CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 20
on the case-law of the Court
July 2000

Statistical information

		July	2000
I. Judgments delivered			
Grand Chamber		2	19
Chamber I		8	36(38)
Chamber II		12	197(201)
Chamber III		13	101(105)
Chamber IV		11	51(61)
Total		**46**	**404(424)**
II. Applications declared admissible			
Section I		32	141(287)
Section II		3	120
Section III		3	105(115)
Section IV		2	105(108)
Total		**40**	**471(630)**
III. Applications declared inadmissible			
Section I	- Chamber	18	64(78)
	- Committee	83	564
Section II	- Chamber	3	62(68)
	- Committee	114	683
Section III	- Chamber	5	66(71)
	- Committee	101(127)	805(864)
Section IV	- Chamber	6(7)	56(60)
	- Committee	122	1119
Total		**452(479)**	**3419(3507)**
IV. Applications struck off			
Section I	- Chamber	0	3
	- Committee	0	9
Section II	- Chamber	1	30
	- Committee	1	7
Section III	- Chamber	1	7
	- Committee	5	17
Section IV	- Chamber	1	9
	- Committee	2	19
Total		**11**	**101**
Total number of decisions[1]		**503(530)**	**3991(4238)**
V. Applications communicated			
Section I		24	167(176)
Section II		87	227(230)
Section III		38(39)	249(250)
Section IV		45	172
Total number of applications communicated		**194(195)**	**815(828)**

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

Judgments delivered in July 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
Section I	7	1	0	1	8
Section II	5	6	0	0	12
Section III	7	3	1	2[1]	13
Section IV	7	3	1	0	11
Total	**28**	**13**	**2**	**3**	**46**

Judgments delivered January - July 2000					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	17	1	0	1[1]	19
Section I	30	6	1	2[2]	38
Section II	43	151	0	0	195
Section III	81	14	4	2[1]	101
Section IV	35	13	2	1[1]	51
Total	**206**[3]	**185**	**7**	**6**	**404**

[1] Just satisfaction.
[2] One revision request and one lack of jurisdiction.
[3] Of the 189 judgments on merits delivered by Sections, 54 were final judgments.

[* = not final]

ARTICLE 1

RESPONSIBILITY OF STATES
Responsibility of Member States for proceedings before the EC courts: *communicated*.

DSR-SENATOR LINES GMBH - 15 States of the European Union (N° 56672/00)
[Section III]

The applicant company was fined € 13,750,000 by the European Commission for infringements of the competition rules of the Treaty Establishing the European Community (EC treaty). The applicant company challenged the fine and decision before the Court of First Instance of the European Communities and made a request for an interim measure under the EC treaty. The applicant company's request for suspension of the operation of the European Commission's decision was eventually rejected by the EC Court of First Instance. The applicant company's appeal to the Court of Justice of the European Communities was to no avail.
Communicated under Article 1 and 6(1) (access to court).

RESPONSIBILITY OF STATES
Responsibility of Russia for events in Moldova, where Russian military troops were stationed and accused of supporting separatists from Transnistria: *communicated*.

ILASCU and others - Moldova and Russia (N° 48787/99)
[Section I]

The applicants, who are of Moldovan nationality, are detained in Transdniestria, a region of Moldova which has seceded from Moldova. In 1992, after violent confrontations between Moldovan forces and Transdniestrian separatists, the Moldovan authorities accused the Russian army of supporting the separatists. The Moldovan Parliament denounced Russia's interference in its domestic affairs; it complained of the Russian army's presence in Transdniestria and of its support for the separatists. To date the dispute between Moldova and Russia over the withdrawal of Russian troops from Moldova has not been resolved. In 1992 the applicants were arrested by the authorities of the self-proclaimed Republic of Transdniestria and accused of having fought against "the lawful State of Transeniestria". They were brought before the Supreme Court of the self-styled Republic of Transdniestria, which convicted them following a trial during which, in particular, they were only allowed to consult their legal representatives in the presence of armed police. The first applicant was sentenced to death; the other applicants were given long prison sentences and their assets were ordered to be confiscated. The Supreme Court of Moldova dealt with the matter of its own motion and quashed that judgment; it held that the Supreme Court of the self-proclaimed Republic of Moldova was not constitutional and ordered that the applicants be released. In 1995 the Moldovan Parliament instructed the Moldovan Government to act expeditiously to secure the applicants' release. The applicants also complain of the conditions of their detention, and refer to numerous and repeated instances of ill-treatment, ranging from deprivation of food and light to mock executions. Last, they complain of the inertia of the Moldovan authorities in enforcing the judgment of the Supreme Court of Moldova ordering their release. Moldova, which ratified the Convention on 12 September 1997, recorded in its instrument of ratification to the effect that it was unable to ensure compliance with the provisions of the Convention as regards the acts and omissions of the organs of the self-styled Republic of Transdniestria in the territory actually controlled by those organs until the dispute had been definitively resolved. Russia ratified the Convention on 5 May 1998.
Communicated under Articles 1, 2, 3, 5, 6, 8, 35(3) (*ratione temporis*) and 57.

ARTICLE 2

LIFE
Alleged involvement of security forces in a murder and effectiveness of investigation: *no violation*.

EKINCI - Turkey (n° 25625/94)
*Judgment 18.7.2000 [Section III]

Facts: The applicant's brother, an official in a pro-Kurdish political party, was arrested by the police and then released some ten days later. Some months later he was wounded during a demonstration and decided to leave his village with his family. He took up residence there again and was killed in the centre of the village. The police attended the scene, searched the area and drew up a report stating that they had been unable to find any evidence. An autopsy was carried out. Some of the deceased's close relatives who were questioned by the authorities mentioned revenge against the family but did not report any particular suspicion. The Public Prosecutor opened an investigation and asked to be kept informed of its progress on a regular basis. A number of investigations were subsequently carried out: the body was exhumed to enable a ballistic examination to be carried out, certain village guards who had been implicated in a letter of denunciation were sought out and questioned, their homes were searched, their firearms were examined and witnesses were questioned. No presumed perpetrator was identified and the investigation was still under way when the judgment was pronounced. The applicant alleges that his brother was killed by or with the connivance of the law-enforcement agencies because of his political activities. He further contends that no effective investigation has been carried out with a view to solving the murder.
Law: Preliminary objection by the Government (failure to exhaust domestic remedies) – The applicant is dispensed from exercising the available civil and administrative remedies. A civil action for damages in respect of unlawful acts by agents of the State presupposes that the person responsible for the harm has been identified, which is not so in the present case. As regards the administrative remedy, it has not been shown that it would be effective in a situation comparable to the applicant's.
Article 2 – On the evidence adduced, it is impossible to establish beyond reasonable doubt that the authorities had any responsibility for the murder of the applicant's brother. As regards the obligation incumbent on States Parties to carry out an effective investigation whenever the use of force has led to the death of a person, it cannot be denied that investigations aimed at finding the killer were carried out both at the preliminary investigation stage and afterwards. The entire file relating to the investigation and information on its progress were communicated to the Court. The possibility that the law-enforcement agencies (village wardens) might be involved was investigated. The authorities cannot be accused of having remained passive or of having carried out a wholly ineffective investigation.
Conclusion: no violation (unanimously).

LIFE
Illegal immigrant suffering from AIDS sent back to her own country : *friendly settlement*.

TATETE - Switzerland (N°41874/98)
Judgment 6.7.00 [Section II]

The applicant, whose country of origin is the Democratic Republic of the Congo, entered Switzerland illegally in February 1997. One month later her application for asylum was refused and she was requested to leave Switzerland. Her appeal against that refusal was

dismissed, as was her request that her case be reopened. Shortly before the latter request was rejected, in October 1997, the applicant was admitted to hospital and found to have AIDS, and, in particular, to be suffering from pneumonia, which in the hospital's view meant that her return to her country of origin would have to be postponed. After being admitted to hospital for a second time, the applicant, relying on her state of health, requested the Swiss authorities responsible for asylum matters to reconsider her situation. In support of her request, she produced a medical certificate which stated, *inter alia*, that her HIV infection was at the C3 stage and that she had tuberculosis and pneumonia. At that stage, a monthly medical examination was necessary and, once the tuberculosis had been treated, a tritherapy against AIDS could be undertaken in order to reduce the risk of developing fresh diseases and to improve her long-term life expectancy. The document concluded that if the applicant's treatment should cease abruptly as a result of her being returned to her country of origin her short-term health would deteriorate. This request for a reconsideration of her situation was rejected, both at first instance in January 1998 and on appeal in April 1998, on the grounds that tuberculosis and hepatitis could be treated in Kinshasa and that although the care given in Switzerland might postpone the development of AIDS, that disease was fatal sooner or later. The Swiss authorities also pointed out that the applicant's family circle in her country of origin would be beneficial to her and, last, that she could be given medicines and instructions for her future doctors when she left Switzerland.
The parties reached a friendly settlement when the applicant was granted temporary leave to remain and paid 6,000 Swiss francs (CHF) by way of lump-sum compensation for all the harm sustained.

ARTICLE 3

TORTURE
Ill-treatment during police custody: *violation*.

DIKME - Turkey (N° 20869/92)
Judgment 11.7.2000 [Section I]

Facts: The applicant was stopped and questioned with a lady companion while they were in possession of false identity papers. He was taken to the premises of the Anti-Terrorist Brigade of the Security Forces, where he remained in custody, with no contact with the outside world, for sixteen days. The police officers who questioned him while he was in custody told him that they were members of a unit specialising in suppressing the activities of the armed extremist movement *Dev-Sol*. According to the applicant, they threatened him with death on the ground that he belonged to that organisation and repeatedly subjected him to ill-treatment. He alleges, in particular, that he was blindfolded while being questioned, that he was struck on several occasions, subjected to the "Palestinian hanging", given electric shocks in various parts of his body and subjected to a mock execution. At the end of those sixteen days he was examined by a practitioner from the Institute of Forensic Medicine and taken before a judge who ordered that he be placed in provisional detention for terrorist acts. The Institute of Forensic Medicine drew up a report which mentioned only old "scratches" on which scabs had formed. However, subsequent medical examinations carried out by the administration record the presence of numerous sequellae of grazes and bruises on various places of the body. Furthermore, the applicant's companion, who was in custody in the same place as the applicant, stated that she had seen him blindfolded on a number of occasions. She also asserted that the police officers who questioned her had told her of the treatment they were inflicting on the applicant. While the applicant was in provisional detention his mother attempted to visit him, but the authorities refused to allow her to do so. At his trial before the State Security Court the applicant retracted the admissions he had made while in custody and

lodged a complaint of torture against the police officers who had questioned him. He was sentenced to death, but the Court of Cassation set aside the judgment – since the operative part did not mention any proof forming the basis of the conviction – and remitted the case to the State Security Court, where it is still pending. The applicant's complaint was dismissed.
Law: Preliminary objection of the Government (failure to exhaust domestic remedies and to comply with the six-month period for lodging an application) – Despite being twice being granted further time, the Government failed to communicate in due time their observations on the admissibility of the application to the Commission. It appears that the Commission itself contemplated reconsidering its decision on admissibility pursuant to the former Article 29, but failed to obtain the requisite qualified majority. Non the less, the Government, after failing to present their observations on admissibility in time, cannot profit from the fact that the Court determines preliminary objections by a simple majority whereas a qualified majority was necessary at the admissibility stage.
Article 5(2) – Since the applicant was stopped and questioned while in possession of forged papers, he cannot claim that he did not know the reasons for his arrest. Nor can he contend that he was not informed of the suspicions against him, since there is ample evidence that he was quickly able to realize the nature of those suspicions. It is apparent, in particular, from the applicant's own account of the events that the death threats made by the police mentioned, *inter alia*, his supposed membership of *Dev Sol*.
Conclusion: no violation (unanimously).
Article 5(3) – Although it was consistent with the national provisions applicable to terrorism, the fact that the applicant was brought before a judge after being held in custody for sixteen days contravenes the requirement of prompt review by a court laid down in Article 5(3). Only rapid judicial intervention makes it possible to detect and prevent any ill-treatment during detention.
Conclusion: violation (unanimously).
Article 3 – The detailed explanations provided by the applicant, the findings of the medical reports and the lack of denials by the Government on this point suffice to show, beyond all reasonable doubt, that the applicant suffered "a large number of blows and other similar forms of torture". As regards the psychological violence he claims to have suffered, his companion's evidence is sufficient to establish, having regard to the level of proof required, that he was questioned while blindfolded. For the remainder, the Court finds of its own motion that, during the sixteen days of his detention in custody, the applicant was deprived of all assistance, medical or other, and of any review by a court. During that period he was therefore entirely at the mercy of the police and the physical violence which they employed. Those findings are in themselves sufficient to establish the existence of interference with his mental integrity, without there being any need to consider the applicant's allegations in that regard. The applicant has not shown that his claims regarding the electric shocks or the "Palestinian hanging" torture are true. Article 3 does not allow of any derogation, even in the event of public emergency threatening the life of the nation, and applies to persons in detention, irrespective of the nature of the offences which they are alleged to have committed. The applicant's suffering was exacerbated by his being completely isolated and kept blindfolded. As this treatment was intended to "humiliate him, degrade him and break his resistance and his will", it was inhuman and degrading. The number, duration and purpose of the assaults conferred on them a "particularly grave and cruel nature likely to cause acute suffering" which justifies their being classified as torture for the purposes of Article 3. Although the applicant's complaint did in fact lead to an investigation into those incidents, it was not successful and the Government have not even been able to supply any information on its progress, There has thus been a violation of Article 3 under this head too.
Conclusion: violation (unanimously).
Article 6(1) and (3)(c) – Under Turkish law admissions obtained during detention in custody and subsequently challenged are not decisive. Furthermore, the applicant's conviction was quashed on the ground of insufficient evidence. As the case is still pending, it is impossible at this stage to carry out an overall examination of the fairness of the trial.
Conclusion: no violation (unanimously).

Article 8 – A mother's desire to visit her son who is being held prisoner does indeed fall within the scope of Article 8. However, the applicant's mother does not appear to have made any determined efforts to see her son. The State did not exceed the margin of appreciation which it is recognised as having to control visits to persons in detention.
Conclusion: no violation (unanimously).
Article 41 – The Court awarded the applicant 200,000 francs in respect of the non-pecuniary harm sustained and a sum in respect of costs and expenses.

INHUMAN TREATMENT
Alleged ill-treatment in police custody and lack of effective investigation: *no violation*.

CALOC -France (N° 33951/96)
Judgment 20.7.2000 [Section III]

Facts: In September 1988 the applicant, a heavy plant driver by occupation, attended the police station (*gendarmerie*)to be interviewed in respect of a complaint lodged by his former employer, who suspected him of having sabotaged two bulldozers. He attempted to flee while being questioned, but was caught and immobilised by several police officers while he was struggling violently. Following this incident, Dr T. examined the applicant but found no external signs of violence; the applicant did not complain of any pain. During the ensuing questioning he admitted having attempted to flee and having resisted the police. He was then placed in a cell until the following day. Later in the course of his detention in custody, he admitted that he was guilty and again admitted having knocked the police officers over in his attempt to flee. The day after his release Dr K. examined him and found heavy bruising on his right shoulder, traces of being tightly bound on his wrists and lumbar injuries; he ordered the applicant to stay off work for one week, which was subsequently extended to twenty days. On 18 November 1988 the applicant complained that he had been beaten and injured. On 30 November 1988 the prosecution opened a preliminary investigation. A further complaint lodged against the applicant by another businessman, for damaging plant, also led to a preliminary investigation. The applicant was placed in custody and questioned by a police officer who had not been involved in his first period of detention; he admitted the facts of which he was accused. While being questioned about the circumstances of his first period of detention, he admitted having attempted to flee and having struggled violently when the police were attempting to overcome him. In the preliminary investigation concerning his own complaint, police from another company interviewed Dr K. and the applicant, who was again placed in detention. The applicant stated that he had not received any blows until he attempted to flee. Dr T. was also questioned, and reiterated that he had not noticed any suspicious external marks on the applicant. No further action was taken in respect of his complaint. He lodged another complaint, and this time applied to join the proceedings as party seeking civil damages. He claimed that the admissions made while he was first in custody had been obtained by ill-treatment after he had been examined by Dr T.; he claimed to have been kept on a chair with both arms held behind his back after the incident and then to have been taken to a cell where he was chained with his arms outspread until the following morning. His application to join the proceedings as party claiming civil damages was dismissed in the light, *inter alia*, of a medical examination which had been ordered and which did not establish that he had been the victim of violence while in custody. He appealed unsuccessfully against the order refusing to allow him to claim civil damages. The Court of Cassation, to which he had appealed, none the less quashed the judgment under appeal and remitted the case to the indictments division of a different court of appeal. By judgment of December 1994, and after a thorough investigation, the indictments division concluded that there was no serious charge against the police officers. It referred to the reasoning of the applicant, pointing out, first, that the lesions identified by Dr K. following his release from custody had not been noted by Dr T. after his attempted escape, and, second, that his refusal to admit the facts of which he was accused had given way during his detention in custody,

which followed the first medical visit, to full admissions. The division none the less found that he had not referred to being kept in chains in the detention cell until some time later and that the statutory arrangement of such cells made such an accusation difficult to believe. Furthermore, the doctors interviewed had established that the type of injuries of which he complained might appear after a period had elapsed. Finally, he could have withdrawn his admissions after being released from custody but had not done so. This time the judgment was upheld by the Court of Cassation.

Law: Article 3 – The ill-treatment alleged by the applicant was inflicted on him while he was in custody. It is not disputed that he attempted to flee from the police station or that he was taken back by force; on the other hand, the applicant claims to have been the victim of ill-treatment after that incident and throughout the whole period of his custody.

1. The lack of an effective investigation – a preliminary investigation was opened by the prosecution less then two weeks after the applicant lodged his simple complaint. The doctors who had examined the applicant while he was in custody and just after his release were interviewed and the applicant was interviewed on three occasions. Although it is regrettable that the authorities took advantage of the fact that the applicant was in custody to carry out those interviews, the first interview, which took place in the context of an investigation carried out following another complaint lodged against him, was carried out by a police officer who had not been present when he attempted to flee. Furthermore, during the next two interviews he was heard by police officers from a different brigade, and there is nothing to indicate that he was unable to speak freely. Last, it is not disputed that immediately the applicant lodged a complaint together with an application to join the proceedings as party claiming civil damages the indictments division carried out a thorough investigation. It cannot therefore be maintained that on the occasion of investigation carried out following the applicant's complaint the authorities did not take effective action to carry out an investigation or that they showed inertia.

2. The allegations of violence against the applicant when he attempted to flee – the Government do not dispute the allegations of violence on that occasion. The certificate drawn up by Dr K. on the day after the applicant' release from custody mentions heavy bruising on his right shoulder, traces of being tightly bound on his wrists and lumbar injuries. The subsequent medical reports did not diverge from those findings. Having regard to the applicant's injuries in the present case, and mainly those to the right shoulder, his incapacity for work for twenty days was a necessary consequence of the particular characteristics of his occupation. However, the applicant did not deny having resisted the police officers or having struggled while trying to escape. Nor is it apparent from the examination carried out by Dr T. after the incident, or from the certificate drawn up by Dr K., that he was beaten. Therefore it has not been proved that the force employed was excessive or disproportionate.

3. The allegations of ill-treatment by the police following his attempt to flee – In its judgement of December 1994, the indictments division cast doubt on the applicant's credibility owing to the inconsistencies in his statements concerning the course of his detention in custody, and in particular the belated references to the ill-treatment allegedly suffered in the detention cell. Furthermore, the fact that he did not complain of pain until the day following his release from custody did not necessarily mean that he had been the victim of ill-treatment between the time when he was examined by Dr T. and the time when he was released, since the doctors in question stated that the type of pain from which the applicant was suffering could appear after a period of time. Last, the applicant could have withdrawn his admissions but did not do so. The judgment was upheld by the Court of Cassation. The applicant's other allegations of ill-treatment found no support in the medical examinations, notably those carried out by Dr K. All in all, the applicant's allegations do not appear to be based on evidence which has sufficient basis to be probative.

Conclusion: no violation (6 votes to 1).

Article 6(1) – The proceedings lasted more than 7 years solely as regards the investigation of the complaint together with an application to join the proceedings as civil party. The judicial authorities were under a particular duty to act diligently when they were investigating a complaint lodged by an individual as a result of violence allegedly committed against him by

the law-enforcement agencies. Even though, in particular, the second indictments division dealing with the case carried out a thorough investigation, all in all total the requisite diligence was not observed.
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant 60,000 French francs in respect of non-material harm and 10,000 French francs in respect of costs and expenses.

EXPULSION
Expulsion to Iran - risk of stoning for adultery: *violation*.

JABARI - Turkey (Nº 40035/98)
*Judgment 11.7.2000 [Section IV]

Facts: The applicant, an Iranian national, had a relationship, involving sexual relations, with a married man in Iran. She was arrested as she was walking with the man in the street and was submitted to a virginity examination. After being released, she fled to Turkey. Her intention was to fly to Canada via France with a forged passport. However, on her arrival in Paris, she was intercepted by the French police, who sent her back to Turkey after having established that she was in possession of a forged passport. She was arrested at Istanbul airport for having entered the country with a forged passport and her deportation was ordered. She lodged an asylum application which was rejected as being outwith the 5-day time limit. She was later granted refugee status by the UNHCR but her applications against the deportation order and to obtain a stay of execution were nevertheless rejected by the Administrative Court. A residence permit was granted pending the outcome of the Convention application. The applicant maintains that stoning to death, flogging and whipping are penalties prescribed by Iranian law for the offence of adultery
Law: Article 3 – The Court was not persuaded that the Turkish authorities had conducted any meaningful assessment of the applicant's claim, including its arguability. Her failure to comply with the 5-day time limit denied her any scrutiny of the factual basis of her fears. The automatic and mechanical application of such a short time limit for an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3. The Administrative Court limited itself to the issue of the formal legality of the deportation order; the UNCHR, on the hand, interviewed the applicant and was able to assess her credibility, and due weight must be given to its conclusions. Moreover, the Court was not persuaded that the situation in Iran had evolved to the extent that adulterous behaviour is no longer considered a reprehensible affront to Islamic law: stoning for adultery remains on the statute book. It is substantiated that there is a real risk of the applicant being subjected to treatment contrary to Article 3 if deported.
Conclusion: violation (unanimously).
Article 13 – There was no assessment by the domestic authorities of the risk claimed by the applicant and there was no appeal against the refusal to consider her asylum request. Although she could challenge the lawfulness of the deportation order, this did not entitle her to either a suspension of its implementation or an examination of the merits of her claim. Given the irreversible nature of the harm that might occur, the notion of an effective remedy in such circumstances requires independent and rigorous scrutiny of such a claim and the possibility of having the measure suspended. Since the Administrative Court failed to provide any of these safeguards, the judicial review proceedings relied on by the Government did not satisfy the requirements of Article 13.
Conclusion: violation (unanimously).
Article 41 - The Court considered that the finding of a potential violation of Article 3 and the finding of a violation of Article 13 constituted sufficient just satisfaction in respect of non-pecuniary damage.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Preventive detention: *violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), below).

Article 5(1)(c)

LAWFUL ARREST OR DETENTION
Absence of legal basis for prolongation of detention on remand: *violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]

Facts: A murder cases against the applicant was struck off in 1995 due to lack of evidence. However, he was arrested on 8 February 1996 and his "preventive detention" was ordered by the Chief Police Commissioner and confirmed the following day by the Regional Court. Such detention was authorised where there were reasons to suspect a dangerous act might be committed (with specific reference to banditry, criminal association and terrorising a person). The murder case was reopened on 8 March and on 14 March the Deputy Prosecutor General authorised the applicant's detention on remand until 4 June. Several applications in which the applicant contested the lawfulness of the detention were rejected by the prosecution. On 13 June the prosecutor informed the prison administration that the applicant's detention was "automatically extended until 14 June", pursuant to former Article 226(6) of the Code of Criminal Procedure, whereby periods during which the accused had access to the file were not counted towards the term of detention. The applicant had access from 30 May until 10 June, while other suspects had access until 14 June. No further orders concerning his detention were made until 31 July, when the Regional Court decided that the detention "shall remain unchanged". Lithuania's reservation, which provided that a prosecutor could order detention, had ceased to apply on 21 June 1996. On 16 October 1996 the Regional Court, after hearing the case from 14 to 16 October in the presence of the applicant and his lawyer, decided that the applicant was to remain in custody until 15 February 1997. This was the first occasion on which the applicant appeared before a judge. The applicant's appeal was rejected in November 1997, the Court of Appeal holding that while the courts had "possibly" erred in law with regard to the detention, no appeal lay against their decisions. An application to the President of the Supreme Court was also rejected and civil proceedings brought against the prison administration were unsuccessful. In the meantime, the Ombudsman had found that the applicant had been detained illegally from 14 June to 31 July 1996. The applicant was acquitted and released in June 1997. This judgment was quashed on appeal and the case was referred back to the prosecution for further investigation. The proceedings were discontinued in October 1997. The applicant died in 1999.
Law: The Court accepted that the applicant's widow had a legitimate interest in maintaining the application.

Government's preliminary objection (6 month time limit in respect of the "preventive detention") – Although the preventive detention was formally replaced by detention on remand on 14 March 1996, the change of statutory basis did not affect the applicant's situation and the period of detention must be taken as a whole for the purposes of the six months rule. The Government's objection must therefore be rejected.
Article 5(1) – Preventive detention of the kind found in this case is not permitted by Article 5(1)(c).
Conclusion: violation (unanimously).
Article 5(1) – No order was made by a judge or prosecutor between 4 June and 31 July 1996 authorising the applicant's detention and it has been shown that the Article 226(6) of the Code of Criminal Procedure was vague enough to cause confusion even among the competent State authorities. The provision was therefore incompatible with the requirements of "lawfulness" and furthermore permitted detention by reference to matters wholly extraneous to Article 5(1). The deprivation of liberty pursuant to the provision was consequently not prescribed by law. Moreover, the Government's argument that the detention was justified from 24 June by the sole fact that the case had been transferred to the Regional Court does not override the requirement that the detention had to be based on a valid order. A practice of keeping a person in detention without a specific legal basis is incompatible with the principles of legal certainty and protection from arbitrariness. The fact that the case had been transmitted to the court did not clarify whether and under what conditions the detention could be continued and thus did not constitute a lawful basis for the continued detention. There was consequently no lawful basis for the detention between 4 June and 31 July.
Conclusion: violation (unanimously).
Article 5(1) – The applicant did not dispute that on 31 July 1996 the Regional Court acted within its jurisdiction in so far as it had power to make an appropriate order in respect of his detention. Although the court did not "order" new detention or specify what type of detention remained unchanged, the meaning of the decision must have been clear to all present, including the applicant's lawyer, given the context. It cannot be said that the court acted in bad faith or failed to apply the domestic law correctly. Thus, it has not been established that the order was invalid under domestic law or that the detention was unlawful within the meaning of Article 5.
Conclusion: no violation (unanimously).
Article 5(3) – The requirement that the applicant be brought promptly before a judge or other officer did not apply to his preventive detention, to which Article 5(1)(c) was not applicable. From 14 March until 14 October he remained in detention without being brought before a judge or other officer. However, Lithuania's reservation was sufficiently clear and precise to fulfil the requirements of Article 57 of the Convention and the fact that the applicant was not brought before an appropriate officer could not constitute a violation of Article 5(3) as long as the reservation remained in force. Moreover, "brought promptly" implies that the right to be brought before an officer relates to the time when a person is first deprived of his liberty and when the reservation expired the applicant had already been in detention for over three months. Since a reservation would be devoid of purpose if the State were required on its expiry to enforce the right retroactively, there was no longer an obligation to bring the applicant promptly before a judge.
Conclusion: no violation (unanimously).
Article 5(3) – While this provision is not applicable to the preventive detention, the period of detention falling outside the Court's competence can nonetheless be taken into account in assessing the reasonableness of the length. The detention on remand lasted 14 months and 26 days. The only reasons given by the prosecuting authorities for the detention were the gravity of the offence and the strength of the evidence against him; the Regional Court gave no reasons for continuing the detention. The suspicion that the applicant had committed murder could not constitute a relevant and sufficient ground for keeping him in detention for almost 15 months, particularly when that suspicion proved unsubstantiated. The length of the detention was therefore excessive.
Conclusion: violation (unanimously).

Article 5(4) – This provision does not guarantee a right to an appeal against decisions ordering or extending detention and in principle the intervention of one organ is sufficient, provided the procedure followed has a judicial character and the individual enjoys the guarantees appropriate to the type of detention. In this case, the Regional Court made no reference to the applicant's grievances about the unlawfulness of his detention and the Court of Appeal and President of the Supreme Court, while acknowledging that the lawfulness of the detention was open to question, failed to examine his complaints due to the statutory bar on appeals. The civil proceedings were not relevant, since they could not secure release and did not involve an examination of the underlying lawfulness. The applicant was thus denied the right to contest the procedural and substantive conditions essential for the lawfulness of his detention.
Conclusion: violation (unanimously).
Article 41 – The Court found that there was no causal link between the violations and the alleged pecuniary damage. It awarded the applicant 60,000 litai (LTL) in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

LAWFUL ARREST OR DETENTION
Lack of precision in decision prolonging unlawful detention on remand: *no violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), above).

Article 5(2)

INFORMATION ON REASONS FOR ARREST
Failure to provide reasons for arrest: *no violation*.

DIKME - Turkey (n° 20869/92)
Judgment 11.7.2000 [Section I]
(See Article 3, above).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Lithuanian reservation and non-retroactivity of requirement of "promptness" on expiry of the reservation: *no violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), above).

JUDGE OR OTHER OFFICER
Detention on remand ordered by public prosecutor: *violation*.

NIEDBALA - Poland (N° 27915/95)
Judgment 4.7.2000 [Section I]

Facts: The applicant's detention on remand was ordered by a District Prosecutor on 2 September 1994. His appeal was dismissed by the Regional Court on 12 September and his appeal against a subsequent decision to prolong the detention was rejected by the same court in October 1994. The applicant was convicted in March 1995. His release was ordered, but he was arrested in connection with a new offence a month later, when a District Prosecutor again ordered his detention on remand. His appeal was dismissed by the District Court six days later. At the time, public prosecutors were responsible for ordering detention on remand prior to the bill of indictment being lodged. Prosecutors are subordinate to the Prosecutor General, who also carries out the functions of Minister of Justice. The applicant was not entitled to be present at the court hearings relating to his detention, the decisions being taken on the basis of the case-file and the prosecutor's submissions, which were not communicated to the applicant. The prosecutor was entitled to be present. The applicant also complains that a letter which he wrote to the Ombudsman was opened and delayed.
Law: Article 5(3) – It is indisputable that prosecutors are subject to the supervision of the executive branch of government. The mere fact that they also act as guardians of the public interest cannot be regarded as conferring judicial status on them. They perform investigative and prosecuting functions and their position at the time must be seen as that of a party to proceedings. The fact that the prosecutors who remanded the applicant in custody questioned him before ordering his detention and considered whether detention was justified does not suffice to find that they offered sufficient guarantees of independence. Moreover, although the detention orders were subject to judicial review after 10 and 6 days respectively, the review was not automatic and in any event such review does not remedy the fact that the detention orders were made by the prosecutors. Finally, it is not disputed that Polish law did not offer any safeguard against the risk of the same prosecutor later participating in the prosecution.
Conclusion: violation (unanimously).
Article 5(4) – It is uncontested that the law at the time did not entitle the applicant or his lawyer to attend court sessions concerning the detention on remand or require that the prosecutor's submissions be communicated to them. The applicant thus had no opportunity to comment on those submissions. Furthermore, the prosecutor was entitled to be present at the hearings and did attend on one occasion.
Conclusion: violation (unanimously).
Article 8 – At the time, Polish law allowed for automatic censorship of prisoners' correspondence, without drawing any distinction between different categories. The relevant provisions did not lay down any principles and in particular failed to specify the manner and the time-frame within which censorship should be effected. Consequently, the law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities. The interference was not in accordance with the law.
Conclusion: violation (unanimously).
Article 41 - Since the Court cannot speculate as to whether the applicant would have been detained on remand had the procedural guarantees of Article 5(3) and (4) been respected, non-pecuniary damage is adequately compensated by the finding of a violation. The Court awarded the applicant 2,000 zlotys (PLN) in respect of the non-pecuniary damage sustained on account of the violation of Article 8. It also made an award in respect of costs and expenses.

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *violation*.

TRZASKA - Poland (N° 25792/94)
Judgment 11.7.2000 [Section I]

Facts: The applicant was arrested in June 1991 on suspicion of attempted manslaughter, robbery and rape. A number of hearings were held, but the proceedings had to be recommenced twice, firstly after a change in the composition of the court and secondly after a change of the applicant's lawyers. Further hearings were held, and at one of these, in May 1994, the applicant requested his release. The request was refused by the Regional Court and his appeal was rejected by the Court of Appeal. A further request was also rejected by the Regional Court in July 1994. In March 1995 he was convicted and sentenced to 25 years' imprisonment. This judgment was later quashed, but after a reconsideration of the case the applicant was again convicted in May 1997 and given the same sentence.
Law: Article 5(3) – The period to be examined began on 1 May 1993 when Poland's recognition of the right of petition took effect, although the fact that the applicant had at that time been in detention for over one year and ten months must be taken into account. Notwithstanding the retrospective effect under Polish law of the judgment which quashed the initial conviction, the applicant's detention after that conviction was, under the Convention, detention "after conviction by a competent court" and that period is not included for the purposes of Article 5(3) (whereas during the subsequent period he was again in detention on remand). The total period to be examined is three years and seven months. The courts relied on the serious nature of the offences and, in one decision, on the risk of collusion. However, no concrete factual circumstances were invoked in respect of the risk of collusion. The Government argued that the risk of re-offending must also have been relied on, but it is difficult to accept this as a relevant and sufficient ground for a protracted detention when it was not expressly referred to in any of the court decisions. Moreover, taking into account certain periods of inactivity, the authorities failed to show the requisite diligence.
Conclusion: violation (unanimously).
Article 5(4) – Since the applicant's first request for release was made during a hearing at which he was present with his lawyer, the court review was carried out in a manner which respected the principle of equality of arms. However, as it took place two years and ten months after the applicant was detained and over one year after Poland recognised the right of petition, the review was not carried out "speedily". As for the other types of proceedings by which the applicant's detention was reviewed, the law at the time did not entitle the applicant or his lawyer to attend the relevant hearings, while the prosecutor was so entitled, nor did it require communication to them of the prosecutor's submissions, thus depriving the applicant of any opportunity to contest the reasons invoked to justify his detention.
Conclusion: violation (unanimously).
Article 6(1) – The Court can only examine the period of four years, one month and seven days after Poland's recognition of the right of petition (until May 1997), although it can have regard to the fact that the proceedings had already lasted over one year and ten months. The case disclosed a certain complexity but there are no grounds to hold that it was particularly complex. The applicant contributed to the length of the proceedings, but there were also certain delays attributable to the authorities and on an overall assessment the length was excessive.
Conclusion: violation (unanimously).
Article 41 - The Court considered that the finding of a violation constituted in itself just satisfaction for any damage sustained by the applicant. It made an award in respect of costs.

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *violation*.

BARFUSS - Czech Republic (N° 35848/97)
*Judgment 31.7.2000 [Section III]

Facts: The applicant was arrested on 19 May 1994 on suspicion of fraud and his detention on remand was ordered. His detention was extended on several occasions, the courts relying in particular on the risk of his absconding. He also lodged numerous unsuccessful requests for release, including four constitutional complaints. He was convicted on 7 November 1997 and sentenced to 9 years' imprisonment. The judgment was upheld on 9 December 1997.
Law: Article 5(3) – The period to be examined is three years, five months and nineteen days (19 May 1994 to 7 November 1997). There existed reasonable suspicion that the applicant had committed an offence, and the courts relied on the complexity of the investigation, the seriousness of the charges and the danger that the proceedings would be obstructed if the applicant were released, due to the risk of his absconding. The reasoning given in relation to the risk of absconding was relevant and sufficient to justify the deprivation of liberty. However, as regards the conduct of the proceedings, there were a number of delays of several months and, having regard to the circumstances of the case as a whole, special diligence was not displayed.
Conclusion: violation (unanimously).
Article 6(1) – The criminal proceedings lasted from 19 May 1994 until 26 March 1998, a period of three years, ten months and seven days. The case was of some complexity and the applicant contributed to the length, but neither factor justifies the overall length. On the other hand, various delays, for which no convincing explanation has been provided, were attributable to the authorities, and the period as a whole failed to satisfy the "reasonable time" requirement.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant CZK 100,000 in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *struck out*.

KAZIMIERCZAK - Poland (N° 33863/96)
Judgment 27.7.2000 [Section IV]

The case concerned the length of the applicant's detention on remand. The Government have informed the Court that the applicant has died.

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), above).

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Absence of proper review of lawfulness of detention: *violation*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), above).

PROCEDURAL GUARANTEES OF REVIEW
Detainee not entitled to attend hearings concerning detention on remand and non-communication of prosecutor's submissions: *violation*.

NIEDBALA - Poland (N° 27915/95)
Judgment 4.7.2000 [Section I]
(See Article 5(3), above).

PROCEDURAL GUARANTEES OF REVIEW
Detainee not entitled to attend hearings concerning detention on remand and non-communication of prosecutor's submissions: *violation*.

TRZASKA - Poland (N° 25792/94)
Judgment 11.7.2000 [Section I]
(See Article 5(3), above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings concerning an action against a court decision imposing a interlocutory measure: *Article 6 not applicable*.

MOURA CARREIRA and LAURENÇO CARREIRA - Portugal (N° 41237/98)
Decision 6.7.2000 [Section IV]

In 1978 the courts made an interim order against the applicants prohibiting them from disposing of their shares in a limited company following a protective application by members of the same company. The latter claimed that the applicants had failed to honour a promise to sell their shares. The applicants appealed against that decision and also claimed damages from their fellow-members. Their claim for damages was dismissed. In June 1997 their appeal was dismissed; the decision was notified to them in July 1997. In November 1997 the courts decided to terminate the objection to the protective order in view of the outcome of the main proceedings.
Inadmissible under Article 6(1): The present application was out of time in so far as it related to the main proceedings, namely the claim for damages. As regards the proceedings to have the protective decision set aside, Article 6 does not apply to protective proceedings in respect of an interim order. Such proceedings seek to govern a temporary situation pending a decision on the main issue and therefore do not resolve civil rights and obligations. The proceedings in question could only lead to the confirmation or annulment of the protective measure or a change in the form in which the latter measure should to be pronounced. The question of the failure to honour the promise to sell was only resolved in the main proceedings. The outcome of the objection proceedings was therefore not decisive for a civil right and Article 6(1) therefore does not apply: incompatible *ratione materiae*.

APPLICABILITY
Proceedings relating to non-payment of a special contribution forming part of an electricity bill: *Article 6 applicable*.

KLEIN - Germany (N° 33379/96)
*Judgment 27.7.2000 [Section IV]

Facts: Proceedings were brought against the applicant in December 1985 for non-payment of a coal-mining contribution which formed part of his electricity bill. The court found against the applicant in April 1986 and ordered him to pay 141 marks (DEM). The applicant lodged a constitutional complaint, claiming that the contribution at issue was unconstitutional. In October 1994, after obtaining observations from various authorities, the Second Division of the Federal Constitutional Court found that the provisions underlying the contribution amounted to an inadmissible special levy. It quashed the judgment against the applicant and ordered that the unconstitutional provisions should not be applied after 31 December 1995. It remitted the case to the District Court, which in February 1995 ordered the applicant to pay around 80 marks to the electricity company, since the legislation remained in force until the end of that year. The applicant's further constitutional complaint was rejected in August 1995.
Law: Article 6(1) – The case concerns not only the length of proceedings before the Federal Constitutional Court, but also the length of proceedings before the civil courts and the dispute before the civil courts was of a pecuniary nature and undeniably concerned a civil right.

Article 6 is therefore applicable. The length of the proceedings to be examined is around nine years and eight months, the main delay being a period of over eight years for the first round of constitutional proceedings. The case was of some complexity - the scope of the judgment went well beyond the particular case, the Constitutional Court having obtained observations from various authorities. However, a chronic overload, like the one the Constitutional Court has laboured under since the end of the 1970s, cannot justify excessive length of proceedings. Reunification can have played only a secondary role in this particular case, which had been pending before the Constitutional Court for more than four years when the reunification treaty entered into force. While the amount at issue was minor, the constitutionality of the law in issue raised a question of principle for a great number of citizens. Despite the complexity of the case, the length of the proceedings before the Constitutional Court was not reasonable.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs.

APPLICABILITY
Disciplinary proceedings concerning commissioned and non-commissioned officers: *inadmissible*.

BATUR - Turkey (N° 38604/97)
ERBEK - Turkey (N° 38923/97)
DURAN and others - Turkey (N° 38925/97)
TORAMAN - Turkey (N° 39830/98)
OZDEN - Turkey (N° 40276/98)
GOKDEN and KARACOL - Turkey (N° 40535/98)
KAPLAN and others - Turkey (N° 40536/98)
GUMUSALAN - Turkey (N° 40688/98)
DOGAN - Turkey (N° 40689/98)
DURGUN - Turkey (N° 40751/98)
EREZ - Turkey (N° 40752/98)
DENDEN and others - Turkey (N° 40754/98)
YILDIRIM - Turkey (N° 40800/98)
GULGONUL - Turkey (N° 40806/98)
ABUL - Turkey (N° 40807/98)
DERE - Turkey (N° 43916/98)
Decision 4.7.2000 [Section I]
(See below).

ACCESS TO COURT
Absence of indication of available remedies and time-limits in decisions subject to appeal: *inadmissible*.

SOCIETE GUERIN AUTOMOBILES - the 15 Member States of the European Union (N° 51717/99)
Decision 4.07.2000 [Section III]

The applicant company brought actions before the Court of First Instance of the European Communities for annulment of certain decisions of the European Commission. The actions were dismissed for failure to comply with the two-month period for instituting proceedings laid down in Article 173 of the Treaty on European Union. The Commission decisions did not mention the remedies available or the period prescribed for instituting proceedings. However, the Court of First Instance held that there was no requirement under Community law for such information to be given. On appeal against one of the judgments, the Court of Justice upheld the decision of the Court of First Instance.
Inadmissible under Articles 6 and 13: The guarantees provided by Articles 6 and 13 seek to avoid the introduction of procedural rules which would have the effect of impeding access by the public to a remedy. In the present case, the applicant does not criticise the existing rules, but complains that they do not appear on measures which are open to challenge, and thus claims guarantees in addition to those rules. However, the articles on which the applicant relies do not cover the right to be informed of the remedies and time-limits for instituting proceedings by information to that effect on measures which are open to challenge: inadmissible *ratione materiae* (the Court found it unnecessary to consider the compatibility *ratione personae* of the application with the Convention).

RIGHT TO A COURT
Failure of administration to enforce a court decision: *violation*.

ANTONETTO - Italy (n° 15918/89)
*Judgment 20.7.2000 [Section II]

Facts: In 1964 Turin city council granted planning permission for the construction of a multi-storey building next to the applicant's house. In 1967 the applicant had the planning permission annulled by the Council of State. The applicant then requested the city council to demolish the parts of the building which had already been built in breach of the statutory building provisions or, should that be impossible, the whole building. The city council failed to do so. In spite of the succession of actions for enforcement which she lodged and the subsequent decisions of the Council of State, the applicant was unable to get Turin city council to comply with the 1967 judgment. In 1988 a law was enacted which made it possible to cure breaches of the building regulations. In 1989 the Council of State, on a fresh application by the applicant, held that the situation in issue was now covered by that law and dismissed her application.
Law: Article 6(1) – The possibility of obtaining enforcement of a judgment is an essential ingredient of the right to a court. As a component of the State governed by the rule of law, the administration is under a duty to comply with the decisions of the supreme administrative court. The failure to enforce a judgment, like a delay in implementing a judgment, has the effect of depriving the person concerned of the guarantees laid down in Article 6 of which he had the benefit during the judicial stage of the proceedings. From 1 August 1973, the date on which the right of individual petition was recognised by Italy, the failure to enforce the judgment of the Council of State deprived Article 6(1) of all practical effect. The enactment of the 1988 law is of no relevance to the assessment of the violation, since that provision affected the applicant's situation only because of the administration's failure to enforce the 1967 judgment.

Conclusion: violation (unanimously).
Article 1 of Protocol No. 1 – Although it is not an deprivation or control of assets, the city council's refusal to comply with the decision of the Council of State constitutes an interference with the applicant's right to the peaceful enjoyment of her possessions, since the fact that the building remained unaltered deprived her house of part of its value. The interference had no basis in law, even if the entry into force of the 1988 law allowed it to acquire one.
Conclusion: violation (unanimously).
Article 41: The Court awarded the applicant the full amount claimed in respect of pecuniary harm, compensation for the non-pecuniary harm sustained as a consequence of the violation and all the costs and expenses incurred before the Convention organs.

FAIR HEARING
Failure to obtain expert opinion in respect of child access and failure to hold a hearing on appeal: *violation*.

ELSHOLZ - Germany (N° 25735/94)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix I).

FAIR HEARING
Non-notification of hearing before *Conseil d'Etat*: *struck out*.

JAEGERT - France (N° 29827/96)
Judgment 18.7.2000 [Section III]

Following an application by the applicant concerning the calculation of his retirement pension, the administrative courts referred him to the Ministry of the Interior so that his pension might be reviewed. On appeal by the Minister of Finance, the Council of State set the judgment aside and determined the merits of the case, but did not invite the applicant to attend the hearing.
The applicant has informed the Court that he does not intend to pursue his application.

REASONABLE TIME
Length of civil proceedings: *violation*.

DI NIRO - Italy (N° 43011/98)
*Judgment 27.7.2000 [Section II]

The case concerns the length of civil proceedings instituted in August 1993 and still pending (about 6 years 10 months for two levels of jurisdiction).
Conclusion: violation (6 votes to 1).
Article 41 - The Court awarded the applicant 16 million lires (ITL) in respect of non-pecuniary damage and three million lires in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

MATTIELLO - Italy (N° 42993/98)
*Judgment 27.7.2000 [Section II]

The case concerns the length of civil proceedings instituted in November 1992 and still pending in April 2000 (about 7 years 5 months for two levels of jurisdiction).
Conclusion: violation (6 votes to 1).
Article 41 - The Court awarded the applicant 16 million lires (ITL) in respect of non-pecuniary damage and three million lires in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

MORENA - Italy (N° 45066/98)
*Judgment 27.7.2000 [Section IV]

The case concerns the length of civil proceedings (almost 7 years 3 months).
Conclusion: violation (6 votes to 1).
Article 41 - The Court awarded the applicant 10 million lires (ITL) in respect of non-pecuniary damage and 1,615,680 lires in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings: *violation*.

MORETTI - Italy (N° 45067/98)
SARTORI - Italy (N° 45069/98)
NOVOTNY - Italy (N° 45072/98)
*Judgments 27.7.2000 [Section IV]

The cases concern the length of civil proceedings:
Moretti - 5 years 7 months;
Sartori - over 15 years 7 months for two levels of jurisdiction and still pending;
Novotny - over 13 years 3 months and still pending.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicants the following sums:
Moretti - 10 million lires (ITL) in respect of non-pecuniary damage and 5 million lires in respect of costs and expenses;
Sartori - 30 million lire in respect of non-pecuniary damage;
Novotny - 40 million lire in respect of non-pecuniary damage and 2 million lire in respect of costs and expenses.

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

SKOUBO - Denmark (N° 39581/98)
Judgment 6.7.2000 [Section II]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 20,000 kroner (DKK) plus reasonable legal expenses.

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

DEGRO - Slovakia (N° 43737/98)
Judgment 6.7.2000 [Section II]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 100,000 Slovak korunas.

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

DROULEZ - France (N° 41860/98)
Judgment 18.7.2000 [Section III]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 30,000 francs (FRF).

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

IADAROLA - Italy (N° 43091/98)
Judgment 27.7.2000 [Section II]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 12 million lire (ITL), made up of 9 million lire in respect of non-pecuniary damage and 3 million lire in respect of costs and expenses.

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

LEPORE and others - Italy (N° 43102/98)
Judgment 27.7.2000 [Section II]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to each of the three applicants of 11 million lire (ITL), made up of 10 million lire in respect of non-pecuniary damage and one million lire in respect of costs and expenses.

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

PIROLA - Italy (N° 45065/98)
Judgment 27.7.2000 [Section IV]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 25 million lire (ITL), made up of 20 million lire in respect of non-pecuniary damage and 5 million lire in respect of costs and expenses.

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

TOSCANO and others - Italy (N° 45068/98)
Judgment 27.7.2000 [Section IV]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicants of a total amount of 59 million lire (ITL), made up of 54 million lire in respect of non-pecuniary damage (21 million lire for the first applicant and 11 million lire for each of the other three applicants) and 5 million lire in respect of costs and expenses (1,250,000 lires per applicant).

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

PERSICHETTI & C. S.r.l. - Italy (N° 45070/98)
Judgment 27.7.2000 [Section IV]

The case concerns the length of civil proceedings.
The parties have reached a friendly settlement providing for payment to the applicant company of 20 million lire (ITL) in respect of damage and one million lire in respect of costs and expenses.

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

CALOC - France (N° 33951/96)
Judgment 20.7.2000 [Section III]
(See Article 3, above).

REASONABLE TIME
Length of administrative proceedings: *violation*.

S.M. - France (N° 41453/98)
*Judgment 18.7.2000 [Section III]

Facts: The case concerns the length of administrative proceedings initiated by the applicant, a medico-social secretary in a departmental social services office. The proceedings mainly concerned the amount of the applicant's retirement pension, following a refusal to establish her in a certain category. The proceedings lasted more than 12 years and 9 months.

Law: Article 6(1) – the applicant's duties did not involve participation in the exercise of public authority and, in any event, the proceedings in issue mainly concerned the amount of her retirement pension. All pension disputes fall within the scope of Article 6, because once retired a servant breaks his special link with the administration. Article 6 is applicable. A number of periods of inactivity can be attributed to the judicial authorities and neither the complexity of the case nor the applicant's conduct can explain the time taken.
Conclusion: violation (unanimously).
Article 41 – The Court saw no connection between the violation and any pecuniary harm which the applicant may have sustained and rejected her claims under that head. The Court awarded the applicant a sum of 40,000 francs (FRF) in respect of non-pecuniary harm. It further considered that there was no need to reimburse the costs incurred in the domestic proceedings, since these were not incurred for the purpose of remedying the violation found.

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

AKIN - Netherlands (N° 34986/97)
Judgment 4.7.2000 [Section I]

The case concerns the length of administrative proceedings relating to a claim for social security benefits.
The parties have reached a friendly settlement providing for an *ex gratia* payment to the applicant of 2,000 guilders (NLG).

REASONNABLE TIME
Length of proceedings before the Council of State – congestion of the roll due to successive strikes by lawyers: *violation*.

TSINGOUR - Greece (n° 40437/98)
*Judgment 6.7.2000 [Section II]

Facts: On 30 June 1994 the applicant lodged an appeal before the Council of State against the refusal of the Order of Pharmacists to admit him as a member. The hearing was postponed on several occasions. The authorities attributed these delays to an excessive workload caused by a series of lawyers' strikes. The hearing took place on 19 May 1998 and on 12 January 1999 the court delivered a judgment annulling the decision of the Order.
Law: Article 6(1) – Although it cannot be denied that a persistent lawyers' strike is capable of disrupting the functioning of a supreme court, decisions must none the less be delivered within a reasonable time. In the present case the law allows the hearing to be postponed only once. The considerable length of the proceedings before a single level of court "is difficult to reconcile with the effectiveness and credibility of the judicial system demanded by the Convention".
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 3,000,000 drachma (GDR) in respect of loss of opportunity owing to his inability to pursue his profession as a result of the combined effects of the decision of the Order of Pharmacists and the time which the Council of State required to determine the matter. The Court also awarded the applicant a sum in respect of costs and expenses.

REASONABLE TIME
Length of civil proceedings following the finding of a violation due to the length: *violation*.

S.A. - Portugal (N° 36421/97)
*Judgment 27.7.2000 [Section IV]

The case concern the length of proceedings. In an earlier application to the European Commission of Human Rights (N° 18034/91), the Commission had already found a violation of Article 6 because the applicant had not had his case examined within a reasonable time. The present application therefore concerns the period after 1 July 1993 (the day after adoption of the Commission's report). The proceedings ended on 14 August 1998 and therefore lasted about five years and one month.
Conclusion: violation (unanimously).
Article 41 - The Court awarded the applicant 400,000 escudos (PTE) in respect of non-pecuniary damage.

REASONABLE TIME
Length of proceedings in the labour courts: *friendly settlement*.

N'DIAYE - France (N° 41735/98)
Judgment 20.7.2000 [Section III]

The case concerns the length of proceedings in the labour courts.
The parties have reached a friendly settlement providing for payment to the applicant of a global sum of 30,000 francs (FRF).

Article 6(1) [criminal]

APPLICABILITY
Disciplinary proceedings concerning commissioned and non-commissioned officers: *Article 6 not applicable*.

BATUR - Turkey (N° 38604/97)
ERBEK - Turkey (N° 38923/97)
DURAN and others - Turkey (N° 38925/97)
TORAMAN - Turkey (N° 39830/98)
OZDEN - Turkey (N° 40276/98)
GOKDEN and KARACOL - Turkey (N° 40535/98)
KAPLAN and others - Turkey (N° 40536/98)
GUMUSALAN - Turkey (N° 40688/98)
DOGAN - Turkey (N° 40689/98)
DURGUN - Turkey (N° 40751/98)
EREZ - Turkey (N° 40752/98)
DENDEN and others - Turkey (N° 40754/98)
YILDIRIM - Turkey (N° 40800/98)
GULGONUL - Turkey (N° 40806/98)
ABUL - Turkey (N° 40807/98)
DERE - Turkey (N° 43916/98)
Decision 4.7.2000 [Section I]

The applicants, who were non-commissioned officers in the Turkish army, were dismissed by decision of the Supreme Military Council; this decision was definitive and was not amenable to judicial review.
Inadmissible under Article 6(1): The States are entitled to draw a distinction between criminal law and disciplinary law "in so far as the boundary thus drawn does not undermine the object and aim of Article 6". Whether a dispute falls within one or other of these areas of law, and therefore whether or not Article 6 is applicable, will also depend on the nature of the offence and the nature and severity of the sanction incurred. In the present case the offences of which the applicants were accused were, under Turkish law, a matter for disciplinary law. By joining the army, the applicants chose to comply with military discipline, which, owing to the needs of the service, implies restrictions that could not be imposed on civilians. The decision to dismiss the applicants belongs to that special disciplinary system which concerns a group having a specific status and is not a criminal penalty for the purposes of Article 6(1) of the Convention. Existence of "disputes" relating to "civil" rights: since the Pellegrin v. France judgment of 8 December 1999 disputes concerning public servants whose posts involve participation in responsibilities of the administration in so far as the latter is acting as the depositary of public authority responsibility for protecting the general interest of the State are excluded from the scope of Article 6(1): incompatible *ratione materiae*.

ACCESS TO COURT
Appeal on points of law rejected on the ground that the brief was not signed by the appellant but by his counsel : *communicated*.

MAILLET - France (N° 45676/99)
[Section I]

The applicant was sentenced to a ten-year term of imprisonment. Before the Assize Court he was represented by a lawyer appointed by the court who subsequently drafted and signed the pleadings which the applicant filed in support of his cassation appeal. The Court of Cassation dismissed the appeal on the ground that the pleadings bore only the lawyer's signature and not the applicant's, and therefore did not satisfy the conditions laid down in the Code of Criminal Procedure.
Communicated under Article 6(1).

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

MOREL - France (N° 43284/98)
[Section III]

The applicant was sentenced, on appeal, to an immediate ten-month term of imprisonment and appealed on a point of law against that judgment. Under the Code of Criminal Procedure anyone who is given a custodial sentence of more than six months and who appeals on a point of law is required to report to the prison authorities – known as the obligation to "surrender to custody" –, failing which his appeal will lapse. However, a person thus convicted may apply to the Court of Appeal which sentenced him for exemption from the obligation to surrender to custody. The applicant failed to apply for an exemption from the obligation to surrender to custody but failed to report to the prison authorities.
Communicated under Article 6 [see the Khalfaoui v. France judgment of 14 December 1999].

ORAL HEARING
Absence of oral hearing on appeal: *violation*.

TIERCE and others - San Marino (N° 24954/94, 24971/94 and 24972/94)
Judgment 25.7.2000 [Section I]

Facts: In 1990 the first applicant's business associate filed a complaint against the first applicant, whom he accused of irregularities in the management of their company. A *Commissario della Legge* investigated the matter; he heard each of the two parties in the other's presence, ordered an expert inquiry into the management of the company and authorised the attachment of a number of the applicant's assets to prevent him disposing of them. Two vehicles covered by the attachment order could not be found and a further complaint of misappropriation of assets covered by an attachment order was filed by the applicant's business associate against the applicant; the vehicles were eventually found, on the basis of information received from the applicant. In 1992 the applicant was committed for trial for fraud and misappropriation of attached assets before the same *Commissario della Legge*, sitting as a judge in the summary procedure applied to the case. The applicant was found guilty by the *Commissario della Legge*, who imposed a suspended prison sentence and ordered him to pay a fine. The applicant appealed. Without holding a hearing, and relying on the documents relating to the investigation at first instance placed in the file for the appeal by the same *Commissario della Legge*, the appellate court rejected the applicant's grounds of

appeal and remitted the procedural documents to the *Commissario della Legge* for verification of the applicant's responsibility for misappropriating another vehicle covered by an attachment order. The San Marino judicial system makes no provision for a cassation appeal. The other two applicants were both arrested while in possession of drugs. The *Commissario della Legge* confirmed their arrest, questioned them and then charged them with possession of and trafficking in drugs (the second applicant was also accused of illegal possession of a firearm) and summoned them to appear for trial. The *Commissario della Legge* convicted the second applicant of possession of drugs and acquitted the third applicant for lack of evidence. The second and third applicants appealed against that decision. The *Procuratore del Fisco* also appealed and argued that both applicants should have been found guilty of being in possession of drugs with intent to deal. The second applicant requested the appellate court to raise a question on the constitutional legitimacy of the absence of a public hearing on appeal during which the accused could give evidence in person to the appellate court. Without holding a hearing, and on the basis of the documents relating to the investigation at first instance placed in the file for the appeal, the appellate court convicted both applicants and held that the question of constitutional legitimacy was unfounded.

Law: Article 6(1) – 1. Independence of the *Commissario della Legge* – The first applicant's fears concerning the objective impartiality of the *Commissario della Legge* related to the combination of his roles as investigating judge, trial judge at first instance and judge responsible for preparing the appeal. For more than two years the *Commissario della Legge* conducted very thorough investigations into the first applicant's affairs, including repeated questioning of the applicant, the complainant and witnesses, ordering expert inquiries and questioning the expert and making orders for attachment of the applicant's assets. The *Commissario della Legge* thus made very extensive use of his powers as investigating judge. He then committed the applicant for trial and convicted him. Consequently, the applicant's concerns regarding the impartiality of the *Commissario della Legge* could be regarded as justified from an objective standpoint. In the light of that conclusion, the Court did not consider whether the applicant's fears concerning the fact that the *Commissario della Legge* had then prepared the file for the appeal were also well founded.

Conclusion: violation (unanimously).

2. Hearing on appeal – In San Marino the appellate court has jurisdiction to deal with points of fact and of law. There is no public hearing before that court. Under the Code of Criminal Procedure, an investigative hearing may be held in the course of the appeal if the appellate court considers that further investigations are necessary, but the hearing is before the *Commissario della Legge*, who is responsible for investigations on appeal. There was no such investigative hearing either in the first applicant's case or in the second and third applicants' case. Had such a hearing taken place, it would not have been before the appellate court and the applicants would therefore not have been able to plead their case before that court. In both cases the appellate court was required to deal with facts and law in order to ascertain the applicants' guilt. In the first applicant's case the court considered the legal classification of the applicant's conduct. In the case against the other two applicants the appellate court had to evaluate the testimony of both applicants before the court of first instance without directly questioning them. The second applicant's conviction was aggravated by the fact that he intended to deal in the drugs in his possession and the third applicant was convicted although he had been acquitted at first instance. In both cases it was necessary to hear the applicants directly in their appeals. All in all, the role of the appellate court and the nature of the questions submitted to it lead to the conclusion that there was no special feature of the procedure that could justify refusing the applicants a hearing in public on appeal which they could attend and at which they could give evidence in person.

Conclusion: violation (unanimously).

Article 41 – The Court awarded 12,000,000 ITL to the first applicant and 10,000,000 ITL to each of the other two applicants in respect of non-pecuniary damage. It also awarded the three applicants 15,000,000 in respect of costs and expenses.

REASONABLE TIME
Length of criminal proceedings: *violation*.

MATTOCCIA - Italy (N° 23969/94)
Judgment 25.7.2000 [Section I]
(See Appendix II).

REASONABLE TIME
Length of criminal proceedings: *violation*.

BARFUSS - Czech Republic (N° 35848/97)
*Judgment 31.7.2000 [Section III]
(See Article 5(3), above).

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

HANSEN - Denmark (N° 28971/95)
Judgment 11.7.2000 [Section II]

The case concerns the length of criminal proceedings.
The parties have reached a friendly settlement providing for payment to the applicant of 45,000 kroner (DKK) plus reasonable legal expenses.

IMPARTIAL TRIBUNAL
Cumulation of functions – *Commissario della Legge*: *violation*.

TIERCE and others - /San Marino (N° 24954/94, 24971/94 and 24972/94)
Judgment 25.7.2000 [Section I]
(See above).

Article 6(3)(a)

INFORMATION IN DETAIL
Lack of specification in rape charge: *violation*.

MATTOCCIA - Italy (N° 23969/94)
Judgment 25.7.2000 [Section I]
(See Appendix II).

EXAMINATION OF WITNESSES
Use of statements made by anonymous witness in convicting an accused: *inadmissible*.

KOK - Netherlands (N° 43149/98)
Decision 4.7.2000 [Section I]

The applicant was arrested and placed in police custody on the charges of belonging to a criminal organisation and of possessing drugs and arms. His arrest resulted from a search by the police of premises which he used for storing cocaine and weapons. The search was prompted by revelations made by an informant whose name was kept secret. Prior to this action, the police had also searched a car in which had been found, *inter alia*, a forged driving licence with the applicant's photograph, an unopened letter addressed to him and keys which later turned out to correspond to the door of the searched house. Criminal proceedings were initiated against the applicant. The investigating judge ordered that the identity of the informant, who was to be heard as a witness, remain secret. The judge, relying on the informant's arguments as well as on police information, considered that reprisals were highly probable should his or her identity be divulged. After questioning the informant, the judge considered him or her as being reliable. The informant took the oath before questioning, which took place in a room where neither the defence nor the prosecuting authorities were present. A large number of the questions had been submitted beforehand in writing by the defence, which was also able to submit further questions during questioning, which they followed through a sound link. The answers were repeated by the witness once it had been ensured that his or her anonymity was not jeopardised. The applicant's appeal against the decision to keep the witness's anonymity was dismissed by the Regional Court after having been discussed in open court. He was convicted and sentenced to imprisonment. His appeal against sentence was unsuccessful, as was his subsequent appeal on points of law.
Inadmissible under Article 6(1) and (3)(d): Using statements of an anonymous witnesses to found a conviction is not under all circumstances incompatible with the Convention. In cases where the anonymity of witnesses is maintained, the handicaps which weigh on the defence must be counterbalanced by the procedures followed by the judicial authorities. Moreover, a conviction should not be based solely or to a decisive extent on anonymous statements. In the instant case, although the precise grounds of the anonymous witness's fears were not revealed, their well-foundedness was investigated by the investigating judge, who relied on information provided by both the witness and the police. Her decision that the informant's anonymity should be preserved was reviewed and upheld on appeal. Given that the applicant could reasonably be suspected of membership of a criminal association and that he was arrested armed with a pistol, he could be perceived as a threat by people aware of his dealings, such as the informant. Thus, there were sufficient reasons for keeping secret the latter's identity. Furthermore, other elements of evidence than the statements of the anonymous witness were taken into account, e.g. official police reports of the arrest and the searches of the car and the house. Therefore, the applicant's conviction was not exclusively or to a decisive extent based on the anonymous witness's evidence. As to whether the specific procedures of the witness's questioning were sufficient to counterbalance the difficulties borne by the defence, the investigating judge assessed the witness's reliability and gave a reasoned opinion, which the defence was able to question in open court. The witness's questioning was organised in accordance with law. Not only the defence but also the prosecuting authorities were absent from the room where it took place. The defence was able to submit written questions in advance and could ask further questions during the questioning which they followed through a sound link. The witness's answers were repeated when they did not threaten his or her anonymity. Finally, the informant was under oath. Therefore, the witness's interrogation appeared to be fair to the defence: manifestly ill-founded.

OBTAIN ATTENDANCE OF WITNESSES
Refusal of court to hear witness for the defence: *no violation*.

PISANO - Italy (N° 36732/97)
*Judgment 27.7.2000 [Section II]

Facts: The applicant was convicted of murdering his wife. The time of death was estimated at between 11.30 am and 12.00 noon, in the applicant's mistress's apartment. The applicant stated that he had been absent from work between 10.00 am and 11.30 am, notably in order to deposit certain documents at the land registry. As regards the time spent at the land registry office, the applicant referred to a specific incident involving the person in front of him in the queue. He was unable to identify the person in question at that stage. His mistress stated that the applicant had murdered his wife and asked her to dispose of the body. Both were committed to the assizes to stand trial for premeditated homicide and for concealing the corpse. In the course of a hearing before the court the applicant requested, pursuant to Article 507 of the Code of Criminal Procedure, that the person in front of him at the land registry office, whom he had succeeded in identifying after a long search, be called as a witness for the defence. That person had written to the applicant's legal representative to confirm the incident at the land registry office as described by the applicant during the investigation. the Assize Court refused the applicant's request on the ground that in its view the examination of the person concerned was not "absolutely necessary" within the meaning of Article 507. A reconstruction of the crime showed that the applicant had sufficient time to commit the offence. The Assize Court considered, *inter alia*, that the applicant had not established that he had gone to the land registry office and sentenced him and his mistress to life imprisonment. The Assize Court further noted that other evidence established the applicant's guilt, in particular the bruises and wounds on his hands and legs, which suggested a struggle with the deceased, the accusation made against him by his mistress and co-accused and the numerous telephone calls to her before and after the offence. The applicant lodged an appeal before the Assize Court of Appeal and challenged the refusal to call the defence witness referred to above. The Assize Court of Appeal upheld the judgment at first instance and held that the evidence against the applicant was sufficiently probative and consistent to preclude any validity being accorded to his alibi. The applicant's cassation appeal was dismissed.
Law: Article 6(1) and (3)(d) – Under Italian law the accused, like the prosecution, must indicate before the trial commences the witnesses whom he wishes to be called. Since the applicant indicated the name of his defence witness only after the trial had commenced, the conditions for calling that witness were different from those applicable to the prosecution witnesses indicated in due time by the prosecution. The summoning of that defence witness was subject to the stricter rules laid down in Article 507 of the Code of Criminal Procedure, which provides that the court is not to summon a witness unless it considers the witness "absolutely necessary". The applicant did not challenge the legality of the refusal, but rather its appropriateness. Article 6(3)(d) does not require that every witness be summoned to give evidence, but refers to the principle of equality of arms. The applicant was able to present to the courts of first instance, appeal and cassation his arguments regarding the appropriateness of hearing evidence from that witness for the defence, and it is not for the Court to sanction any errors of fact or of law committed by the domestic courts if they do not constitute a breach of the rights guaranteed by Article 6. Since the fairness of the proceedings was not adversely affected by the decision to hear evidence from that witness, it cannot be inferred that there was a violation of the rights of the defence. As regards the alleged failure to state the reasons for refusing to summon the witness for the defence, in the light of the judgment of the Assize Court it is possible to understand why that court did not deem it necessary to summon the witness. Consequently, the brief information provided with the order refusing to summon the witness for the defence cannot constitute a violation of the rights of the defence, or in particular of the principle of equality of arms. As regards the investigations carried out, they concerned the way in which the applicant spent his time on the day of the offence and the

possibility that he might have visited the scene of the crime. The applicant was able to apprise himself of the result of those investigations and to challenge the conclusions which the prosecution had drawn from them before the investigating court and the trial courts. The applicant has not adduced any evidence on which it might be concluded that the prosecution had knowingly intended to interfere with the fairness of the proceedings. In conclusion, the rights of the defence were not subject to any restriction which deprived the applicant of a fair trial.
Conclusion: no violation (5 votes to 2).

ARTICLE 8

PRIVATE LIFE
Conviction for gross indecency involving several men in private: *violation*.

A.D.T. - United Kingdom (N° 35765/97)
*Judgment 31.7.2000 [Section III]

Facts: Police officers carried out searches at the home of the applicant, a practising homosexual, and seized various items, including photographs and videos. The applicant was arrested and admitted that the videos contained footage of him and up to four other adult men engaging in oral sex and mutual masturbation in his home. He was charged with gross indecency under S. 13 of the Sexual Offences Act 1956 (the decriminalisation of sexual acts between consenting adult males in private not applying when there are more than two men). He was duly convicted and conditionally discharged for two years. Confiscation and destruction of the material was ordered.
Law: Article 8 – The applicant was aware that his conduct was in breach of the criminal law and was therefore continuously and directly affected by it, and he was also directly affected in that he was prosecuted and convicted. There is no evidence to indicate any actual likelihood of the videos being made public, either deliberately or inadvertently, and it is unlikely that the applicant would knowingly be involved in making them public, since he had gone to some lengths to conceal his sexual orientation. He was thus the victim of an interference with regard both to the legislation and to the conviction. The case differs from previous cases dealt with by the Court in that the activities involved more than two men and the applicant was convicted because more than two were present. While at some point sexual activities can be carried out in such a manner that State interference may be justified, the facts of the case do not indicate such circumstances: the applicant was involved in activities with a restricted number of friends in circumstances where it was most unlikely that others would become aware of what was going on, and although the acts were recorded, the applicant was not prosecuted for that or the risk that the videos might become public but for the acts themselves. The activities were therefore genuinely private. Given the narrow margin of appreciation in that respect, the absence of any public health considerations and the purely private nature of the behaviour, the reasons submitted for the maintenance in force of legislation criminalising homosexual acts between men in private, and *a fortiori* the applicant's prosecution and conviction, are not sufficient.
Conclusion: violation (unanimous).
Article 14+8: The Court considered it unnecessary to examine this complaint.
Conclusion: not necessary to examine (unanimous).
Article 41 – The Court awarded £20,929.05 (GBP) in respect of pecuniary and non-pecuniary damage and also made an award in respect of costs.

FAMILY LIFE
Refusal to grant father access to child born out of wedlock – insufficient involvement in decision-making process: *violation*.

ELSHOLZ - Germany/ (N° 25735/94)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix I).

FAMILY LIFE
Taking of children into care and suspension of parental rights: *no violation*.

SCOZZARI and GIUNTA - Italy (N° 39221/98 and 41963/98)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix III).

FAMILY LIFE
Restriction of mother's right of access to children in care: *violation*.

SCOZZARI and GIUNTA - Italy (N° 39221/98 and 41963/98)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix III).

FAMILY LIFE
Placement of children in community where certain personnel had convictions for paedophilia: *violation*.

SCOZZARI and GIUNTA - Italy (N° 39221/98 and 41963/98)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix III).

FAMILY LIFE
Prisoner's mother prevented from visiting her son: *no violation*.

DIKME - Turkey (N° 20869/92)
Judgment 11.7.2000 [Section I]
(See Article 3, above).

FAMILY LIFE
Expulsion pending proceedings relating to access to child: *violation*.

CILIZ - Netherlands (N° 29192/95)
Judgment 11.7.2000 [Section I]

Facts: The applicant, a Turkish national, married in the Netherlands in 1988. The couple had a child in 1990., but separated in 1991. As the residence permit which the applicant had obtained was dependent on his marriage and cohabitation, he lost the right to reside in the Netherlands from the moment of separation. He obtained a separate one-year residence permit to enable him to work, but his request to have this renewed was rejected in 1993 because was at that time in receipt of unemployment benefit. His request for a review was rejected by the State Secretary for Justice in October 1994 and his appeal to the Hague Regional Court was

dismissed in May 1995. In the meantime, the applicant had requested the Utrecht Regional Court to establish formal access arrangements in respect of his child. The court had found such arrangements inappropriate, although it had assumed that the existing informal contacts would continue. The applicant had appealed to the Court of Appeal, which in June 1995 requested the Child Care and Protection Board to organise supervised meetings on a trial basis. However, while the appeal was pending, the applicant was placed in detention with a view to his deportation. The first trial meeting did not take place until November 1995, the day before the applicant was expelled. The access proceedings were eventually continued in the absence of the applicant, who had been refused an entry visa. In May 1998 the Court of Appeal confirmed the decision not to establish formal access arrangements, taking into account the time which had passed since the applicant had seen his child. The applicant's further appeal was dismissed by the Supreme Court in April 1999. He had re-entered the Netherlands and submitted a new application for access arrangements. This was rejected by the Regional Court in December 1999. An appeal is pending.

Law: Article 8 – A bond amounting to family life exists between parents and a child born in marriage and is not terminated by separation or divorce resulting in the child ceasing to live with one of them. While the applicant did not always demonstrate the extent to which he valued meetings with his child, meetings took place on a fairly frequent, if not regular basis and he applied to the courts to have access determined. The events subsequent to his separation from his wife did not, therefore, constitute exceptional circumstances capable of breaking the ties of family life. The domestic authorities were in the processing of fulfilling their positive obligation of ensuring the continuation of family ties after divorce, but the decision to expel the applicant frustrated this examination, and there was therefore an interference with his right to respect for family life. This interference had a basis in domestic law and was aimed at preserving the economic well-being of the country. As to necessity, by expelling the applicant after it had been decided that trial meetings should take place, the authorities not only prejudged the outcome of the access proceedings but, more importantly, they denied the applicant all possibility of any further meaningful involvement in them. Moreover, by the time he was able to return, the passage of time had resulted in a *de facto* determination of the proceedings which he then instituted. By failing to coordinate the proceedings, the authorities did not act in a manner permitting the development of family ties. The decision-making process concerning both the expulsion and the access did not afford the requisite protection of the applicant's interests.

Conclusion: violation (unanimously).

Article 41 - The Court considered that there was no causal link between the violation and the pecuniary damage claimed by the applicant. It awarded him 25,000 guilders (NLG) in respect of non-pecuniary damage and also made an award in respect of costs.

FAMILY LIFE
Expulsion of foreigner from the country where he had lived for most of his life: *friendly settlement*.

ABBAS - France (N° 35783/97)
Judgment 20.7.2000 [Section III]

The applicant entered France in 1972 at the age of six years. He is the eldest of a family of eight brothers and sisters, several of whom are of French nationality. The family all live in France. Following his conviction in 1991 for drug trafficking, an order excluding him from French territory was made. He returned to France illegally in 1993 and a fresh exclusion order was made for a three-year period. Following the expiry of that period, the applicant applied for a visa to return to France. His application was rejected.
The parties reached a friendly settlement. A long-term residence visa was issued to the applicant, who returned to France in August 1999, and the Minister of the Interior gave instructions for him to be issued with an Algerian residence certificate valid for one year, renewable, on which he is described as a "worker".

CORRESPONDENCE
Censorship of detainee's correspondence: *violation*.

NIEDBALA - Poland (N° 27915/95)
Judgment 4.7.2000 [Section I]
(See Article 5(3), above).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction for making separatist propaganda: *violation*.

SENER - Turkey (N° 26680/95)
Judgment 18.7.2000 [Section III]

Facts: The applicant was owner and editor of a weekly review, the 23rd edition of which was seized on the orders of the Istanbul State Security Court in September 1993, on the ground that an article in it contained separatist propaganda. The applicant was convicted by the State Security Court, including a military judge, of having disseminated separatist propaganda and sentenced to 6 months' imprisonment and a fine of 50 million Turkish liras. The court noted that the article in question referred to "Kurdistan" and claimed that genocide had taken place. It ordered confiscation of the publication. The applicant's appeal was rejected by the Court of Cassation. Following amendments to the law, her case was re-examined by the State Security Court, which imposed the same sentence. However, the Court of Cassation quashed this judgment on the ground that the prison sentence had not been commuted to a fine. The State Security Court then decided to defer imposition of a final sentence, which would only be given if the applicant was convicted again within three years. The author of the article was convicted in 1995, but the sentence imposed on him was suspended.
Law: Article 10 – It is clear and undisputed that there has been an interference with freedom of expression. The interference was prescribed by law and pursued the legitimate aims of the protection of national security and public safety. As to necessity, although certain phrases in the impugned article seem aggressive in tone, the article as a whole does not glorify violence or incite to hatred, revenge, recrimination or armed resistance; on the contrary, it is an

intellectual analysis of the Kurdish problem which calls for an end to the armed conflict. In any case, the applicant was not convicted for incitement to violence but for disseminating separatist propaganda, and in that respect the authorities failed to give sufficient weight to the public's right to be informed of a different perspective on the situation. The reasons given by the State Security Court, while relevant, cannot be regarded as sufficient to justify the interference. Although the applicant's sentence was suspended, she was faced with the threat of a heavy penalty and if she fails to comply with the condition imposed she will automatically be sentenced for the original offence. The conditional suspension of her sentence thus did not deprive her of her victim status, but in fact had the effect of restricting her work and reducing her ability to offer views to the public. The convicton was consequently disproportionate to the aims.
Conclusion: violation (6 votes to 1).
Article 6(1) – The Court has already held that civilians tried by a State Security Court may legitimately fear that that court lacks independence and impartiality due to the presence of a military judge (Incal and Çiraklar judgments, *Reports* 1998-IV and VII). There is no reason to reach a different conclusion in the present case.
Conclusion: violation (6 votes to 1).
Artice 18 - The Court considered that since the restrictions were consistent with the legitimate aims contained in Article 10(2), there had been no violation of Article 18.
Conclusion: no violation (unanimous).
Article 41 - The Court awarded the applicant 30,000 French francs (FRF) in respect of non-pecuniary damage. It also made an award in respect of costs.

FREEDOM OF EXPRESSION
Ban on broadcasting of radio advertisement for religious meeting: *communicated*.

MURPHY - Ireland (N° 44179/98)
[Section IV]

The applicant is a pastor attached to a Bible-based Christian ministry, the Irish Faith Centre. Relying on the Radio and Television Act 1988, the authorities banned the broadcast of a short radio advertisement which the Irish Faith Centre had prepared to publicise a forthcoming religious meeting. The applicant appealed against this decision, on the ground either that the Act had been wrongly applied or that it was unconstitutional. The High Court found that the Act had been applied correctly and that in any case it presented a reasonable limitation to the right to communicate and thus could not be deemed unconstitutional. The applicant's subsequent appeal to the Supreme Court was rejected.
Communicated under Articles 9 and 10.

ARTICLE 13

EFFECTIVE REMEDY
Effective remedy in respect of deportation: *no violation*.

G.H.H. and others - Turkey (N° 43258/98)
*Judgment 11.7.2000 [Section I]
(See Article 34, below).

ARTICLE 14

DISCRIMINATION (Article 8)
Allegedly different treatment of natural fathers and divorced fathers: *no violation*.

ELSHOLZ - Germany (N° 25735/94)
Judgment 13.7.2000 [Grand Chamber]
(See Appendix I).

ARTICLE 34

VICTIM
Threat of expulsion: *not necessary to examine*.

G.H.H. and others - Turkey (N° 43258/98)
*Judgment 11.7.2000 [Section I]

Facts: The applicants are Iranian nationals. The first two applicants were anti-government activitists in Iran, where the first applicant claims to have been detained and ill-treated on several occasions. The applicants fled to Turkey, where the UN High Commissioner for Refugees rejected their requests to be recognised as refugees. A deportation order was served on them in August 1998 and the Ministry of Foreign Affairs again confirmed that they did not meet the criteria for refugee status. However, the UNHCR subsequently re-examined the applicants' asylum request and, in the light of new evidence about the applicant's association with other writers who had been murdered, it granted them refugee status. As a result, the Ministry of Foreign Affairs directed that the applicants should be allowed to remain in Turkey, on a humanitarian basis, until they could be resettled in a third country. The applicants settled in the USA in October 1999.
Law: Articles 2, 3 and 8 - Given that the applicants' fears about forced return to Iran have been removed, they can no longer claim to be victims.
Conclusion: not necessary to examine (unanimously).
Article 13 - By the stage at which the Ministry of Foreign Affairs confirmed that the applicants did not satisfy the criteria for refugee status, they had not made out a claim under Article 3 which could be said to be arguable on the merits: the UNHCR had rejected their claim and it was only when new evidence came to light that both it and the Ministry changed their view. In the absence of information about these developments, the authorities cannot be accused of having under-estimated the risk to the applicants. When the information did become available, the authorities allowed them to remain and from then on there was no risk of summary deportation and no issue arises from that date.
Conclusion: no violation (unanimously).

ARTICLE 35(1)

SIX MONTH PERIOD
Considerable delay in communicating information necessary to investigate a complaint: *inadmissible*.

GAILLARD - France (N° 47337/99)
Decision 11.7.2000 [Section III]

The applicant was convicted by the criminal court of having carried out development without planning permission. He appealed against that judgment, without success. By judgment of 22 August 1994 the Court of Cassation rejected his appeal on points of law. He then requested the Court of Cassation to alter its judgment; this request, too, was rejected. On 22 January 1997 the Court of Cassation also dismissed the appeal lodged by the Attorney General attached to the Court of Cassation on the ground that its decision contravened a statute. The applicant lodged a second application for the Court of Cassation to alter, on this occasion, the judgment of 22 January 1997; this application was dismissed on 2 July 1998. He then lodged a number of applications with the Criminal Convictions Review Board seeking a review of the judgment of the Court of Appeal; these applications were unsuccessful. Finally, he lodged an interlocutory application before the Court of Appeal for enforcement of the judgment of the criminal court. The Court of Appeal dismissed his application and he lodged a cassation appeal, which was dismissed on 2 July 1998. On 25 April 1997 the applicant had contacted the secretariat of the Commission. On 6 January 1998 the secretariat received an application. On 3 February 1998 it sent the applicant a form for completion, which the applicant did not return until 28 December 1998.
Inadmissible under Article 35(1) (six-month period): In accordance with the practice followed by the Commission, the date of introduction of the application is the date of the first letter setting out, including in a summary manner, the complaints raised. However, where a significant period lapses before the applicant provides the further details required to investigate the complaint, it is necessary to examine the particular circumstances of the case in order to determine the date which is to be regarded as the date on which the application was introduced. Since the applicant did not return the application form until 28 December 1998 – ie ten months after receiving it and one year after his last letter – the latter date must be taken as the date of introduction of the application. The applicant complains of violations of the Convention in the judgments of the Court of Cassation of 22 August 1994 and 22 January 1997: *inadmissible* (out of time).

ARTICLE 41

JUST SATISFACTION

LUSTIG-PREAN and BECKETT - United Kingdom (N° 31417/96 and 32377/96)
*Judgment 25.7.2000 [Section III]
(See Appendix IV).

SMITH and GRADY - United Kingdom (N° 33985/96 and 33986/96)
*Judgment 25.7.2000 [Section III]
(See Appendix IV).

ARTICLE 44

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 17):

DEWICKA - Poland (N° 38670/97)
Judgment 4.2.2000 [Section IV]

DI ANNUNZIO - Italy (N° 40965/98)
MUSO - Italy (N° 40981/98)
Judgments 5.4.2000 [Section II]

STARACE - Italy (N° 34081/96)
Judgment 27.4.2000 [Section II]

PEPE - Italy (N° 30132/97)
Judgment 27.4.2000 [Section II]

ROTONDI - Italy (N° 38113/97)
Judgment 27.4.2000 [Section II]

S.A.GE.MA S.N.C. - Italy (N° 40184/98)
Judgment 27.4.2000 [Section II]

L. - Finland (N° 25651/94)
Judgment 27.4.2000 [Section IV]

KUOPILA - Finland (N° 27752/95)
Judgment 27.4.2000 [Section IV]

PUNZELT - Czech Republic (N° 31315/96)
Judgment 25.4.2000 [Section III]

ARTICLE 57

RESERVATIONS
Lithuanian reservation in respect of ordering of detention on remand by prosecutors: *reservation valid*.

JEČIUS - Lithuania (N° 34578/97)
Judgment 31.7.2000 [Section III]
(See Article 5(1)(c), below).

RESERVATIONS
Reservation by which Moldova declines responsibility for acts committed on the territory held by separatists of Transdniestria: *communicated*.

ILASCU and others - Moldova and Russia (N° 48787/99)
[Section I]
(See Article 1, above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Tips included in cheque and credit card payments counted as remuneration for the purpose of minimum wage regulation: *communicated*.

NERVA and others - United Kingdom (N°42295/98)
Decision 11.7.2000 [Section III]

The applicants were waiters at the material time. When they received a tip from a customer, the money gathered was later distributed proportionately among all the waiters. As a result of a new tax system, tips paid by customers by including the amount in cheque or credit card vouchers were paid over to their employer who distributed an equivalent amount among the waiters, in a proportion which he decided. The sum which each of the applicants received featured in their wage slip as "additional pay". At the relevant time, a minimum remuneration was provided by law for waiters. As the weekly share of the applicants' tips was regularly superior to the statutory minimum wage, they decided to challenge their employer's right to count cheque or credit card tips as part of the minimum remuneration. The courts however found against the applicants both at first instance and at appeal, and leave to appeal to the House of Lords was refused to them.
Communicated under Articles 1 of Protocol N° 1 and 14.

PEACEFUL ENJOYMENT OF POSSESSIONS
Interference with enjoyment of possession without legal basis : *violation*

ANTONETTO - Italy (n° 15918/89)
*Judgment 20.7.2000 [Section II]
(See Article 6(1), above).

TRANSITIONAL PROVISIONS – ARTICLE 5(4) OF PROTOCOL Nº 11

FORMER ARTICLE 32
Late reference to Court: *lack of jurisdiction*.

TALENTI - Italy (N° 38102/97)
Judgment 27.7.2000 [Section II]

The case concerns the length of civil proceedings.

The Government's application bringing the matter before the Court, which was dated 5 August 1999, was received by the Court Registry on 12 August 1999, whereas the Commission's report was communicated to the Council of Ministers on 6 May 1999. Under the former Article 47 of the Convention, the matter had to be brought before the Court within the three-month period laid down in the former Article 32. Neither the Convention nor the Rules of Court applicable at the material time contained a provision authorising a derogation from that obligation. The Government therefore exceeded the period with which they were required to comply. Nor does the case-file disclose any special circumstance of such a kind as to cause time to cease to run or to be suspended. The fact that the letter, the date of sending of which is not known, is dated 5 August 1999 is not a sufficient factor. Consequently, the Government's application bringing the matter before the Court is inadmissible because it is out of time.
Conclusion: The Court is unable to deal with the merits of the case.

APPENDIX I

Case of Elsholz v. Germany – Extract from press release

Facts: The applicant, Egbert Elsholz, a German national born in 1947, lives in Hamburg (Germany). He is the father of the child C., born out of wedlock on 13 December 1986. Since November 1985 the applicant lived with the child's mother and her elder son. In June 1988 the mother, together with the two children, moved out of the flat. The applicant continued to see his son frequently until July 1991. On several occasions, he also spent his holidays with the two children and their mother. Subsequently, no more visits took place. When questioned by an official of the Erkrath Youth Office (*Jugendamt*) at his home in December 1991, C. stated that he did not wish to have further contacts with his father.

In December 1992 the Mettmann District Court (*Amtsgericht*) dismissed the applicant's request to be granted a right of access (*Umgangsregelung*). The District Court considered that contacts with the father would not enhance the child's well-being.

The applicant's renewed request to be granted access was dismissed by the Mettmann District Court in December 1993. The Court referred to its prior decision of December 1992 and found that the conditions under Article 1711 § 2 of the Civil Code (*Bürgerliches Gesetzbuch*) concerning the father's right to personal contact with his child born out of wedlock were not met. It noted that the applicant's relationship with the child's mother was so strained that the enforcement of access rights could not be envisaged. If the child were to be with the applicant against his mother's will, this would put him into a loyalty conflict which he could not cope with and which would affect his well-being. The Court added that it was irrelevant which parent was responsible for the tensions. After two long interviews with the child, the District Court reached the conclusion that his development would be endangered if the child had to take up contacts with his father contrary to his mother's will. The District Court furthermore considered that the facts of the case had been established clearly and exhaustively for the purposes of Article 1711 of the Civil Code. It therefore found it unnecessary to obtain an expert opinion.

On 21 January 1994 the Wuppertal Regional Court (*Landgericht*), without a hearing, dismissed the applicant's appeal. The Regional Court found, in line with the decision appealed against, that the tensions between the parents had negative effects on the child, as was confirmed by the hearings with the child held in November 1992 and December 1993, and that contacts with his father were not therefore in the child's best interest, even less so because these contacts had in fact been interrupted for about two and a half years. It was irrelevant who was responsible for the break-up of life in common. What mattered was that in the present situation contacts with the father would negatively affect the child. This conclusion, in the Regional Court's view, was obvious, which was why there was no necessity of obtaining an opinion from an expert in psychology. The Regional Court finally observed that there was no necessity to hear the parents and the child again since there was no indication that any findings more favourable for the applicant could result from such a hearing.

In April 1994 a panel of three judges of the Federal Constitutional Court (*Bundesverfassungsgericht*) refused to entertain the applicant's constitutional complaint (*Verfassungsbeschwerde*).

The applicant complained that the German court decisions dismissing his request for access to his son, a child born out of wedlock, amounted to a breach of Article 8, that he had been a victim of discriminatory treatment in breach of Article 14 read in conjunction with Article 8 and that his right to a fair hearing guaranteed under Article 6 § 1 had been breached.

Law: Article 8 – The Court recalled that the notion of family under this provision was not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together out of wedlock. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment and by the very fact of his birth. Thus there existed between the child and his parents a bond amounting to family life. The Court further recalled that the mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life, even if the relationship between the parents

had broken down, and domestic measures hindering such enjoyment amounted to an interference with the right protected by Article 8.
The Court considered that the decisions refusing the applicant access to his son interfered with the applicant's exercise of his right to respect for his family life as guaranteed by paragraph 1 of Article 8. Such interference constituted a violation of Article 8 unless it was "in accordance with the law", pursued an aim or aims that were legitimate under paragraph 2 of this provision and could be regarded as "necessary in a democratic society".
In the Court's view the court decisions of which the applicant complained had a basis in national law, namely, Article 1711 § 2 of the Civil Code as in force at the relevant time, and were clearly aimed at protecting the "health or morals" and the "rights and freedoms" of the child. Accordingly they were in accordance with the law and pursued legitimate aims within the meaning of paragraph 2 of Article 8.
In determining whether the impugned measure was "necessary in a democratic society", the Court considered whether, having regard to the particular circumstances of the case and notably the importance of the decisions to be taken, the applicant had been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests. The combination of the refusal to order an independent psychological report and the absence of a hearing before the Regional Court revealed, in the Court's opinion, an insufficient involvement of the applicant in the decision-making process. The Court thus concluded that the national authorities overstepped their margin of appreciation, thereby violating the applicant's rights under Article 8.
Conclusion: violation (13 votes to 4).
Article 14 taken together with Article 8 – The Court did not find it necessary to consider whether the former German legislation as such, namely, Article 1711 § 2 of the Civil Code, made an unjustifiable distinction between fathers of children born out of wedlock and divorced fathers, such as to be discriminatory within the meaning of Article 14, since the application of this provision in the present case did not appear to have led to a different approach than would have ensued in the case of a divorced couple.
The Court noted that the German court decisions were clearly based on the danger to the child's development if he had to take up contact with the applicant contrary to the will of the mother. The risk to the child's welfare was thus the paramount consideration. Consequently, it could not be said on the facts of the present case that a divorced father would have been treated more favourably. There had accordingly been no violation of Article 14 in conjunction with Article 8.
Conclusion: no violation (unanimously).
Article 6 § 1 – The Court, having regard to its findings with respect to Article 8, considered that in the present case, because of the lack of psychological expert evidence and the circumstance that the Regional Court did not conduct a further hearing, the proceedings, taken as a whole, did not satisfy the requirements of a fair and public hearing within the meaning of Article 6 § 1. There had thus been a breach of this provision.
Conclusion: violation (13 votes to 4).
Article 41 – The Court found it impossible to assert that the relevant decisions would have been different if the violation of the Convention had not occurred. However, it could not, in the Court's opinion, be excluded that if the applicant had been more involved in the decision-making process, he might have obtained some degree of satisfaction and this could have changed his future relationship with the child. In addition, the applicant certainly suffered non-pecuniary damage through anxiety and distress. The Court thus concluded that the applicant suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention and awarded him DEM 35,000.
The Court further awarded the applicant DEM 12,584.26 for costs and expenses
Judge Baka joined by Judges Palm, Hedigan and Levits expressed a partly dissenting opinion and this is annexed to the judgment.

APPENDIX II

Case of Mattoccia v. Italy – Extract from press release

Facts: The applicant, Massimiliano Mattoccia, an Italian national, was born in 1964 and lives in Giulianello (Latina, Italy). He used to work as a bus driver for a school for handicapped children in Rome. On 12 June 1990 he was convicted of raping R., a mentally handicapped girl born in 1964 who attended that school. His conviction was upheld by the court of appeal and the Court of Cassation. Both the exact time and place of the rape were repeatedly changed and never established.

The applicant complained that his right to a fair hearing guaranteed under Article 6 §§ 1 and 3 (a) and (d) of the European Convention on Human Rights and his right to a hearing within a reasonable time guaranteed by Article 6 § 1 of the Convention had been violated.

Law: Article 6 §§ 1 and 3 (a) and (b) (fairness of the proceedings) – The Court examined the fairness of the proceedings taken as a whole, including the way in which the evidence was taken. It recalled that the accused must be made aware "promptly" and "in detail" of the cause of the accusation, i.e. the material facts alleged against him which are the basis of the accusation, and of the nature of the accusation, i.e. the legal qualification of these material facts. While the extent of the "detailed" information referred to in this provision varies depending on the particular circumstances of each case, the accused must at any rate be provided with sufficient information as is necessary to understand fully the extent of the charges against him with a view to preparing an adequate defence. In this respect, the adequacy of the information must be assessed in relation to sub-paragraph (b) of paragraph 3 of Article 6. The same is true as concerns the changes in the accusation, including the changes in its "cause".

The Court observed that at the preliminary stage the prosecuting authorities did not convey all the available information on the accusation to the applicant, even though the latter appeared to have adopted a line of defence which was manifestly inadequate. More detailed information was contained in the prosecution file, which became accessible to the applicant shortly before 23 October 1986, but to which he only sought access in September 1989. In the Court's view, however, even though the applicant could have sought access to the prosecution file in due time, this did not dispense the prosecution from complying with the obligation to inform the accused promptly and in detail of the full accusation against him. This duty rests entirely with the prosecuting authorities and cannot be complied with passively by making information available without bringing this to the attention of the defence.

Moreover, at the first hearing before the trial court the time and place of the rape were changed; at the second hearing, which was held less than one month later, new elements occurred which prompted the court, in a judgment delivered on the same day, to hold that the rape had been committed on yet another date and that the witnesses in the applicant's favour were not credible. No allowances were made by the trial court for the difficulties caused to the defence, suddenly confronted with yet another new version of events. It was therefore only possible for the applicant to seek to adduce new evidence on appeal, which he did: he requested the Court of Appeal to hear his employer.

The appellate court briefly ruled that the employer's testimony was superfluous and the Court of Cassation upheld this decision. The Court however disagreed. It could not see how the evidence gathered at trial would be sufficient, given that the "cause" of the accusation had been changed at a stage when the applicant could no longer react to it if not on appeal.

In conclusion, although the Court was cognisant that rape trials raise very sensitive and important issues of great concern to society and that cases concerning the very young or the mentally handicapped often confront the prosecuting authorities and the courts with serious evidential difficulties in the course of the proceedings, the present case was exceptional. Taking into account the vagueness of the accusation and the numerous and repeated changes in its cause, and in view of the lengthy period which had elapsed between the committal for trial and the trial (more than three and a half years) compared to the rapidity of the trial (less than one month), fairness required that the applicant should have been afforded greater

opportunity and facilities to defend himself in a practical and effective manner, for example by calling witnesses to establish an alibi.
The Court concluded that the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence had been violated.
Conclusion: violation (unanimously).
Article 6 § 1 (length of the proceedings) – The Government had conceded that the length of the proceedings brought against the applicant had exceeded a reasonable time. The Court observed that the case was not complex and the applicant had not been responsible of any delays; instead, delays covering more than half of the overall length of the proceedings had occurred, which were attributable to the national authorities. The applicant's right to a hearing within a reasonable time had therefore been violated.
Conclusion: violation (unanimously).
Article 41 – The Court, clearly, could not speculate on what the outcome would have been if the applicant had had a fair trial, and therefore rejected the applicant's claims for pecuniary damage. As to the non-pecuniary damage, ruling on an equitable basis, the Court awarded him ITL 27,000,000. It also awarded him ITL 15,000,000, less the amount already paid by way of legal aid, for legal costs and expenses.

APPENDIX III

Case of Scozzari and Giunta v. Italy – Extract from press release

Facts: The first applicant, Dolorata Scozzari, a Belgian and Italian national, was born in 1960 and lives in Figline Valdano (Italy). She also acts on behalf of her children, G., aged thirteen, who has dual Belgian and Italian nationality, and M., aged six and who has Italian nationality.
The second applicant, Carmela Giunta, is an Italian national, who was born in 1939 and lives in Brussels. Since the end of 1998 she has also had a home in Italy. She is the first applicant's mother.
On 9 September 1997, in view of the dramatic situation in the first applicant's home, a situation that had been largely brought about by the violence of the first applicant's husband towards both her and the children and the fact that the elder child had been subjected to paedophile abuse by a "social worker", the Florence Youth Court suspended the first applicant's parental rights and ordered the children's placement with the "Il Forteto" community, near Florence. Two of the main leaders of that community had been convicted in 1985 of the ill-treatment of three handicapped people (a girl and two boys) who had stayed there. One of them was also convicted of sexual abuse. The case-file shows that the two men continue to hold positions of responsibility within the community and are actively involved in the proceedings concerning the first applicant's children and in the arrangements for looking after them.
On 9 September 1997 the Youth Court ordered that the first applicant should have contact with the younger child only, but she was prevented from doing so in practice. Subsequently, it ordered that she should receive counselling in preparation for contact with the younger child. Visits that had already been arranged were, however, suspended in July 1998. Subsequently, following the Youth Court's decision of 22 December 1998 to allow contact with both children, the first applicant was allowed to visit them for the first time on 29 April 1999. A second visit took place on 9 September 1999, but social services decided to suspend all visits thereafter.
The first applicant, who purported also to be acting on behalf of her children, complained of infringements of Article 8 of the Convention in that her parental rights had been suspended, her children had been taken into care, the authorities had delayed before finally allowing her to see the children, too few contact visits had been organised and the authorities had placed the children at "Il Forteto".

The second applicant also alleged a violation of Article 8, complaining that the authorities had discounted the possibility of her being given the care of her grandsons and delayed organising contact with them.

Law: Government's preliminary objections – The Italian Government had contested, firstly, the first applicant's standing also to act on behalf of her children. They went on to contend that the Belgium Government had no standing to intervene, since their intervention was based solely on the fact that the elder child was a Belgian national.

The Court said that minors could apply to the Court even, or indeed especially, if they were represented by a mother who was in conflict with the authorities. It considered that in the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there was a danger that some of those interests would never be brought to the Court's attention and that the minor would be deprived of effective protection of his rights under the Convention. Consequently, even though the mother had been deprived of parental rights – indeed, that was one of the causes of the dispute which she had referred to the Court – her standing as the natural mother sufficed to afford her the necessary power to apply to the Court on the children's behalf, also, in order to protect their interests. The Government's preliminary objection had, therefore, to be dismissed, both as regards the *locus standi* of the first applicant's children and the standing of the Belgium Government to intervene in the proceedings.

Article 8 (suspension of the first applicant's parental authority and the removal of the children) – The Court noted that the first applicant's domestic circumstances seriously deteriorated in 1994. It was particularly struck by the negative role played by her former husband. The case file showed that it was he who had been largely responsible for the violent atmosphere within the family through his repeated assaults on the children and his former wife.

However, it had to be noted, too, that even after separating from her former husband, the first applicant had found it difficult to look after her children (a report by a neuropsychiatrist employed by the local health authority indicated that the first applicant was suffering from a personality disorder and was incapable of managing the complex situation of her family and children). The problem was compounded by the severe trauma suffered by the elder child as a result of the paedophile abuse of him by a social worker who had succeeded in ingratiating himself with the first applicant's family. The Court considered that, against that background, the authorities' intervention was based on relevant and sufficient reasons and was justified by the need to protect the children's interests. Consequently, there had been no violation of Article 8 of the Convention on that account.

Conclusion: no violation (unanimously).

Article 8 (contact between the first applicant and her children) – The Court considered, firstly, that the decision of 9 September 1997 to prohibit any contact between the first applicant and her elder son did not appear to have been based on sufficiently valid reasons. It was true that the child had gone through a very difficult and traumatic experience. However, a measure as radical as the total severance of contact could be justified only in exceptional circumstances. While the complex circumstances that were harmful to the family life and the development of the children had fully justified their being temporarily taken into care, the grave situation within the first applicant's family did not justify by itself contact with the elder child being severed.

The Court further noted that although the decision of 9 September 1997 had provided for the organisation of visits with the younger son, nothing further was done until 6 March 1998, when the Florence Youth Court finally decided to require visits to be preceded by a preparatory programme for the mother. However, nothing had come of that as, just two days before the first visit had been due to take place on 8 July 1998, the Youth Court had decided, at the request of the deputy public prosecutor, who had just started an investigation concerning the children's father, to suspend the visits that had already been scheduled. It was difficult to identify the basis on which the Youth Court had reached such a harsh and drastic decision, since the deputy public prosecutor's application had been based on the mere possibility, unsupported by any objective evidence, that the scope of the investigation might

be enlarged to include the mother. The Court had to conclude that both the deputy public prosecutor and the Youth Court had acted irresponsibly.
Subsequently, despite the Youth Court's order of 22 December 1998 for the resumption of visits by 15 March 1999, the first visit did not take place until 29 April 1999. What was more, it did not prove to be the beginning of regular and frequent contact to assist the children and their mother in re-establishing their relationship. Continued separation could certainly not be expected to help cement family bonds that had already been put under considerable strain.
It was apparent from the case file that, from the first visit, social services had played an inordinate role in the implementation of the Youth Court's decisions and adopted a negative attitude towards the first applicant, one for which the Court found no convincing objective basis (for example, having carefully examined the video and audio recordings of the visits, the Court had found both the visits themselves and their outcome to be far less negative than the reports of social services suggested). In reality, the manner in which social services had dealt with the situation up till then had helped to accentuate the rift between the first applicant and the children, creating a risk that it would become permanent. The fact that there had been only two visits (after one and a half year's separation) since its decision of 22 December 1998 should have incited the Youth Court to investigate the reasons for the delays in the programme, yet it had merely accepted the negative conclusions of social services, without conducting any critical analysis of the facts.
Consequently, there had been a violation of Article 8 on that point.
Conclusion: violation (unanimously).
Article 8 (decision to place the children with the "Forteto" community) – The Court noted that two of the principal leaders and co-founders of "Il Forteto" had been convicted in 1985 by the Florence Court of Appeal of the ill-treatment and sexual abuse of three handicapped people staying in the community.
The Court was not called upon to express an opinion on "Il Forteto" as such or on the general quality of care which that community offered to children placed there. Nor was it for the Court to become involved in the debate between the supporters and opponents of "Il Forteto". However, the fact that the two members of the community convicted in 1985 continued to hold positions of responsibility within the community could not be regarded as innocuous and meant that a detailed examination of the concrete situation of the first applicant's children was called for.
The Court noted that, contrary to the assertions of the respondent Government, the evidence on the case file showed that the two leaders concerned played a very active role in bringing up the first applicant's children. The Court had strong reservations about that.
The Court's reservations were reinforced by the fact that, as the Government acknowledged, the Youth Court had been aware of the convictions of the two members of the community concerned when it took the decisions regarding the first applicant's children, (though it was true that neither had committed any further offences since 1985). A further contributory factor was the sexual abuse to which the elder child had been subjected in the past. The combination of those two factors (the past sexual abuse against the elder child and the criminal antecedents of the two community leaders), made the first applicant's concerns about her children's placement at "Il Forteto" understandable from an objective standpoint.
It also had to be noted that the authorities had at no point explained to the first applicant why, despite the men's convictions, sending the children to "Il Forteto" did not pose a problem. Parents should not be forced, as they had been in the case before the Court, merely to stand by while their children were entrusted into the care of a community whose leaders included people with serious previous convictions for ill treatment and sexual abuse. The situation had been compounded by the following two sets of circumstances.
Firstly, some of the leaders of "Il Forteto", including one of the two men convicted in 1985, appeared to have contributed substantially to delaying or hindering the implementation of the decisions of the Florence Youth Court to allow contact between the first applicant and her children.
Secondly, the evidence pointed to the first applicant's children having been subjected to the mounting influence of the leaders at "Il Forteto", including, once again, one of the two men

convicted in 1985. That influence had been exerted with the aim of distancing the boys, particularly the elder boy, from their mother.
In the Court's view, the facts showed that the leaders of "Il Forteto" responsible for looking after the first applicant's children had helped to deflect the implementation of the Youth Court's decisions from their intended purpose of allowing visits to take place. Moreover, it was not known who really had effective care of the children at "Il Forteto".
That situation should have prompted the Youth Court to increase its level of supervision. However, it did not do so. In practice, the leaders concerned worked in a community which enjoyed very substantial latitude and did not appear to be subject to effective supervision by the relevant authorities.
Furthermore, experience showed that when children remained in the care of a community for a protracted period, many of them never returned to a real family life outside the community. Accordingly, the Court saw no valid justification for there being no time-limit on the care order concerning the first applicant's children, especially as that appeared to be in contravention of the relevant provisions of Italian law.
The fact of the matter was that the absence of any time-limit on the care order, the negative influence of the people responsible for the children at "Il Forteto", coupled with the attitude and conduct of social services, were in the process of driving the first applicant's children towards an irreversible separation from their mother and long-term integration within "Il Forteto".
Consequently, in the aforementioned circumstances, the children's uninterrupted placement to date at "Il Forteto" did not satisfy the requirements of Article 8 of the Convention.
Conclusion: violation (unanimously).
Article 8 (position of the second applicant) – The Court noted that the evidence on the case file indicated that the second applicant would have had substantial difficulty in looking after the children properly. The Court consequently considered that the authorities' decision not to entrust the children into the second applicant's care had been based on reasons that remained relevant even after the second applicant's move to Italy, which in any event was interrupted by her trips to Belgium.
With regard to contact between the second applicant and the children, the Court noted that her attitude had initially been characterised by a degree of incoherence. Subsequently, despite the decision of the Florence Youth Court on 22 December 1998 that contact between the second applicant and the children should start before 15 March 1999, she had failed to get in touch but had simply waited to hear from social services, even after the expiry of the time-limit fixed by the Youth Court. Although the Court was not persuaded by the Government's explanation for the delay in implementing the Youth Court's order concerning the second applicant, it considered that she had not furnished any valid explanation for her failure to act after the time-limit had expired or to inform the relevant authorities when she travelled to Belgium. The Court concluded that there had been no violation of Article 8 as regards the second applicant.
Conclusion: no violation (unanimously).
Article 3 – Although the fact that some of the witness statements produced by the first applicant gave cause for concern and the Government had not contested their veracity, the Court agreed with the opinion of the Commission that there was nothing on the case file to indicate that the children had been subjected to treatment contrary to Article 3 of the Convention at "Il Forteto". It also had to be noted in that connection that the first applicant had not lodged a criminal complaint with the relevant domestic authorities. Consequently, there had been no violation of Article 3.
Conclusion: no violation (unanimously).
Article 2 of Protocol No. 1 – The Court noted that the case file showed that the first applicant's elder son had begun school shortly after arriving at "Il Forteto". The younger child has just started nursery school. Furthermore, with regard to the influence of "Il Forteto" on the children's upbringing, the Court referred to its conclusions on the placement of the children within that community. Consequently, there had been no violation of Article 2 of Protocol No. 1.

Conclusion: no violation (unanimously).
Article 41 – The Court pointed out that it followed from Article 46 of the Convention that a judgment in which the Court found a breach imposed on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Furthermore, subject to monitoring by the Committee of Ministers, the respondent State remained free to choose the means by which it would discharge its legal obligation under Article 46 of the Convention, provided that such means were compatible with the conclusions set out in the Court's judgment. Accordingly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction was to provide reparation solely for damage suffered by those concerned to the extent that such events constituted a consequence of the violation that could not otherwise be remedied.
The Court considered that the first applicant had undoubtedly sustained non-pecuniary damage. Ruling on an equitable basis, it awarded her ITL 100,000,000.
It considered, further, that the children had personally sustained damage, too. Ruling on an equitable basis, it awarded each child in person ITL 50,000,000.
As to the costs incurred before the Convention institutions, the Court awarded the applicant's lawyer ITL 17,685,000 (after deduction of the sum which the lawyer had received on account from the first applicant, which the State was to pay to the latter, and the sums already paid to her by way of the legal aid granted to the applicants by both the Commission and the Court.)
Judges Zupančič expressed a consenting opinion and this is annexed to the judgment.

APPENDIX IV

Cases of Lustig-Prean and Beckett v. the United Kingdom and Smith and Grady v. the United Kingdom (just satisfaction) – Extract from press release

Mr Lustig-Prean and Mr Beckett, British nationals, were born in 1959 and 1970 and live in London and Sheffield (United Kingdom) respectively. Ms Smith and Mr Grady, British nationals, were born in 1966 and 1963 and live in Edinburgh and London respectively.
All four applicants, who were at the relevant time members of the United Kingdom armed forces, are homosexual. The Ministry of Defence applies a policy which excludes homosexuals from the armed forces. The applicants, who were each the subject of an investigation by the service police concerning their homosexuality, all admitted their homosexuality and were administratively discharged on the sole ground of their sexual orientation, in accordance with Ministry of Defence policy. They were discharged in January 1995, July 1993, November 1994 and December 1994 respectively. In November 1995 the Court of Appeal rejected their judicial review applications.
Non-Pecuniary damage – The applicants essentially submitted that the investigations and their discharge because of their homosexuality were insulting, humiliating and degrading events and that the discharge deprived each of them of chosen and successful careers. Ms Smith also stressed the substantial and continuing negative psychological effect of her discharge and the preceding investigation.
The Court referred to the reasons noted in its principal judgments as to why it considered the interferences with the applicants' Convention rights to have been "especially grave" and it found that the investigations and the discharge of each applicant were profoundly destabilising events in their lives which had, and it was not excluded, continued to have a significant emotional and psychological impact on each of them. It awarded each applicant GBP 19,000 and rejected the claims for aggravated damages and interest.
Pecuniary damage – The applicants claimed compensation amounting to the difference between what would have been their service income and benefits (including the benefits from

the service non-contributory pension scheme) and their civilian income and benefits. All made certain presumptions about the potential progress of their service careers had they not been dismissed and also described their civilian employment record since discharge.
On the date of the present judgments, Mr Lustig-Prean is running his own property company, Mr Beckett has been employed by the police since 1996, Ms Smith has worked very little since her discharge and was unemployed and Mr Grady is an administrator in the London office of the Chicago Board of Trade.
The Court recalled that, in principle, a judgment in which the Court finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. However, in the present cases, the Court was of the view that a precise calculation of the sums necessary to make complete reparation in respect of pecuniary losses was prevented by the inherently uncertain character of the damage flowing from the violation. While the Court did not accept the Government's contention that no award should be made in respect of future losses, given the large number of imponderables involved in its assessment, it did consider that the greater the interval since the discharge of the applicants the more uncertain the damage became. Accordingly, the Court stated that the question to be decided was the level of just satisfaction, in respect of both past and future pecuniary loss, which it was necessary to award to each applicant.
The Court went on to note the reasons, detailed in the principal judgements, as to why it had found that the discharge of the applicants had a profound effect on their careers and prospects, pointing out that the significant differences between civilian and service life and qualifications, together with the emotional and psychological impact of the investigations and of the consequent discharges, rendered it difficult for the applicants to find equivalent civilian careers. It also noted the applicants' service career prospects had they not been discharged and found the loss of a non-contributory pension to be significant.
The Court awarded compensation (inclusive of interest) to Mr Lustig-Prean of GBP 39,875 (past loss of earnings), GBP 25,000 (future loss of earnings) and GBP 30,000 (loss of the benefit of the non-contributory service pension scheme), making a total of GBP 94,875. It also awarded compensation (inclusive of interest) to Mr Beckett of GBP 34,000 (past loss of earnings), GBP 7,000 (future loss of earnings) and GBP 14,000 (loss of the benefit of the non-contributory service pension scheme), making a total of GBP 55,000.
On the same basis, the Court awarded compensation (inclusive of interest claimed) to Ms Smith of GBP 30,000 (past loss of earnings), GBP 15,000 (future loss of earnings) and GBP 14,000 (loss of the benefit of the non-contributory service pension scheme), making a total of GBP 59,000 and (inclusive of interest claimed) to Mr Grady, GBP 25,000 (future loss of earnings) and GBP 15,000 (loss of the benefit of the non-contributory service pension scheme), making a total of GBP 40,000.
Costs and expenses – All applicants claimed costs and expenses in relation to the Convention proceedings, for which the Court awarded GBP 16,000 to Mr Lustig-Prean, GBP 15,000 to Mr Beckett and a total sum of GBP 32,000 to Ms Smith and Mr Grady, who were jointly represented before the Court. Mr Lustig-Prean also claimed reimbursement of the costs and expenses of his domestic judicial review proceedings, for which the Court awarded him GBP 18,000 (inclusive of VAT). Mr Grady was awarded GBP 200 for costs in domestic proceedings.
Judge Loucaides expressed in both cases a partly dissenting and partly concurring opinion which is annexed to the judgments.

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