CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 8
on the case-law of the Court
July 1999

Statistical information

		July	1999
I. Judgments delivered			
Grand Chamber		22	48
Section I		1	2
Section II		1	4
Section III		0	2
Section IV		5	10
Total		**29**	**66**
II. Applications declared admissible			
Section I		0	39
Section II		4	229
Section III		5	101
Section IV		3	49
Total		**12**	**418**
III. Applications declared inadmissible			
Section I	- Chamber	1	35
	- Committee	23	283
Section II	- Chamber	2	76
	- Committee	0	241
Section III	- Chamber	8	74
	- Committee	45	303
Section IV	- Chamber	7	81
	- Committee	134	584
Total		**220**	**1677**
IV. Applications struck off			
Section I	- Chamber	0	5
	- Committee	0	0
Section II	- Chamber	0	4
	- Committee	0	4
Section III	- Chamber	0	11
	- Committee	2	3
Section IV	- Chamber	0	9
	- Committee	3	10
Total		**5**	**46**
Total number of decisions[1]		**237**	**2141**
V. Applications communicated			
Section I		4	233
Section II		7	186
Section III		10	232
Section IV		28	144
Total number of applications communicated		**29**	**795**

[1] **Not including partial decisions.**

ARTICLE 2

LIFE
Disappearance: *violation*.

ÇAKIÇI - Turkey (Nº 23657/97)
Judgment 8.7.99 [Grand Chamber]
(See Appendix I).

LIFE
Killing by unidentified persons and effectiveness of investigation: *no violation/violation*.

TANRIKULU - Turkey (Nº 23763/94)
Judgment 8.7.99 [Grand Chamber]
(See Appendix II).

ARTICLE 3

TORTURE
Torture in police custody: *violation*.

ÇAKIÇI - Turkey (Nº 23657/97)
Judgment 8.7.99 [Grand Chamber]
(See Appendix I).

TORTURE
Torture in police custody: *violation*.

SELMOUNI - France (Nº 25803/94)
Judgment 28.7.99 [Grand Chamber]
(See Appendix III).

INHUMAN TREATMENT
Mental suffering due to disappearance of applicant's brother: *no violation*.

ÇAKIÇI - Turkey (Nº 23657/97)
Judgment 8.7.99 [Grand Chamber]
(See Appendix I).

EXPULSION
Expulsion to the United States of a person running the risk of a death penalty: *communicated.*

NIVETTE - France (Nº 44190/98)
[Section I]

An international warrant was issued by an American court of first instance for the arrest of the applicant, an American national, for the suspected murder of his companion. He was arrested in France and detained with a view to his being extradited. The American authorities lodged a request for his extradition with the French Ministry of Foreign Affairs. The French courts issued an opinion in favour of extradition provided that the American authorities gave an assurance that they would not call for or carry out the death penalty in his case. They referred to a statement by the American attorney with conduct of the case in which he had said that he would not seek the death penalty. The applicant's appeal to the Court of Cassation was dismissed. The courts found as a subsidiary point that there was no arguable case regarding the applicant's nationality (the applicant had claimed that he had French nationality).
Communicated under Article 3 of the Convention, Article 3 of Protocol No. 4 and Article 1 of Protocol no. 6.

ARTICLE 5

Article 5(3)

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER
Magistrate not empowered to examine reasonableness of suspicion: *admissible*.

SABEUR BEN ALI - Malta (Nº 35892/97)
Decision 6.7.99 [Section II]

In March 1995, the applicant was arrested in Malta on suspicion of drug-related offences. He was brought before the Court of Magistrates and was charged with, *inter alia,* possession and importation of drugs. In compliance with the relevant law, he was remanded in custody during the criminal inquiry. At the conclusion of the inquiry, he was committed for trial. His request for provisional release was rejected by the Attorney-General. In February 1997, he was eventually acquitted of all charges and released. He complains that the Court of Magistrates did not have power to examine whether he had been arrested on reasonable suspicion and that he was precluded under the Dangerous Drugs Ordinance from requesting release on bail before 20 days from the arraignment had elapsed or the end of the criminal inquiry, whichever was earlier. Finally, he complains that there is no provision in Maltese law whereby he could have had the lawfulness of his arrest and detention reviewed by a court.
Admissible under Article 5(3) and (4).

REVIEW OF LAWFULNESS OF DETENTION
Absence of possibility to have lawfulness of detention reviewed by a court: *admissible*.

SABEUR BEN ALI - Malta (Nº 35892/97)
Decision 6.7.99 [Section II]
(See Article 5(1), above).

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Absence of possibility of court review of prefectoral decisions staggering the granting of police assistance in enforcement of eviction orders: *violation*.

IMMOBILIARE SAFFI - Italy (Nº 22774/93)
Judgment 28.7.99 [Grand Chamber]
(See Appendix IV).

FAIR HEARING
Non-communication of judge commissaire's report to the parties: *admissible*.

MOREL - France (Nº 34130/97)
Decision 6.7.99 [Section III]

The applicant lodged a notice with the commercial court that construction companies of which he was the head were unable to pay their debts. Judicial reorganisation proceedings were consequently commenced and an insolvency judge, judicial administrator and creditors' representative were assigned to the case by the commercial court. The court ordered a six-month period of observation to allow the administrator to draw up a report on the companies' finances and workforce and to make proposals as to whether or not they should continue to trade; the observation period was extended twice. The insolvency judge made a number of orders during that period regarding management of the business. In the light of the report prepared by the insolvency judge and the judicial administrator, the court made orders for the liquidation of the companies. The insolvency judge remained in office and was appointed president of the court chamber dealing with the liquidation. After an unsuccessful appeal, the applicant lodged a further appeal, on points of law. The Court of Cassation held that the fact that the insolvency judge had been one of the three judges that had delivered judgment was consistent with the relevant domestic law and did not contravene Article 6 of the Convention. The applicant had further argued that the insolvency judge's report had not been served on him. The Court of Cassation dismissed that ground of appeal, too, holding that the report could and had been presented orally and that there had therefore been no violation of Article 6. The applicant was subsequently unable to obtain a copy of that report which was deemed "secret, being part of the deliberations".
Admissible under Article 6(1) (impartial tribunal, fair hearing).

PUBLIC HEARING
Absence of public hearing in arbitration proceedings: *violation*.

SCARTH - United Kingdom (Nº 33745/96)
Judgment 22.7.99 [Section IV]

Facts: Proceedings were brought against the applicant for recovery of debt. In view of the amount involved, the case was referred for hearing by way of arbitration. The applicant applied for the hearing to be held in public but this request was refused and the hearing consequently took place in private. The arbitrator found in favour of the plaintiff. The applicant sought to have the award set aside; after a hearing in private, the application was

refused. An application for leave to appeal to the Court of Appeal was also refused, after the applicant had been heard in open court.
Law: The Government conceded that there had been a violation and the Court saw no reason to disagree with the Commission's conclusion that there had been a violation of Article 6(1).
Conclusion: Violation (unanimous).
Article 41: The Court found that there was no causal link between the violation of the Convention and the pecuniary damage claimed by the applicant. It further considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of the applicant's costs.

IMPARTIAL TRIBUNAL
Intervention of judge commissaire in both bankruptcy reorganisation and liquidation proceedings: *admissible*.

MOREL - France (Nº 34130/97)
Decision 6.7.99 [Section III]
(See below).

REASONABLE TIME
Administrative practice (Italy).

BOTTAZZI - Italy
A.P. - Italy
DI MAURO - Italy
FERRARI - Italy
Judgments 28.7.99 [Grand Chamber]
(See Appendix V).

REASONABLE TIME
Length of civil proceedings: *violation*.

BOTTAZZI - Italy
A.P. - Italy
DI MAURO - Italy
FERRARI - Italy
Judgments 28.7.99 [Grand Chamber]
(See Appendix V).

REASONABLE TIME
Length of criminal proceedings which the applicant joined as a civil party: *violation*.

SELMOUNI - France (Nº 25803/94)
Judgment 28.7.99 [Grand Chamber]
(See Appendix III).

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

ERI Lda. - Portugal (Nº 31823/96)
Judgment 22.7.99 [Section IV]

The case concerns the length of several sets of civil proceedings, the main proceedings having begun in November 1992 and ended in April 1999.
The case has been settled on the basis of a payment to the applicant company of the sum of 2,500,000 escudos.

REASONABLE TIME
Length of criminal proceedings in which the applicant claimed damages: *violation*.

SANTOS - Portugal (Nº 35586/97)
Judgment 22.7.99 [Section IV]

Facts: On 9 June 1991 the applicant had lodged a criminal complaint concerning a bad cheque. In May 1993 he claimed damages against the defendant. As the defendant could not be found, the representative of the public prosecutor's office issued an order in May 1994 for the defendant to be summoned by the display of notices. The defendant received the case file in February 1997 and the judge set the case down for trial on 3 July 1997. However, the trial was adjourned *sine die* when the judge fell ill. On 19 March 1999 the judge set the case down for trial on 11 October 2000.
Law: The period to be taken into consideration began not when the criminal complaint was lodged on 20 June 1991 but when the action in damages was brought on 7 May 1993. The adjourned proceedings were still pending. The length of the proceedings for the purposes of Article 6(1) of the Convention was therefore six years and approximately two months.
The case was not complex and the applicant had not contributed to the delays in the proceedings. As regards the conduct of the judicial authorities, the Court found that there had been a period of inactivity when the defendant could not be found. That was an incontrovertible fact which could not be entirely attributable to the State. However, the fact that the judicial authorities had encountered difficulties in effecting service as required by statute could not deprive the applicant, who was a civil party to those proceedings, of his right to have his case heard within a reasonable time. The Court also found another unjustified delay that started with the adjournment of the hearing on 3 July 1997 and ended with the order of 19 March 1999 setting a new date for trial. That period had lasted more than a year and eight months. In addition, the date set for trial was 11 October 2000, which was a year and seven months later, even though the proceedings had already taken six years and approximately two months by the time that order was made.
Conclusion: Violation (unanimous).
Article 41: The Court awarded the applicant 800,000 escudos as compensation for non-pecuniary damage. It dismissed the applicant's claims for pecuniary damage.

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

CAETANO BAETA - Portugal (Nº 36671/97)
Judgment 22.7.99 [Section IV]

The case concerns the length of civil proceedings brought by the applicant in January 1978. In May 1999 the parties reached a settlement which brought the proceedings to an end.

The Government is willing to settle the case on the basis of a payment to the applicant of the sum of 1,800,000 escudos. This offer does not imply any recognition by the Government of Portugal that there has been a violation of the Convention.

REASONABLE TIME
Date of lodging of complaint of ill-treatment taken as starting point for length of proceedings.

SELMOUNI - France (Nº 25803/94)
Judgment 28.7.99 [Grande Chambre/Grand Chamber]
(See Appendix III).

REASONABLE TIME
Length of civil proceedings: *violation*.

MATTER - Slovakia (Nº 31534/96)
Judgment 5.7.99 [Section II]

Facts: The case concerned the length of proceedings relating to the decision to deprive the applicant of his legal capacity for mental health reasons. The proceedings began in 1987 and are still pending. They have lasted for more than seven years since the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition in March 1992.
Law: Article 6(1): The Court firstly noted that the proceedings involved the determination of civil rights and obligations, so that Article was applicable. It accepted that the case was of some complexity, but considered that this could not justify their length. It further noted that the applicant had contributed to delays, in refusing to cooperate with medical experts, by challenging certain judges and by asking for the case to be dealt with by a different court. However, the Court identified periods of inactivity for which no satisfactory explanation had been provided by the Government and found that the domestic courts had failed to act with the special diligence required by Article 6(1) in cases of this nature.
Conclusion: Violation (unanimous).
Article 8: The Court found that the forcible examination of the applicant in a hospital in 1993 amounted to an interference with his right to respect for his private life. The interference, which the Court considered a serious one, had a legal basis and the Court found no reason to doubt that it pursued the legitimate aim of protecting the applicant's own rights and health. As to the necessity of the interference, the Court found that it was justified to obtain an expert opinion on the applicant's mental and recalled that the expert first tried to examine the applicant on a voluntary basis. As the applicant refused, the District Court ordered his examination in a mental hospital and this decision was confirmed by the Regional Court after the applicant's guardian and the public prosecutor had agreed to such an examination. The District Court invited the applicant twice to submit to the examination in the mental hospital and warned him that, if he did not comply, he could be taken there. The applicant failed to comply and the District Court ordered that he should be taken to the hospital. The applicant was taken to the hospital on 19 August 1993 and was discharged on 2 September 1993, when the examination was concluded. Having regard to the case as a whole, the Court considered that the interference was not disproportionate to the legitimate aims pursued, and was therefore "necessary in a democratic society".
Conclusion: No violation (unanimous).
Article 41: Since the applicant had not submitted any claim, the Court did not award just satisfaction.

REASONABLE TIME
Length of criminal proceedings in which the applicant sought damages: *friendly settlement*.

S.N. - Portugal (Nº 33289/96)
Judgment 6.7.99 [Section IV]

The applicant was the victim of a rape by an unknown offender. She lodged a complaint and criminal proceedings were commenced by the prosecution. In February 1991 the applicant applied to be joined as an *assistente* (person assisting the prosecution) in the criminal proceedings. In September 1991 the investigating judge granted that application. In April 1995 the representative of the public prosecutor's office lodged his submissions regarding the suspect and in May 1995 the applicant made a claim for damages. In its judgment of 10 October 1995 the court found that although the applicant had proved that she had been raped it was not possible to establish the guilt of the suspect, who was therefore acquitted. The applicant complained of the length of the proceedings.
The Government are disposed to settle the case by making a payment of 1,200,000 escudos to the applicant: 1,000,000 escudos for non-pecuniary damage and 200,000 escudos for costs and expenses. The offer is not to be taken as any admission by the Portuguese Government that there has been a violation of the Convention.

REASONABLE TIME
Anticipated length - second hearing in civil proceedings fixed for two years after first hearing: *communicated*.

DE SIMONE - Italy (Nº 42520/98)
[Section II]

In August 1997, following the theft of his car, the applicant sued his insurers in the district court for 2,097,000 lire plus interest. The first hearing, at which the parties entered an appearance, was held in January 1998 and the next hearing has been set down for January 2000.
Communicated under Article 6(1).

Article 6(1) [criminal]

ACCESS TO COURT
Authorisation of the State prosecution service to initiate appeal proceedings: *settlement between parties.*

MILLAN I TORNES - Andorra (N° 35052/97)
Judgment 6.7.99 [Section I]

In 1995, the applicant was found guilty of aggravated concealment (of the body of a murder victim) and sentenced to 6 years' imprisonment. He filed an appeal, but the judgment was confirmed by the Higher Court of Justice. The applicant then submitted a request to file an *empara* appeal before the Constitutional Court, which was rejected. He complains that the refusal by the State prosecution service deprived him of access to the Constitutional Court and maintains that the need for authorisation from the State prosecution service to initiate such appeal proceedings is contrary to Article 6 of the Convention.
The parties have informed the Court that they have signed an agreement with a view to reaching a friendly settlement on the basis that a law amending the Constitutional Court Act of 3 July 1993 has been adopted and came into force on 20 May 1999. That law affords defendants direct access to the Constitutional Court by way of an *empara* appeal without the need for prior authorisation from the State prosecution service. In addition, paragraph 2 of the transitional provisions of the law provides that anyone who had been refused leave by the State prosecution service to make an *empara* appeal could bring such an appeal to the Constitutional Court within 15 days after the date the law came into force.

FAIR HEARING
Non-communication of public prosecutor's observations to accused: *communicated*.

DİNDAR - Turkey (Nº 32456/96)
[Section II]
(See Article 6(3)(d), below).

INDEPENDENT AND IMPARTIAL TRIBUNAL
National Security Courts (Turkey): *violation*.

GERGER - Turkey (Nº 24919/94)
KARATAS - Turkey (Nº 23168/94)
BASKAYA and OKÇUOGLU - Turkey (Nº 23536/94 and 24408/94)
OKÇUOGLU - Turkey (Nº 24246/94)
SÜREK and ÖZDEMIR - Turkey (Nº 23927/94 and 24277/94)
SÜREK - Turkey (no. 1) (Nº 26682/95)
SÜREK - Turkey (no. 2) (Nº 24122/94)
SÜREK - Turkey (no. 3) (Nº 24735/94)
SÜREK - Turkey (no. 4) (Nº 24762/94)
Judgments 8.7.99 [Grand Chamber]
(See Appendix VI).

Article 6(3)(d)

OBTAIN ATTENDANCE OF WITNESSES
Refusal to summon witness for the defence: *communicated*.

DİNDAR - Turkey (Nº 32456/96)
[Section II]

The applicant had A.E. sign a contract appointing the applicant as his estate agent; he showed him round a first set of office premises. However, A.E. rented another office, allegedly without help from the applicant. The applicant sent a demand for his fees maintaining that A.E. had negotiated directly with the owner of the office even though it had been on offer in the contract. A.E. lodged a complaint claiming that the applicant had falsified the contract by adding the address of the office in question after the contract had been signed. The public prosecutor sought his conviction for forgery of private documents. The assize court dismissed the applicant's request for expert evidence to be obtained on the handwritten contract and for the defence witnesses to be heard, even though the prosecution witnesses had been heard. On appeal on points of law, the judgment was overturned owing to a procedural defect. The case was remitted to the assize court, which again convicted the applicant. In the subsequent proceedings before the Court of Cassation, the observations of the Principal Public Prosecutor on the merits of the case were not communicated to the applicant and his request for a hearing was turned down. The Court of Cassation upheld the fresh verdict of the assize court in its entirety.
Communicated under Article 6(1) and (3)(b) and (d).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Foreseeability of offence: *no violation*.

BASKAYA and OKÇUOGLU - Turkey (Nº 23536/94 and 24408/94)
Judgment 8.7.99 [Grand Chamber]
(See Appendix VI).

NULLA POENA SINE LEGE
Imprisonment of publisher under provision relating only to editors: *violation.*

BASKAYA and OKÇUOGLU - Turkey (Nº 23536/94 and 24408/94)
Judgment 8.7.99 [Grand Chamber]
(See Appendix VI).

ARTICLE 8

PRIVATE LIFE
Enforced psychiatric examination: *no violation*.

MATTER - Slovakia (Nº 31534/96)
Judgment 5.7.99 [Section II]
(See Article 6(1), above).

PRIVATE LIFE
Psychiatric examination imposed on applicant by court order: *communicated*.

S.T. - Turkey (Nº 32431/96)
[Section III]

The applicant, a university professor, was suspended from his post following complaints by students and colleagues. A disciplinary inquiry was conducted by a committee composed of three fellow professors into the allegations of abuse of authority, verbal and physical aggression and defamation that had been made against the applicant. In the light of the inquiry's findings, a magistrate at the court of first instance made an order requiring the applicant to undergo psychiatric examination. Though required to do so by domestic law, he did not hear either the applicant or his lawyer. The applicant's appeal against that order was dismissed. The psychiatric examination, which the applicant underwent voluntarily, was conducted by a board from the faculty of medicine. The applicant was found not to be suffering from any illness and to have capacity to take or defend legal proceedings. However, according to the most recent information supplied by the applicant, the order remains valid. To date, the applicant has not been admitted to a psychiatric institution and no proceedings have been brought against him.

ARTICLE 10

FREEDOM OF EXPRESSION
Convictions for disseminating separatist propaganda: *violation*.

CEYLAN - Turkey (Nº 23556/94)
ARSLAN - Turkey (Nº 23462/94)
GERGER - Turkey (Nº 24919/94)
POLAT - Turkey (Nº 23500/94)
KARATAS - Turkey (Nº 23168/94)
ERDOGDU and INCE - Turkey (Nº 25067/94 and 25068/94)
BASKAYA and OKÇUOGLU - Turkey (Nº 23536/94 and 24408/94)
OKÇUOGLU - Turkey (Nº 24246/94)
SÜREK and ÖZDEMIR - Turkey (Nº 23927/94 and 24277/94)
SÜREK - Turkey (no. 1) (Nº 26682/95)
SÜREK - Turkey (no. 2) (Nº 24122/94)
SÜREK - Turkey (no. 3) (Nº 24735/94)
SÜREK - Turkey (no. 4) (Nº 24762/94)
Judgments 8.7.99 [Grand Chamber]
(See Appendix VI).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Alleged pressure by the authorities on applicant: *violation*.

TANRIKULU - Turkey (Nº 23763/94)
Judgment 8.7.99 [Grand Chamber]
(See Appendix II).

ARTICLE 35(1)

EFFECTIVE DOMESTIC REMEDY
Insufficiency of criminal investigation into allegations of ill-treatment: *preliminary objection (non-exhaustion) rejected*.

SELMOUNI - France (Nº 25803/94)
Judgment 28.7.99 [Grand Chamber]
(See Appendix III).

EFFECTIVE DOMESTIC REMEDY (Italy)
Application to Constitutional Court: *preliminary objection (non-exhaustion)rejected*.

IMMOBILIARE SAFFI - Italy (Nº 22774/93)
Judgment 28.7.99 [Grand Chamber]
(See Appendix IV).

EFFECTIVE DOMESTIC REMEDY (Italy)
Application to administrative courts in respect of decisions staggering the granting of police assistance for enforcement of eviction orders: *preliminary objection (non-exhaustion) rejected*.

IMMOBILIARE SAFFI - Italy (Nº 22774/93)
Judgment 28.7.99 [Grand Chamber]
(See Appendix IV).

ARTICLE 1 OF PROTOCOL NO. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Staggering of the granting of police assistance to enforce eviction order: *violation*.

IMMOBILIARE SAFFI - Italy (Nº 22774/93)
Judgment 28.7.99 [Grand Chamber]
(See Appendix IV).

PEACEFUL ENJOYMENT OF POSSESSIONS
Delay of administration in paying tax credits: *communicated*.

BUFFALO Srl - Italy (Nº 38746/97)
[Section II]

The applicant company, registered as being in voluntary liquidation at the companies register, held tax credits against the State. Owing to delays in their repayment, the applicant company was obliged to seek bank finance to tide it over and to pay tax on credits that had not been repaid. In addition, the delays hindered the liquidation of the company. The applicant company also alleges that the amount received for some of the credits that were repaid was less than the amount due. It adds that the taxpayer has no remedy to allow it to recover the difference between the amount paid and the amount due.
Communicated under Article 1 of Protocol No. 1.

ARTICLE 1 OF PROTOCOL NO. 6 / ARTICLE 1er DU PROTOCOLE Nº 6

ABOLITION OF THE DEATH PENALTY
Expulsion to the United States of a person running the risk of a death penalty: *communicated.*

NIVETTE - France (Nº 44190/98)
[Section I]
(See Article 3, above).

PROCEDURAL MATTERS

FORMER ARTICLE 47

THREE MONTH TIME-LIMIT
Court vacations not considered to interrupt the running of the three month period.

A.L.M. - Italy (Nº 35284/97)
Judgment 28.7.99 [Grand Chamber]
(See Appendix V).

TRANSITIONAL PROVISIONS
ARTICLE 5(4) OF PROTOCOL Nº 11

CASES REFERRED TO THE GRAND CHAMBER

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

ELSHOLZ v. Germany (Nº 25735/94) concerning complaints about the refusal of access to his son and about the alleged unfairness of the proceedings concerned.

ROTARU v. Romania (Nº 28341/95) concerning the applicant's complaints that the Romanian Investigation Services keep data about his private life and that he cannot modify or annul information which he considers false and defamatory.

APPENDIX I

Case of Çakiçi v. Turkey - Extract from press release

Facts: The applicant, Izzet Çakıcı, a Turkish national, was born in 1953 and lives in Diyarbakır, Turkey. The application was lodged on his behalf and on behalf of his brother Ahmet Çakıcı.

On 8 November 1993, an operation was carried out by gendarmes from Hazro at the village of Çitlibahçe where Ahmet Çakıcı lived. The gendarmes were looking for, among other things, evidence concerning the kidnapping and murder of teachers and an imam by the PKK and for anyone who might have been involved. In a co-ordinated operation, gendarmes from Lice apprehended three persons at the neighbouring village of Bağlan, who were transferred the next day to the Diyarbakır provincial gendarme headquarters.

The applicant and the Government have put forward different versions of the events in question.

According to the applicant, the Hazro gendarmes apprehended Ahmet Çakıcı when they came to Çitlibahçe. They took him to Hazro from where he was transferred to Diyarbakır provincial gendarme headquarters. He was detained there for sixteen to seventeen days in the same room as the three people who had been apprehended at Bağlan. One of these three, Mustafa Engin, reported when he was released that Ahmet Çakıcı had been beaten, a rib being broken and his head split open. According to him, Ahmet Çakıcı had also been taken out for interrogation and received electric shock treatment. The applicant later learned from Hikmet Aksoy, who had been detained by gendarmes at Kavaklıboğaz station, that his brother had been taken from Diyarbakır provincial gendarme headquarters to Hazro gendarme station and from there to Kavaklıboğaz, where he had talked to Hikmet Aksoy. The applicant and his family had received no further news about Ahmet Çakıcı, until the Government provided information during the proceedings before the European Commission of Human Rights.

According to the Government, Ahmet Çakıcı was not taken into custody by the gendarmes during the operation on 8 November 1993. They rely on the custody records of Hazro gendarme station and Diyarbakır provincial gendarme headquarters, where there are no entries concerning Ahmet Çakıcı. During the Commission proceedings, they provided information that it had been reported that Ahmet Çakıcı's identity card had been found on one of the bodies of terrorists killed during a clash with security forces from 17 to 19 February 1995 on Kıllıboğan hill, Hani district.

On 13 June 1996, the Hazro public prosecutor issued a decision of lack of jurisdiction concerning the allegations about Ahmet Çakıcı's disappearance, finding, among other things, that Ahmet Çakıcı's identity card had been found on the body of a dead terrorist and that this confirmed the terrorist's identity as Ahmet Çakıcı.

The applicant complained of violations of Articles 2, 3, 5, 13, 14 and 18 of the European Convention on Human Rights.

Law: The Court's assessment of the facts: The Court accepted the facts found by the Commission which had carried out fact-finding missions in this case. It was accordingly established that the applicant's brother had been taken into custody by the security forces on 8 November 1993, that he had been taken to Hazro gendarme station that night and that he had been detained at Diyarbakır provincial gendarme command from 9 November until at least 2 December 1993 when he was last seen by Mustafa Engin. It was established that during his detention Ahmet Çakıcı was beaten, one of his ribs broken, his head split open and that he had been given electric shock treatment twice. Though report was made by Hazro district gendarmerie that his identity card had been found on the body of a dead member of the PKK in February 1995, there was no evidence as to the identification of the body or the release of the body for burial and it could not be regarded as established that Ahmet Гakıcı's body had been found as alleged. The Court noted that the Commission's task of establishing the facts had been made more difficult since the Government had failed to provide the

Commission's delegates with the opportunity to inspect original custody records, to facilitate the attendance of the witness Hikmet Aksoy and to secure the attendance before the delegates of two state officials. The Court, considering that it was of the utmost importance for the effective operation of the system of individual petition instituted under former Article 25 of the Convention (now replaced by Article 34) that States provide all necessary facilities to make possible a proper and effective examination of applications (former Article 28 § 1 (a), now replaced by Article 38), found that the Government had fallen short of this duty.

Government's preliminary objection: The Court rejected the Government's preliminary objection that the applicant had failed to exhaust domestic remedies. The Court found that the applicant and his father had made petitions and enquiries to the State Security Court prosecutor in relation to the disappearance of Ahmet Çakıcı and that though the authorities had been made aware of their concerns no effective response was made. It observed that, although statements were taken from the applicant and Ahmet Çakıcı's wife which confirmed their allegations, no measures were taken by the various public prosecutors beyond enquiring about possible entries in custody records and taking two brief statements from the witness Mustafa Engin. No steps at all were taken by the public prosecutor to verify the report that Ahmet Çakıcı's body had been found. In these circumstances, the applicant had done all that could reasonably be expected of him to exhaust domestic remedies.

Article 2 of the Convention: The Court found that the disappearance of Ahmet Çakıcı after he had been taken into custody led, in the circumstances of this case, to a presumption that he had died. No explanation having been provided by the Government as to what happened to him during his detention, the Government were liable for his death and there was a violation of Article 2 of the Convention. There was additionally a violation of Article 2 in that the inadequate investigation into the disappearance and alleged finding of Ahmet Çakıcı's body referred to above disclosed a failure to protect his right to life.

Conclusion: Violation (unanimous).

Article 3 of the Convention: The Court found that the ill-treatment which Ahmet Çakıcı suffered during his detention (see above) constituted torture contrary to this provision. It did not find however that the disappearance of Ahmet Çakıcı disclosed a basis for finding that the applicant had himself suffered inhuman and degrading treatment at the hands of the authorities. It emphasised that there was no general principle that a relative of the victim of a disappearance was also a victim of treatment contrary to Article 3. That would depend on the existence of special factors giving the suffering of the relative a dimension and character distinct from the distress inevitably caused in the circumstances. Of particular relevance were the authorities' reactions and attitudes to the situation when it was brought to their attention by the family. No special features existed in this case which justified a finding of a violation of Article 3 in respect of the applicant.

Conclusion: Violation in respect of the applicant's brother (unanimous), no violation in respect of the applicant himself (14 votes to 3).

Article 5 of the Convention: The Court held that the disappearance of Ahmet Çakıcı during an unacknowledged detention disclosed a particularly grave violation of the right to liberty and security of person guaranteed by this provision. It referred in particular to the lack of accurate and reliable records of the detention of persons taken into custody by gendarmes and the lack of any prompt or meaningful enquiry into the circumstances of Ahmet Çakıcı's disappearance.

Conclusion: Violation (unanimous).

Article 13 of the Convention: Referring to its reasoning in, among other things, its judgment of 19 February 1998 in the case of Kaya v. Turkey, the Court considered that the national authorities had been under an obligation to carry out an effective investigation into the circumstances of the disappearance of Ahmet Çakıcı. Reiterating its findings under Articles 2 and 5 of the Convention that no such effective investigation had been conducted, the Court concluded that there had been a violation of Article 13.

Conclusion: Violation (16 votes to 1).

Articles 14 and 18 of the Convention: The Court found that it did not have any evidence before it substantiating the alleged breaches of Articles 14 and 18. Accordingly, there had been no violation of these provisions.
Conclusion: No violation (unanimous).
Article 41 of the Convention: In respect of pecuniary damage, the applicant had claimed 4,7000,000 Turkish liras for a sum allegedly taken from Ahmet Çakıcı on his apprehension and GBP 11,534.29 for his surviving spouse and children in respect of the loss of his earnings. The applicant also claimed GBP 40,000 for non-pecuniary damage and GPB 32,205.17 by way of reimbursement of his costs and expenses.
The Court, ruling on an equitable basis, awarded GBP 11,534.29 for pecuniary damage for the applicant's brother's spouse and children, GBP 25,000 for non-pecuniary damage for his brother's heirs, GBP 2,500 for non-pecuniary damage for the applicant himself and GBP 20,000 for costs and expenses.
Judges Jungwiert, Thomassen, Fischbach and Gölcüklü expressed partly dissenting opinions and these are annexed to the judgment.

APPENDIX II

Case of Tanrikulu v. Turkey - Extract from press release

Facts: The applicant, Selma Tanrıkulu, a Turkish national, was born in 1964 and lives in Diyarbakır (Turkey). The applicant's husband, Zeki Tanrıkulu, was a doctor in the Silvan State hospital. At around noon on 2 September 1993 he was shot on a steep road which runs between the hospital and the Silvan police headquarters. The applicant, who heard the shots, rushed over from her apartment situated in the grounds of the hospital and saw two men running away. Her husband died soon after. The applicant and the Government had put forward different versions of the events concerned.
According to the applicant, there were at least eight members of the security forces standing in a line across the road where her husband was shot, brandishing machine guns. She pleaded with them not to let the two men whom she had seen running away escape but they did nothing.
According to the Government, there were no more than two police officers present outside the police headquarters. These officers, who were under strict instructions not to leave their post, stood guard outside the entrance to the headquarters, which was around the corner from where the incident took place.
On 5 November 1993 the Silvan public prosecutor's office ruled that it had no jurisdiction to investigate the matter and transferred the file to the State Security Court at Diyarbakır. The chief public prosecutor at that Court took a statement from the applicant on 18 November 1994. The investigation has not led to any arrests and is still pending.
The applicant complained that the killing of her husband by security forces or with the connivance of those forces, as well as the lack of an effective official investigation into the killing and the lack of protection in domestic law of the right to life, constituted violations of that right to life guaranteed under Article 2 of the Convention. She further complained of an infringement of Article 13 in that she had been denied an effective remedy for Convention breaches and, arguing that her husband had been killed because of his Kurdish origins, she also alleged a violation of Article 14 (freedom from discrimination in the enjoyment of Convention rights). Finally, the applicant complained that she had been hindered in the exercise of the right of individual petition as guaranteed by former Article 25 § 1.
Law: Government's preliminary objections: The Government had maintained before the Court that the applicant had not exhausted the domestic remedies afforded her by Turkish law. The Court noted that civil law remedies could only succeed if the person responsible for the act complained of had been identified, which had not been the case. With respect to an action in administrative law the Court observed that it had not been provided with any

examples of persons having brought such an action in a situation comparable to the applicant's. Moreover, an obligation to exhaust such an administrative law remedy that was capable only of leading to an award of damages might render illusory a Contracting State's obligation under Articles 2 and 13 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible for the deprivation of life. The Court consequently dismissed the preliminary objection in so far as civil and administrative law remedies were concerned. It joined the preliminary objection concerning remedies in criminal law to the merits.

The Court's assessment of the facts: The Court accepted the facts as they had been established by the Commission which had carried out a fact-finding mission in Ankara to this end. It noted, however, that the Commission's task of establishing the facts had been made more difficult since the Government had failed to provide the complete investigation file and had also not secured the attendance before the Commission's Delegates of two public prosecutors. The Court, considering that it was of the utmost importance for the effective operation of the system of individual petition instituted under former Article 25 of the Convention (now replaced by Article 34) that States furnish all necessary facilities to make possible a proper and effective examination of applications (former Article 28 § 1 (a), now replaced by Article 38), found that the Government had fallen short of this duty.

Article 2 of the Convention:

(1) The death of the applicant's husband: The Court considered that the material in the case file did not enable it to conclude beyond reasonable doubt that the applicant's husband had been killed by security forces or with their connivance.

(2) The investigations by the national authorities: The Court reiterated that the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. The investigation should have been capable of leading to the identification and punishment of those responsible. The Court doubted that the examination conducted at the scene of the incident could have been more than superficial in view of the limited time that had been spent on it and because no photographs had been taken. There was, moreover, no record of any attempt having been made to retrieve eleven missing bullets that had passed through the body of the applicant's husband. The Court expressed misgivings as to the limited amount of forensic information obtained from the post-mortem examination and considered it regrettable that no forensic specialist had been involved and that no full autopsy had been performed. The Court was further struck by the fact that the public prosecutor had referred the investigation to the Diyarbakır State Security Court, indicating that in his opinion the killing constituted a terrorist offence, since there did not appear to have been any evidence available supporting that conclusion. The applicant's statement had not been taken until more than a year after the event, and even when the authorities had been made aware of her complaints after she had filed an application with the Commission, the authorities had not been prompted, for instance, to take statements from those members of the security forces who had been standing guard outside the police headquarters.

In conclusion, the investigations in the case could not be regarded as effective investigations capable of leading to the identification and punishment of those responsible for the killing of the applicant's husband. The Court was, moreover, not persuaded that the criminal law remedies nominally available to the applicant would have been capable of altering to any significant extent the investigation that was carried out.

Accordingly, the Court dismissed the remainder of the Government's preliminary objection and held that there had been a violation of Article 2. In view of that finding, the Court considered that it was not necessary to examine the applicant's complaint regarding an alleged lack of protection in domestic law of the right to life.

Conclusion: Violation (unanimous).

Article 13 of the Convention: Referring to its reasoning in, among other things, its judgment of 19 February 1998 in the case of Kaya v. Turkey, the Court considered that the national

authorities had been under an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. Reiterating its finding under Article 2 that no such effective investigation had been conducted, the Court concluded that there had been a violation of Article 13.
Conclusion: Violation (16 votes to 1).
Article 14: The Court found that it did not have any evidence before it substantiating the alleged breach of Article 14. Accordingly, there had been no violation of this provision.
Conclusion: No violation (unanimous).
Former Article 25 § 1 of the Convention: The Court noted that the applicant had been questioned by the chief public prosecutor at the Diyarbakır State Security Court about the authenticity of the power of attorney which had been submitted to the Commission in respect of her legal representation in the proceedings before that institution. The Court emphasised that it was not appropriate for the authorities of a respondent Government to enter into direct contact with an applicant about such matters, and considered that to proceed as the Government had in the present case could have been interpreted by the applicant as an attempt to intimidate her. The Court further noted that according to the record of this questioning the applicant had been shown a power of attorney bearing a name which was not hers, even though the only power of attorney that had been transmitted to the Government by the Commission had been in the applicant's name. Subsequent to the applicant's having been questioned, the Government had informed the Commission that the applicant had denied signing the power of attorney. The Court was of the opinion that a deliberate attempt had been made on the part of the authorities to cast doubt on the validity of the application to the Commission and thereby on the credibility of the applicant. In conclusion, the Court found that the respondent State had failed to comply with their obligations under former Article 25 § 1 of the Convention.
Conclusion: Failure to comply with obligations (16 votes to 1).
Article 41 of the Convention: The applicant had claimed 15,000 pounds sterling (GBP) for non-pecuniary damage to compensate herself, her husband and their three minor children, and GBP 24, 396.06 by way of reimbursement of her costs and expenses.
The Court, ruling on an equitable basis, awarded the applicant GBP 15,000 for non-pecuniary damage and GBP 15,000 for costs and expenses.
Judge Gölcüklü expressed a partly dissenting opinion which is annexed to the judgment.

APPENDIX III

Case of Selmouni v. France - Extract from press release

Facts: The applicant, Ahmed Selmouni, a Netherlands and Moroccan national, was born in 1942 and is currently in prison in Montmédy (France). The applicant was held in police custody in Bobigny from 25 to 29 November 1991 and questioned by police officers from the Seine-Saint-Denis Criminal Investigation Department in connection with drug-trafficking proceedings. While he was in police custody he was examined six times by doctors, which resulted in six medical certificates being drawn up. When he was brought before the investigating judge (in proceedings in which he was ultimately sentenced to fifteen years' imprisonment in a judgment of Bobigny Criminal Court of 7 December 1992), the judge took the initiative of ordering an expert medical report. After being placed in detention, the applicant was again examined by the doctor from the medical department of Fleury-Mérogis prison. On 7 December 1991 the expert appointed by the investigating judge examined him and listed the visible injuries on his body, concluding that they had been sustained at a time which corresponded to the period of police custody. On 1 December 1992 the applicant was questioned about the events for the first time by an officer of the National Police Inspectorate. The record of the interview was sent to the Bobigny Public Prosecutor on 2 December 1992. On 1 February 1993 the applicant lodged a criminal complaint together with an application to

join the proceedings as a civil party for "assault occasioning actual bodily harm resulting in total unfitness for work for more than eight days; assault and wounding with a weapon (namely a baseball bat); indecent assault; assault occasioning permanent disability (namely the loss of an eye); and rape aided and abetted by two or more accomplices, all of which offences were committed between 25 and 29 November 1991 by police officers in the performance of their duties". On 22 February 1993 a judicial investigation was opened in the Bobigny *tribunal de grande instance* into the complaint lodged both by the applicant and by another person who had been taken into police custody. An identity parade was organised on 10 February 1994. The applicant picked out four police officers (a fifth officer being identified by the other civil party on 7 March 1996). In a judgment of 27 April 1994 the Court of Cassation decided to remove the case from the Bobigny investigating judge and transfer it to a judge attached to the Versailles *tribunal de grande instance*, in the interests of the proper administration of justice. The identified police officers were charged in January, February and March 1997. On 21 October 1998 they were committed for trial at the Criminal Court on charges of assault occasioning unfitness for work for less than eight days and indecent assault committed collectively and with violence and coercion. In a judgment of 25 March 1999 the Versailles Criminal Court sentenced the police officers to three years' imprisonment, except for the one who had been in charge, in respect of whom it handed down a four-year prison sentence and issued a warrant for his immediate arrest. In a judgment of 1 July 1999 the Versailles Court of Appeal convicted the police officers of assault with or under the threat of the use of a weapon, occasioning total unfitness for work for less than eight days in the case of Mr Selmouni and more than eight days in the case of the other victim, by police officers in the course of their duty and without legitimate reason. The police officers were given suspended prison sentences of twelve to fifteen months, except for the one who had been in charge, who was sentenced to eighteen months' imprisonment, of which fifteen months were suspended.

The applicant complained that, on account of ill-treatment which he alleged he had suffered during police custody and the length of the proceedings relating to his criminal complaint and application to join the proceedings as a civil party, there had been a violation of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman and degrading treatment, and of Article 6 § 1 of the Convention, which guarantees the right to a decision on civil rights and obligations within a "reasonable time".

Law: The Government's preliminary objections: The Government's main submission, which was the same as that made before the Commission, was that the complaint based on Article 3 could not be examined by the Court as the case stood because the applicant had not exhausted domestic remedies. The Government submitted that the applicant's application to join the criminal proceedings against the police officers as a civil party was an ordinary remedy sufficient to afford redress for the alleged damage. After examining the facts, the Court formed the opinion that the issue was not so much whether there was an inquiry, since it appeared to have been conclusively established that there had been one, as whether it had been conducted diligently, whether the authorities had been determined to identify and prosecute those responsible and, accordingly, whether the inquiry had been "effective". The Court considered that Mr Selmouni's allegations, which – as had been clear from the medical certificates of which the authorities were aware – amounted at the very least to an arguable claim, were particularly serious, in respect of both the alleged facts and the status of the persons implicated. The Court considered that the authorities had not taken the positive measures required in the circumstances of the case to ensure that the remedy referred to by the Government was effective. Accordingly, given the lack of convincing explanation by the Government as to the "effectiveness" and "adequacy" of the remedy they had relied on, that is, a criminal complaint together with an application to join the proceedings as a civil party, the Court considered that the remedy available to the applicant was not, in the instant case, an ordinary remedy sufficient to afford him redress in respect of the violations he had alleged. While emphasising that its decision was limited to the circumstances of this case and should not be interpreted as a general statement to the effect that a criminal complaint together with an application to join the proceedings as a civil party is never a remedy which must be used in

the event of an allegation of ill-treatment during police custody, the Court decided that the Government's objection on grounds of failure to exhaust domestic remedies could not be upheld.

Article 3 of the Convention: As regards the establishment of the facts, the Court noted the existence of several medical certificates containing precise and concordant information, and the lack of any plausible explanation of how the injuries had been caused. As well as that, it was of the opinion that, in the context of the complaint submitted for its examination, those of the allegations in Mr Selmouni's statements that were not supported by the medical reports could also be considered to have been established, excepting the allegations of rape and loss of visual acuity. The Court found that all the injuries recorded in the various medical certificates and the applicant's statements regarding the ill-treatment to which he had been subjected while in police custody established the existence of physical and – undoubtedly (notwithstanding the regrettable failure to order a pyschological report on Mr Selmouni after the events complained of) – mental pain and suffering. The course of the events also showed that pain and suffering had been inflicted on the applicant intentionally for the purpose of, *inter alia*, making him confess to the offence which he had been suspected of having committed. Lastly, the medical certificates annexed to the case file showed clearly that the numerous acts of violence had been directly inflicted by police officers in the performance of their duties. The acts complained of had been such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore found elements which were sufficiently serious to render such treatment inhuman and degrading. In other words, it remained to establish in the present case whether the "pain or suffering" inflicted on Mr Selmouni could be defined as "severe" within the meaning of Article 1 of the United Nations Convention against Torture, which came into force on 26 June 1987. The Court considered that this "severity" was, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depended on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. The Court was satisfied that a large number of blows had been inflicted on Mr Selmouni. Whatever a person's state of health, it could be presumed that such intensity of blows would cause substantial pain. Moreover, a blow did not automatically leave a visible mark on the body. However, it could be seen from the expert medical report of 7 December 1991 that the marks of the violence Mr Selmouni had endured had covered almost all of his body. The Court also observed that the applicant had been subjected to a certain number of acts which would have been heinous and humiliating for anyone, irrespective of their condition. The Court noted, lastly, that the above events had not been confined to any one period of police custody during which – without this in any way justifying them – heightened tension and emotions might have led to such excesses. It had been clearly established that Mr Selmouni had endured repeated and sustained assaults over a number of days of questioning. Under these circumstances, the Court was satisfied that the physical and mental violence, considered as a whole, committed against the applicant's person had caused "severe" pain and suffering and had been particularly serious and cruel. Such conduct had to be regarded as acts of torture for the purposes of Article 3 of the Convention.

Conclusion: Violation (unanimous).

Article 6 § 1 of the Convention: The Court considered that the period to be taken into consideration in examining the length of the proceedings with regard to the "reasonable time" requirement laid down in Article 6 § 1 had begun when the applicant had expressly lodged a complaint while being interviewed by an officer of the National Police Inspectorate, that is, on 1 December 1992. The Court noted that this simple form of criminal complaint was a remedy afforded by French law and that the Public Prosecutor had been informed of the applicant's complaint as early as 2 December 1992, when the record of the interview by the officer had been transferred to him. Having regard to the nature and extreme seriousness of the alleged acts, the Court did not consider that it should take as the starting-point 1 February 1993, the date on which the applicant had lodged a criminal complaint and an application to

join the proceedings as a civil party or, *a fortiori*, the date on which that complaint and application had been registered. The Court noted that the proceedings, which are still pending since an appeal on points of law may be brought, had already lasted more than six years and seven months. Irrespective of the Government's acknowledgement that, regard being had to the seriousness of the alleged facts, the overall length of the proceedings had been excessive, the Court considered that its conclusions with regard to the admissibility of the complaint based on Article 3, in particular the finding that a number of delays had been attributable to the judicial authorities, resulted in a finding that this complaint was well-founded. The Court considered that the "reasonable time" prescribed by Article 6 § 1 had been exceeded. Accordingly, there had been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings.

Conclusion: Violation (unanimous).

Article 41 of the Convention:

(a) Damages - Costs and expenses

Having regard to the extreme seriousness of the violations of the Convention of which Mr Selmouni was a victim, the Court considered that he had suffered personal and non-pecuniary injury for which the findings of violations in its judgment did not afford sufficient satisfaction. Considering, having regard to its previous conclusions, that the question of the application of Article 41 was ready for decision, and making its assessment on an equitable basis as required by that Article, it awarded him 500,000 French francs. The Court considered reasonable only the applicant's claim for costs and expenses incurred before the Commission and the Court, namely 113,364 French francs. It awarded him that amount in full, less the amounts received in legal aid from the Council of Europe which had not already been taken into account in the claim.

(b) Request for transfer to the Netherlands

The applicant requested a transfer to the Netherlands to serve the remainder of his sentence there. The Netherlands Government, having regard to the circumstances of the case, supported the applicant's request, observing that the two States concerned were parties to the Convention on the Transfer of Sentenced Persons of 21 March 1993. The Court reiterated that Article 41 did not give it jurisdiction to make such an order against a Contracting State.

(c) Request for a declaration that the sums in question should be exempt from attachment

The applicant pointed out that he had been ordered to pay, jointly and severally with the other persons convicted in the proceedings against them, a customs fine of 12 million French francs. Accordingly, the applicant asked the Court to specify in its judgment that the sums awarded under Article 41 should be exempt from attachment. The Court considered that the compensation fixed pursuant to Article and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for*, inter alia*, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the State itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind, the Court considered that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory. However, the Court did not have jurisdiction to accede to such a request. It therefore had to leave this point to the discretion of the French authorities.

APPENDIX IV

Case of Immobiliare Saffi v. Italy - Extract from press release

Facts: The application was brought by Immobiliare Saffi, an Italian construction company. Following a corporate merger in 1988 Immobiliare Saffi became the owner of an apartment in Livorno that had been let. Although the tenancy had expired on 31 December 1983 and an order for possession had been made by the Livorno Magistrate, the tenant had refused to vacate. Despite numerous attempts, the bailiffs were unable to enforce the order, as, under the statutory provisions for the staggering or suspension of evictions, the applicant company was not entitled to police assistance in enforcing the order for possession. It did not recover possession of the apartment until April 1996, after the death of the tenant.

The applicant company complained that its right to the peaceful enjoyment of its possessions as guaranteed under Article 1 of Protocol No. 1 to the Convention had been infringed as it had been unable to recover possession of the apartment; it also complained of breaches of Article 6 § 1 in that it had been denied access to a court regarding the provision of police assistance and the enforcement proceedings had been unreasonably protracted.

Law: Government's preliminary objections: The Government had maintained that the applicant company had not exhausted domestic remedies, as it had failed to issue proceedings in the administrative courts challenging the refusal of police assistance and to raise the constitutionality of the legislative provisions concerned. As regards the first limb of the objection, with regard to the period before 1 January 1990 the Court observed that, as the enforcement of orders for possession had been suspended by statute and Immobiliare Saffi did not satisfy the necessary conditions to escape suspension, an application to the administrative courts would have had no prospects of success. As to the period after 1 January 1990, the Court observed that requests for police assistance in enforcing orders for possession had to be dealt with in order of priority, as determined according to criteria which the prefect had to establish. The administrative courts would only have had jurisdiction to set aside decisions of the prefect that failed to apply the criteria. In the case before the Court, Immobiliare Saffi's complaint was not that the prefect's decisions had been arbitrary, but that the application of the criteria for determining priority had had a disproportionate impact on its right of property. Accordingly, an application to the administrative courts could not be regarded as having been an effective remedy. As to the second limb of the objection – the constitutionality issue –, the Court observed that in the Italian legal system an individual was not entitled to apply directly to the Constitutional Court for review of a law's constitutionality. Accordingly, such an application could not be a remedy whose exhaustion was required under Article 35 of the Convention. The objection had to be dismissed.

Article 1 of Protocol No. 1 to the Convention:

A. The applicable rule

The Court held that the implementation of the legislative measures had allowed the tenant to remain in the apartment and so undoubtedly amounted to control of the use of property, such that the second paragraph of Article 1 was applicable.

B. Compliance with the conditions in the second paragraph

1. Aim of the interference: The Court found the impugned legislation had a legitimate aim in the general interest as the simultaneous eviction of a large number of tenants would undoubtedly have led to considerable social tension and jeopardised public order.

2. Proportionality of the interference: The Court reiterated that an interference, particularly one falling to be considered under the second paragraph of Article 1 of Protocol No. 1, had to strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. In spheres such as housing, which played a central role in the welfare and economic policies of modern societies, the Court would respect the legislature's judgment as to what was in the general interest unless that judgment was manifestly without reasonable foundation. The Court observed that, in order to deal with the chronic housing shortage, the Italian Government had adopted a series of emergency measures designed to control rent increases and to extend the

validity of existing leases. In 1982 and 1983, when the last statutory extension had expired, the Italian State had considered it necessary to resort to emergency provisions to suspend the enforcement of non-urgent orders for possession. Those legislative measures could reasonably be regarded as having been appropriate to achieve the legitimate aim pursued. Subsequently, when the final period of suspension of evictions had ended, the Italian State had considered it appropriate for orders for possession to be enforced in cases to which the suspension rules did not apply, according to an order of priority established by the prefect after consulting the prefectoral committee. On the other hand, non-priority cases, such as the one before the Court, were to be enforced within a maximum period of four years starting on 1 January 1990. The Court considered that, in principle, a system of temporary suspension or staggering of the enforcement of court orders followed by the reinstatement of the landlord in his property was not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, the Court observed that the Italian system suffered from a degree of inflexibility: by providing that cases in which the lease had been terminated on the ground that the landlord urgently needed to recover the apartment for himself or his family should always be given priority, it had automatically made the enforcement of non-urgent orders for possession dependent on there being no requests warranting priority treatment. It followed that, since there were always a large number of priority requests outstanding, non-urgent orders were in practice never enforced after January 1990. The provision of police assistance, which the prefect determined by reference to an order of priority, had therefore ended up depending almost entirely on the volume of prior-ranking requests for police assistance and the number of police officers at the prefect's disposal. For approximately eleven years Immobiliare Saffi had thus been left in a state of uncertainty as to when it would be able to repossess its apartment. It could not apply to either the judge dealing with the enforcement proceedings or the administrative court. It had had no means of compelling the Government to take into account any particular difficulties it might encounter as a result of the delay in the eviction and no prospect of obtaining compensation through the Italian courts for the protracted wait, one during which it had been unable to sell or let the apartment at market value. Nothing in the file suggested that the tenant occupying the applicant company's premises had deserved any special protection. In the light of the foregoing, the Court agreed with the Commission that the system of staggering the enforcement of orders for possession, coupled with what had already been a six-year wait because of the statutory suspension of the enforcement of such orders, had imposed an excessive burden on the applicant company and accordingly upset the balance that had to be struck between the protection of the right of property and the requirements of the general interest. Consequently, there had been a violation of Article 1 of Protocol No. 1.

Conclusion: Violation (unanimous).

Article 6 § 1 of the Convention: The Court observed that the applicant company had originally relied on Article 6 in connection with its complaint regarding the length of the proceedings for possession. Like the Commission, the Court nonetheless considered that the case had firstly to be examined in connection with the more general right to a court.

A. Whether Article 6 was applicable: The Court observed that the applicant company had issued proceedings before the Livorno Magistrate for an order confirming termination of the lease and requiring the tenant to vacate the premises. As the tenant did not contest termination, the only outstanding point had concerned the date of repossession. For so long as that date was put back owing to the tenant's refusal to leave voluntarily, which entailed a *de facto* extension to the lease and a subsequent restriction on the applicant company's right of property, there had continued to be a "dispute" (*contestation*) for the purposes of Article 6. In any event, the Court reiterated that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court had to be regarded as an integral part of the "trial" for the purposes of Article 6, which was therefore applicable.

B. Compliance with Article 6: The Court accepted that a stay of execution of a judicial decision for such period as was strictly necessary to enable a satisfactory solution to be found to public-order problems could be justified in exceptional circumstances. The case before the

Court did not, however, concern an isolated refusal by the prefect to provide police assistance, owing to the risk of a serious disturbance of public order. The magistrate's decision regarding the date by which the tenant was required to vacate the premises had been reopened by statutory intervention. The legislature had conferred a power, and possibly a duty, on prefects, as the authority responsible for maintaining public order, to intervene systematically in the enforcement of orders for possession, while at the same time defining the scope of that power. The postponement of the date by which the premises had to be vacated had rendered nugatory the Livorno Magistrate's decision, which had been made on the basis of the very same factors. In addition, the Court observed that the assessment whether it was appropriate subsequently to stay enforcement of the order for possession and therefore *de facto* to extend the lease had not been subject to any effective review by the courts, since the scope of judicial review of the prefect's decision had been limited to verifying whether he had complied with the criteria governing the order of priority. Legislative intervention should not prevent, invalidate or unduly delay execution of a decision, still less, undermine its substance. In the instant case, from the moment the prefect had become the authority responsible for determining when the order for possession would be enforced, and given that there could be no effective judicial review of his decisions, the applicant company had been deprived of its right under Article 6 § 1 of the Convention to have its dispute (*contestation*) with its tenant decided by a court. That situation was incompatible with the principle of the rule of law. Consequently, there had been a violation of Article 6 § 1 of the Convention.
Conclusion: Violation (unanimous).
As to the complaint concerning the length of the proceedings, the Court considered that it had to be regarded as having been absorbed by the preceding complaint.
Article 41 of the Convention: The applicant company had claimed (a) 6,274,408 Italian lire (ITL), for bailiffs' and lawyers' fees incurred in the enforcement proceedings; (b) ITL 37,200,000, for loss of rent; and (c) ITL 564,179,000, as it had not been able to realise the property. It had also sought ITL 20,000,000 for non-pecuniary damage. Under (a), the Court awarded the sum of ITL 2,832,150 only, being the amount of costs and expenses that were shown to have been actually and necessarily incurred and reasonable in amount. As to (b), the Court made an award up to the point when Immobiliare Saffi recovered possession of its apartment (ITL 25,608,000). The Court dismissed the claim under (c) as there was no evidence that the applicant company had attempted, but had found itself unable, to sell the property. As regards non-pecuniary damage, the Court considered that it was unnecessary to examine whether a commercial company could allege that it had sustained non-pecuniary damage through anxiety as, having regard to the facts of the case, it had decided to make no award under that head. The Court awarded ITL 5,000,000 in respect of costs incurred before the Commission.

APPENDIX V

5 Italian cases - Extract from press release

Facts: The applicants are all Italian citizens. Mr Emilio Bottazzi was born in 1916 and lives in Genoa. Mr A.P. was born in 1952 and lives in Biauzzo di Codroipo (Udine). Mr Sebastiano Di Mauro was born in 1937 and lives in Terracina. Mr A.L.P. was born in 1939 and lives in Milan. Mrs Marcella Ferrari was born in 1911 and lives in Rome.
The Bottazzi case: The case concerned the applicant's request for a review of the decision to stop paying him his war pension, on the ground that his health had deteriorated. The proceedings had begun on 4 April 1991 and ended on 2 December 1997, the date on which the Court of Audit's judgment dismissing his appeal was deposited with the registry.
The A.P. case: The case concerned an order against M.L.D. to pay the applicant for services provided under a business contract. M.L.D. had appealed on 19 February 1990 and the case

was disposed of on 28 November 1995, the date on which the judgment of the Udine District Court granting the applicant's claims in part was deposited with the registry.
The Di Mauro case: The case concerned civil proceedings which the owner of a flat rented by the applicant had instituted, seeking to terminate the lease. The proceedings had begun on 5 March 1984 and ended on 27 December 1997, since neither party had resumed them in the relevant court of appeal.
The A.L.M. case: The case concerned proceedings brought by the applicant against a company for payment of 250,575,000 Italian lire which, he alleged, were owed to him. The proceedings had begun on 11 September 1992 and ended on 14 March 1996, when the judgment of the Milan District Court dismissing the applicant's action was deposited with the registry.
The Ferrari case: The case concerned the applicant's claim for payment by a Rome health clinic of an adjustment for inflation and of statutory interest in respect of arrears of her widow's pension which had been paid six years late. The proceedings had begun on 31 January 1990 and ended on 6 August 1998, when judgment of the Rome District Court granting the applicant's claims in part was deposited with the registry.
The applicants complained that their cases had not been heard within a "reasonable time" as required by Article 6 § 1 of the European Convention on Human Rights. The five applicants complained of a violation of their right to a fair hearing within a reasonable time, guaranteed under Article 6 § 1 of the European Convention on Human Rights, on account of the excessive length of the civil proceedings in their respective cases.
Law:
I. The Bottazzi, A.P., Di Mauro and Ferrari cases
Article 6 § 1 of the Convention: In each of these four cases the Court noted at the outset that Article 6 § 1 of the Convention imposed on the Contracting States the duty to organise their judicial systems in such a way that they could meet the requirements of that provision. It wished to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility. It pointed out, moreover, that the Committee of Ministers of the Council of Europe, in its Resolution DH (97) 336 of 11 July 1997 (Length of civil proceedings in Italy: supplementary measures of a general character), had considered that "excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law". The Court next drew attention to the fact that since 25 June 1987, the date of the Capuano v. Italy judgment, it had already delivered 65 judgments in which it had found violations of Article 6 § 1 in proceedings exceeding a "reasonable time" in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more than 1,400 reports of the Commission had resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 of the Convention for the same reason. The frequency with which violations were found showed that there was an accumulation of identical breaches which were sufficiently numerous to amount not merely to isolated incidents. Such breaches reflected a continuing situation that had not yet been remedied and in respect of which litigants had no domestic remedy. This accumulation of breaches accordingly constituted a practice that was incompatible with the Convention. The Court examined the facts of the present case in the light of the information provided by the parties and the above-mentioned practice. Having regard to its case-law on the subject, the Court considered that in these cases the length of the proceedings in question (almost six years and eight months in the case of Bottazzi; more than five years and nine months in the case of A.P.; approximately thirteen years and nine months in the case of Di Mauro; and more than eight years and six months in the case of Ferrari) had been excessive and had failed to meet the "reasonable time" requirement. Accordingly, there had been a violation of Article 6 § 1.
Conclusion: Violation (unanimous, except Di Mauro - 15 votes to 2).
Article 41 of the Convention: The Court awarded the following amounts in just satisfaction:
Bottazzi: 15,000,000 Italian lire for pecuniary damage and 7,000,000 lire for costs and expenses;

A.P.: 30,000,000 lire for pecuniary and non-pecuniary damage and 8,000,000 lire for costs and expenses;
Di Mauro: 5,000,000 lire for non-pecuniary damage and 10,000,000 lire for costs and expenses;
Ferrari: 15,000,000 lire for non-pecuniary damage and 11,275,488 lire for costs and expenses.

II. The A.L.M. case: The Court noted that the Government's application of 7 September 1998 bringing the case before the Court had arrived at the Registry on 8 September, whereas the Commission's report had been transmitted to the Committee of Ministers on 13 May 1998. The Government maintained that the three-month period provided for in former Article 32 had not expired by the time that their application was lodged. In their submission, the rule contained in Law no. 742 of 7 October 1969 (and also, they asserted, in the legislation of other European countries) that procedural time-limits in the "ordinary and administrative courts" were suspended during judicial vacations was a "general" principle which applied to proceedings in the Court. The applicant requested the Court to dismiss the Government's application as being out of time. The Court pointed out that under former Article 47 of the Convention an application had to be lodged within the three-month period laid down by former Article 32. No provision allowing an exemption from that requirement was to be found in either the Convention or the Rules of Court as applicable at the time the application was lodged. Furthermore, even supposing that the rule on the suspension of procedural time-limits during "judicial vacations" did exist in the legislation of countries other than Italy, the Court considered that the Government had failed to establish the existence of a generally recognised principle of law, inherent in former Article 32 of the Convention, to the effect that procedural time-limits were suspended during judicial vacations. The Government had therefore exceeded the time allowed it. Furthermore, no special circumstance of a nature to suspend the running of time or justify its starting to run afresh was apparent from the file. The Government's application bringing the case before the Court was consequently inadmissible as it had been made out of time.

Conclusion: No jurisdiction - out of time (unanimous).

Four judges expressed separate opinions: Mr Türmen in the Bottazzi judgment, and Mrs Greve, Mr Ferrari Bravo and Mr Costa in the Di Mauro judgment.

APPENDIX VI

13 Turkish cases - Extract from press release

1. Case of Ceylan v. Turkey

The applicant, Münir Ceylan, is a Turkish national. He was born in 1951 and lives in Istanbul. While president of the petroleum workers' union (*Petrol-İş Sendikası*), Mr Ceylan wrote an article entitled 'The time has come for the workers to speak out – tomorrow it will be too late' in the 21-28 July 1991 issue of *Yeni Ülke* (New Land), a weekly newspaper published in Istanbul. Criminal proceedings were brought against him in the Istanbul National Security Court as a result and on 3 May 1993 he was convicted under Article 312 §§ 2 and 3 of the Turkish Criminal Code of inciting the people to hostility and hatred by making distinctions based on ethnic or regional origin or social class. He was sentenced to one year and eight months' imprisonment and a fine of 100,000 Turkish liras (TRL).

2. Case of Arslan v. Turkey

The applicant, Günay Arslan, is a Turkish national. He was born in 1960 and lives in Istanbul. He is the author of the book *Yas Tutan Tarih, 33 Kurşun* ('History in mourning, 33 bullets'). A first edition was published in December 1989. On 29 March 1991 the Istanbul National

Security Court sentenced Mr Arslan to six years and three months' imprisonment for making separatist propaganda contrary to Article 142 §§ 3 and 6 of the Criminal Code. However, as that provision was repealed by the Prevention of Terrorism Act 1991 (Law no. 3713 of 12 April 1991), the National Security Court declared his conviction null and void in a supplementary judgment of 3 May 1991. A second edition of the book was published on 21 July 1991. In a judgment of 28 January 1993 the National Security Court convicted Mr Arslan of making propaganda against the "indivisibility of the State" contrary to section 8 of Law no. 3713 and sentenced him to one year and eight months' imprisonment and a fine of TRL 41,666,666.

3. Case of Gerger v. Turkey

The applicant, Haluk Gerger, is a Turkish national. He was born in 1950 and is a journalist living in Ankara. On 23 May 1993 a memorial ceremony was held in Ankara for Denis Gezmiş, Yusuf Aslan and Hüseyin İnan, the founders of an extreme left-wing movement among university students at the end of the 1960s. They had been sentenced to death for seeking to destroy the constitutional order by violence and had been executed in May 1972. The applicant had been invited to speak at the ceremony but was unable to attend and sent the organising committee a message that was read out in public. Holding that the message contained separatist propaganda against the unity of the Turkish nation and the territorial integrity of the State, the Ankara National Security Court found Mr Gerger guilty of an offence under section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713) and sentenced him to one year and eight months' imprisonment and a fine of TRL 203,333,333.

4. Case of Polat v. Turkey

The applicant, Edip Polat, is a Turkish national. He was born in 1962 and lives in Diyarbakır. In 1991 a book of his entitled *Nevrozladık Şafakları* ('We made each dawn a Spring Festival') was published. In a judgment of 23 December 1992 the Ankara National Security Court held that the work contained propaganda against the territorial integrity of the State and the indivisible unity of the nation, contrary to section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713). It sentenced the applicant to two years' imprisonment and a fine of TRL 50,000,000.

5. Case of Karataş v. Turkey

The applicant, Hüseyin Karataş, is a Turkish national. He was born in 1963 and lives in Istanbul. In November 1991 his anthology of poems entitled *Dersim – Bir İsyanın Türküsü* ('The song of a rebellion – Dersim') was published. In a judgment of 22 February 1993 the Istanbul National Security Court held that the work contained propaganda against the indivisible unity of the State, contrary to section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713) and sentenced the applicant to one year and eight months' imprisonment and a fine of 41,666,666 Turkish liras. After Law no. 4126 of 27 October 1995 came into force the sentence was reviewed, the term of imprisonment being reduced to one year, one month and ten days and the fine increased to TRL 111,111,110.

6. Case of Erdoğdu and İnce v. Turkey

Ümit Erdoğdu and Selami İnce are Turkish nationals. Mr Erdoğdu was born in 1970 and lives in Istanbul. Mr İnce was born in 1966 and lives in Ankara. At the material time, Mr Erdoğdu was the editor of the monthly review *Demokrat Muhalefet!* ('Democratic Opposition!'). The January 1992 issue of the review included an interview with a Turkish sociologist conducted by the second applicant, Mr İnce. The Istanbul National Security Court held that, by publishing the interview, the applicants had committed the offence of disseminating propaganda against the indivisibility of the State contrary to section 8 of the Prevention of

Terrorism Act 1991 (Law no. 3713). In a judgment of 12 August 1993 the first applicant was sentenced to five months' imprisonment and a fine of TRL 41,666,666 and the second applicant to one year and eight months' imprisonment and a fine of TRL 41,666,666. After Law no. 4126 of 27 October 1995 and Law no. 4304 of 14 August 1997 came into force, the Istanbul National Security Court decided to defer passing a final sentence upon Mr Erdoğdu and to suspend execution of Mr İnce's sentence.

7. Başkaya and Okçuoğlu v. Turkey

Fikret Başkaya and Mehemet Selim Okçuoğlu are Turkish nationals. They were born in 1940 and 1964 respectively. Mr Başkaya is a professor of economics and a journalist and lives in Ankara; Mr Okçuoğlu is the owner of a publishing house, *Doz Basin Yayin Ltd Sti,* and lives in Istanbul. In April 1991, *Doz Basin Yayin Ltd Sti* published a book written by the first applicant entitled *Batılılaşma, Çağdaşlaşma, Kalkınma - Paradigmanın İflası / Resmi İdeolojinin Eleştirisine Giriş* ('Westernisation, Modernisation, Development - Collapse of a Paradigm / An Introduction to the Critique of the Official Ideology'). The Public Prosecutor at the Istanbul National Security Court brought criminal proceedings against the applicants on the grounds that, through the book, they had disseminated propaganda against the indivisibility of the State contrary to section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713 of 12 April 1991). On 14 October 1992 the National Security Court acquitted the applicants, holding that the book as a whole was an academic work containing no elements of propaganda. The Public Prosecutor appealed to the Court of Cassation, which quashed the decision of the trial court and remitted the case back to it for retrial. In a judgment of 5 August 1993 the Istanbul National Security Court convicted the applicants, sentencing the first applicant to one year and eight months' imprisonment and a fine of TRL 41,666,666 and the second applicant to five months' imprisonment and a fine of the same amount.

8. Okçuoğlu v. Turkey

The applicant, Ahmet Zeki Okçuoğlu, is a Turkish national. He was born in 1950 and lives in Istanbul. In May 1991, issue no. 12 of a magazine called *Demokrat* ('Democrat') included an article on a round-table debate organised by the magazine and in which the applicant had taken part. The article was entitled 'Kürt Sorununun Dünü ve Bugünü' ('The past and present of the Kurdish problem'). On 11 March 1993 the Istanbul National Security Court held that the views expressed by the applicant as reproduced in the article amounted to propaganda against the indivisibility of the State contrary to section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713). It sentenced him to one year and eight months' imprisonment and a fine of 41,666,666 Turkish liras. After Law no. 4126 of 27 October 1995 came into force, the National Security Court reviewed the applicant's case on the merits and reduced his prison sentence to one year, one month and ten days but increased the fine to TRL 111,111,110.

9. Case of Sürek and Özdemir v. Turkey

Kamil Tekin Sürek and Yücel Özdemir are Turkish nationals. Mr Sürek was born in 1957 and lives in Istanbul. Mr Özdemir was born in 1968 and lives in Cologne, in Germany. At the material time, Mr Sürek was the majority shareholder in *Deniz Basın Yayın Sanayi ve Ticaret Organizasyon*, a Turkish company which owns a weekly review entitled *Haberde Yorumda Gerçek* ('The Truth of News and Comments'), published in Istanbul. Mr Özdemir was the editor-in-chief of the review. In the 31 May 1992 and 7 June 1992 issues of the review, an interview with a leader of the Kurdistan Workers' Party ("the PKK"), an illegal organisation, was published in two parts. The edition of 31 May 1992 also contained a joint declaration by four socialist organisations. On 27 May 1993, the Istanbul National Security Court found the applicants guilty of disseminating propaganda against the indivisibility of the State in the form of the above publications, contrary to sections 6 and 8 of the Prevention of Terrorism Act 1991 (Law no. 3713). The first applicant was sentenced to two fines totalling TRL

300,000,000. The second applicant was sentenced to six months' imprisonment and two fines totalling TRL 150,000,000.

10. Case of Sürek v. Turkey (no. 1)

Issue no. 23 of *Haberde Yorumda Gerçek*, dated 30 August 1992, contained two readers' articles entitled 'Silahlar Özgürlüğü Engelleyemez' ('Weapons cannot win against freedom') and 'Suç Bizim' ('It is our fault'). On 12 April 1992 the Istanbul National Security Court held that the applicant, in his capacity as the owner of the review in which the articles had been published, was guilty of disseminating propaganda against the indivisibility of the State contrary to section 8 of the Prevention of Terrorism Act 1991 (Law no. 3713) and sentenced him to a fine of TRL 166,666,666. The applicant appealed to the Court of Cassation, which quashed the judgment and remitted the case to the Istanbul National Security Court for retrial. On 12 April 1994 the court sentenced the applicant to a reduced fine of TRL 83,333,333.

11. Case of Sürek v. Turkey (no. 2)

The 26 April 1992 issue of *Haberde Yorumda Gerçek* contained coverage of a press conference given by a delegation visiting Şırnak village in the wake of tensions in the area. The delegation comprised two former members of the Turkish Parliament, Leyla Zana and Orhan Doğan, together with Lord Avebury and a member of the Anglican Church. The coverage included an article reporting the Governor of Şırnak as having told the delegation that the Şırnak Chief of Police had ordered his men to open fire on the local population. It also reproduced a dialogue between Leyla Zana, Orhan Doğan and İsmet Yediyıldız, a Gendarme Commander. On 2 September 1993, Istanbul National Security Court found the applicant, in his capacity as the owner of the review, guilty of revealing the identity of officials responsible for combating terrorism and thus making them terrorist targets. It sentenced him to pay a fine of TRL 54,000,000 under section 6 of the Prevention of Terrorism Act 1991 (Law no. 3713).

12. Case of Sürek v. Turkey (no. 3)

Issue No. 42 of the review *Haberde Yorumda Gerçek*, dated 9 January 1993, contained an article entitled 'In Botan the poor peasants are expropriating the landlords!'. On 27 September 1993 the Istanbul National Security Court found the applicant, in his capacity as the owner of the review in which the article had been published, guilty of disseminating propaganda against the indivisibility of the State contrary to section 8 of the Prevention of Terrorism Act (Law no. 3713) and sentenced him to a fine of TRL 83,333,333.

13. Case of Sürek v. Turkey (no. 4)

Issue no. 51 of the review *Haberde Yorumda Gerçek*, dated 13 March 1993, included an article entitled 'Kawa and Dehak Once Again**'**. The article discussed what might occur during the forthcoming *Newroz* (Spring Festival) celebrations. The same issue also contained an interview by the Kurdish News Agency with a representative of the National Liberation Front of Kurdistan, the political wing of the PKK, an illegal organisation. On 27 September 1993 the Istanbul National Security Court found the applicant, in his capacity as the owner of the review in which the article and the interview had been published, guilty of disseminating propaganda against the indivisibility of the State contrary to sections 6 and 8 of the Prevention of Terrorism Act 1991 (Law no. 3713) and sentenced him to a fine of TRL 83,333,333.

Law:

(a) Article 10 of the Convention

The applicants all complained that their convictions amounted to an infringement of their right to freedom of expression, as guaranteed by Article 10 of the Convention. The Court found that in each case the convictions amounted to an "interference" in the applicant's right to freedom of expression. Accepting that the interference was "prescribed by law" within the meaning of the second paragraph of Article 10 and pursued at least one of the "legitimate aims" set out in that provision, the Court went on to examine whether the interference was "necessary in a democratic society" for those aims to be achieved. It concluded that there had been a violation of Article 10 in eleven of the thirteen cases.

In the cases of Erdoğdu and İnce v. Turkey, Okçuoğlu v. Turkey, Sürek and Özdemir v. Turkey, Sürek v. Turkey (no. 1), Sürek v. Turkey(no. 2), Sürek v. Turkey (no. 3) and Sürek v. Turkey (no. 4), it referred in particular to the essential role of the press in ensuring the proper functioning of political democracy. While the press had not to overstep the bounds set, among other things, for the protection of vital interests of the State such as national security or territorial integrity against the threat of violence or the prevention of disorder or crime, it was nevertheless incumbent on it to impart information and ideas on political issues, including divisive ones. Not only had the press the task of imparting such information and ideas; the public had a right to receive them. Freedom of the press afforded the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.

Lastly, in the case of Karataş v. Turkey the Court observed that Article 10 included freedom of artistic expression, which afforded the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Those who created, performed, distributed or exhibited works of art contributed to the exchange of ideas and opinions which was essential for a democratic society. Hence the obligation on the State not to encroach unduly on their freedom of expression.

The Court went to say in each of the judgments that, in line with its case-law, there was little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. Furthermore, the limits of permissible criticism were wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government had to be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupied made it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means were available for replying to the unjustified attacks and criticisms of its adversaries. Nevertheless, it certainly remained open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks. Finally, where such remarks constituted an incitement to violence against an individual or a public official or a sector of the population, the State authorities enjoyed a wider margin of appreciation when examining the need for an interference with freedom of expression.

The Court reached its decision in each case in the light of the foregoing principles and having regard to the offending passages – the Court verifying in every case whether they constituted an incitement to violence, armed resistance or an uprising –, the context in which they were made and the type and severity of the sentence imposed.

Conclusion:

Ceylan - Violation (16 votes to 1).

Arslan - Violation (unanimous).

Gerger - Violation (16 votes to 1).

Polat - Violation (unanimous).

Karataş - Violation (12 votes to 5).

Erdoğdu and İnce - Violation (unanimous).

Başkaya and Okçuoğlu - Violation (unanimous).

Okçuoğlu - Violation (unanimous).
Sürek and Özdemir - Violation (11 votes to 6).
Sürek (no. 2) - Violation (16 votes to 1).
Sürek (no. 4) - Violation (16 votes to 1).
Sürek (no. 1) - No violation (11 votes to 6).
Sürek (no. 3) - No violation (10 votes to 7).

(b) Article 6 § 1 of the Convention

In the nine cases in which it had jurisdiction to hear the complaint, the Court held that the applicants had been denied the right to have their cases heard by an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention, as they had been tried by the National Security Courts, in which three judges sat, one of whom was a military judge. The Court pointed out in that connection that in its Incal v. Turkey judgment of 9 June 1998 and its Çıraklar v. Turkey judgment of 28 October 1998 it had noted that, although the status of military judges sitting as members of National Security Courts did provide some guarantees of independence and impartiality, certain aspects of these judges' status made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the executive; the fact that they remained subject to military discipline; and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. The Court saw no reason to reach a conclusion different from its decision in those cases and held that there had also been a breach of Article 6 § 1 in the nine cases before it (Gerger, Karataş, Başkaya and Okçuoğlu, Okçuoğlu, Sürek and Özdemir, Sürek (no. 1), Sürek (no. 2), Sürek (no. 3) and Sürek (no. 4)).
Conclusion: Violation (16 votes to 1).

(c) Article 7 of the Convention

In the case of Başkaya and Okçuoğlu v. Turkey, the Court reiterated that, according to its case-law, Article 7 embodied, among other things, the principle that only the law could define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law had not to be extensively construed to an accused's detriment, for instance by analogy. The Court considered that in the case before it the applicants' conviction as such under section 8 of the Prevention of Terrorism Act 1991 had not contravened the "*nulla lege sine lege*" principle embodied in Article 7. On the other hand, it held that the fact that the second applicant had been given a prison sentence was incompatible with that Article as the sentence had been imposed under section 8(2), which expressly applies to editors, while publishers were liable only to a fine. The Court considered that section 8(2) was a *lex specialis* on the sentencing of editors and publishers and that the sentencing of the second applicant, who was in fact a publisher, had in that instance been based on an extensive construction, by analogy, of the rule in the same sub-section on the sentencing of editors.
Conclusion: Violation in respect of the second applicant (unanimous).
Article 41 of the Convention (just satisfaction): The Court awarded the applicants the following sums: 40,000 French francs (FRF) for non-pecuniary damage and FRF 15,000 for costs and expenses in the case of Ceylan v. Turkey; FRF 30,000 for non-pecuniary damage and FRF 15,000 for costs and expenses in the case of Arslan v. Turkey; FRF 40,000 for non-pecuniary damage and FRF 20,000 for costs and expenses in the case of Gerger v. Turkey; USD 1,415 for pecuniary damage, FRF 40,000 for non-pecuniary damage and FRF 20,000 for costs and expenses in the case of Polat v. Turkey; FRF 40,000 for non-pecuniary damage and FRF 20,000 for costs and expenses in the case of Karataş v. Turkey; FRF 30,000 to each of the applicants for non-pecuniary damage, FRF 10,000 to Mr Erdoğdu and FRF 2,004 to Mr İnce for costs and expenses in the case of Erdoğdu and İnce v. Turkey; FRF 67,400 to the first applicant and FRF 17,400 to the second applicant for pecuniary damage, FRF 40,000 to the first applicant and FRF 45,000 to the second applicant for non-pecuniary damage, and FRF

22,000 to the first applicant and FRF 15,000 to the second applicant for costs and expenses in the case of Başkaya and Okçuoğlu v. Turkey; FRF 40,000 for non-pecuniary damage and FRF 20,000 for costs and expenses in the case of Okçuoğlu v. Turkey; FRF 8,000 to the first applicant for pecuniary damage and, to each of the applicants, FRF 30,000 for non-pecuniary damage and FRF 15,000 for costs and expenses in the case of Sürek and Özdemir v. Turkey; FRF 10,000 for costs and expenses in the case of Sürek v. Turkey (no. 1); FRF 13,000 for pecuniary damage, FRF 30,000 for non-pecuniary damage and FRF 15,000 for costs and expenses in the case of Sürek v. Turkey (no. 2); FRF 15,000 for costs and expenses in the case of Sürek v. Turkey(no. 3); and FRF 3,000 for pecuniary damage, FRF 30,000 for non-pecuniary damage and FRF 15,000 for costs and expenses in the case of Sürek v. Turkey (no. 4).

Several judges expressed separate opinions and these are annexed to the judgment.

APPENDIX

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