CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 26
on the case-law of the Court
January 2001

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

Statistical information[1]

		January	2001
I. Judgments delivered			
Grand Chamber		6	6
Section I		34	34
Section II		6	6
Section III		33	33
Section IV		0	0
Total		**79**	**79**
II. Applications declared admissible			
Section I		9(13)	9(13)
Section II		5	5
Section III		14(15)	14(15)
Section IV		7(8)	7(8)
Total		**35(41)**	**35(41)**
III. Applications declared inadmissible			
Section I	- Chamber	7	7
	- Committee	162	162
Section II	- Chamber	8	8
	- Committee	88	88
Section III	- Chamber	15	15
	- Committee	155(156)	155(156)
Section IV	- Chamber	9(19)	9(19)
	- Committee	174	174
Total		**618(629)**	**618(629)**
IV. Applications struck off			
Section I	- Chamber	0	0
	- Committee	6	6
Section II	- Chamber	0	0
	- Committee	3	3
Section III	- Chamber	2	2
	- Committee	4	4
Section IV	- Chamber	0	0
	- Committee	2	2
Total		**17**	**17**
Total number of decisions[2]		**670(687)**	**670(687)**
V. Applications communicated			
Section I		18(19)	18(19)
Section II		18	18
Section III		33(35)	33(35)
Section IV		32(33)	32(33)
Total number of applications communicated		**101(105)**	**101(105)**

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

Judgments delivered in January 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5	0	0	1[1]	6
Section I	27	6	1	0	34
Section II	6	0	0	0	6
Section III	31	2	0	0	33
Section IV	0	0	0	0	0
Total	**69**	**8**	**1**	**1**	**79**

[1] Just satisfaction.
[2] Of the 64 judgments on merits delivered by Sections, four were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Responsibility of Italian and Albanian authorities in the death of Albanian illegal immigrants in a collision at sea: *inadmissible*.

XHAVARA and others - Italy and Albania (N° 39473/98)
Decision 11.1.2001 [Section IV]

In 1997, the Italian and Albanian authorities, faced with the wave of Albanian citizens immigrating illegally into Italy, took, jointly, a number of measures to discourage further Albanians from leaving. They decided to set up a naval blockade and signed an agreement authorising the Italian navy to board and search Albanian boats. The applicants, who are Albanian, were trying to enter Italy illegally when their boat, the *Kater I Rades*, sank following a collision with an Italian warship whose crew was attempting to board and search the vessel. The applicants were rescued, but fifty-eight people, among whom were members of their family, perished in the shipwreck. The commanding officer of the warship was prosecuted in Italy for manslaughter. He was accused of having exposed the passengers of the Albanian boat, which he had been chasing, to a risk which was disproportionate to the aim pursued, namely the protection of national security. Some of the applicants applied to join the civil proceedings as civil parties seeking damages. The officer was committed for trial in November 1998. His trial was still continuing on 21 December 2000.
Inadmissible under Article 2: the Albanian authorities could not be held liable for the measures taken by Italy in performance of the agreement reached between the two states and, in particular, the sinking of the *Kater I Rades*. In respect of the Italian authorities' liability, the applicants had not adduced any evidence to show that the boat had been deliberately sunk. Furthermore, the commanding officer of the warship had been prosecuted in Italy and committed for trial. There was no reason to believe that the investigation carried out by the Italian authorities had been inefficient or biased. The applicants were also able to join the criminal proceedings as civil parties and attend the hearings. The purpose of those proceedings was precisely to establish whether the accused had exposed the passengers to a danger disproportionate to the aim pursued and thus to determine whether the measures taken to control immigration had been applied in a manner compatible with the duty to protect the right to life. Having regard to the complexity of the case and to the necessity of instructing experts, the overall length of the proceedings did not justify dispensing the applicants from the obligation to exhaust domestic remedies: non-exhaustion of domestic remedies.

ARTICLE 3

TORTURE
Allegations of torture of a suspected leader of the PKK: *communicated*.

SOYSAL - Turkey (N° 50091/99)
[Section I]

The applicant is one of the leaders of the Kurdistan National Liberation Front (ERNK), an organisation which claims to be the political wing of the Kurdistan Workers' Party (PKK). On 13 July 1999 he was arrested in Moldova and handed over to Turkish intelligence agents. He was taken back to Turkey and placed in police custody. He underwent a medical examination which revealed, among other things, that he suffered from Hepatitis B. He alleged that he was subsequently tortured during interrogations by intelligence agents. He was then transferred to

the police authorities. He underwent medical tests in a hospital, following which his state of health was held not to give cause for alarm, although marks from blows and injuries were observed, and he was prescribed tests for Hepatitis B. Following further questioning, he had to undergo more tests at the hospital on account of his precarious state of health. On 23 July 1999 he appeared before the public prosecutor. He retracted his earlier confessions, saying that he had made them under threat of torture. He was brought before a judge of the National Security Court, who ordered him to be placed in pre-trial detention. He was able to converse with his lawyers, who noted injury marks on his legs, back and arms, and in particular marks suggesting that he had been given intravenous injections. At the request of the prison doctor, he was taken to hospital where his state of health was, however, deemed satisfactory. In August 1999 the public prosecutor charged the applicant with being one of the leaders of the PKK and requested the application of Article 125 of the Criminal Code, which provides for the death penalty. The applicant's lawyer lodged a complaint against the officers who had been in charge of the applicant during his detention in police custody. The complaint was referred to the Prime Minister, whose prior agreement was necessary in order to bring criminal proceedings. The Prime Minister did not give his agreement, however. The public prosecutor with whom the complaint had been lodged accordingly made an order discontinuing the proceedings. The applicant is currently still in detention.
Communicated under Articles 2, 3, 5(1), (2), (3) and (4), 14 and 18.

INHUMAN TREATMENT
Conditions of detention of a suspected leader of the PKK: *communicated*.

SOYSAL - Turkey (N° 50091/99)
[Section I]
(see above).

INHUMAN TREATMENT
Destruction of home and property by security forces: *violation*.

DULAŞ - Turkey (N° 25801/94)
Judgment 30.1.2001 [Section I]

Facts: The applicant claimed that her home and possessions had been destroyed by the security forces, who had burned around fifty houses in her village, forcing the evacuation of the village.
The European Commission of Human Rights took evidence and found the evidence of the applicant and other villagers to be convincing, whereas it considered the evidence given by members of the security forces to be unreliable. It found it established that the applicant's property had been burned by the security forces.
Law: The Court accepted the facts as established by the Commission.
Government's preliminary objection (non-exhaustion) – Despite the extent of the problem of village destruction, there appeared in previous cases to be no example of compensation being awarded or of prosecutions being brought. There had consistently been a general reluctance on the part of the authorities to admit that such practices by members of the security forces had occurred. It has thus not been demonstrated with sufficient certainty that effective and accessible remedies existed. In the circumstances, it is understandable that the applicant considered it pointless to attempt to secure satisfaction through national legal channels. The preliminary objection must therefore be dismissed.
Article 3 – The applicant was over 70 at the time of the events and her home and property were destroyed in front of her eyes, depriving her of means of shelter and support and obliging her to leave the community where she had lived all her life. Having regard to the

circumstances in which her home and possessions were destroyed and her personal circumstances, she must have been caused suffering of sufficient severity for the acts to be categorised as inhuman treatment.
Conclusion: violation (unanimously).
Article 8 and Article 1 of Protocol No. 1 – There can be no doubt that the acts of the security forces constituted particularly grave and unjustified interferences with the applicant's rights under these provisions.
Conclusion: violation (unanimously).
Article 13 – It has not been established with sufficient certainty that the remedies referred to by the Government provided in the circumstances of the case any effective prospect of obtaining redress. While the applicant did not approach any domestic authority with her complaints, it appears that she was summoned by the public prosecutor following communication of her application to the Government. However, it is not apparent that he took any investigative step before issuing a decision of lack of jurisdiction and referring the matter to the Administrative Council, which the Court has already found not to be independent. There was therefore no thorough or effective investigation.
Conclusion: violation (6 votes to 1).
Article 18 – The Court did not find it necessary to examine this complaint separately.
Conclusion: not necessary to examine (unanimously).
The Court did not find it necessary to determine whether the failings identified were part of a practice adopted by the authorities.
Former Article 25 (Article 34) – The Court was not satisfied that the interview with the public prosecutor related solely to the latter's duty to collect information about the applicant's complaints for the purpose of his own investigation. It also involved verifying the authenticity of the application and whether the applicant wanted to continue it and the applicant not unreasonably must have felt intimidated by the interview and felt under pressure to withdraw her application. This constituted undue interference.
Conclusion: failure to comply with obligations (unanimously).
Article 41 – The Court awarded the applicant £12,600 (GBP) in respect of pecuniary damage and £10,000 in respect of non-pecuniary damage. It also made an award in respect of costs.

INHUMAN TREATMENT
Continued detention of aged convict: *communicated*.

PAPON - France (N° 64666/01)
[Section III]

The applicant was Secretary General of the Gironde prefecture during the German Occupation which followed the French defeat of 1940. After Liberation, he carried on a career as a senior official and was a minister from 1978 to 1981. In May 1981 a weekly published articles implicating him in questionable conduct during the Occupation. Following those revelations, he was prosecuted and sentenced in April 1998 to ten years' imprisonment for complicity in crimes against humanity. He lodged an appeal on points of law with the Court of Cassation, which dismissed it on 21 October 1999. Since then, the applicant, who is over 90 years old, has been serving his sentence in the Santé Prison. In 1996 he had to have a triple heart bypass operation. During his trial, hearings had to be adjourned several times on account of the applicant's health. In January 2000 he had to be fitted with a pacemaker. He lodged two applications with the President of the Republic for a pardon on medical grounds, both of which were dismissed. Referring to parliamentary inquiry reports and to a book published by the head doctor at the Santé Prison on inmates' living conditions, the applicant alleged, among other things, that his conditions of detention were incompatible with extreme old age.
Communicated under Article 3.
The Court decided to give priority to the application (Rule 41 of the Rules of Court).

EXTRADITION
Extradition to China, with the risk of imprisonment: *admissible*.

JIN - Hungary (N° 58073/00)
Decision 11.1.2001 [Section II]

The applicant, a Chinese national, is detained pending extradition to China following a request of the Interpol Beijing Office and the Chinese Ministry of Justice. The applicant is suspected of involvement in robbery, stabbing and shooting of a person in China, for which two others were sentenced to death and executed. In view of the elements contained in the investigation and extradition documents, the Regional Court which ordered his detention considered that his offence constituted "bodily assault causing disabling injuries" which under both Chinese and Hungarian law is punishable by imprisonment. The Hungarian Ministry of Justice obtained the formal assurance of the Chinese authorities that the applicant would not be sentenced to death, and in the event he would be that the sentence would not be carried out. The applicant claims that in China he would be summarily judged and sentenced to imprisonment. In view of the conditions of detention in Chinese prisons, he asserts that the conditions of his detention would be inhuman.
Admissible under Articles 3, 6 and 1 of Protocol N° 6.

ARTICLE 5

Article 5(1)

LAWFUL ARREST AND DETENTION
Conditions of arrest and detention of a suspected leader of the PKK: *communicated*.

SOYSAL - Turkey (N° 50091/99)
[Section I]
(See Article 3, above).

Article 5(1)(c)

LAWFUL ARREST OR DETENTION
Continuation of detention on remand under a practice without any legal basis: *violation*.

KAWKA - Poland (Nº 25874/94)
Judgment 9.1.2001 [Section I]

Facts: The applicant was arrested in January 1994 and remanded in custody. On 25 March, at the prosecutor's request, the Regional Court prolonged the detention. The court rejected two requests for release and later prolonged the applicant's detention until 30 September. This decision was confirmed on appeal. The indictment was lodged on 21 September. The applicant had again requested his release on 1 September, and this request was rejected by the Regional Court on 4 October. Both the applicant's father and his lawyer appealed against this decision, submitting that the detention had expired on 30 September without any further decision prolonging it. However, the appeal was dismissed, the court pointing out that the prescribed time-limits ceased to apply once the indictment had been lodged. This was the practice at the

time. The applicant's subsequent requests for release were also rejected, and he was ultimately convicted. At the relevant time, neither a detainee nor his lawyer was entitled to attend hearings relating to prolongation of detention, whereas the prosecutor was. Moreover, there was no requirement that the prosecutor's submissions be communicated to the detainee or his lawyer.
Law: Article 5(1)(c) – The sole basis for the applicant's detention between 1 and 4 October was the fact that the bill of indictment had been lodged. The Court has already found in its Baranowski v. Poland judgment of 28 March 2000 that this is an insufficient legal basis for detention.
Conclusion: violation (unanimously).
Article 5(4) – It is not disputed that at the time neither the applicant nor his lawyer could attend hearings concerning the detention, whereas the prosecutor could, nor that the applicant had no opportunity to comment on the prosecutor's submissions. This is not consistent with the principle of equality of arms.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation of Article 5(4) constituted sufficient just satisfaction in that respect, since it could not speculate as to whether he would have been detained if the guarantees of that provision had been respected. With regard to the violation Article 5(1), it awarded him PLN 4,000.

REASONABLE SUSPICION
Arrest by the police of foreigners without residence permits while they were demonstrating in order to have their situation regularised: *inadmissible*.

CISSE - France (N° 51346/99)
Decision 16.1.2001 [Section III]
(see Article 11, below).

Article 5(5)

COMPENSATION
Absence of right to compensation, following acquittal, in respect of allegedly unlawful detention: *no violation*.

N.C. - Italy (Nº 24952/94)
*Judgment 11.1.2001 [Section II]

Facts: The applicant, technical director of a company, was arrested on 3 November 1993 on suspicion of abuse of power and corruption. The suspicion was based on the statements of five witnesses and an expert opinion. The applicant immediately filed an application for release, arguing that there were no serious indications of guilt, as required by Article 273 of the Code of Criminal Procedure. However, the District Court rejected the application, considering that there were serious indications of guilt and that there was a danger of the applicant committing further crimes. It placed the applicant under house arrest. The applicant sought to have this order revoked, arguing that he had resigned from his position with the company, but the judge for preliminary investigations rejected the request on 3 December 1993. On appeal, the District Court ordered the applicant's release, considering that since he had resigned there were no longer any grounds for keeping him in detention. It later acquitted him.
Law: Article 5(5) – The applicability of this provision presupposes a violation of one of the other paragraphs of Article 5. The applicant's detention fell under Article 5(1)(c) and it has to be determined whether his detention was contrary to that provision. Firstly, as to whether there

existed serious evidence of the applicant's guilt, the Court's task is to examine whether the elements of which the authorities had knowledge at the relevant time were reasonably sufficient. The authorities did not draw any manifestly unreasonable or arbitrary conclusions from the available elements and there is no reason to doubt that these elements were sufficient for the authorities to believe that the applicant had committed the offence. Secondly, as to the danger of further crimes being committed, the reason given by the judge for the preliminary investigations – that the applicant remained technical director of the company and was thus in a position to commit other crimes – is not manifestly unreasonable or arbitrary. The mere fact that the decision did not include an explicit consideration of the applicant's clean record or the absence of any allegation of re-offending after the alleged offence is not sufficient to conclude that these elements were not taken into account. Moreover, the subsequent decision of the District Court, while concise, fulfilled the requirement that the particular circumstances of the case be taken into account. Consequently, the authorities' conclusion that there was a genuine risk of re-offending was not arbitrary, and the applicant's detention up until 2 December 1993 was in conformity with Article 5(1)(c) and no separate issue arises under Article 6(2). With regard to the applicant's detention after 2 December 1993, it was lawful under domestic law and the mere fact that the decision of 3 December was later set aside does not affect the lawfulness. The ground relied on – that despite his resignation the applicant could use his professional skills elsewhere – was not irrelevant or arbitrary and the detention was not incompatible with Article 5(1)(c).

Finally, with regard to the conformity of the length of the applicant's detention with Article 5(3), the period was only one and a half months and the reasons given were both relevant and sufficient. Moreover, the detention was not unduly prolonged by the way in which the case was handled. Since the applicant's detention was not contrary to either Article 5(1) or Article 5(3), there has been no violation of Article 5(5).

Conclusion: no violation (4 votes to 3).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Scope of review of refusal of planning application: *no violation*.

CHAPMAN - United Kingdom (Nº 27238/95)
JANE SMITH - United Kingdom (Nº 25154/94)
Judgments 18.1.2001 [Grand Chamber]
(See Appendix I).

ACCESS TO COURT
Rejection of claim without examination of substance: *violation*.

PLATAKOU - Greece (Nº 38460/97)
*Judgment 11.1.2001 [Section II]

Facts: In December 1990 property belonging to the applicant was expropriated. In April 1993 the court of first instance provisionally assessed compensation at 30,000,000 drachmas (GRD). The applicant applied to the Court of Appeal to have the final amount of compensation determined, arguing (with the help of a 1993 estimate by the Ministry of Culture) that her property was worth GRD 120,000,000. In October 1993 the applicant's lawyer instructed a court bailiff to serve her application on the State in accordance with the law. The statutory time-limit to be complied with by the bailiff was six months from the date of the court of first instance's decision. The bailiff exceeded that time-limit. In parallel proceedings the State brought an action in the Court of Appeal for the final amount of compensation to be determined. Its application was served on the applicant in March 1994. The Court of Appeal declared both applications inadmissible as out of time, noting, however, that the time-limit had been suspended for the State during the judicial recess. The applicant applied to the Court of Appeal for the previous situation in the case to be restored, arguing that she should not be held liable for the bailiff's error. She lodged an appeal on points of law with the Court of Cassation against the Court of Appeal's judgment which had ruled her initial application inadmissible, and a concomitant application for the previous position in the case to be restored. In November 1995 the Court of Appeal adjourned its examination of the application for the previous position in the case to be restored, pending the Court of Cassation's ruling on the applicant's appeal. Although the Court of Cassation had mentioned in its judgment that the application for the previous position in the case to be restored should be held inadmissible, it did not deal with that point in the operative part. The Court of Appeal dismissed the applicant's application for the previous position in the case to be restored, on the ground that her application had already been dismissed by the Court of Cassation.
Law: Article 6 (1) – Dismissal of the application for a final unit price for compensation – The ruling of inadmissibility by the Court of Appeal had penalised the applicant for an error in service of her application. Under domestic law, court bailiffs were responsible for serving court documents and they were therefore liable for failure to comply with the conditions of service. The exercise of their duties could be analysed as the act of a state organ. The applicant could not therefore be held liable for an error in the service on the State of her application for a final unit price for compensation.
Dismissal of the application for the previous position in the case to be restored – neither the Court of Appeal nor the Court of Cassation had examined the merits of the applicant's request for the previous position in the case to be restored and consequently the commencement of

proceedings to determine the final amount of compensation for expropriation. The Court of Cassation had referred, among other things, to the lack of grounds supporting the applicant's appeal in respect of the alleged error of the court bailiff. It appeared, however, that the applicant had indeed submitted evidence in support of her appeal. Even supposing that the applicant had not scrupulously complied with the conditions for lodging her appeal, such rigid formalism could not be allowed to affect the Court of Cassation proceedings. The Court of Appeal had not examined the applicant's complaint either, on the ground that it had already been dismissed by the Court of Cassation, although there had been no mention of it in the operative part of the judgment. Ultimately, the applicant had applied to two courts without succeeding in having her claim examined on the merits.
Suspension in favour of the State of the judicial time-limit during the judicial recess – If the applicant had been able to benefit from the suspension of the time-limit during the judicial recess, as had the State, her request for the determination of a final unit price for compensation would not have been considered to be out of time. The applicant had accordingly been placed in a substantially worse position than the State. In conclusion, the applicant had suffered a disproportionate infringement of her right of access to a tribunal and a substantial infringement of her right to a court. In addition, the principle of equality of arms had also been infringed.
Conclusion: violation (unanimous).
Article 1 of Protocol No.1: In order to determine whether the impugned measure complied with the requirement of a fair balance and, in particular, whether it had placed a disproportionate burden on the individual, the terms of compensation provided for in domestic law had to be taken into consideration. The taking of property without payment of an amount reasonably related to the value of the property normally constituted an excessive infringement which could not be justified under this Article. In the instant case the compensation had been fixed at GRD 30,000,000, the State arguing that the applicant's property was in a very poor condition. According to the documents submitted by the applicant, in particular an estimate by the Minister of Culture and an expert's report dated 1993, the property appeared to be in very good condition and to be worth more than GRD 117,000,000. In a further expert's report, dated 1999, the value of the property had been estimated at more than GRD 147,000,000. In the light of those factors, the applicant had sufficiently established that the compensation for expropriation did not bear a reasonable relation to the value of the property.
Conclusion: violation (unanimous)
Article 41: The Court awarded the applicant GRD 90,000,000 for pecuniary damage, GRD 3,000,000 for non-pecuniary damage and GRD 6,710,000 for costs and expenses.

ACCESS TO COURT
Refusal to grant police assistance in order to carry out an eviction decided by Court order: *violation*.

LUNARI - Italy (N° 21463/93)
*Judgment 11.1.2001 [Section II]

Facts: A large number of lease agreements expired at the beginning of the 1980s. The Italian authorities, who were anxious to avoid the social tensions which, given the housing shortage, would inevitably have been generated by massive evictions of tenants, adopted measures suspending or staggering enforcement of the evictions. Subsequently, the police were also instructed to stagger their interventions, owing to the number of requests made by landlords wishing to recover their property. However, the legal provisions suspending or staggering the evictions provided that they would become enforceable, as a matter of priority, where the tenant owed the lessor a sum amounting to two months' rent.

The applicant had been renting a flat to a couple who subsequently divorced. The wife, who had a modest income and a dependant child, succeeded to her husband on the lease. In September 1987, when the lease ran out, the applicant requested his tenant to quit the premises. When she failed to comply with his request, he summoned her to appear in the district court, which, in an order of 9 October 1987, confirmed the notice to quit and served an order on the tenant to vacate the flat by 9 October 1988 at the latest. When the tenant persisted in her refusal to quit, the applicant had recourse on two occasions, in October 1989 and May 1991, to a bailiff. As the bailiff was unable to obtain the assistance of the police, he could not evict the tenant. The applicant went back to the district court in December 1991 seeking an order that since the tenant had stopped paying her rent and co-ownership service charges, she could be legally evicted. At the end of the trial, during which the tenant had disputed the applicant's submissions, the court upheld the applicant's request in a decision of April 1993. In the meantime, there had been nineteen unsuccessful attempts to evict the tenant. In July 1993 the bailiff instructed by the applicant obtained the assistance of the police for the first time and the tenant vacated the flat. In November 1992 the applicant had been ordered, by a court decision, to pay the managing agent the co-ownership service charges due from the tenant.

Law: Article 1 of Protocol No.1 – The interference in question pursued a public-interest aim. In adopting measures suspending enforcement of the evictions and providing for exceptions to their application, the legislature was reasonably entitled to consider that the means chosen were appropriate to achieve the legitimate aims pursued. It remained to be determined whether, on the facts, a fair balance had been struck between the interests of the community and those of the landlord. The applicant had obtained an eviction order, enforcement of which had been scheduled for 9 October 1988. The legal conditions for eviction of the tenant had been satisfied, including during the period in which the evictions had been suspended, since she had not paid rent since 1991, a fact of which the applicant had informed the authorities. It was not until July 1993 that the applicant had secured the assistance of the police and, in the meantime, he had had to bring a legal action for a ruling that the rent had not been paid, and himself pay the co-ownership service charges due from his tenant to the managing agent. The restrictions imposed on his enjoyment of the flat, due, among other things, to a misapplication of the exceptions to the measures staggering police intervention, had resulted in an individual and excessive burden on him, which had failed to strike the necessary balance between peaceful enjoyment of possessions and the requirements of the general interest.

Conclusion: violation (unanimous)

Article 6 (1) – The right to enforcement of a court decision was an integral part of the right of access to a court. Accordingly, it could not be impeded, invalidated or excessively delayed. The eviction order which the applicant had obtained in 1987 was not enforced until July 1993. Although the rent arrears had entitled the applicant to the benefit of police assistance, sixteen months had elapsed before the district court acknowledged that fact. It had not been shown that the stay of execution had lasted only the time strictly necessary to remedy the housing situation or that the four years during which the court decision had remained unenforced had been used to find a solution to the problem of rehousing the applicant's tenant.

Conclusion: violation (unanimous)

Article 41: The Court awarded the applicant 330,000 Italian lire for pecuniary damage and 15,000,000 lire for non-pecuniary damage.

ACCESS TO COURT
Suspension of civil proceedings due to absence of legal representation, despite free legal assistance having been granted: *communicated*.

RENDA MARTINS - Portugal (N° 50085/99)
[Section IV]

In January 1996 the applicant, who had been injured in an industrial accident, applied to the civil chambers of the Lisbon Court for legal aid to have a lawyer assigned to lodge a claim in damages against his former employer. In December 1996 the court granted the applicant legal aid and requested the Bar Council to assign him a lawyer. Between March 1997 and January 1999 four lawyers were assigned in succession, all of whom asked to be discharged from their duties. In February 1999 the applicant, represented by a fifth officially assigned lawyer, lodged the civil action in question. The same month the fifth lawyer asked to be discharged from his duties. In January 2000, when the seventh lawyer had asked to be discharged from his duties, the President of the Bar Council informed the court that, in view of the number of lawyers previously assigned, owing to the applicant's difficult personality, he did not intend to appoint a further lawyer to represent him. At the end of January 2000 the court invited the applicant to instruct a lawyer and, in November 2000, seeing that the applicant had not done so, decided to adjourn the proceedings.
Communicated under Article 6(1).

ACCESS TO COURT
Impossibility for grandparents to institute proceedings to have the guardianship of their grandchild transferred to them: *communicated*.

LAUKKANEN - Finland (N° 37536/97)
[Section IV]

The applicants' 10-year-old grandchild has lived with them since 1993, with no contacts with her mother, the applicants' daughter. The social authorities refused to institute proceedings on behalf of the child concerning the transfer of guardianship from the mother to the applicants. The applicants brought their claim before the District Court, which refused to examine their request on the ground that they had no legal right to bring it. According to the Act on Custody and Visiting Rights concerning Children, the right to request the transfer of the guardianship of a child lies in the hands of the parents, the guardians of the child and the social authorities, who can institute proceedings on behalf of the child if need be. The applicants' subsequent appeals to the Court of Appeal and the Supreme Court were to no avail.
Communicated under Article 6(1).

EQUALITY OF ARMS
Suspension of time-limit during court vacation, in respect of the State but not an individual party: *violation*.

PLATAKOU - Greece (Nº 38460/97)
Judgment 11.1.2001 [Section II]
(see above).

CRIMINAL CHARGE
Pecuniary sanction for works carried out on a house without the required permit: *Article 6 not applicable*.

INOCÊNCIO - Portugal (N° 43862/98)
Decision 11.1.2001 [Section IV]

The applicant was fined 500,000 Portuguese escudos by the district council for his place of residence for making alterations to his house without having first obtained the necessary permit, this being defined in a Legislative Decree as a summary offence. The applicant appealed against the decision imposing a fine. The fine was upheld and his appeal dismissed.
Inadmissible under Article 6(1): With regard to the legal classification of the offence for which the applicant had been fined, the said offence was governed by the law relating to summary offences and not the criminal law. With regard to the nature of the offence, the requirement of a permit to carry out building works had to be construed as a regulation pertaining to the use of property, which was part of an overall planning policy. A penalty for failing to comply with that regulation could not be deemed to be a punitive or criminal measure of general application to all citizens. With regard to the nature and severity of the penalty, it could not be replaced by a custodial sentence in the event of failure to pay the fine. Although the amount of the fine was substantial, there was no threat of criminal proceedings against the applicant. Having regard to those factors, the fine could not be deemed to be a criminal penalty within the meaning of Article 6, which was thus inapplicable: incompatible *ratione materiae*.

ACCESS TO COURT
Dismissal of cassation appeal due to appellant's failure to surrender into custody: *communicated*.

PAPON - France (N° 54210/00)
[Section III]

The applicant was Secretary General of the Gironde prefecture during the German Occupation which followed the French defeat of 1940. After Liberation, he carried on a career as a senior official and was a minister from 1978 to 1981. In May 1981 a weekly published articles implicating him in questionable conduct during the Occupation. In December 1981 a criminal complaint, together with an application to join the proceedings as a civil party, was lodged against him for his role in the deportation of Jews. Six further complaints followed. In July 1982 the public prosecutor requested an investigation to be commenced in respect of each of the seven complaints. In January 1983 the investigating judge in charge of the case charged the applicant with crimes against humanity. However, all the investigative and prosecution measures taken by the judge were set aside in February 1987 for non-compliance with a substantial formality. The investigation continued and the applicant was charged again in July 1988. The Assize Court convicted him of complicity in a crime against humanity and sentenced him in April 1998 to ten years' imprisonment. The applicant appealed on points of law to the Court of Cassation. He was informed that, prior to any examination of his appeal, he would have to fulfil the legal obligation of "surrendering to custody". That provision, which has now been abrogated, required persons who had been sentenced to more than one year's imprisonment to surrender to custody before the Court of Cassation would examine their appeal. The applicant, relying on, among other things, his old age and state of health, requested an exemption from the duty to surrender to custody. This was refused him on the

ground that his health did not appear to be incompatible with detention in a hospital cardiology department. As the applicant had failed to surrender to custody, the Court of Cassation gave judgment on 21 October 1999 forfeiting his appeal on points of law.
Communicated under Article 6(1) and Article 2 of Protocol No. 7.

FAIR HEARING
Conviction *in absentia* of accused, placed under supervisory guardianship, without notification to the guardian and without any legal representation at the hearing: *violation*.

VAUDELLE - France (N° 35683/97)
*Judgment 30.1.2001 [Section III]

Facts: In March 1995 the applicant was placed under supervisory guardianship following a judgment in which the guardianship judge had found that, on account of the deterioration of his mental faculties, he had to be represented and assisted in his civil transactions. His son was appointed as his guardian. A month earlier, a complaint had been lodged against him for indecent assaults on minors. He failed to respond to two summonses issued at the prosecution's request, requiring him to undergo a psychiatric examination. Neither did he attend the hearing fixed by the *tribunal de grande instance,* despite having acknowledged receipt of the summons addressed to him personally. He was not represented at the hearing. The court sentenced him to prison and ordered him to pay damages. The judgment was served on him subsequently. His son then declared that he had not been informed of his father's arrest and conviction until the day when his father began serving his sentence, all the summonses having been sent directly to the first applicant alone. He complained – unsuccessfully – to the prosecution about the situation, alleging that his father had not been in a position to conduct his own defence and that he (the son) should have been informed of events in the proceedings so that he could organise his father's defence. The guardianship judge, to whom he had also applied, explained that the supervisory guardianship under which the applicant had been placed was merely a system of assistance which did not entail an obligation to advise the person appointed as guardian of criminal proceedings against the person under supervisory guardianship. As relations between the applicant and his son had deteriorated, the son requested the supervisory judge to place his father under judicial guardianship. The applicant's son was discharged from his duties as the applicant's supervisory guardian.
Law: Article 6(1) and (3)(a) – The question which arose here was whether compliance with procedural rights had guaranteed the applicant effective enjoyment of his right to a fair trial and allowed him to exercise his rights of defence, the guardianship judge having noted that, on account of the deterioration of his mental faculties, he had to be represented and assisted in his civil transactions and, moreover, that he was incapable of taking part in court proceedings without the assistance of his guardian. In order to determine whether the domestic law provided sufficient procedural guarantees, account had to be taken of the particular circumstances of a case. The offences with which the applicant had been charged were particularly serious since he had been accused of indecent assaults on minors. He had been required to undergo a psychiatric examination, but had failed to comply with two summonses. He was liable to a term of imprisonment, which demonstrated the seriousness of what was at stake in the proceedings. The Government did not dispute that the judicial authorities concerned were aware that the applicant had been placed under supervisory guardianship. The criminal court had, however, convicted the applicant in proceedings deemed to be adversarial, in the absence of the applicant and his representative and without a psychiatrist's report. Having regard to those factors, the court should have ensured, before giving its ruling, that the trial had been conducted fairly. It should have taken the special measures which the circumstances required to ensure that the defendant could appear at first instance and that his right to an officially assigned lawyer would be effective. Furthermore, special procedural

guarantees might be necessary to protect those who, on account of a mental disorder, were not entirely capable of acting on their own behalf. In the instant case, since the applicant had been deemed to be incapable of acting alone or on his own behalf in civil transactions, he should have been deemed to be suffering from the same incapacity in the criminal proceedings against him, having regard to the possibility that his right to liberty was at stake in those proceedings. An individual who had been certified incapable of defending his civil interests and who benefited from assistance to that effect should also have been assisted in defending himself against a criminal charge. The proceedings also had consequences for his property to the extent that he was ordered to pay damages. Since placement under supervisory guardianship was designed to protect the subject's economic rights, nothing justified not giving the applicant any assistance in the criminal proceedings. With regard to the Government's submission that the guardian bore liability, it should be noted that at no time was he informed of the criminal proceedings brought against his father. To conclude, in the light (among other things) of the seriousness of the criminal charge, the proper administration of justice required the national authorities to take additional steps, such as ordering the applicant to submit to a psychiatric examination and summoning him to appear at the hearing personally or through a representative. He could then have understood the proceedings and have been informed in detail of the nature and cause of the accusation against him and the fairness of the criminal trial would have been ensured.
Conclusion: violation (unanimous)
Article 41: The Court awarded the applicant FRF 50,000 for non-pecuniary damage.

FAIR HEARING
Extradition to China, with the risk of a summary trial: *admissible*.

JIN - Hungary (N° 58073/00)
Decision 11.1.2001 [Section II]
(See Article 3, above).

FAIR HEARING
Conviction for sexual abuse solely on the basis of statements made by the victim to the police: *admissible*.

S.N. - Sweden (N° 34209/96)
Decision 16.1.2001 [Section I]
(See Article 6(3)(d), below).

FAIR HEARING
Refusal by court, without giving reasons, of request to have the victim, other witnesses and experts summoned and to be allowed to examine an exhibit: *communicated*.

MERIAKRI - Moldova (N° 53487/99)
[Section I]

In March 1997, the applicant was arrested on suspicion of armed robbery. He alleged that he was severely beaten up by police officers after having refused to sign the interrogation record in which he declared himself guilty. He lodged two complaints with the authorities concerning his alleged ill-treatment in detention but they were not examined. In June 1997, the applicant appeared before the District Court in respect of the crime he was charged with. He submitted a written request to have the victim summoned so that he could question him before the court and to be allowed to examine the gun which constituted the main exhibit. He

also asked to be confronted with the co-accused. The court rejected his request without giving any reasons. In July 1997, in the course of the hearings, the applicant requested that the police officers responsible for the investigation should also be summoned and that criminal proceedings be instituted against the police officers who had allegedly ill-treated him. The court again rejected the applicant's request without giving reasons. He was eventually convicted of armed robbery and sentenced to 12 years' imprisonment. He unsuccessfully lodged appeals to the Regional Court and subsequently the Court of Appeal. In addition, the applicant alleged that the prison authorities interfered with his correspondence with the Court and domestic authorities. He produced a request he had addressed to the prison authorities by which he asked for the documents which were necessary to his application before the Court. He received no answer to his requests. Another letter which the Moldovan mission to the OSCE had sent him bore stamps which proved that it had been examined by several offices before eventually reaching him. He further contended that the prison authorities systematically censored and delayed the letters sent by the Court to him.
Inadmissible under Articles 3, 5(1) and 13: The complaints under these articles relate to facts which occurred before the entry into force of the Convention in Moldova on 12 September 1997.
Communicated under Article 6(1) and 8.

FAIR HEARING
Failure to carry out DNA test in rape case: *communicated*.

TEZEL - Turkey (N° 43923/98)
[Section I]

The applicant, a dog trainer by profession, was arrested and charged with, *inter alia*, rape. He was convicted and sentenced to 10 years' imprisonment, the court relying on testimonies given at the trial and on medical reports. Scratches on the applicant's neck were held as evidence against him, although he argued that they had been made by a dog. According to a medical report presented before the court, the scratches could have been caused by an object, a person or an animal. No DNA test was carried out concerning the scratches or on the alleged victim of the rape. The public prosecutor at the Assize Court and the applicant lodged an appeal with the Court of Cassation, on the ground that there was insufficient evidence against the applicant. The court quashed the impugned decision on purely procedural grounds and the Assize Court, to which the case had been remitted, found the applicant guilty once more. The subsequent appeal of the public prosecutor and the applicant was unsuccessful.
Communicated under Article 6(1).

Article 6(3)(c)

FREE LEGAL ASSISTANCE
Rejection of cassation appeal while examination of legal aid request still pending: *communicated*.

DESSALLES - France (N° 50764/99)
[Section IV]

The applicant's pathology laboratory was closed down by court order. The applicant appealed to the Court of Cassation on points of law against that decision and applied for legal aid. The Court of Cassation dismissed his appeal before the Legal Aid Office had dealt with his

application. As the Court of Cassation had already given judgment, the Legal Aid Office dismissed the application on the ground that it had become otiose.
Communicated under Article 6(3)(c).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Impossibility for person accused of sexual abuse of a minor have the victim heard by the court: *admissible*.

S.N. - Sweden (N° 34209/96)
Decision 16.1.2001 [Section I]

The applicant was accused by a child of sexual abuse. An interview of the child by the police took place and was recorded. The applicant was subsequently interrogated by the police and a public prosecutor. The report of the preliminary investigations was communicated to him; he had the possibility to make observations or ask for additional interviews. Following his request, another interview of the child was carried out by the police; it was also recorded. The applicant's counsel did not attend it; however, had he done so, he would not have been allowed to put any questions to the child. The applicant was indicted for sexual acts with a child. The District Court played the recordings of the child's interviews at the trial without hearing him again. Although it was open to the applicant to do so, he chose not to request that the child be heard by the court. According to a well-established court practice, he would not have obtained such a hearing of the child in court. Relying entirely on the child's assertions, the court convicted the applicant and sentenced him to imprisonment. Upon the applicant's appeal, the Court of Appeal upheld the conviction, although it reduced the sentence. Although the court admitted that there was no technical evidence supporting the child's allegations which, the court acknowledged, were sometimes imprecise, it found that the police interviews provided sufficient evidence for the applicant's guilt to be established. The applicant again did not request the court to hear the child. He unsuccessfully lodged an appeal with the Supreme Court.
Admissible under Article 6 (1) and (3)(d).

ARTICLE 8

POSITIVE OBLIGATION (Article 8)
Failure to rehouse the applicants outside an area recognized as dangerously polluted : *communicated*.

LEDIAYEVA - Russia (N° 53157/99)
DOBROKHOTOVA - Russia (N° 53247/99)
ZOLOTARYEVA - Russia (N° 53695/00)
FADEIEVA - Russia (N° 55723/00)
ROMASHINA - Russia (N° 56850/00)
TARASOVA - Russia (N° 56935/00)
SHIRUNOVA - Russia (N° 56989/00)
[Section II]

The applicants lived in Tcherepovets in the health safety zone surrounding the company "Severtal", a metallurgical factory known to be a source of serious nuisance, in which it was illegal to build houses. The first applicant was, nonetheless, compulsorily rehoused in another flat in the same zone. The applicants brought proceedings against the company, requesting that they be immediately rehoused outside the zone. The Municipal Court gave judgment ordering the municipality to rehouse them free of charge outside the zone in order of placement on the waiting list. The applicants appealed and judgment was upheld on that point. When they had still not been rehoused three years later, the last six applicants applied for immediate enforcement of the judgments. Their application failed, both at first instance and on appeal, on the ground that they were already on the waiting list. The applicants complained of an infringement of their right to respect for their home and of their physical and moral integrity as a result of the authorities' passiveness in the face of the nuisance and risks of pollution, since they had not relocated them outside the health safety zone, but had merely placed them on the waiting list.
Communicated under Articles 6 and 8.

FAMILY LIFE
Involvement of parent in decision-making process concerning the taking of his child into public care: *inadmissible*.

M.C. - Finland (N° 28460/95)
Decision 25.1.2001 [Section IV]

In November 1993 the applicant, a Pakistani national, was arrested on suspicion of having killed his wife, the mother of his child, Y. The following day, the social authorities placed Y. in public care, on a provisional basis, and the Basic Welfare Board later confirmed the placement of Y. in care. The applicant's access to the child was prohibited and her whereabouts were to remain undisclosed to him. As he had not been heard prior to this decision, the Board sent it to the County Administrative Court for review. The applicant lodged out of time an appeal to the County Administrative Court against the Board's decision. Meanwhile, Y. had been placed with a foster family. In February 1994 an official of the Board then ordered that the access prohibition be maintained until Y. reached the age of twelve, her whereabouts remaining undisclosed to her relatives. The applicant appealed to the Board. In the care order proceedings, the County Administrative Court examined the applicant's complaint, despite its having been lodged out of time, and dismissed it. The applicant lodged an appeal to the Supreme Administrative Court, requesting an oral hearing. In the meantime, he had been convicted of manslaughter and sentenced to nine years'

imprisonment. In May 1994, the Board confirmed the access prohibition issued in February 1994. The applicant appealed against this decision, contending that he had not been heard, and the County Administrative Court found in his favour, quashing the decision and remitting the case for re-examination. The court rejected the applicant's request that his legal costs be covered by the Board. In February 1995 the access prohibition was again upheld by the Board. In March 1995 the Supreme Administrative Court rejected the applicant's request for an oral hearing in the care order proceedings. The court considered that although he had not been heard prior to the Board's decision of November 1993, he had been able to appeal against the order and the Board had sent the said order for review before the County Administrative Court. Therefore, according to the Supreme Administrative Court, there was no reason to quash it. The County Administrative Court quashed the Board's decision of February 1995 and remitted it for re-examination; it rejected the applicant's request that his legal costs be paid by the Board. In September 1995 the Board maintained the access prohibition until 2004, as initially scheduled, taking into account the opinion of an expert in child psychiatry. The applicant complained that he had not been heard in respect of the opinion. In April 1996 the County Administrative Court held an oral hearing at which the doctor was heard as witness. The applicant emphasised in his submissions to the court that he could not afford to call his own expert. The court rejected the applicant's appeal, finding the duration of the access prohibition justified; no further appeal was open. Following the applicant's release from prison on parole, the immigration authorities decided not to renew his residence permit and eventually expelled him, prohibiting him from re-entering the country.

Inadmissible under Article 8: The placement of the applicant's daughter in public care interfered with the applicant's right to respect for family life. The interference was prescribed by law and aimed at protecting the health and rights of his daughter. It does not appear that the authorities overstepped their margin of appreciation in ordering and implementing the related measures, and the interference can thus be considered proportionate to the legitimate aims pursued. It remains to be determined whether, having regard to the particular circumstances of the case, the applicant was involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests. The authorities did not hear the applicant before the care order was issued in November 1993 or before the access prohibition was maintained in May 1994 and September 1995. However, the Supreme Administrative Court considered that the failure to hear the applicant in the care order proceedings had been compensated for by the County Administrative Court's examination of the applicant's out of time appeal. As regards the decision of May 1994, the County Administrative Court referred the matter back for re-examination, after finding that the applicant had not been heard; the applicant was able to present written submissions up to the Board's decision of February 1995. Although he could not comment on the expert's opinion prior to the decision of September 1995, he was later able to present oral arguments to the County Administrative Court and to examine the expert as a witness. Overall, it cannot be deemed that the applicant was excluded from the decision-making process: manifestly ill-founded.

Inadmissible under Article 6(1) (oral hearing): According to Finland's reservation, which the Court considers valid, Finland could not guarantee a right to an oral hearing before, *inter alia*, the Supreme Administrative Court, since domestic law did not provide for it. The relevant part of the reservation was withdrawn as from 1 December 1996, but the impugned proceedings had ended before that date, and Finland was therefore under no obligation to provide an oral hearing in those proceedings: incompatible *ratione materiae*.

Article 6(1) (fair hearing): As regards the overall fairness of the proceedings, it has to be borne in mind that in the context of care proceedings the lack of disclosure of important documents is capable of affecting the ability of parents not only to influence the outcome of the proceedings but also to assess their prospects of making an appeal. It is established that the applicant was involved to a sufficient degree in the decision-making process for the purposes of Article 8 and for the same reasons there is no indication that the Board's repeated failure to hear the applicant made the proceedings unfair. As to the complaint that the legal

aid granted to the applicant would not cover the costs had he called an expert to counter the opinion lodged in connection with the prohibition on access, the Convention does not gurantee legal aid in civil cases. States have a free choice of means to enable individuals to have access to a court for the determination of their civil rights and obligations; a legal aid scheme constitutes one of these means but not the sole one. According to the Finnish law applicable at the time, costs incurred by an expert or any other witness testifying before the County Administrative Court were reimbursed by the State, provided that they had been summoned by the court itself. However, the applicant never requested the court to summon any expert witness; had the court accepted such a request, the costs pertaining to the expert witness would have been covered by the State. Accordingly, there is no indication that the proceedings were unfair in that only one expert witness was heard. As to the refusals to order the Board to bear the applicant's costs, he was granted legal aid and has not substantiated the alleged detrimental effects of the refusal. Moreover, Article 6(1) does not guarantee to a party successful in respect of the substance of a case any absolute right to be awarded costs against the other party: manifestly ill-founded.
Article 6(1) (length of proceedings): The length of the proceedings (more than two years and two months and comprising three examinations by the Board and the County Administrative Court) cannot be considered excessive, even in the light of what was at stake for the applicant and his daughter: manifestly ill-founded.

HOME
Refusal of applications by gypsies for planning permission to station residential caravans on land owned by them: *friendly settlement*.

CHAPMAN - United Kingdom (Nº 27238/95)
BEARD - United Kingdom (Nº 24882/94)
COSTER - United Kingdom (Nº 24876/94)
LEE - United Kingdom (Nº 25289/94)
JANE SMITH - United Kingdom (Nº 25154/94)
Judgments 18.1.2001 [Grand Chamber]
(See Appendix I).

CORRESPONDENCE
Censorship of prisoner's correspondence by prison authorities : *violation*.

NATOLI - Italie (N° 26161/95)
Judgment 9.1.2001 [Section I]

Facts: The applicant has been serving a life sentence since 1984. In July 1992 the Minister of Justice made an order applying to the applicant for one year the special rules of detention provided for in section 41 *bis* of the Prison Administration Act, in consequence whereof the applicant was forbidden from corresponding with other inmates and all his correspondence was censored. The special rules of detention were extended every six months until February 1997. However, the prohibition on corresponding with other inmates was lifted from August 1994. Pursuant to ministerial orders, from January 1994 censorship of the applicant's correspondence was made subject to the prior authorisation of the relevant judicial authority. Thus, in a decision of January 1995 the judge responsible for the execution of sentences ordered all the applicant's correspondence to be censored under section 18 of the Prison Administration Act. That censorship continued after the special rules of detention had ceased to apply in February 1997 because the judge responsible for the execution of sentences had not revoked his decision of January 1995. Letters to the Commission and, in particular, letters to the applicant's lawyers dated 1999 testify to that censorship.

Law: Article 8 – There was interference with the applicant's right to respect for his correspondence. With regard to the lawfulness of that interference during the initial period in which the special rules of detention applied (from July 1992 to January 1994), the control of his correspondence was based on an order of the Minister of Justice made pursuant to the aforementioned section 41 *bis*. In judgments of 1993, the Italian Constitutional Court considered that the Minister of Justice had acted *ultra vires* under Italian law in taking measures regarding the correspondence. The control of the applicant's correspondence during that period was not therefore "in accordance with the law". For the subsequent period the control of the correspondence had been ordered by the judge responsible for the execution of sentences, who had based his decision on section 18 of the Prison Administration Act. In the Diana v. Italy judgment (*Reports of Judgments and Decisions* 1996-V) and the Domenichini v. Italy judgment (*Reports* 1996-V), this Court held that the section in question did not indicate with sufficient clarity the scope and conditions of exercise of the relevant authorities' power of appreciation in the area in question. Furthermore, the Bill presented to the Senate introducing an amendment of the law in order to bring it into line with the above-mentioned judgments did not appear to have been passed. Although the new prison rules, which had come into force in September 2000, provided that letters addressed to the Court should not be censored, that change to the law did not affect section 18 of the Prison Administration Act, a provision which had been held to constitute an insufficient legal basis in the above-mentioned judgment. A number of other applications concerning the control of inmates' correspondence were, moreover, pending before the Court. The monitoring of the applicant's correspondence was not therefore at any time "in accordance with the law".
Conclusion: violation (unanimous)
Article 41 – The finding of a violation constituted in itself just satisfaction. A certain sum should, nevertheless, be awarded for costs and expenses.

CORRESPONDENCE
Censorship of a prisoner's correspondence by prison authorities: *communicated*.

MERIAKRI - Moldova (N° 53487/99)
[Section I]
(See Article 6(1) [criminal], above).

ARTICLE 9

FREEDOM OF RELIGION
Confiscation of the means of communication used by an asylum seeker for political propaganda on behalf of an Islamic group: *inadmissible*.

ZAOUI - Switzerland (N° 41615/98)
Decision 18.1.2001 [Section II]

In Algiers the applicant was an active member of the Islamic Salvation Front (FIS), of which he was elected a representative in 1991. In 1993 he left Algeria where he was sentenced to death in absentia. The applicant took refuge in France and then in Belgium. His applications for political asylum were dismissed in both countries. In Belgium he was given a suspended prison sentence for "conspiracy" for membership of an Islamic group and made subject to a compulsory residence order. He left Belgium illegally, however, for Switzerland where he applied for political asylum in 1997. While his application for asylum was pending, he published tracts of political propaganda inciting to activism within the FIS Foreign Coordination Committee and against the Algerian government in power. As a result of those publications, in April 1998 the Federal Council banned the applicant from his terrorist activities and ordered his fax machines and his access to the internet to be blocked. It also ordered the applicant's telephones to be seized if he failed to comply with the decision.
Inadmissible under Article 9: the applicant's activities were mainly aimed at broadcasting messages of propaganda in favour of the FIS and did not constitute the expression of a religious belief within the meaning of Article 9. The confiscation did not therefore infringe his freedom of religion: manifestly ill-founded.
Inadmissible under Article 10: With regard first to the threat of seizure of his telephones, the applicant could not claim to be a victim within the meaning of Article 34 because it was merely a hypothetical penalty and not an effective one. The confiscation of his fax machines and the blocking of his access to the internet, however, constituted an interference with the applicant's freedom of expression. That interference was prescribed by law and pursued the legitimate aim of protecting national security, public safety and public order. With regard to the "necessity in a democratic society" of that interference, it had to be observed that, in the opinion of the Federal Council, the purpose of confiscating the applicant's means of telecommunication was to prevent him from pursuing his political propaganda activities internationally. Despite his suspended sentence and the strict surveillance measures taken against him, the applicant had left Belgium to enter Switzerland illegally and apply for political asylum. Furthermore, the Federal Council's decision had been based on the fact that the applicant had engaged in acts of political propaganda while his application for asylum was pending. Under domestic law, asylum could be refused to a refugee who threatened Switzerland's internal or external security. Although it was, admittedly, difficult for another State to assess the situation in Algeria and the effect of activities conducted abroad by members of the Islamic opposition, having regard to the context in which the applicant had left Algeria, his propaganda for the Islamic opposition, his criminal conviction in Belgium, the conditions of his entry into Switzerland and, lastly, the reasons for his stay there and his misdeeds in that country, the seizure of his means of communication, which were instruments of political propaganda, could be justified as necessary in a democratic society:
manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Confiscation of the means of communication used by an asylum seeker for political propaganda : *inadmissible*.

ZAOUI - Switzerland (N° 41615/98)
Decision 18.1.2001 [Section II]
(see Article 9, above).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Intervention by the authorities at a meeting held by a group of foreigners without residence permits: *admissible*.

CISSE - France (N° 51346/99)
Decision 16.1.2001 [Section III]

In June 1996 a group of non-French nationals, mainly from Africa, who did not have residence permits and so were liable to be deported from French territory, occupied a church in Paris requesting the regularisation of their position. They were joined by representatives of human-rights associations. In the morning of 23 August 1996, under a prefectoral order made on the grounds that the occupation constituted a threat to public health, peace, safety and order, the police set up a system of identity checks at the church exit and began clearing it. Persons whose skin colour indicated prima facie that they were foreigners were sent to a detention centre run by the administrative authorities for aliens being deported. The applicant, who was one of the spokespersons of the group without identity papers (*sans-papiers*) did not have a residence permit and was arrested. She was sentenced by a criminal court to two months' imprisonment (suspended) for unlawfully entering and remaining in France. She appealed to the Court of Appeal, which upheld the sentence. She appealed on points of law to the Court of Cassation, which held that the applicant's complaint concerning the unlawfulness of the order for the church to be cleared did not affect the outcome of the criminal proceedings and dismissed her appeal. Before the European Court, the applicant complained that the deprivation of her liberty had been unlawful since there was no evidence that an offence had been committed. She also alleged that the order to clear the church had been unlawful since the authorities could not take action of their own motion in the absence of any emergency. She submitted that the decisive criterion in the identity check which had led to her arrest had been the skin colour of the persons in the church. She alleged, lastly, that the interference by the State with her right to peaceful assembly was neither in accordance with the law (the order to clear the church being unlawful) nor justified.
Admissible under Article 11: Government's preliminary objection (exhaustion of domestic remedies) – Admittedly, the applicant could have brought proceedings in the administrative court challenging the order terminating the *sans-papiers'* "assembly" by authorising the evacuation of the church. However, since the church was cleared the very next day, her application would in all likelihood have been deemed purposeless. Furthermore, it emerged both from the criminal court's judgment and the Court of Appeal's judgment that in relying before those courts on the unlawfulness of the prefectoral order, the applicant had drawn their attention to the violation of her right to freedom of assembly. The preliminary objection was dismissed.

Inadmissible under Article 5(1)(c): The reasonableness of the suspicions on which an arrest had to be based constituted an essential element of the protection afforded by Article 5 (1) against arbitrary deprivations of liberty. Those suspicions had to be founded on evidence which would satisfy an objective observer that the person concerned had committed an offence. The reasonableness of the suspicions had to be assessed on the basis of the circumstances. In the present case the applicant was, on her own admission, the spokesperson for a group of foreigners without residence permits who had been occupying the church precisely for the purpose of requesting the regularisation of their position. The group formed the majority of the persons present on the premises. In deciding to clear the church and arrest the foreigners inside who were, on their own admission, unlawfully resident, the authorities thus based their decision on reasonable suspicions within the meaning of the Article relied on: manifestly ill-founded.
Inadmissible under Article 5(1), taken in conjunction with Article 14: The system of identity checks was designed to monitor anyone suspected of being an illegal resident. It could not therefore be concluded that the applicant had been discriminated against on the basis of her race or colour: manifestly ill-founded.

ARTICLE 14

DISCRIMINATION
Foreigner without residence permit arrested during identity check allegedly based on race: *inadmissible*.

CISSE - France (N° 51346/99)
Decision 16.1.2001 [Section III]
(see Article 11, above).

ARTICLE 34

LOCUS STANDI
Locus standi of sole heir of deceased applicant.

MALHOUS - Czech Republic (N° 33071/96)
Decision 13.12.2000 [Grand Chamber]

Facts: In 1949 plots of agricultural land owned by the applicant's father were expropriated under the New Land Reform Act of 1948. No compensation was paid. Title to the plots was transferred to legal persons, but some of the plots were subsequently transferred to natural persons in a procedure under the 1948 Act. The applicant's father subsequently died. In 1991 a Real Estate Act was passed according to which property confiscated under the 1948 Act without compensation could be returned to its former owners or to their heirs if it was still in the possession of the State or of a legal person. If such property had been transferred to a natural person, the former owners or their heirs could claim the assignment of other equivalent property or financial compensation. On the basis of that Act, the applicant entered into agreements with two legal persons for the restitution of land having belonged to his father before expropriation. The Land Office gave decisions refusing to approve the restitution agreements on the ground that some of the plots had been assigned to natural persons who had produced deeds of assignment certifying their property rights. The applicant lodged two appeals with the Municipal Court against the decisions of the Land Office, claiming restitution of the entire property. He disputed the finding that the deeds of

assignment in favour of the natural persons certified ownership of the property and asked to be allowed to consult them. The court upheld the decisions of the Land Office. It noted that, under the Code of Administrative Procedure, the applicant could have consulted the deeds of assignment, which were in the file, at any time during the administrative proceedings. Moreover, in accordance with the Code of Civil Procedure, the court did not hold a hearing, as only points of law were in issue. The Land Office, to which the case had been referred back, confirmed the applicant's property rights in respect of those plots which had not been re-assigned to natural persons and informed him that he could seek compensation for the plots which could not be returned. The applicant appealed – unsuccessfully – to the Constitutional Court. The Constitutional Court held, among other things, that the Municipal Court had correctly applied the Code of Civil Procedure in refusing to hold a hearing. In 1998 the applicant died. His lawyer lodged with the Land Office a posthumous request for compensation by the assignment of other plots. The request was still pending. In the meantime the proceedings regarding the applicant's inheritance ended with a finding of the District Court, which did not take into account the request pending before the Land Office, that the applicant had not left any estate. The applicant's nephew requested the District Court to re-open the inheritance proceedings; those proceedings were still pending. According to the applicant's last will, produced by his nephew, the latter had been designated as his universal heir since he had disinherited his children. The applicant stated that he wished to pursue his uncle's application before the Court.

Law: Article 34 – In a number of cases in which the applicant had died in the course of the proceedings, the Court has taken into account the statements of the applicant's heirs or close members of his family who expressed the wish to pursue the proceedings before the Court. In this case it was the applicant's nephew, who had been designated as universal heir in the deceased's will. The fact that the inheritance proceedings were still pending did not affect the nephew's position as the person designated as universal heir. It appeared sufficient that the applicant had designated him in his will as his heir and that there were serious prospects of his eventually being recognised as such, in which case at least part of the applicant's estate, including the restitution rights, would accrue to him. Moreover, over and above a material interest, cases before the Court had a moral dimension and persons near to an applicant might thus have a legitimate interest in seeing to it that justice was done even after the applicant's death. Such was the case where, as here, the leading issue raised by the case transcended the person and the interests of the applicant and his heirs, and where other persons might be affected. If in such circumstances a potential heir wished to pursue the application it could not be said that the matter had been resolved or that for other reasons it was no longer justified to continue the examination of the application. An examination of the application in this case was therefore justified.

Article 1 of Protocol No. 1 – (a) The applicant complained that restitution had not been granted to him in respect of the entire property which had belonged to his father. The complaint lodged by the applicant's nephew concerned only the property of which ownership had been transferred to natural persons and which, under the Real Estate Act of 1991, could not be returned. The applicant had been informed that he could claim compensation either in the form of other equivalent land or in the form of financial compensation. After his death, a request for the allocation of other equivalent land had been submitted on behalf of the applicant by his lawyer. The request was still pending. (b) With regard to the Government's submission that the applicant had not exhausted domestic remedies, none of the remedies could have provided the applicant any redress. The applicant's nephew was not obliged to raise again the arguments raised by the applicant in his appeal to the Constitutional Court, since it was sufficient if an applicant had exhausted one of several alternative remedies likely to produce essentially the same result. Indeed, it could not be expected in the present case that the ordinary courts would have decided the matter differently from the Constitutional Court. The applicant had thus satisfied the conditions of exhaustion of domestic remedies. (c) The applicant's possessions had been expropriated, some being attributed to natural persons before the Convention came into force in the Czech Republic. Therefore the Court was not

competent *ratione temporis* to examine the circumstances of the expropriation or the continuing effects produced by it. Furthermore, the deprivation of a property right or of another right *in rem* was in theory an instantaneous act and did not produce a continuing situation of deprivation of a right. The applicant's complaint, in so far as he could be understood to be challenging the measures taken pursuant to the 1948 Act in respect of his father's property prior to the entry into force of the Convention, was incompatible with the provisions of the Convention. However, the proceedings for restitution of land brought by the applicant before the administrative and judicial authorities under the 1991 Act had started after the Convention had entered into force. That part of the application could not therefore be rejected for lack of temporal jurisdiction. (d) The concept of possessions covered both existing possessions and assets in respect of which the applicant could argue that he had at least a legitimate expectation of obtaining effective enjoyment of a property right. The hope of recognition of the survival of an old property right which it had long been impossible to exercise effectively could not be considered as a "possession" within the meaning of Article 1 of Protocol No. 1. In the instant case it had to be determined whether the applicant had a legitimate expectation of securing the restitution of land of which title had been assigned to natural persons. The authorities had, however, correctly applied the 1991 Act, according to which only property in the possession of the State or a legal person could be returned. Accordingly, the applicant's nephew did not have any right or legitimate expectation of realising his claim to restitution and thus did not have a possession in the meaning of Article 1 of Protocol No. 1: incompatible *ratione materiae*.

Article 6(1) (fair trial): With regard to the applicant's complaint that he had not had a fair hearing, he could, under the Code of Administrative Procedure, have consulted the file and, in particular, the deeds of assignment of property to natural persons at any time during the proceedings. Furthermore, having considered that only questions of law had been raised before it, the Municipal Court was entitled to apply the provision of the Code of Civil Procedure to the effect that it was not necessary to hold a hearing if only questions of law were raised. The Constitutional Court subsequently upheld the merits of that reasoning. After the case had been referred back to the Land Office, the applicant could have consulted the administrative file containing the deeds of assignment. Moreover, the applicant could have lodged a further appeal against the last decision of the Land Office. There was no indication that the Constitutional Court had not given the applicant a fair hearing. Ultimately, there was nothing to suggest that the applicant's right to a fair hearing had been infringed: manifestly ill-founded.

Admissible under Article 6(1) (impartial and independent tribunal).

ARTICLE 35

EFFECTIVE DOMESTIC REMEDY (Austria)

Length of proceedings: application under Article 132 of the Federal Constitution.

BASIC - Austria (Nº 29800/96)

*Judgment 30.1.2001 [Section III]

Facts: In February 1990 the applicant was found by the police in possession of jewellery, including a valuable watch. He claimed that the jewellery had been pledged to him for gambling debts. The police filed an information against him on suspicion of receiving goods for which no import duties had been paid. The Customs Office ordered seizure of the jewellery with a view to possible forfeiture. Criminal proceedings were insituted against another person, E.W., who claimed to be the owner of the jewellery, and the applicant, whose request for return of the watch had remained unanswered, was called to join these proceedings as a private party. E.W. was found guilty of evading import duties and forfeiture of the watch

was ordered. This was confirmed in January 1995 by the Appeals Board of the Regional Directorate of Finance, which stated that the forfeiture also took effect against the applicant, as he had not proved ownership and had not acquired a valid pledge. The decision was served in March 1996. In the meantime, object liability proceedings had been instituted by the customs authorities, who decided to seize the watch as security for the import duties. However, this decision was quashed on the ground that the watch had already been seized in the context of the criminal proceedings.
Law: Government's preliminary objection (non-exhaustion) – In its admissibility decision of 16 March 1999, the Court dismissed the Government's argument that an application against the administration's failure to decide, under Article 132 of the Constitution, was an effective remedy to speed up proceedings. However, it has in the meantime accepted that a similar remedy in Portugal is effecive and must now review the Austrian position. Austrian law provides in the field of administrative proceedings that the competent authority has, unless provided otherwise, to decide within six months upon any request by a party. If this time-limit is not complied with, the party may - in a case like the present one where the possibility to request a transfer of jurisdiction to the higher authority is excluded - lodge an application under Article 132 of the Constitution with the Administrative Court. If deemed admissible, it results in an order addressed to the authority to give the decision within three months, which can be renewed only once. Moreover, the Government have supplied information which shows that in the vast majority of cases such an application does not cause a further delay in the proceedings, as the Administrative Court usually takes no more than a month to issue such an order. With regard to the applicant's assertion that an application under Article 132 lies against the failure of the "highest authority", the Government have adduced case-law of the Constitutional Court, according to which an application also lies against a first instance authority's failure to decide where - as in the present case - a request for a transfer of jurisdiction is excluded. Since the applicant failed to use this remedy, he has not exhausted domestic remedies: preliminary objection allowed.

PALLANICH - Austria (Nº 30160/96)
*Judgment 30.1.2001 [Section III]

This case concerns the length of administrative proceedings. The Court allowed the Government's preliminary objection, on the ground that the applicant, in failing to lodge an application under Article 132 of the Federal Constitution, had not exhausted domestic remedies (see the Basic v. Austria judgment, above).

EFFECTIVE DOMESTIC REMEDY (Austria)
Length of proceedings: application under Section 91 of the Courts Act.

HOLZINGER - Austria (no. 1) (Nº 23459/94)
Judgment 30.1.2001 [Section III]

Facts: The applicant instituted civil proceedings in May 1988. They ended at first instance in March 1993. The decision on the applicant's appeal was notified in November 1993. He complains about the length of the proceedings.
Law: Government's preliminary objection (non-exhaustion) – In its decision on admissibility, the European Commission of Human Rights found that an application under Section 91 of the Courts Act did not constitute an effective remedy but was relevant to the question whether the proceedings had taken an unreasonably long time: it was an interlocutory application to a court whereby a higher court was requested to fix an adequate time-limit for taking a procedural measure which the court below had failed to take, and as such it could not give rise to any finding as to the length of the proceedings as a whole, nor to redress for any unreasonable delay to date. However, the Court disagreed with this approach: the focus of

Article 35 of the Convention in relation to complaints about the length of proceedings is on the prevention of a breach of the Convention and not on recognition by the domestic authorities of a violation which has occurred or the grant of reparation for such a violation, and what is important is whether a given remedy is capable of speeding up proceedings or preventing them becoming unreasonably long. Furthermore, the effectiveness of a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole. Section 91 of the Courts Act entered into force in January 1990, during the proceedings at issue, and it was from then that the applicant could have made an application under that provision. The 17 month period prior to that date did not in itself give rise to a breach of Article 6, and in failing to lodge an application under Section 91 the applicant did not exhaust domestic remedies: preliminary objection allowed.

HOLZINGER - Austria (no. 2) (Nº 28898/95)
*Judgment 30.1.2001 [Section III]

Facts: The applicant instituted civil proceedings in 8 July 1987. The proceedings ended at first instance in July 1998. The decision on the applicant's appeal was given in January 1999. The applicant complains about the length of the proceedings.
Law: Government's preliminary objection (non-exhaustion) – In the first Holzinger v. Austria case (see above), the Court found that a request under Section 91 of the Courts Act is, in principle, an effective remedy in respect of complaints about the length of court proceedings. However, it added that the effectiveness of such a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole. In this case, the proceedings had already lasted some two and a half years when the provision in question came into force and the remedy became available to the applicant. This period, during which the applicant had no remedy at his disposal, is substantial, and even if he had lodged an application under Section 91, any decision which might have speeded up the proceedings could not have made up for delay which had already occurred. The case is therefore distinguishable from the applicant's first case and the remedy in question cannot be considered as effective.
The proceedings lasted over 11½ years. It is relevant that the applicant did not make use of the remedy which became available, and the various adjournments of the proceedings, one of which lasted almost four years, had his consent, so that the ensuing delays were his responsibility. However, the authorities were responsible for the delays during the first two and a half years and no sufficient explanation for this has been provided.
Conclusion: violation (unanimously).
Article 41 – The Court considered that there was no causal link between the violation and the pecuniary damages claimed by the applicant. It awarded him 30,000 schillings (ATS) in respect of non-pecuniary damage and also made an award in respect of costs.

EXHAUSTION OF DOMESTIC REMEDIES
Examination of responsibility of Italian authorities for the deaths of Albanian illegal immigrants pending before national courts: *inadmissible*.

XHAVARA and others - Italy and Albania (N° 39473/98)
Decision 11.1.2001 [Section IV]
(see Article 2, above).

ARTICLE 41

JUST SATISFACTION
Restitutio in integrum.

BRUMARESCU - Romania (Nº 28342/95)
Judgment 23.1.2001 [Grand Chamber]
(see Appendix II).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 23):

G.H. - Austria (N˚ 31266/96)
DU ROY and MALAURIE - France (N° 34000/96)
KANOUN - France (N˚ 35589/97)
Judgments 3.10.2000 [Section III]

APEH ÜLDÖZÖTTEINEK SVÖVETSÉGE and others - Hungary (N˚ 32367/96)
GIOMI - Italy (N˚ 53361/99)
Judgments 5.10.2000 [Section II]

LAUNIKARI - Finland (N˚ 34120/96)
Judgment 5.10.2000 [Section IV]

SATIK and others - Turkey (N˚ 31866/96)
Judgment 10.10.2000 [Section I]

İBRAHIM AKSOY - Turkey (N° 28635/95, 30171/96, 34535/97)
GRAUSLYS - Lithuania (N˚ 36743/97)
GRAUZINIS - Lithuania (N˚ 37975/97)
Judgments 10.10.2000 [Section III]

LAGRANGE - France (N° 39485/98)
DACHAR - France (N° 42338/98)
Judgements 10.10.2000 [Section III]

CAPUTO - Italy (N˚ 45074/98)
Aldo TRIPODI - Italy (N˚ 45078/98)
FORTUNATI - Italy (N˚ 45079/98)
ALTAMURA - Italy (N˚ 45074/98)
ZURZOLO - Italy (N˚ 45087/98)
MIOLA - Italy (N˚ 45098/98)
PASQUETTI - Italy (N˚ 45101/98)
TRAPANI - Italy (N˚ 45104/98)
D'ANGELO - Italy (N˚ 45108/98)

GIBERTINI - Italy (N° 45109/98)
GRAPPIO - Italy (N° 45110/98)
Judgments 12.10.2000 [Section IV]

Nunzio CONTE - Italy (N° 32765/96)
Judgment 17.10.2000 [Section IV]

O. - Italy (N° 44335/98)
SILVERI - Italy (N° 44353/98)
MAZZOTTI - Italy (N° 44354/98)
PALAZZO - Italy (N° 44356/98)
PALOMBO - Italy (N° 44358/98)
LIPPERA ZANIBONI - Italy (N° 45055/98)
STUDIO TECNICO AMU S.a.s. - Italy (N° 45056/98)
BONO - Italy (N° 45059/98)
X200 S.r.l. - Italy (N° 45060/98)
S.S. - Italy (N° 45061/98)
FICARA - Italy (N° 45062/98)
MARI - Italy (N° 45063/98)
VON BERGER - Italy (N° 45064/98)
Judgments 17.10.2000 [Section I]

KARAKASIS - Greece (N° 38194/97)
DE MOUCHERON and others - France (N° 37051/97)
Judgments 17.10.2000 [Section III]

AMBRUOSI - Italy (N° 31227/96)
Judgment 19.10.2000 [Section II]

BÜKER - Turkey (N° 29921/96)
CHAPUS - France (N° 46693/99)
Judgments 24.10.2000 [Section III]

SOBCZYK - Poland (N° 25693/94 and N° 27387/95)
CASTANHEIRA BARROS - Portugal (N° 36945/97)
Judgments 26.10.2000 [Section IV]

Article 44(2)(c)

On 17 January 2001 the Panel of the Grand Chamber rejected requests for revision of the following judgments, which have consequently become final:

GNAHORE - France (N° 40031/98)
Judgment 19.9.2000 [Section III]
(see Information Note Nº 22)

The case concerns the placement of a child in care and the imposition of restrictions on the father's right of access, as well as the refusal of a request for legal aid due to the absence of serious grounds of appeal.

TELE 1 PRIVATFERNSEH GmbH - Austria (N° 32240/96)
Judgment 21.9.2000 [Section II]
(See Information Note N° 22)

The case concerns the monopoly of the Austrian Broadcasting Corporation on terrestrial television.

WOJNOWICZ - Poland (N° 33082/96)
Judgment 21.9.2000 [Section IV]
(See Information Note Nº 22)

The case concerns the length of civil proceedings.

J.B. - France (N° 33634/96)
Judgment 26.9.2000 [Section III]

The case concerns the length of criminal proceedings.

DAKTARAS - Lithuania (Nº 42095/98)
Judgment 10.10.2000 [Section III]
(See Information Note Nº 23)

The case concerns statements by public prosecutor before the trial that the accused's guilt had been "proved" by the evidence. It also concerns the fact that the same judge lodged an appeal and appointed the judges to decide it.

WŁOCH - Poland (N° 27785/95)
Judgment 19.10.2000 [Section IV]
(See Information Note Nº 23)

The case concerns detention in respect of acts allegedly not constituting criminal offence.

TANRIBILIR - Turkey (N° 21422/93)
Judgment 16.11.2000 [Section II]
(see Information Note Nº 24)

The case concerns the suicide of a person in police custody and effectiveness of investigation.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Expectation of having propriety right recognised long after confiscation: *inadmissible*.

MALHOUS - Czech Republic (N° 33071/96)
Decision 13.12.2000 [Grand Chamber]
(See Article 34, above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Clear underestimate of the value of property by the State in awarding compensation for expropriation: *violation.*

PLATAKOU - Greece (Nº 38460/97)
Judgment 11.1.2001 [Section II]
(see Article 6(1), above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal to grant police assistance in order to carry out an eviction decided by court order: *violation*.

LUNARI - Italy (N° 21463/93)
*Judgment 11.1.2001 [Section II]
(see Article 6(1), above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of withdrawing money deposited in savings account: *communicated*.

TRAJKOVSKI - Former Yugoslav Republic of Macedonia (N° 53320/99)
[Section II]

Before the dissolution of the Socialist Federative Republic of Yugoslavia (SFRY), the applicant had deposited money in a foreign currency on a savings account with a bank of the Socialist Republic of Macedonia (SRM). The SFRY Government later restricted the possibility of withdrawal from this type of savings accounts. The Former Yugoslav Republic of Macedonia declared its independence in 1991; according to its Constitution, laws of the SFRY remained in force, except for those regulating the organisation and competence of the SFRY. In accordance with the directive of the SFRY Government, the bank where the applicant had his savings account refused to let him withdraw any money from his account. He unsuccessfully lodged a complaint with the Municipal Court. In 1993, the Parliament of the Former Yugoslav Republic of Macedonia adopted an Act regarding savings in foreign currencies. Pursuant to this Act, withdrawal from these savings accounts was only allowed in exceptional cases. The applicant's appeal was successful and the case was referred back to the Municipal Court. However, the court dismissed his claim on the ground that all savings in foreign currency had been frozen by the SFRY Government and the 1993 Act. The applicant's subsequent appeals before the Court of Appeal and the Supreme Court were to no avail.
Communicated under Article 1 of Protocol N° 1.

ARTICLE 1 OF PROTOCOL No. 6

ABOLITION OF THE DEATH PENALTY
Extradition to China, with risk of death penalty: *admissible*.

JIN - Hungary (N° 58073/00)
Decision 11.1.2001 [Section II]
(See Article 3, above).

ARTICLE 2 OF PROTOCOL No. 7

REVIEW OF CONVICTION
Dismissal of Cassation appeal due to appellant's failure to surrender into custody: *communicated*.

PAPON - France (N° 54210/00)
[Section III]
(see Article 6(1) [criminal], above).

ARTICLE 41 OF THE RULES OF COURT

PRIORITY CASE
Continued detention of aged convict: *priority granted*.

PAPON - France (N° 64666/01)
[Section III]
(see Article 3, above).

APPENDIX I

Cases of Chapman, Coster, Beard, Lee and Jane Smith v. the United Kingdom - extract from press release

The Court held:

- By ten votes to seven, that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights, **in all five cases;**
- Unanimously, that there had been **no violation of Article 14** (prohibition of discrimination), **in all cases**;
- Unanimously, that there had been **no violation of Article 1 of Protocol No. 1** (right to peaceful enjoyment of possessions), **in the cases of *Chapman*, *Coster, Jane Smith* and *Lee***;
- Unanimously, that there had been **no violation of Article 6** (access to court), **(*Chapman* and *Jane Smith*)**;
- Unanimously, that there had been **no violation of Article 2 of Protocol No. 1** (right to education), **(*Coster, Lee* and *Jane Smith*).**

1. Principal facts

The cases concern applications brought by applicants from five British gypsy families: Sally Chapman, born in 1954 and resident in Hertfordshire; Thomas and Jessica Coster, born in 1962 and 1964 and resident in Kent; John and Catherine Beard, born in 1935 and 1937 and currently with no fixed address for their caravans; Jane Smith, born in 1955 and resident in Surrey; and, Thomas Lee, born in 1943 and resident in Kent.

Sally **Chapman** bought land in 1985 in the Three Rivers District in Hertfordshire on which to station her caravan, without obtaining prior planning permission. She was refused planning permission for her caravan, and also permission to build a bungalow. Her land was in a Green Belt area. It was acknowledged in the planning proceedings that there was no official site for gypsies in the area and the time for compliance with the enforcement order was for that reason extended. She was fined for failure to comply and left her land for eight months, returning due to an alleged lack of other alternatives and having spent the time being moved on from one illegal encampment to another. She still lives on her land with her husband and father, who is over 90 years' old and suffering from senile dementia.

Thomas and Jessica **Coster**, husband and wife, allege that they were forced, through lack of alternatives, to live in conventional housing from 1983 to 1987. In 1988, having bought some land near Maidstone in Kent, they moved on to it in caravans. Their applications for planning permission were dismissed twice on grounds that the development was a significant intrusion into an attractive rural area. They were prosecuted and fined in 1989, 1990 and 1992. Following injunction proceedings in 1992, they left their land but returned after a short while. They were fined again in 1994 and faced injunction proceedings in 1996 which were substituted by enforcement proceedings for removal under s. 178 of the Town and Country Planning Act 1990, following which they allege that they had no alternative but to accept council housing accommodation in 1997.

John and Catherine **Beard**, husband and wife, stationed caravans on land bought by them in Lancashire. They were twice refused planning permission on grounds of impact on visual amenity and highway safety considerations. They were prosecuted four times between 1991 and 1995 and faced injunction proceedings in 1996, which led to John Beard receiving a suspended committal to prison for three months for failure to remove the caravans. They left their land as a result and have since been without a fixed address for their caravans.

Thomas **Lee** and his family stationed caravans on land bought by them in a Special Landscape Area in Kent. Planning permission was refused as the planning inspector found his site was highly visible and detrimental to the landscape. While there are official sites in the area, he complains that these are not fit for human habitation as they are located on rubbish sites or on old sewage beds. Permission was however given for use of a caravan for agricultural purposes on land near to his and permission has been given for a large residential development 600 yards from his land.
Jane Smith and her family bought land for their caravans in a Green Belt area in Surrey and were refused planning permission on the grounds that their occupation harmed a sensitive area of the countryside. Her application for a bungalow was refused, to prevent diminishing the rural character of the countryside. Injunction proceedings were taken against her in 1994, following which the family applied to be housed as "homeless". She complains that the accommodation offered so far has either been in flats or in urban areas or has concerned land unsuitable for habitation due to pollution. She remains on her land under threat of removal and committal to prison for contempt.

Complaints

The applicants complain that measures taken against them to enforce planning measures concerning the occupation of their own land in their caravans violated Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention.
All the applicants, save the Beard family, argue that these measures also interfered with their peaceful enjoyment of their land, contrary to Article 1 of Protocol No. 1.
Sally Chapman and Jane Smith further complain under Article 6 of the lack of effective access to court to appeal against the planning and enforcement decisions of the authorities and the Coster family, Jane Smith and Thomas Lee also invoke Article 2 of Protocol No. 1, alleging that the enforcement measures deprived their children or grandchildren of an education.

Decision of the Court

Article 8

In all five cases, the Court considered that the applicants' occupation of their caravans was an integral part of their ethnic identity as gypsies and that the enforcement measures and planning decisions in each case interfered with the applicants' rights to respect for their private and family life.
However, the Court found that the measures were "in accordance with the law" and pursued the legitimate aim of protecting the "rights of others" through preservation of the environment.
As regards the necessity of the measures taken in pursuit of that legitimate aim, the Court considered that a wide margin of appreciation had to be accorded to the domestic authorities who were far better placed to reach decisions concerning the planning considerations attaching to a particular site. In these cases, the Court found that the planning inspectors had identified strong environmental objections to the applicants' use of their land which outweighed the applicants' individual interests.
The Court also noted that gypsies were at liberty to camp on any caravan site with planning permission. Although there were insufficient sites which gypsies found acceptable and affordable and on which they could lawfully place their caravans, the Court was not persuaded that there were no alternatives available to the applicants besides occupying land without planning permission, in some cases on a Green Belt or Special Landscape area.
The Court did not accept that, because statistically the number of gypsies was greater than the number of places available in authorised gypsy sites, decisions not to allow the applicants to occupy land where they wished to install their caravans constituted a violation of Article 8.

Neither was the Court convinced that Article 8 could be interpreted to impose on the United Kingdom, as on all the other Contracting States to the European Convention on Human Rights, an obligation to make available to the gypsy community an adequate number of suitably equipped sites. Article 8 did not give a right to be provided with a home, nor did any of the Court's jurisprudence acknowledge such a right. Whether the State provided funds to enable everyone to have a home was a matter for political not judicial decision.
Conclusion: no violation

Article 14

In all five cases**,** the Court had regard to its findings above under Article 8 that any interference with the applicant's rights was proportionate to the legitimate aim of preservation of the environment.
Conclusion: no violation

Article 1 of Protocol No. 1

For the same reasons given under Article 8, in ***Chapman, Coster, Lee*** and ***Jane Smith***, the Court found that any interference with the applicants' peaceful enjoyment of their property was proportionate and struck a fair balance in compliance with the requirements of Article 1 of Protocol No. 1.
Conclusion: no violation

Article 6

In ***Chapman*** and ***Jane Smith*** the Court found that the scope of review of the High Court, which was available to the applicants after a public procedure before an inspector, was sufficient to comply with the requirement under Article 6 § 1 of access to an independent tribunal. It enabled a decision to be challenged on the basis that it was perverse, irrational, had no basis on the evidence or had been made with reference to irrelevant factors or without regard to relevant factors, which provided adequate judicial control of the administrative decisions in issue.
Conclusion: no violation

Article 2 of Protocol No. 1

In ***Coster***, ***Lee*** and ***Jane Smith,*** the Court found that the applicants had failed to substantiate their complaints that their children or grandchildren were effectively denied the right to education as a result of the planning measures complained of.
In ***Coster,*** the Court noted that their eldest children, now over 16 years of age, had left school and gone out to work and their youngest children were attending the school near their home.
In ***Lee,*** the applicant's grandchildren have been attending school near their home on the applicant's land and, in ***Jane Smith,*** the applicant had remained on her land since 1993.
Conclusion: no violation

Judges Pastor Ridruejo, Bonello, Tulkens, Strážnická, Lorenzen, Fischbach and Casadevall expressed a joint dissenting opinion in each case, which are annexed to the judgments. Judge Bonello added a further separate opinion.

APPENDIX II

Case of Brumarescu v. Romania (just satisfaction) - extract from press release

The Court (Grand Chamber) held unanimously that the respondent State was to return to the applicant, within six months, the house in issue and the land on which it was situated, except for the flat and the corresponding part of the land already returned. It further held that, failing such restitution, the respondent State was to pay the applicant 181,400 United States dollars (USD) for pecuniary damage. It also awarded the applicant USD 15,000 for non-pecuniary damage and USD 2,450, less 3,900 French francs received by way of legal aid, for legal costs and expenses. Those sums were to be converted into Romanian lei at the rate applicable on the date of settlement.
In its principal judgment, delivered on 28 October 1999, the Court had found a violation of Article 6 of the Convention (access to a court and fair trial) and Article of Protocol No. 1 (protection of property) and had not decided the question of just satisfaction.

Summary of the facts

The case concerned an application brought by a Romanian national, Dan Brumărescu, who was born in 1926 and lives in Bucharest. Mr Brumărescu is retired.
In 1950 the applicant's parents' house in Bucharest was nationalised without payment of compensation. On 9 December 1993, in proceedings brought by the applicant, the Bucharest Court of First Instance held that the nationalisation had been unlawful. As there was no appeal, the judgment became final and enforceable. In 1994 the applicant regained possession of the house. On an unknown date, the Procurator-General of Romania lodged an application to have the judgment of 9 December 1993 quashed. In a decision of 1 March 1995 the Supreme Court of Justice quashed the judgment of 9 December 1993 on the ground that the house had passed into State ownership by virtue of a legislative instrument and that the manner in which such an instrument was applied could not be reviewed by the courts, that being a matter for the executive or the legislature.
The applicant complained that his right of access to a court, as secured by Article 6 § 1 of the Convention, had been violated in that the Supreme Court of Justice had held that the lower courts had no jurisdiction to deal with a claim for recovery of possession such as his. He also complained that the Supreme Court of Justice's judgment had deprived him of one of his possessions, contrary to Article 1 of Protocol No. 1.

List of other judgments delivered in January

Article 5

CIHAN - Turkey (Nº 25724/94)
Judgment 30.1.2001 [Section I]

The case concerns the lawfulness of the applicant's detention – friendly settlement.

Article 6

MUONIO SAAMI VILLAGE - Sweden (Nº 28222/95)
Judgment 9.1.2001 [Section I]

The case concerns access to court in respect of permits for licensed reindeer hunting – friendly settlement.

SALVATORE - Italy (Nº 37827/97)
Judgment 9.1.2001 [Section I]

The case concerns the length of civil proceedings – no jurisdiction (lack of victim status).

MAGYAR - Hungary (Nº 32396/96)
*Judgment 11.1.2001 [Section II]

IORILLO - Italy (Nº 45875/99)
C. a.r.l. en liquidation - Italy (no. 1) (Nº 45882/99)
C. a.r.l. en liquidation - Italy (no. 2) (Nº 45883/99)
VERINI - Italy (no. 1) (Nº 46982/99)
VERINI - Italy (no. 2) (Nº 46983/99)
RAVIGNANI - Italy (Nº 46984/99)
M.Q. - Italy (Nº 46985/99)
IANNI - Italy (Nº 46986/99)
ARIENZO - Italy (Nº 46987/99)
SILVIA RICCI - Italy (Nº 46988/99)
CIABOCCO - Italy (Nº 46989/99)
GALLO - Italy (Nº 46990/99)
PAOLELLI - Italy (Nº 46991/99)
VERINI - Italy (no. 3) (Nº 46992/99)
ANTONINI and others v. Italy (Nº 46993/99)
MANCINELLI - Italy (Nº 46994/99)
BERTO - Italy (Nº 46995/99)
FRACCHIA - Italy (Nº 46996/99)
G. GIAPPICHELLI EDITORE S.R.L. - Italy (Nº 46997/99)
CIUFFETELLI - Italy (Nº 46999/99)
P.I. - Italy (Nº 47000/99)
BALDINI - Italy (Nº 47001/99)

STORTI - Italy (Nº 47002/99)
PICCOLI - Italy (Nº 47003/99)
CANTÙ - Italy (Nº 47004/99)
*Judgments 16.1.2001 [Section III]

WALDER - Austria (Nº 33915/96)
*Judgment 30.1.2001 [Section III]

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

BECK - Sweden (Nº 26978/95)
Judgment 9.1.2001 [Section I]

AIT-SAID - France (Nº 42224/98)
Judgment 16.1.2001 [Section III]

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

CENTIONI and others - Italy (Nº 41807/98)
ALDO PICCIRILLO - Italy (Nº 41812/98)
MUSIANI - Italy (Nº 41813/98)
Judgments 9.1.2001 [Section I]

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

Article 8

SAHLI - Belgium (Nº 38707/97)
Judgment 9.1.2001 [Section III]

The case concerns the threatened expulsion of an Algerian national who has lived in Belgium since 1966 – friendly settlement.

Article 1 of Protocol No. 1

TANGANELLI - Italy (Nº 23424/94)
*Judgment 11.1.2001 [Section II]

The case concerns the prolonged impossibility for a landlord to recover possession of his apartment, due to the absence of police assistance – violation.

P.M. - Italy (Nº 24650/94)
*Judgment 11.1.2001 [Section II]

The case concerns the prolonged impossibility for a landlord to recover possession of his apartment, due to the absence of police assistance – violation (of both Article 1 of Protocol No. 1 and Article 6(1) of the Convention).

AKTAŞ and others - Turkey (Nº 19264/92)
ATAK and others - /Turkey (Nº 19265/92)
BALTEKIN - Turkey (Nº 19266/92)
BILGIN and others - Turkey (Nº 19267/92)
SANİYE BILGIN and others - Turkey (Nº 19268/92)
BOZKURT and others - Turkey (Nº 19269/92)
İLHAN BUZCU and others - Turkey (Nº 19270/92)
NURİYE BUZCU - Turkey (Nº 19271/92)
ÇALKAN and others - Turkey (Nº 19272/92)
ÇAPAR - Turkey (Nº 19273/92)
HAMDİ ÇELEBI - Turkey (Nº 19274/92)
YUSUF ÇELEBI - Turkey (Nº 19275/92)
ÇIPLAK - Turkey (Nº 19276/92)
DANIŞ - Turkey (Nº 19277/92)
EROL - Turkey (Nº 19278/92)
GÖÇMEN and others - Turkey (Nº 19279/92)
GÖKGÖZ - Turkey (Nº 19280/92)
GÖKMEN and others - Turkey (Nº 19281/92)
AYŞE IŞIK and others - Turkey (Nº 19283/92)
YILMAZ IŞIK and others - Turkey (Nº 19284/92)
CEMİL KARABULUT and others - Turkey (Nº 19285/92)
SEFER KARABULUT - Turkey (Nº 19286/92)
ÖZEN - Turkey (Nº 19287/92)
ÖZTEKIN - Turkey (Nº 19288/92)
*Judgment 30.1.2001 [Section I]

These twenty four cases concern delays in payment of additional compensation awarded following expropriation, and in particular the inadequacy of the rate of interest compared to the rate of inflation – violation.

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