the light of the applicant's personal history of involvement in terrorism, they could be interpreted by sympathisers as an appeal to carry on terrorist activities. The restrictions imposed on the applicant's freedom of expression could thus reasonably regarded as answering a pressing social need, the reasons adduced by the national courts being relevant and sufficient. Having regard to these elements and the State's margin of appreciation in such matters, the interference was proportionate to the legitimate aims pursued: manifestly ill-founded.

FREEDOM OF EXPRESSION
Dismissal of teacher for exerting political influence on pupil in the GDR: *communicated*.

VOLKMER - Germany (N° 39799/98)
[Section IV]

The applicant was a school teacher in German, Latin and civics in the German Democratic Republic. Between 1970 and 1977, he served as an honorary secretary to the East German Unified Socialist Party (SED) at the school where he taught, and between 1977 and 1981 was employed on a full-time basis in a district executive committee of the SED. After the reunification of Germany, he was incorporated in the Berlin civil service as a teacher. One of his former pupils declared that the applicant, in his capacity of SED representative, had asked him to attend a church conference about which he had later been questioned by an official of the East German authorities. In 1992, the special commissioner of the Government for "person-related" documents of the former GDR informed the authorities that the applicant had been registered as a contact person in the files of the Ministry of State Security. It appeared that he had signed a declaration of confidentiality and had been interviewed on five occasions but that the Ministry had decided not to pursue further co-operation with the applicant. He told the FRG authorities that he had indeed been contacted by the Ministry of State Security but that he had refused to co-operate. He was suspended from his functions soon afterwards and was finally given notice of termination of his contract. The Labour Court found the dismissal to be unjustified. The Higher Labour Court reversed the judgment, and deemed the applicant to be unsuited to continue teaching. The Federal Labour Court considered that the applicant's dismissal was not only based on his SED membership and his political beliefs but also on the professional and honorary functions he had held within that party and the fact that he had used one of his pupils to spy on SED adversaries. It clearly reflected his commitment to the one-party system of the GDR and demonstrated his unfitness to teach the values of the

German free democratic constitutional system. The Federal Constitutional Court declined to entertain the applicant's constitutional complaint.
Communicated under Articles 6(1) (applicability, fair hearing) and 10.

FREEDOM OF EXPRESSION
Limit between the right of the press to express criticism of a person and defamation: *communicated*.

PERNA - Italy (N° 48898/99)
[Section II]
(See Article 6(3)(d), above).

FREEDOM OF EXPRESSION
Prohibition of Basque separatist publication: *admissible*.

ASSOCIATION EKIN - France (N° 39288/98)
Decision 18.1.2000 [Section III]
(See Article 34, below).

FREEDOM TO IMPART INFORMATION
Prohibition on publication by a newspaper of a photograph of a suspect in the context of the criminal proceedings against him: *violation*.

NEWS VERLAGS GmbH & CoKG - Austria (Nº 31457/96)
*Judgment 11.1.2000 [Section I]
(See Appendix II).

ARTICLE 34

VICTIM
Acceptance by applicant of compensation for the killing of her husband by soldiers: *inadmissible*.

CARAHER - United Kingdom (N° 24520/94)
Decision 11.1.2000 [Section III]

The applicant's husband was killed by British soldiers in Northern Ireland while he was in a vehicle driven by his brother. The two soldiers involved in the shooting were charged with the murder of the applicant's husband and attempted murder of his brother with intent to do him grievous bodily harm. The version of events as presented at the trial by the two soldiers and military witnesses on the one side and the applicant and civilian witnesses on the other differed greatly. The brother of the applicant's husband and a friend stopped their car to help somebody whose car, which had a Republic of Ireland registration, had broken down. Just as the Irish car drove off, the applicant's husband came along in his own car and stopped. The three men were checked out there by a patrol of British soldiers who allowed them to go on. The military witnesses alleged that the applicant's husband then went past an army vehicle checkpoint (VCP), not far from where they had been checked out, without stopping despite being ordered to do so. He drove into a car park not far from the VCP. The applicant's husband and his brother took the former's car and, according to the two soldiers who had by then left the VCP to go to the car park, deliberately ignored another express order to stop their

vehicle. The applicant and civilian witnesses, on the other hand, claimed that no attempt had ever been made to stop them either at the VCP or in the car park. The two soldiers alleged that a third soldier, in trying to stop them from leaving the car park, had ended up on the car's bonnet as the car moved forward. Considering that his life was at danger, they had shot at the driver to stop the vehicle. They admitted at the trial that they were trained to stop a vehicle by shooting at the driver rather than at the tyres. The two soldiers were acquitted of all charges by the Crown Court, which found that there was a reasonable possibility that they had fired at the driver because they honestly considered it necessary in order to save their fellow soldier from death or serious injury. The applicant started civil proceedings before the High Court to obtain compensation. A settlement was reached between the applicant and the Ministry of Defence by means of which she was awarded GBP 50,000.
Inadmissible under Articles 2 and 13: *Concerning the adequacy and context of the settlement* - The possibility of obtaining compensation for the death of a person constitutes, generally and in normal circumstances, an adequate and sufficient remedy for a substantive complaint of an unjustified use of lethal force by a State agent in violation of Article 2. In the present case, the sum awarded could be regarded as a substantial one. Insofar as the applicant claimed that she could have received far more had she pursued her claims to a successful conclusion, it was her choice not to do so and her argument according to which she had been forced to accept the settlement due to the risk of being held liable to pay the costs of proceedings was untenable. The requirement for a losing party to pay costs is a normal feature of civil proceedings, which does not dispense an applicant from the obligation to exhaust available domestic remedies. Finally, civil proceedings are a standard method of challenging negligent conduct and practices of official bodies and the applicant did not substantiate her argument that such proceedings would provide no possibility of effective redress in the present case.
Concerning the payment of compensation for breach of the right to life - The use of force by the agents of the State in pursuit of one of the aims delineated in Article 2(2) may be justified where it was perceived, for good reasons, to be valid at the time but subsequently turned out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty. Accordingly, in the circumstances, the approach taken by the trial judge, in having regard to the honest and reasonable belief of the two soldiers that one of their colleagues was at risk from the car driven by the brothers, that they had open fire to save his life, was tenable. Insofar as the applicant denounced the existence of an administrative practice contrary to Article 2, there were two elements to examine: whether there had been a repetition of acts and whether there seemed to be an official tolerance of such acts; furthermore, the existence of administrative practice had to be established through substantial evidence, namely *prima facie* evidence. In the present case, the applicant relied on the facts and the judgment in the McCann case, which was not a sufficient basis to justify of the existence of a practice in breach of Article 2. While there are five other cases pending before the Court in which allegations are made of excessive use of force by security forces stationed in Northern Ireland (Jordan, Nº 24746/94; McKerr, Nº 28883/95; Finucane, Nº 29178/95; Kelly and others, Nº 30054/96; and Shanaghan, Nº 37715/97), the Commission found in a previous case that the use of lethal force by soldiers firing at a car going through a road block was justified in terms of Article 2(2) and did not disclosed any disproportionate use of force. In view of the facts of the pending cases, even assuming that these cases were to result in findings of substantive breaches of Article 2, they could not be analysed as a series of similar acts which could be linked such as to constitute a pattern or system. Nor is there substantial evidence of official tolerance of any alleged unlawful acts.
In conclusion, the applicant, in bringing civil proceedings for aggravated damages in respect of the death of her husband and in accepting and receiving compensation, effectively renounced further use of these remedies. She therefore can no longer claim to be a victim: manifestly ill-founded.

VICTIM
Continuing status of victim after annulment of impugned decision: *admissible*.

ASSOCIATION EKIN - France (N° 39288/98)
Decision 18.1.2000 [Section III]

In 1987 the applicant, a French non-profit association for the promotion of Basque culture, published a collective work containing notably the contributions of Spanish academics and an article written by the Basque Movement of National Liberation. In April 1988 this work was banned in France for encouraging separatism and justifying recourse to violence. The decision to ban the work was taken on the basis of Article 14 of the Law of 29 July 1881 (Law relating to the press), as amended by the Decree of 6 May 1939 allowing the prohibition of foreign publications or publications in a foreign language. According to the case-law of the *Conseil d'Etat*, a publication with foreign contributions and/or based on foreign documentation, as was the case of the banned work, may be considered as being of foreign origin. In June 1988 the applicant lodged an appeal against the ban with the administrative court, which rejected the applicant's application in a judgment of June 1993. The applicant lodged an appeal against that judgment with the *Conseil d'Etat* in August 1993, and also requested that the *Conseil* make a declaration that Article 14 of the Law of 29 July 1881 was incompatible with Articles 10 and 14 of the Convention in so far as that provision introduced unjustified discrimination with respect to foreign publications. In its decision of July 1977 the *Conseil d'Etat* rejected the applicant's claim of incompatibility. The *Conseil d'Etat* found notably that although the power conferred on the Minister of the Interior under this provision was not limited by the law, it was subject to the review of the administrative courts and was as a result not contrary to the Convention. The *Conseil d'Etat* also quashed the judgment appealed against and the ministerial decree of prohibition. In December 1997 the applicant unsuccessfully made an application to the Minister of the Interior for compensation for loss caused by the nine-year prohibition on publication. The applicant association complained to the Court, among other matters, that Article 14 of the Law of 29 July 1881 was still in force in the French legal system.
Admissible under Articles 6(1) (length of proceedings), 10, 13 and 14 in conjunction with Article 10 : Since the quashing of the prohibition only had the effect of permitting the circulation of a work which had become non-topical because of the length of proceedings, the decision of the *Conseil d'Etat* was not adequate compensation under the Court's case-law. The applicant therefore still had the status of a victim. Since the Minister of the Interior did not allow his application, it would not be reasonable to ask the applicant after nine years of proceedings to seek other remedies under domestic law to obtain compensation for the loss suffered. Moreover, the fact that the statutory provision upon which the prohibition was based remained in force in the domestic legal system posed a real and serious threat to the applicant association in the light of its activities.

ARTICLE 35(1)

EFFECTIVE DOMESTIC REMEDY (France)
Appeals on points of law dismissed due to absence of written pleadings: *non-exhaustion*.

YAHIAOUI - France (N° 30962/96)
Judgment 14.1.2000 [Section III]

Facts: The applicant, Amar Yahiaoui, a Tunisian national, is currently serving a prison sentence in France for killing his wife. In June 1992 in the course of the criminal investigation proceedings introduced against him on a charge of murder, an investigating judge of the Marseilles *Tribunal de Grande Instance* charged him and placed him in detention on remand. From September 1992 onwards the applicant filed eight applications for release which were all rejected by the investigating judge and the Indictments Chamber of the Aïx-en-Provence Court of Appeal. He also filed another eighteen applications which were also rejected by the investigating judge; he did not appeal against these decisions. In addition, he lodged two appeals on points of law against two decisions upholding the rejection of his applications for release. These appeals were also dismissed in the decisions of 16 May 1995 and 9 January 1996 on the ground that he had not filed statements of the grounds of appeal. In March 1996 he made a new application directly to the Indictments Chamber which was rejected. He did not lodge an appeal on points of law against that decision. In May 1997 he was sentenced to 30 years imprisonment by the Assize Court of the *département* of Bouches du Rhône. On 30 May he lodged an appeal on points of law which was rejected on 18 September 1996.
Law: Article 5(3) - The Government's objection on a preliminary issue : The applicant had lodged two appeals on points of law against the decisions of the Indictments Chamber, but had not filed further pleadings to support these appeals, which the Court of Cassation had dismissed for lack of pursuit. Moreover, he had not made any observations on this point. The complaint that an applicant intended to bring before the Court should have first been brought before the appropriate domestic courts. The Court of Cassation was in a position to make a finding, on the basis of an examination of the proceedings, as to whether or not those authorised to exercise judicial power had respected the reasonable time-limit in accordance with the requirements of Article 5(3). The applicant had therefore not given the French courts the opportunity to avoid or redress the violations allegedly committed by the French authorities, as required by Article 35(1).
Conclusion : Non-exhaustion (unanimous).

SIX MONTH PERIOD
Six month issue raised by the Court of its own motion: *inadmissible*.

WALKER - United Kingdom (N° 34979/97)
Decision 25.1.2000 [Section III]

The applicant was remanded in custody for 28 days in circumstances where the judge had no power to imprison. On 14 February 1996, upon the applicant's request for judicial review, the High Court found that his remand in custody had been unlawful. The applicant's subsequent action for compensation was to no avail.
Inadmissible under Articles 5 (1) and (5), 6 and 13: The final decision to be taken into consideration was the High Court's decision. The applicant introduced his application on

18 October 1996, outside the six month time-limit. As to whether the absence of observations from the Government on the question of the six months' rule could have affected this position, it was recalled that this rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which supervision is no longer possible. The application of the six months' rule cannot be set aside solely because a Government have not made a preliminary objection based on it: out of time.

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber):

RIERA BLUME and others - Spain (Nº 37680/97) [14.1.2000]
(See Information Note Nº 11)

MAINI - France (Nº 31808/96) [26.1.2000]
(See Information Note Nº 11)

VARIPATI - Greece (Nº 38459/97) [26.1.2000]
(See Information Note Nº 11)

Article 44(2)(c)

On 31 January 2000 the Panel of the Grand Chamber rejected requests for revision of the following judgments, which have consequently become final:

DONSIMONI - France (Nº 36754/97)
Judgment 5.10.99 [Section III]

The case concerns the length of criminal proceedings brought against the applicant. The proceedings began in March 1994 and are still pending before the court of appeal. They have therefore lasted around five and a half years, including five years and almost two months before the first instance court.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 35,000 francs (FRF) in respect of non-pecuniary damage and 15,000 francs in respect of costs and expenses.

GELLI - Italy (Nº 37752/97)
Judgment 19.10.99 [Section II]

Facts: The applicant was arrested in Switzerland in September 1982 in connection with the bankruptcy of the private bank, Banco Ambrosiano. The case involved 40 co-accused. He escaped from prison in August 1983 and remained at liberty until re-arrested in September 1987. He was extradited to Italy in February 1988 and was convicted in April 1994. The conviction was upheld in March 1996. In a judgment of November 1996, lodged with its registry in December 1996, the Court of Cassation held that certain charges were time-barred and reduced the applicant's sentence accordingly. The applicant complained about the length of the proceedings.
Law: The proceedings began at the latest in September 1982 and ended in December 1996, but the period during which the applicant absconded, totalling 4 years 1 month, must be deducted from the period to be examined, since the applicant has not shown any reason to rebut the presumption that he is not entitled to complain about the length of the proceedings following his flight. Accordingly, the period to be examined is 10 years 2 months for three levels of jurisdiction. The case was extremely complex and it is not for the Court to say whether the particular charge in respect of which the applicant complained should have been separated from the others. However, no delay can be attributed to the applicant, other than the period during which he absconded, whereas a very long delay between 1985 and 1991 is attributable to the judicial authorities. No explanation has been provided by the Government for this period, which amounts to more than half the total period and is in itself sufficient to conclude that the case was not heard within a reasonable time.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 20 million lire (ITL) in respect of non-pecuniary damage. Although the applicant had not provided details of legal costs, the Court, taking into account the simplicity of the case, awarded him 2 million lire.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS

Exercise by the State of a right of pre-emption over a work of art several years after its purchase through an agent without the proper declaration being made: *violation*.

BEYELER - Italy (N° 33202/96)
Judgment 5.1.2000 [Grand Chamber]
(See Appendix III).

PEACEFUL ENJOYMENT OF POSSESSIONS

Length delay in fixing and payment of final compensation for expropriation: *violation*.

ALMEIDA GARRETT, MASCARENHAS FALCÃO and others - Portugal
Judgment 11.1.2000 [Section I]
(See Appendix IV).

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF THE PEOPLE
Candidate who came second on his party's list at parliamentary elections not chosen to replace elected candidate on latter's death: *communicated*.

SPIŠÁK - Slovakia (Nº 43730/98)
[Section II]

The applicant came second in terms of votes for the Slovak National Party's candidates at the 1994 parliamentary elections in the constituency of Eastern Slovakia. While the candidate of the party who had obtained most votes became member of the National Council, the other candidates on the list, including the applicant, became substitutes in accordance with the Election Act. In December 1996 the elected member died and, by a decision of the party, was replaced by a substitute other than the applicant, despite the latter having been second on the list. The National Council accepted the party's decision in this respect. The Constitutional Court, upon the applicant's appeal, found that the National Council had violated his constitutional rights and infringed the Election Act by approving the party's decision. Following new parliamentary elections in 1998, the term of office of the members of the National Council elected in 1994 expired without the applicant having had the opportunity to sit.
Communicated under Article 3 of Protocol Nº 1 and 13 and 14 of the Convention.

ARTICLE 3 OF PROTOCOL No. 4

PROHIBITION OF EXPULSION OF A NATIONAL
Expulsion from Latvia of applicants having always lived there and having no other nationality: *communicated*.

SLIVENKO - Latvia (N° 48321/99)
[Section II]

The first applicant's family, Soviet citizens of Russian origin, moved to Latvia when she was one month old. The second applicant, a Soviet military officer, was transferred to Latvia in 1977. In 1980, they married and a year later the first applicant gave birth to their daughter, the third applicant. After Latvia's independence in 1991, the first applicant's parents, herself and her daughter were entered in the Register of Latvian residents on the basis of a status of "ex-USSR citizens". In 1994, the second applicant, who still held Russian citizenship, retired from the Russian army and applied for a temporary residence permit. The authorities refused, relying on the fact that families of Soviet military officers were required to leave the Latvian territory following the withdrawal of the Russian troops in 1994. The immigration authorities annulled the first and third applicants' entry in the Register of Latvian residents. A deportation order was issued against the applicants and they were evicted from their flat. The first applicant brought a legal action in her own name and on behalf of the third applicant claiming that they were *de facto* permanent residents. The domestic courts found after lengthy proceedings that they belonged to the second applicant's family and for that reason were

required to leave the country. The first applicant then requested permission for herself and her daughter to remain in Latvia, emphasising the fact that it was their homeland as they had spent all their lives there and had no other nationality and in addition that she had to take care of her handicapped parents who were permanent residents of Latvia. In 1999, the authorities informed her that they had to leave the country immediately. They eventually moved to Russia to join the second applicant who had moved there in 1996. They have not been able to visit the first applicant's parents in Latvia since.
Communicated under Article 8 and Article 3 of Protocol N° 4.

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Possibility of lodging a plea of nullity against decision of conviction: *inadmissible*.

PESTI and FRODL - Austria (N° 27618/95 and N˚ 27619/95)
Decision 18.1.2000 [Section III]

The two applicants were remanded in custody on suspicion of murder. They were suspected of having lured a professional rival of the second applicant to Budapest using a young woman as a decoy and of having killed him before disposing of his body by cutting it into pieces. The second applicant confessed to the murder to the police and the first applicant admitted having helped him in getting rid of the body. They were both charged with murder. The Assize Court sentenced the second applicant to life imprisonment for murder and the first applicant to twenty years' imprisonment for aiding and abetting. The applicants filed separate pleas of nullity with the Supreme Court to complain about various procedural defects. The first applicant complained, *inter alia*, that the presiding judge had interrupted him during his last statement to the jury and the second argued notably that the court had refused to take evidence he wanted to submit. They both also lodged appeals with the Supreme Court to contest their sentences. The Supreme Court rejected the pleas on the basis of the trial transcripts which did not corroborate their complaints. The Supreme Court also dismissed their appeals, confirming the second applicant's sentence and increasing the first applicant's sentence to life imprisonment.
Inadmissible under Article 2 of Protocol N° 7: The Contracting States may limit the scope of review by a higher tribunal. Such a review may be limited to questions of law or may require the person wishing to appeal to apply for leave to do so. In the present case, the applicants could and did file a plea of nullity with the Supreme Court in which they complained about procedural defects in their trial. Furthermore, they lodged an appeal against sentence which was also examined by the Supreme Court. Therefore, the review of the applicants' convictions by the Supreme Court was sufficient: manifestly ill-founded.

APPENDIX I

Case of Ignaccolo-Zenide v. Romania - Extract from press release

Facts: The applicant, Rita Ignaccolo-Zenide, a French national, was born in 1953 and lives at Metz (France). Following her divorce a French court ruled, in a judgment that had become final, that the two children of the marriage were to live with her. In 1990, during the summer holidays, the children went to stay with her former husband; he held dual French and Romanian nationality and lived in the United States. However, at the end of the holidays, he refused to return them to the applicant. After changing addresses several times in order to elude the American authorities, to whom the case had been referred under the Hague Convention of 25 October 1980 on International Child Abduction, he managed to flee to Romania in March 1994, where he has lived ever since. On 14 December 1994 the Bucharest Court of First Instance issued an injunction requiring the children to be returned to the applicant. However, her efforts to have the injunction enforced proved unsuccessful. Since 1990 the applicant has seen her children only once, at a meeting organised by the Romanian authorities on 29 January 1997.

The applicant complained that the failure of the Romanian authorities to enforce the injunction issued by the Bucharest Court of First Instance on 14 December 1994 constituted a breach of her right to respect for her family life, as guaranteed under Article 8 of the Convention.

Law: Article 8 of the Convention - The Court reiterated that although the essential object of Article 8 was to protect the individual against arbitrary action by the public authorities, it also imposed positive obligations inherent in an effective "respect" for family life. Article 8 included a right for parents to have measures taken with a view to their being reunited with their children and an obligation for the national authorities to take such measures. That obligation was not absolute, since some preparation might be needed prior to the reunion of a parent with a child who has been living for any length of time with the other parent. The nature and extent of the preparation depended on the circumstances of each case and any obligation the authorities had to apply coercion in this area was limited, since the interests and rights and freedoms of all concerned, and in particular the paramount interests of the child and his rights under Article 8 of the Convention, had to be taken into account. Where contact with the parent might threaten those interests or interfere with those rights, it was for the national authorities to strike a fair balance between them.

The Court considered that the positive obligations which Article 8 of the Convention imposed on the Contracting States to help reunite parents with their children had to be construed in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. That approach was particularly relevant to the case before the Court, since the respondent State was a party to that instrument.

The decisive factor for the Court was therefore to determine whether the national authorities had taken all reasonable steps to facilitate the enforcement of the order of 14 December 1994.

Although first attempts at enforcement of the injunction were made promptly, in December 1994, the Court noted that as from January 1995 the bailiffs made only two further attempts: in May and December 1995. It noted, too, that the authorities took no action between December 1995 and January 1997 and that no satisfactory explanation for that inactivity had been forthcoming from the Government.

Moreover, the authorities had not done the groundwork necessary for the enforcement of the order, as they had failed to take coercive measures against D.Z. or to prepare for the children's return by, for example, arranging meetings of child psychiatrists and psychologists. No social workers or psychologists took part in the preparation of the meeting on 29 January 1997. The Court noted, lastly, that the authorities had not implemented the measures set out in Article 7 of the Hague Convention to secure the children's return to the applicant.

The Court found that the Romanian authorities had failed to take adequate and sufficient steps to comply with the applicant's right to the return of her children and had thus infringed her

right to respect for her family life, as guaranteed by Article 8. The Court therefore concluded that there had been a violation of Article 8.
Conclusion: Violation (6 votes to 1).
Article 41 of the Convention - The Court held that the applicant must have sustained non-pecuniary damage as she alleged. Ruling on an equitable basis, it awarded her FRF 100,000 under that head. It awarded the applicant FRF 86,000 for costs and expenses.
Judges Maruste and Diculescu-Şova expressed dissenting opinions and these are annexed to the judgment.

APPENDIX II

Case of News Verlags GmbH & CoKG v. Austria - Extract from press release

Facts: The case was brought by News Verlags GmbH & CoKG, a company based in Tulln, Austria, which is the owner and publisher of the magazine *News*. In December 1993 the applicant company published articles in its magazine *News* about a series of letter bombs sent to politicians and other persons in the public eye in Austria which had severely injured several victims. The articles, which also covered the Austrian neo-Nazi scene, included pictures of the suspect, B., accompanied by comments which either directly or indirectly named him as the “perpetrator” of the offences at issue. Upon B’s action, the Vienna Court of Appeal, by judgment of 22 September 1994 in preliminary injunction proceedings and by judgment of 30 August 1995 in the subsequent main proceedings, issued injunctions based on section 78 of the Copyright Act which prohibited the applicant company from publishing photographs of B. in the context of the criminal proceedings against him, irrespective of the accompanying text. Its judgments were upheld by the Supreme Court.
The applicant company complained that its right to freedom of expression guaranteed under Article 10 of the European Convention on Human Rights and the prohibition of discrimination guaranteed under Article 14 of the Convention taken in conjunction with Article 10 had been violated.
Law: Article 10 of the Convention - The Court considered that the prohibition of the publication of B.’s picture in the context of reports on the criminal proceedings against him constituted an interference with the applicant company’s right to freedom of expression guaranteed under Article 10 § 1 of the Convention. The Court was satisfied that the interference was “prescribed by law” namely by section 78 of the Austrian Copyright Act and pursued legitimate aims under Article 10 § 2 of the Convention namely “the protection of the reputation or rights of others” as well as “maintaining the authority and impartiality of the judiciary”.
As regards the question of whether the interference was “necessary in a democratic society” the Court had regard to the context in which the articles giving rise to the injunction proceedings were written, namely a spectacular series of letter bombs. It noted that B. was a right-wing extremist who had entered the public scene well before the letter-bomb series and that the offences he was suspected of, namely offences under the National Socialism Prohibition Act and aiding and abetting assault through letter-bombs, were offences with a political background directed against the foundations of a democratic society. In these circumstances the publication of photographs of B., which moreover did not disclose any details of his private life, did not encroach upon B.’s right to privacy.
The Court further noted that the Vienna Court of Appeal stated in the reasons for its decision of 22 September 1994 and its subsequent judgment of 30 August 1995 that it was not the publication of B.’s picture in itself but its combination with comments which were insulting and contrary to the presumption of innocence that violated B.’s legitimate interests within the meaning of section 78 of the Copyright Act. Nevertheless, the Vienna Court of Appeal prohibited the applicant company from publishing B.’s picture in connection with reports on the criminal proceedings against him, irrespective of the accompanying text.

The Court acknowledged that there may be good reasons for prohibiting the publication of a suspect's picture in itself, depending on the nature of the offence at issue and the particular circumstances of the case. However, the Court noted that no such reasons were adduced by the Vienna Court of Appeal. Nor did the Vienna Court of Appeal carry out a weighing of B.'s interest in the protection of his picture against the public interest in its publication which, according to Austrian law, is required under section 78 of the Copyright Act. The Court found this all the more surprising as the publication of a suspect's picture is not generally prohibited under section 7a of the Austrian Media Act, but - with certain exceptions - depends precisely on a weighing of the respective interests.
Finally, the Court considered that the contested injunctions did not restrict the applicant company's right to publish comments on the criminal proceedings against B. However, they restricted the applicant company's choice as to the presentation of its reports, while it was undisputed that other media remained free to publish B.'s picture throughout the criminal proceedings against him. Having also regard to the domestic courts' finding that it was not the pictures used by the applicant company but only their combination with the text that interfered with B.'s rights, the Court finds that the absolute prohibition of the publication of B.'s picture was disproportionate to the legitimate aims pursued.
The Court concluded that the interference with the applicant company's right to freedom of expression was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention. Accordingly it found a breach of Article 10 of the Convention.
Conclusion: Violation (unanimous).
<u>Article 14 of the Convention taken in conjunction with Article 10</u> - The Court did not consider it necessary to examine whether Article 14 of the Convention taken in conjunction with Article 10 was also violated.
<u>Article 41 of the Convention</u> - The Court awarded the applicant company 276,105 Austrian schillings for costs and expenses. It held that its judgment constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained and dismissed the remainder of the applicant company's claims for just satisfaction.

APPENDIX III

<u>**Case of Beyeler v. Italy** - Extract from press release</u>

Facts : The case concerned an application introduced by a Swiss national, Ernst Beyeler, who was born in 1921 and lives in Basle (Switzerland). He is an art gallery owner. The case concerned a painting by Vincent Van Gogh, "Portrait of a Young Peasant", which Mr Beyeler bought in 1977 for 600 million lire through an intermediary without, however, disclosing to the vendor that the painting was being purchased on his behalf. Consequently, the declaration of sale which the vendor filed with the Italian Ministry of Cultural Heritage in accordance with the requirements of Law no. 1089 of 1939 did not mention his name. In 1983 the Italian Ministry learnt that Mr Beyeler was the real purchaser of the painting. On 2 May 1988 Mr Beyeler sold the work to an American corporation, which intended to include it in a Venetian collection, for 8.5 million dollars. On 24 November 1988 Italy exercised its right of pre-emption, stating that Mr Beyeler had omitted to inform the Ministry that the painting had been purchased on his behalf in 1977, and bought the painting at the 1977 sale price.
The applicant alleged a violation of Article 1 of Protocol No. 1, contending, in particular, that the Italian authorities had expropriated the painting – of which he claimed to be the lawful owner – in breach of the conditions laid down by that provision. He also claimed that he had been discriminated against in violation of Article 14 of the Convention in that the authorities had expressly stated that the applicant's Swiss nationality had made the measure all the more justified.
Law: <u>The Government's preliminary objection</u> - With regard to the Government's objection based on non-exhaustion of domestic remedies, namely that the applicant could have applied

to the civil courts for the amount paid in 1977 to be revised, the Court held that the Government were estopped from relying on that objection because they had raised it for the first time before the Court.

Article 1 of Protocol No. 1 to the Convention -

The applicability of Article 1

The Court considered that this provision was applicable in this case. A series of findings of law and fact proved that the applicant had had a proprietary interest recognised under Italian law – even if it was revocable in certain circumstances – from the time the work had been purchased until the right of pre-emption had been exercised and he had been paid compensation. Thus the *Consiglio di Stato* had held that the exercise by the Ministry of its right of pre-emption fell into the category of expropriation measures and that in this case the administrative authorities had not erred in serving the pre-emption order on the applicant in his capacity as end purchaser. The Court of Cassation had agreed with the *Consiglio di Stato*'s finding that the authorities had not exercised their right of pre-emption until they had been certain that the painting had been purchased by the applicant. Furthermore, in 1988 the pre-emption order had been served on the applicant as the title-holder under the 1977 sale and he had been paid the amount which had been paid at that time. Moreover, between the purchase of the work and the exercise by the State of its right of pre-emption the applicant had been in possession of the painting for several years and on a number of occasions the authorities appeared to have considered the applicant de facto as having a proprietary interest in that painting, and even as its real owner. The applicant's interest had therefore been a "possession" within the meaning of Article 1 of Protocol No. 1, and the Court considered that it had to examine the situation complained of in the light of the general rule laid down in the first sentence of that provision.

Compliance with Article 1

Whether there was any interference - The Court considered that the measure complained of, that is, the exercise by the Ministry of Cultural Heritage of its right of pre-emption, had undoubtedly amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions.

Compliance with the principle of lawfulness - The Court reiterated that an essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 was that it should be lawful. The Court had limited power, however, to review compliance with domestic law, especially as there was nothing in the instant case from which it could conclude that the Italian authorities had applied the legal provisions in question manifestly erroneously or so as to reach arbitrary conclusions. However, the principle of lawfulness also presupposed that the applicable provisions of domestic law were sufficiently accessible, precise and foreseeable. The Court observed that in certain respects the statute lacked clarity, particularly in that it left open the time-limit for the exercise of a right of pre-emption in the event of an incomplete declaration without, however, indicating how such an omission could subsequently be rectified. That factor alone could not, however, lead to the conclusion that the interference in question had been unforeseeable or arbitrary. Nevertheless, the element of uncertainty in the statute and the considerable latitude it afforded the authorities were material considerations to be taken into account in determining whether the measure complained of had struck a fair balance.

The aim of the interference - The Court considered that the control by the State of the market in works of art was a legitimate aim for the purpose of protecting a country's cultural and artistic heritage. As for works of art by foreign artists, the Court observed that the Unesco Convention of 1970 accorded priority, in certain circumstances, to the ties between works of art and their country of origin. It noted, however, that the issue in this case did not concern the return of a work of art to its country of origin. That consideration apart, the Court recognised that, in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations, it was legitimate for a State to take measures designed to facilitate in the most effective way wide public access to them, in the general interest of universal culture.

Whether there was a fair balance -

(a) *Conduct of the applicant*

The Court noted that at the time of the 1977 sale the applicant had not disclosed to the vendor that the painting had been purchased on his behalf. The applicant had then waited six years (from 1977 to 1983) before declaring his purchase, contrary to the relevant provisions of Italian law of which he had been deemed to be aware. He had not approached the authorities until December 1983 when he had been intending to sell the painting to the Peggy Guggenheim Collection in Venice for 2 million dollars. The Court therefore considered that the Government's submission that the applicant had not acted openly and honestly carried some weight, especially as there had been nothing to prevent him from informing the authorities of the true position before 2 December 1983 in order to comply with the statutory requirements.

(b) *Conduct of the authorities*

The Court did not put in question either the right of pre-emption over works of art in itself or the State's interest in being informed of all the details of a contract, including the identity of the end purchaser on a sale through an agent, so that the authorities could decide in the full knowledge of the facts whether or not to exercise their right of pre-emption. After receiving in 1983 the information missing from the declaration made in 1977, that is, the identity of the end purchaser, the Italian authorities had waited until 1988 before giving serious consideration to the question of ownership of the painting and deciding to exercise their right of pre-emption. During that time the authorities' attitude towards the applicant had oscillated between ambivalence and assent and they had often treated him de facto as the legitimate title-holder under the 1977 sale. Furthermore, the considerable latitude left to the authorities under the applicable provisions, as interpreted by the domestic courts, and the above-mentioned lack of clarity in the law had made the situation even more uncertain, to the applicant's detriment.

Conclusion - The Court considered that the respondent Government had failed to give a convincing explanation as to why the Italian authorities had not acted in 1984 in the same manner as they had acted in 1988. Thus, taking punitive action against the applicant in 1988 on the ground that he had made an incomplete declaration, a fact of which the authorities had become aware almost five years earlier, hardly seemed justified. In that connection it had to be stressed that where an issue in the general interest was at stake it was incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency. Furthermore, that state of affairs had allowed the Ministry of Cultural Heritage to acquire the painting in 1988 at well below its market value. The authorities had thus derived an unjust enrichment from the uncertainty that existed during that period and to which they had largely contributed. Irrespective of the applicant's nationality, such enrichment was incompatible with the requirement of a "fair balance".

Conclusion: Violation (16 votes to 1).

Article 14 - In the light of its conclusions regarding Article 1 of Protocol No. 1 to the Convention, the Court considered that there was no reason to examine separately whether the applicant had been the victim of discrimination on the ground of his nationality contrary to Article 14.

Article 41 - The Court considered that the question of the application of Article 41 was not ready for decision. Accordingly, it had to be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the respondent State and the applicant. The Court allowed the parties six months in which to reach such agreement.

Judge Ferrari Bravo expressed a dissenting opinion and this is annexed to the judgment.

APPENDIX IV

Case of Almeida Garrett, Mascarenhas Falcão and others v. Portugal - Extract from press release

Facts: The applicants, Alexandre de Almeida Garrett, José Mascarenhas Falcão, Francisco Augusto Mascarenhas Falcão, Maria Teresa Mascarenhas de Oliveira Falcão de Azevedo, Maria José Mascarenhas Falcão Themudo de Castro and Leone Marie Irion Falcão are all Portuguese nationals. They were born in in 1926, 1932, 1939, 1919, 1935 and 1930 respectively. The first four applicants live in Lisbon and the last two in Constância (Portugal).
The applicants were all owners of land which was expropriated and made national property as part of the agrarian reform implemented in Portugal after the 1974 revolution. In accordance with the legislation applicable to agrarian reform, they received interim compensation in the form of Government bonds. To date, they have not yet received their final compensation. The applicants applied to the ordinary and administrative courts seeking damages for the delay in determining and paying out the final compensation, but the courts concerned ruled that they did not have jurisdiction.
The applicants complained that, having still not received any final compensation, they had suffered an infringement of their right to the peaceful enjoyment of their possessions, secured by Article 1 of Protocol No. 1 to the European Convention on Human Rights. In that connection, they also relied on Articles 6, 13 and 17 of the Convention.
Law: The Government's preliminary objection - The Court, after first pointing out that it could not examine issues arising from the deprivation of ownership in itself, since these fell outside its jurisdiction *ratione temporis*, noted that the applicants complained of the fact that they had received no final compensation, a state of affairs which still obtained. It further observed that the Government had continued to legislate on the matter after the date on which Portugal ratified the Convention. Yet the State was responsible for acts and omissions in respect of a right guaranteed by the Convention which had taken place since the Convention was ratified. Since the applicants were accordingly placed in a continuing situation, the Court dismissed the Government's preliminary objection.
Article 1 of Protocol No. 1 to the Convention - The Court observed that this provision protected financial assets such as debts. It noted that the relevant Portuguese legislation - and a court decision as regards Mr Almeida Garrett in particular - had upheld the applicants' right to compensation on account of the deprivation of their possessions. The applicants could accordingly assert the right to receive payment of the State's debts towards them, so that Article 1 of Protocol No. 1 was applicable.
The Court went on to point out that it was the fact that no final compensation had been paid to date which constituted interference with the applicants' right to peaceful enjoyment of their possessions. It emphasised that it could not examine the deprivation of ownership itself, still less the amount of compensation. Consequently, the rule laid down by Article 1 of Protocol No. 1 which was applicable in the instant case was the one set forth in the first sentence of the first paragraph, which enunciated in general terms the principle of peaceful enjoyment.
For the purposes of that principle, the Court had to ascertain whether a fair balance had been maintained between the requirements of the general interest of the community and protection of an individual's fundamental rights. It accepted that the interference in issue had pursued a legitimate aim since it could not be deemed unreasonable for a State to take into account its own economic and budgetary resources following a far-reaching land reform whose economic and social policy objectives could not be contested. However, the Court noted that twenty-four years had already elapsed without the applicants receiving final compensation, even though such compensation had been provided for in the relevant domestic legislation. It pointed out that the adequacy of compensation would be diminished if payment failed to take account of factors that might reduce its value, such as the lapse of a period of time which could not be described as reasonable.

It was undeniable that the length of the period of time in question was attributable to the State; the complexity of the administrative authorities' task in this regard or the number of persons to be compensated could not justify a period as lengthy as the one complained of.
Moreover, the fact that the applicants had received interim compensation did not appear decisive. The compensation in question had been paid several years after the deprivations of property in issue. In any event, the fact that interim compensation had been paid did not alter the situation of uncertainty which still affected the applicants. It was that uncertainty, coupled with the lack of any effective domestic remedy capable of providing redress for the situation complained of, which led the Court to consider that the applicants had already had to bear a special, excessive burden which had upset the fair balance required between the requirements of the general interest on the one hand and protection of the right to peaceful enjoyment of possessions on the other. The Court accordingly concluded that there had been a violation of Article 1 of Protocol No. 1.
Conclusion: Violation (unanimous).
Articles 6, 13 and 17 of the Convention - The Court considered that it was not necessary to examine the application separately from the standpoint of those provisions.
Article 41 of the Convention - The Court considered that the question of just satisfaction was not ready for decision as regards pecuniary and non-pecuniary damage and decided to reserve it while taking into account the possibility of an agreement between the respondent State and the applicants. On the other hand, it awarded 3,500,000 Portuguese escudos to Mr Almeida Garrett and 2,000,000 escudos to the Mascarenhas Falcão family for costs and expenses.

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