CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 32
on the case-law of the Court
July 2001

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

Statistical information[1]

		July	2001
I. Judgments delivered			
Grand Chamber		4	18(20)
Chamber I		53(66)	201(217)
Chamber II		7	122
Chamber III		13(16)	92(99)
Chamber IV		7	63(70)
Total		**84(100)**	**496(528)**
II. Applications declared admissible			
Section I		4	87 (95)
Section II		3	142(143)
Section III		7	164(169)
Section IV		3	119(121)
Total		**17**	**512(528)**
III. Applications declared inadmissible			
Section I	- Chamber	6	51
	- Committee	142	822
Section II	- Chamber	4	61(62)
	- Committee	213	913
Section III	- Chamber	2	62
	- Committee	294	1292(1293)
Section IV	- Chamber	7	60(71)
	- Committee	177(255)	1125(1203)
Total		**845(923)**	**4386(4477)**
IV. Applications struck off			
Section I	- Chamber	10	18
	- Committee	1	19
Section II	- Chamber	0	32(214)
	- Committee	5	20
Section III	- Chamber	1	10
	- Committee	3	26
Section IV	- Chamber	0	4(6)
	- Committee	3	9
Total		**23**	**138(322)**
Total number of decisions[2]		**885(986)**	**5036(5328)**
V. Applications communicated			
Section I		18	243(254)
Section II		9	145(146)
Section III		17	113(115)
Section IV		15	180(184)
Total number of applications communicated		**59**	**681(699)**

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

Judgments delivered in July 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	4	0	0	0	4
Section I	29(32)	24(34)	0	0	43(56)
Section II	7	0	0	0	7
Section III	13(16)	0	0	0	13(16)
Section IV	7	0	0	0	7
Total	**60(66)**	**24(34)**	**0**	**0**	**84(100)**

Judgments delivered in January - July 2001					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	16(18)	0	1	1[1]	18(20)
Section I	150(155)	48(58)	2	1(2)[1]	201(217)
Section II	83	38	0	1[2]	122
Section III	84(91)	7	1	0	92(99)
Section IV	53(59)	10(11)	0	0	63(70)
Total	**386(406)**	**103(114)**	**4**	**3(4)**	**496(528)**

[1] Just satisfaction.
[2] Revision.
[3] Of the 370 judgments on merits delivered by Sections, 21 were final judgments.

[* = judgment not final]

ARTICLE 2

LIFE
Disappearance: *friendly settlement*.

K. AYDIN, C. AYDIN and S. AYDIN - Turkey (Nº 28293/95, Nº 29494/95 and Nº 30219/96)
Judgment 10.7.2001 [Section I]

The case concerns the disappearance of the applicants' husband/father and the alleged destruction of their home and possessions by members of the security forces. The parties have reached a friendly settlement on the basis of an *ex gratia* payment to the applicants. In addition, the following statements were made by the Government:

- The Government regret the occurrence of the actions which have led to the bringing of the present applications, in particular the disappearance of Mr Müslüm Aydın and the anguish caused to his family.
- It is accepted that the unrecorded deprivation of liberty and insufficient investigations into the allegations of disappearance constituted violations of Articles 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention.
- The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will be made in this context. To this end, necessary co-operation in this process will continue to take place.

LIFE
Abduction and murder by village guards and effectiveness of investigation: *violation*.

AVŞAR - Turkey (Nº 25657/94)
*Judgment 10.7.2001 [Section I]
(see Appendix I).

LIFE
Disappearance of the applicant's brother after his alleged arrest by the police and lack of investigation into the disappearance : *violation.*

IRFAN BILGIN - Turkey (Nº 25659/94)
*Judgment 17.7.2001 [Section I]
(see Appendix II).

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment in custody: *friendly settlements*.

DEĞER - Turkey (Nº 24934/94)
AVCI - Turkey (Nº 24935/94)
ORAK - Turkey (Nº 24936/94)
BOĞA - Turkey (Nº 24938/94)
DOĞAN - Turkey (Nº 24939/94)
PARLAK, AKTÜRK and TAY - Turkey (Nº 24942/94)
KIZILGEDIK - Turkey (Nº 24944/94)
BOĞ - Turkey (Nº 24946/94)
DEMIR - Turkey (Nº 24990/94)
ŞENSES - Turkey (Nº 24991/94)
Judgments 10.7.2001 [Section I]

These cases concern alleged ill-treatment in custody and the length of time taken to bring detainees before a judge. The parties have reached friendly settlements on the basis of *ex gratia* payments to each of the applicants. In addition, the following statements were made by the Government:

- The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained in custody notwithstanding existing Turkish legislation and the resolve of the Government to prevent such occurrences.
- It is accepted that the recourse to torture, inhuman or degrading treatment or punishment of detainees constitutes a violation of Article 3 of the Convention and the Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such forms of ill-treatment - including the obligation to carry out effective investigations - is respected in the future. The Government refer in this connection to the commitments which they undertook in the Declaration agreed on in Application no. 34382/97 and reiterate their resolve to give effect to those commitments. They note that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of ill-treatment in circumstances similar to those of the instant application as well as more effective investigations.
- The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place.

INHUMAN TREATMENT
Alleged ill-treatment during arrest: *communicated*.

POPESCU - Romania (N° 49234/99)
[Section I]

Shortly before 2.30 p.m. on 23 April 1998 the applicant was arrested and taken to police headquarters on suspicion of being implicated in the illegal import of a consignment of cigarettes into Romania. The consignment had been unloaded from a Ukrainian aircraft that had landed at a military airport during the night of 16 to 17 April 1998. At 1.20 a.m. on 24 April 1998 the applicant was taken into police custody pursuant to the Code of Criminal Procedure in connection with the offence. He was imprisoned, but it was only later that he

was informed that he would be prosecuted for complicity in smuggling offences. He was released at 1.20 a.m. on 25 April. On 27 April, while at the wheel of his car, the applicant was forced to stop when two vehicles blocked his path. The vehicles were unmarked and the men who got out were in plain clothes and did not disclose their identity. They pulled the applicant out of his car and threatened him with a gun before proceeding to punch, kick and hit him with batons until he passed out. They took him to police headquarters where he learned that his assailants were members of the Intervention and Special-Action Force from the Ministry of the Interior. When questioned, the applicant said that he had helped to bring consignments of cigarettes into the country in his capacity as the head of an air-freight company. He added that he was certain that the imports were authorised, as they had been ordered and supervised by a colonel from the Ministry of the Interior. On 28 April 1998 the applicant was brought before the public prosecutor's office. He underwent a medical examination which revealed a number of marks caused by recent blows. The applicant was released at 1 a.m. on 29 April. Later that day he was remanded in custody for thirty days. The order remanding him in custody contained particulars of the suspected offences and, as required by the Code of Criminal Procedure, a statement that the applicant's detention was necessary because he posed a threat to public order. No details were given to explain why he was considered a threat. He was further remanded in custody three times by the territorial military court. On 28 July 1998 the military court of appeal ordered his release. The military courts held that the officers accused of wrongfully arresting and falsely imprisoning the applicant and of ill-treating him on 27 and 28 April 1998 had no case to answer. The applicant's appeal against that decision was dismissed. In February 1999 he was sentenced to twelve-years' imprisonment for conspiracy and smuggling. That sentence was reduced on appeal but increased beyond the original term on a further appeal. The applicant's applications for release from police custody and detention pending trial have been dismissed.
Communicated under Articles 3 and 5(1)(c), (2), (3) and (4).

INHUMAN TREATMENT
Alleged torture in police custody: *communicated*.

MADI - France (N° 51294/99)
[Section I]

The applicant complains that he was subjected to ill-treatment while in police custody. He was arrested at the same time as Mr Selmouni (see *Selmouni v. France* [GC], no. 25803/94 ECHR 1999-V) and convicted in the same proceedings. Both he and Mr Selmouni also complain of the unreasonable length of the proceedings against the police officers accused of ill-treating them (seven years and three months). The applicant is a civil party to those proceedings.
Communicated under Articles 3 and 6(1).

DEGRADING TREATMENT
Conditions of detention of a four-limb deficient Thalidomide victim: *violation*.

PRICE - United Kingdom (Nº 33394/96)
*Judgment 10.7.2001 [Section III]
(see Appendix III).

DEGRADING TREATMENT
Conditions of detention and alleged victimisation: *no violation*.

VALAŠINAS - Lithuania (Nº 44558/98)
*Judgment 24.7.2001 [Section III]
(see Appendix IV).

DEGRADING TREATMENT
Body search of male prisoner in presence of female prison officer: *violation*.

VALAŠINAS - Lithuania (Nº 44558/98)
*Judgment 24.7.2001 [Section III]
(see Appendix IV).

EXTRADITION
Expulsion to the United States of a person running the risk of life imprisonment without possibility of release: *inadmissible*.

NIVETTE - France (Nº 44190/98)
Decision 3.7.2001 [Section I]

An international warrant was issued by an American criminal court for the arrest of the applicant, an American national, for the murder of his companion. He was arrested in France and detained with a view to extradition. The American authorities lodged an extradition request with the French Ministry of Foreign Affairs. The French courts issued an opinion in favour of his extradition subject to their receiving an assurance from the American authorities that the latter would not call for or carry out the death penalty in his case. The courts referred to a statement by the American prosecution attorney in which he had said that he would not seek the application of the death penalty. The applicant's appeal to the Court of Cassation was dismissed. The *Conseil d'État* dismissed the applicant's appeal against the extradition order, holding that the Government had obtained sufficient assurances from the American authorities. The applicant alleged that in any event he faced a full life sentence for the offence of which he was accused.
Inadmissible under Article 3: It was clear from the statement issued by the American prosecuting attorney in the case, a statement which he had subsequently reiterated and expanded upon, that he had given an undertaking on oath that the State of California would not plead any of the special circumstances that had to be shown to exist for capital punishment or a full life sentence to be imposed and that that undertaking was binding on his successors and the State of California. That reiterated undertaking and the fact that under Californian law a full life sentence could only be imposed in the instant case if the prosecuting attorney pleaded special circumstances, a course he had undertaken not to take, were decisive. The assurances obtained by the French State accordingly enabled the danger of a full life sentence being imposed on the applicant to be excluded. His extradition was therefore not likely to expose him to a serious risk of being subjected to treatment or a penalty prohibited by those Articles: manifestly ill-founded.

EXPULSION
Deportation of Chechen to Russia: *admissible*.

K.K.C. - Netherlands (N° 58964/00)
Decision 3.7.2001 [Section I]

The applicant, a Russian national of Chechen origin, is to be deported to the Russian Federation. In 1992, he started being involved in the activities of the Chechen army. In 1994, he was accused of treason and immediately arrested by the Chechen military authorities. He managed to escape and remained in hiding in Chechnya until 1997, when he fled to the Netherlands. He unsuccessfully filed with the State Secretary of Justice a first application for asylum or a residence permit on humanitarian grounds. His appeal was rejected. He made a second application for asylum which was also turned down. His subsequent appeal was to no avail. In his appeal, the applicant relied on a statement made by the State Secretary of Justice, according to whom Chechens not holding a residence permit for another area in the Russian Federation than Chechnya should not be expelled until the situation of displaced Chechens in the Russian Federation had improved. This statement was deemed irrelevant in the applicant's case, on the ground that he had a criminal record in the Netherlands - he had been found guilty of a minor offence and shoplifting. According to the Circular on Aliens, no balance had thus to be made between the applicant's interests and the public interest through an assessment of his offences.
Admissible under Article 3.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Allegations of illegal prolongation of police custody: *communicated*.

POPESCU - Romania (N° 49234/99)
[Section I]
(see Article 3, above).

PROCEDURE PRESCRIBED BY LAW
Lawfulness of continuing confinement in secure institution after expiry of detention order: *no violation*.

RUTTEN - Netherlands (Nº 32605/96)
*Judgment 24.7.2001 [Section I]
(see Appendix V).

Article 5(3)

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Alleged failure to bring the applicant promptly before judge or other officer following his arrest: *communicated*.

POPESCU - Romania (N° 49234/99)
[Section I]
(see Article 3, above).

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Detention prolonged more than six days under the Prevention of Terrorism (Temporary Provisions) Act 1989 without the detainee being brought before a judge: *inadmissible*.

MARSHALL - United Kingdom (N° 41571/98)
Decision 10.7.2001 [Section IV]

On 21 February 1998, around 3.15 p.m., the applicant was arrested under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989. He was brought to a holding centre where he was questioned about his involvement in paramilitary activity, including the abduction and murder of an individual. On 23 February 1998, an application was made for an extension order under the 1989 Act, prolonging the applicant's detention for a further three days. The Secretary of State granted the extension requested. On 26 February 1998, a further request for an extension of the applicant's detention of forty-eight hours was made and granted by the Secretary of State. On 27 February 1998, around 5 p.m., the applicant was released without charge. He had been kept in detention six days, one hour and fifty minutes. While in detention, he was at no stage presented before any judicial authority. He had access to a solicitor.
Inadmissible under Articles 5(3) and 13: The period of extended detention of the applicant in the absence of judicial involvement had to be considered incompatible with Article 5(3). However, the question arose whether the failure to observe the requirements of that provision was met by the validity of the derogation made on 23 December 1983 under Article 15. The security situation in Northern Ireland at the time of the applicant's detention had not improved to the point that it would no longer have been justified to refer to it as a public emergency threatening the life of the nation. The authorities continued to be confronted with the threat of terrorism notwithstanding the reduction of its incidence. The weeks preceding the applicant's detention were characterised by an outbreak of deadly violence. The authorities' assessment of the situation in terms of threats which organised violence posed for the life of the community and the search for peaceful settlement could not be contested. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogation necessary to avoid it. As to the decision to prolong the applicant's detention in the absence of judicial intervention, at the time of his arrest the continued reliance on the system of administrative detention of suspected terrorists for periods of up to seven days did not result in the overstepping of the margin of appreciation which is accorded to the authorities in determining their response to the threat to the community. At the material time, the threat of terrorist attacks was still real and the paramilitary groups in Northern Ireland retained the organisational capacity to kill and maim on a wide scale. Although the applicant contested the effectiveness of the safeguards against abuse of the administrative power of extended detention, it appeared that they provided an important measure of protection. It was not disputed that the remedy of habeas corpus was available to the applicant had he chosen to use

it to challenge the lawfulness of the initial arrest or detention. Although he disputed the effectiveness of this remedy, he did not invoke Article 5(4). There was moreover no violation of Article 13, the requirements of which are less strict that those of Article 5(4). Furthermore, persons whose detention has been extended under section 14 of the 1989 Act have an enforceable right to consult a solicitor after forty-eight hours from the time of their arrest. The applicant had frequent access to a solicitor throughout his detention. He could have made representations to the Secretary of State, urging the latter to reject the request to have his detention extended, and challenged by way of judicial review the Secretary of State's decision to grant the request. Besides, detainees are entitled to inform a relative or a friend about their detention and to have access to a doctor. It could not be accepted that the authorities failed to conduct a meaningful review of the continuing necessity for the derogation to Article 5(3). An annual review was carried out, and Parliament debated annually any proposal to renew the legislation and the authorities approached the operation of the 1989 Act with an eye to developments in the political and security situation in Northern Ireland. In February 2001, the Government finally withdrew their derogation. It did not appear either that the Government was in breach of their obligations under the International Covenant on Civil and Political Rights by maintaining their derogation after 1995. In conclusion, the impugned derogation satisfied the requirements of Article 15 and, thus, the applicant could not complain of a violation of Article 5(3). There was no appearance of a violation of Article 13 either: manifestly ill-founded.

Article 5(4)

REVIEW OF LAWFULNESS OF DETENTION
Alleged lack of court to carry out speedy review of lawfulness of detention: *communicated*.

POPESCU - Romania (N° 49234/99)
[Section I]
(see Article 3, above).

SPEEDY REVIEW
Length of time taken to decide on request for prolongation of confinement in secure institution: *violation*.

RUTTEN - Netherlands (Nº 32605/96)
*Judgment 24.7.2001 [Section I]
(see Appendix V).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings in which lawyer is ordered to pay court costs "wasted" by reason of his negligence in handling the case and its consequences on the proceedings: *communicated*.

TÖRMÄLÄ and others - Finland (N° 41258/98)
[Section IV]

The first applicant owned a limited liability company, Oilco Oy, the third applicant; the fourth applicant is a real estate corporation. The second applicant represented the other applicants in the domestic proceedings. In 1993, a bank requested the payment of a loan and initiated debt-recovery proceedings against Oilco Oy. The domestic courts found that the company was responsible for the payment of the debt. The company was later wound up. The applicants started criminal proceedings against the bank's financing manager and a lawyer representing the bank. The District Court found the manager and lawyer of the bank guilty of aggravated extortion. However, they were acquitted by the Court of Appeal, which ordered the second applicant, who acted as counsel for the other applicants in the proceedings, to pay the court costs wasted by reason of his failure to provide sufficient clarification of the facts of the case, although there had been no pre-trial investigation. The Court of Appeal found that the second applicant had unnecessarily prolonged the proceedings and been responsible for the extra work counsel for the accused had to produce.
Communicated under Article 6(1).

APPLICABILITY
Applicability of Article 6 to tax assessment proceedings: *Article 6 not applicable*.

FERRAZZINI - Italy (Nº 44759/98)
Judgment 12.7.2001 [Grand Chamber]
(see Appendix VI).

ACCESS TO COURT
Exclusion of jurisdiction of German courts with regard to claim for return of property confiscated in Czechoslovakia for the purpose of post-war reparations: *no violation*.

PRINCE HANS ADAM II OF LIECHTENSTEIN - Germany (Nº 42527/98)
Judgment 12.7.2001 [Grand Chamber]
(see Appendix VII).

ACCESS TO COURT
Rejection of a request for compensation as a result of a new interpretation by the Court of Cassation of the conditions for submitting a cassation appeal: *admissible*.

MERCURI - Italy (N° 47247/99)
Decision 5.7.2001 [Section II]

From 1991 to 1993 the applicant was held in custody pending trial. He was acquitted in 1994 in a decision that was final as the acts forming the basis of the charge had been decriminalised in the meantime. In 1996 he lodged a claim for compensation in the manner prescribed by the domestic law for the period spent in custody before his acquittal. When making his claim, he complied with the procedures laid down by the applicable case-law. In January 1998 he obtained compensation for the period he had spent in custody after decriminalisation of the acts. He appealed to the Court of Cassation on the ground that the period for which he had been awarded compensation was too short. In September 1998 the Court of Cassation set aside the compensation award. In so doing, it followed a recent judgment of the full court delivered on 26 November 1997 that rendered the applicant's claim for compensation inadmissible as it had not been made, that is to say lodged with the Court of Cassation, either by the applicant in person or by a lawyer holding special authority. However, as that judgment was a recent precedent, the Court of Cassation held that it was equitable to allow a set-off with respect to the costs of the proceedings.
Admissible under Article 6: Under domestic law, a person held in custody was entitled to reparation if he was acquitted and the outcome of the applicant's claim for compensation was directly relevant to the determination of that entitlement. The right to reparation was inherently a civil one. Article 6 was therefore applicable.

ACCESS TO COURT
Alleged immunity of local authority with regard to granting of permission to a company which subsequently emitted toxic fumes and failure to enforce decisions ordering cessation of the emissions: *inadmissible*.

LAM and others - United Kingdom (N° 41671/98)
Decision 5.7.2001 [Section IV]

The first applicant was the owner of a restaurant. His wife and two children, the other applicants, lived with him on the premises. In 1988, a company obtained permission to use a storage building situated next to the restaurant. The company subsequently used a warehouse, also situated in the immediate vicinity of the restaurant, for paint spraying, with the result that toxic cellulose paint spray fumes were emitted into the restaurant via an illegal vent inserted into the wall of the warehouse. As a result of the toxic fumes, the applicant became ill. In 1989, following complaints lodged by the applicant and other residents, the local authority granted the company permission to build a chimney so that the fumes would be channelled away. However, the chimney worsened the situation, the fumes being directed downwards. The applicants were eventually forced to abandon their home and business. Although the local authority served a prohibition notice and an abatement notice on the company, no steps were taken to enforce them. In 1991, the applicants instituted proceedings against the company claiming an injunction and damages, but they did not pursue their claim as the company was not covered by insurance in respect of public liability for emission of fumes. In 1992, the company stopped its activities. The applicants turned to the local authority for redress and, in 1994, claimed damages for personal injury and damage to property as a result of the local authority's negligence. In January 1996, judge C. ordered that the applicants' statement of claims be struck out; he ruled that it would not be just and reasonable to impose a duty of care on the local authority and considered that the applicants' primary remedy was the private law remedy for damages and an injunction against the company to stop the

nuisance. As to the local authority's failure to take enforcement action, the judge emphasised that a number of remedies were available, notably a private law claim against the person creating the nuisance. The Court of Appeal, on which judge P. sat, dismissed the applicants' appeal and the House of Lords refused leave to appeal. The applicants sought to challenge, in separate proceedings and by way of judicial review, a decision of the Central Planning Committee of the local authority of November 1997. This decision concerned a complaint of the applicants in which they maintained that the activity conducted by the company was not covered by the planning permission. The committee's decision was not favourable to the applicants. The decision was notified to the first applicant on 16 January 1996. Fifteen days after notification, the first applicant sought leave to apply for judicial review. Judge K. dismissed the application, finding that it had been lodged out of time. According to Order 53, rule 4(1) of the Rules of Supreme Court and by analogy with time-limits laid down in planning legislation, it could not be considered that the requirement of promptness embodied in this provision was met by the application. The applicants' renewed application was dismissed on the same grounds by the Court of Appeal, in which judge P. took part.

Inadmissible under Article 6(1): (i) As regards the decision striking out the applicants' statement of claim, the applicants maintain that they had a right to recover damages from the local authority on account of the harm they personally suffered as a result of its negligence in licensing an industrial activity not covered by the planning regulations and then failing to take steps to bring an end to the health risks created by that activity. On the assumption that the applicants had an arguable claim that they could invoke such a right, with the consequence that they could rely on Article 6, they had the opportunity to state their case before the High Court and the Court of Appeal. The domestic courts gave close consideration to the question whether they had sustainable action in domestic law and paid careful regard to the case-law precedents drawn both from the law of negligence and administrative law relied on by the parties. At no stage of the proceedings did the domestic courts rely on a doctrine of immunity to shield the local authority from the consequence of a civil action against them. The courts, by reasoned decisions, found that it was not just and reasonable to impose liability on the local authority in respect of alleged negligence in the grant of planning permission or the discharge of its statutory responsibilities. Moreover, they had regard to the remedies available in domestic law to individuals aggrieved by planning decisions which affected their interests. Finally, they considered that Parliament had not intended to confer a civil right on an individual to sue a local authority in respect of its failure to take enforcement action for a nuisance stemming from an activity licensed by it. The intention of Parliament was to place onus on the individual to take action against the source of the alleged nuisance and to that end a range of remedies was available. Contrary to what the applicants allege, these court decisions did not confer immunity on the defendant local authority. In conclusion, the applicants were able to test the arguability of their claims under domestic law. Following adversarial procedure, the domestic courts ruled against them, finding that they had no substantive right to assert: manifestly ill-founded.

(ii) In so far as the applicants contend that the strict application of the promptness requirement of Order 53, rule 4(1) restricted their access to court, the requirement was a proportionate measure taken in pursuit of a legitimate aim. The applicants were not deprived of an access to court *ab initio*, and they failed to satisfy a strict procedural requirement which served a public interest purpose, that is the need to avoid prejudice caused to third parties who may have altered their situation on the strength of administrative decisions. As regards the applicants' challenge to the participation of judge P. in the Court of Appeal proceedings, although based on the same factual background, the issues raised before the Court of Appeal in the two sets of proceedings were different. It is in fact common in the Convention countries that judges in higher courts deal with similar or related cases in turn. The participation of judge P. in both sets of proceedings was not reasonably sufficient to cast doubts as to his impartiality: manifestly ill-founded.

Inadmissible under Articles 8, 13 and 1 of Protocol No. 1: It was open to applicants to take legal proceedings against the company occupying the premises at the rear of the restaurant when their health and business were first affected by the pollution caused by the company's

activities. However, it was only in 1991 that they sought an injunction and damages, after they had been forced to move out of their restaurant and home. Domestic law offered them available and sufficient remedies to test the lawfulness of the company's actions in terms of both civil and criminal law in the absence of the action of the local authority. In this connection, the applicants have not explained adequately why they failed to take timely action against the company on the basis of the tort of nuisance or why they refrained from seeking an injunction to bring an end to the emissions. Moreover, environmental and public health legislation allows an individual to lay a complaint before a Magistrates' Court, which they failed to do. Further, they did not seek an order of mandamus against the local authority to require it to perform its enforcement duties under the environmental and public health legislation. Therefore, the applicants failed to avail themselves of the available remedies: manifestly ill-founded.

FAIR HEARING
Intervention of Prosecutor General by way of appeal for annulment against final judgment: *admissible*.

A.S.I.T.O. - Moldova (N° 40663/98)
Decision 10.7.2001 [Section I]

In October 1992, the applicant company's licence by which it could engage in banking activities was withdrawn. In November 1994, the applicant company concluded a contract with company F., as a "joint commercial transaction". The applicant company made a capital contribution of MDL 330,000 to company F., which was to pay in return MDL 269,000 in monthly instalments. The capital contribution had to be reimbursed by November 1995. A penalty of 0.50% of the unpaid sum for each day of delay was set in case of non-compliance with the contract. However, company F. was unable to pay more than MDL 420,750. In May 1996, the applicant company started proceedings for breach of contract before the Arbitration Court. In August 1996, the Arbitration Court found in favour of the applicant company and issued an order of payment. In June 1997, after the decision had become final, the Prosecutor General lodged an extraordinary appeal for annulment against the decision in issue, requesting that the contract be declared null and void for non-compliance with the Law on Banks and Banking activities. The Economic Tribunal allowed the appeal. The applicant company lodged an appeal against this decision, claiming that the contract was of a private nature and that there was no public interest justifying the interference of the State. The Supreme Court rejected the appeal, finding that the contract was a disguised credit operation. The court concluded that the contract was illegal, on the ground that the applicant no longer had the required banking licence. The Supreme Court rejected the applicant company's subsequent petition for review. In the meantime, in July 1996, the Prosecutor General filed an application for the annulment of the contract with the Arbitration Court, which rejected it. In June 1997, the Prosecutor General unsuccessfully lodged an appeal against the judgment of July 1996. The Prosecutor General lodged an extraordinary appeal in order to obtain the annulment of the contract and the confiscation of the profit. In December 1997, the Supreme Court found that the contract was a disguised credit operation for which the applicant company had no licence and declared it null and void. The court rejected the Prosecutor General's request for confiscation of the profit. The applicant company's petition for review was turned down. In February 1998, the Prosecutor General and the Ministry of Finance filed a joint application for the confiscation of the sum paid by company F. to the applicant company. In February 1999, the Economic Tribunal ordered that MDL 181,500 be confiscated from the applicant company. The applicant company's appeal for annulment was rejected.
Admissible under Article 6(1) and Article 1 of Protocol No. 1.

ADVERSARIAL PROCEEDINGS
Exequatur of ecclesiastical court judgment despite alleged infringement of right to a fair hearing: *violation*.

PELLEGRINI - Italy (Nº 30882/96)
Judgment 20.7.2001 [Section II]
(see Appendix VIII).

PUBLIC HEARING
Lack of public hearing: *violation*.

MALHOUS - Czech Republic (Nº 33071/96)
Judgment 12.7.2001 [Grand Chamber]
(see Appendix IX).

PUBLIC JUDGMENT
Absence of public pronouncement of judgment at first instance: *no violation*.

LAMANNA - Austria (Nº 28923/95)
*Judgment 10.7.2001 [Section III]

Facts: The applicant, a French national, who was held in remand and subsequently acquitted of attempted murder, aggravated robbery and the unlawful possession of a weapon, applied unsuccessfully for compensation. He complained that Salzburg Regional Court and Linz Court of Appeal dismissed his compensation claim on the ground that the suspicion against him had not been dispelled, which violated the presumption of innocence, laid down in Article 6(2). He also relied on Article 6(1), in that the decisions were not delivered publicly.
Law: Article 6(1) – The Court observed that the Salzburg Regional Court's decision of 10 October 1994 – although taken after a public hearing of the applicant's compensation claim – was not delivered publicly as it was dependent on his acquittal becoming final. Instead, it was served in writing on 4 November 1994. The decision by the Linz Court of Appeal of 1 February 1995, which contained a summary of the Regional Court's decision, confirmed its application of section 2 § 1 (b) of the 1969 Act and rendered its decision final, was initially also delivered in writing and was not rendered public by any other means. However, following the Supreme Court's judgment of 9 November 2000, it was delivered publicly on 9 February 2001. Having regard to the compensation proceedings as a whole as well as to their specific features, the Court found that the purpose of Article 6(1), namely subjecting court decisions to public scrutiny, thus enabling the public to study the manner in which the courts generally approached compensation claims for detention on remand, was achieved in the present case by the public delivery of the appellate court's judgment.
Article 6(2) – In considering the complaint raised under Article 6(2), the Court recalled that once an acquittal had become final, the voicing of any suspicions of guilt, including those expressed in the reasons for the acquittal, was incompatible with the presumption of innocence. Both the Salzburg Regional Court and the Linz Court of Appeal made statements in the compensation proceedings following the applicant's final acquittal, expressing the view that there was a continuing suspicion against him, thus casting doubt on his innocence.
The Court held, unanimously that there had been no violation of Article 6(1) and that there had been a violation of Article 6(2).
Finding no causal link between the breach of the Convention found and the alleged pecuniary damage for loss of earnings suffered as a result of his detention on remand, the Court made no award for damage. The applicant was awarded 75,135 Austrian schillings for costs and expenses.

Article 6(1) [criminal]

FAIR HEARING
Confiscation order based on presumption that assets acquired through drug trafficking: *no violation*.

PHILLIPS - United Kingdom (Nº 41087/98)
*Judgment 3.7.2001 [Section III]
(see Appendix X).

FAIR HEARING
Conviction of manslaughter solely on basis of autopsy carried out illegally: *communicated*.

PARRIS - Cyprus (N° 56354/00)
[Section II]

The applicant was convicted of manslaughter on the sole basis of an autopsy carried out following an order of the Attorney General, who had no competence to issue such an order. The Supreme Court dismissed the applicant's appeal on points of law. The court noted that the applicant had had the opportunity to cross-examine witnesses against him and enjoyed full equality of arms.
Communicated under Articles 6(1) and 13.

INDEPENDENT TRIBUNAL
Independence and impartiality of State Security Court: *violation*.

SADAK and others - Turkey (Nº 29900/96, Nº 29901/96, Nº 29902/96 et Nº 29903/96)
Judgment 17.7.2001 [Section I]
(see Article 6(3)(b), below).

Article 6(2)

PRESUMPTION OF INNOCENCE
Applicability of the presumption of innocence to post-trial proceedings: *Article 6(2) not applicable*.

PHILLIPS - United Kingdom (Nº 41087/98)
*Judgment 3.7.2001 [Section III]
(see Appendix X).

PRESUMPTION OF INNOCENCE
Refusal of compensation for detention on remand despite acquittal: *violation*.

LAMANNA - Austria (Nº 28923/95)
*Judgment 10.7.2001 [Section III]
(see Article 6(1) [criminal], above).

Article 6(3)(a)

INFORMATION ON NATURE AND CAUSE OF ACCUSATION
Recharacterisation of charge without giving defence a proper opportunity to submit arguments: *violation*.

SADAK and others - Turkey (Nº 29900/96, Nº 29901/96, Nº 29902/96 and Nº 29903/96)
Judgment 17.7.2001 [Section I]
(see Article 6(3)(b), below).

Article 6(3)(b)

ADEQUATE TIME
Recharacterisation of charge without giving defence a proper opportunity to submit arguments: *violation*.

SADAK and others - Turkey (Nº 29900/96, Nº 29901/96, Nº 29902/96 and Nº 29903/96)
Judgment 17.7.2001 [Section I]

Facts: The four applicants, all former parliamentarians and members of the former Democracy Party (DEP), were accused of having committed treason, under section 125 of the Turkish Penal Code, punishable by the death penalty, in relation to activities allegedly undertaken in the name of the Kurdistan Workers' Party (PKK) and declarations in support of the PKK. On 8 December 1994 they were convicted by the Ankara State Security Court to 15 year's imprisonment for belonging to an armed organisation, under section 168 of the Penal Code, but the charges under section 125 were thrown out.
Law: Article 6 – Finding that the Ankara State Security Court was not an independent and impartial tribunal within the meaning of Article 6, the Court held, unanimously, that there had been a violation of Article 6. The Court further held, unanimously, that the applicants' rights under Article 6(3)(a), (b) and (d) had been violated, in that they had not been informed in time of modifications to the charges against them and that they had not been able to have key witnesses questioned.
Article 41 – The Court awarded 25,000 American dollars (USD) to each applicant for damage and a total of USD 10,000 for costs and expenses

---

Article 6(3)(d)

EXAMINATION OF WITNESSES
Absence of opportunity to examine prosecution witnesses: *violation*.

SADAK and others - Turkey (Nº 29900/96, Nº 29901/96, Nº 29902/96 et Nº 29903/96)
Judgment 17.7.2001 [Section I]
(see Article 6(3)(b), above).

OBTAIN ATTENDANCE OF WITNESSES
Refusal of court to call witnesses and admit evidence requested by accused in defamation proceedings: *no violation.*

PERNA - Italy (Nº 48898/99)
*Judgment 25.7.2001 [Section II]
(see Appendix XI).

ARTICLE 8

PRIVATE LIFE
Refusal of King to reinstate prince to hereditary title: *communicated*.

BERNADOTTE - Sweden (N° 69688/01)
[Section II]

The applicant is the son of the late King Gustav VI Adolf. He was a prince by descent. In 1934, without the King's consent, he married a woman who was not of royal descent, and as a result lost his title by decision of the King. Since 1976, the applicant has requested several times to be reinstated by the present King in his hereditary title of prince. The most recent petition lodged by the applicant was turned down by the King in December 2000. Under domestic law, these refusals are not subject to review.
Communicated under Articles 35(3) (*ratione temporis*), 8, 6(1) and 13.

PRIVATE LIFE
Random compulsory alcohol and drug test, with sample of urine to provide, imposed on crew of ship: *communicated*.

MADSEN - Denmark (N° 58341/00)
[Section II]

The applicant was employed as a passenger assistant by a shipping company. The applicant had no responsibility for the primary operation of the ship but, as any crew member, was involved in the general safety on board. As part of its staff policy regarding alcohol and drugs, the company introduced a random compulsory alcohol and drug test. Persons selected to undergo the test were to provide a urine sample. The applicant, who had been requested to undergo the test, had to provide a urine sample. The results of the test showed no traces of alcohol or drugs. A trade union to which the applicant was affiliated instituted civil proceedings against the company to contest the test and the requirement to provide a urine sample but the Court of Arbitration found in favour of the company.
Communicated under Article 8.

PRIVATE LIFE
Access to social services' files of applicant who had been placed in voluntary care several times as a child: *admissible*.

M.G. - United Kingdom (N° 39393/98)
Decision 3.7.2001 [Section III]

The applicant was on five occasions during his childhood placed in voluntary care with the social services' department of the local authority. During these periods, his mother was undergoing psychiatric treatment and his father had difficulties coping with him and his brother and sister. By letter of April 1995, the applicant requested access to his social services' records. He later asked whether he had been on the risk list, whether his father had been convicted of crimes against children and about the responsibility of the local authority for the abuse he had suffered as a child. The applicant met a social worker who went through his file with him and gave him hand-written notes of the information he was asking for. The social worker later provided the applicant with further information gleaned from the file in the form of typed notes. By letter of June 1996 to the local authority, the applicant's legal representatives noted that he had been provided with summary information and certain documents only. They requested full access to his file. The local authority replied that his social services' records had been created prior to the entry into force of the Access to Personal Files Act 1987. In a letter of January 1997, the applicant requested specific information about the allegations of ill-treatment and his being abused by his father for years. The local authority referred to the information already given to him.
Admissible under Article 8.

FAMILY LIFE
Taking of child into care at birth on basis of emergency care order: *violation*.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]
[referral of judgment of 27.4.2000 [Section IV]]
(see Appendix XII).

FAMILY LIFE
Taking into care, on basis of emergency care order, of child in children's home: *no violation*.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]
[referral of judgment of 27.4.2000 [Section IV]]
(see Appendix XII).

FAMILY LIFE
Taking of children into care: *no violation*.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]
[referral of judgment of 27.4.2000 [Section IV]]
(see Appendix XII).

FAMILY LIFE
Failure of authorities to take proper steps to reunite parents and children in care: *violation*.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]
[referral of judgment of 27.4.2000 [Section IV]]
(see Appendix XII).

FAMILY LIFE
Restrictions on parents' access to children in care: *no violation*.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]
[referral of judgment of 27.4.2000 [Section IV]]
(see Appendix XII).

FAMILY LIFE
Refusal of King to reinstate prince to hereditary title: *communicated*.

BERNADOTTE - Sweden (N° 69688/01)
[Section II]
(see above).

FAMILY LIFE
Withdrawal of parental authority on account of their alleged incapacity to bring up properly their children due to their low level of intelligence: *admissible*.

KUTZNER - Germany (N° 46544/99)
Decision 10.7.2001 [Section IV]

The two applicants have two daughters who were born in 1991 and 1993. The District Youth Office applied to the Guardianship Court for an order withdrawing their parental rights over their daughters after a report had concluded that owing in particular to their impaired mental development they were incapable of bringing up their children. The Guardianship Court appointed an expert in psychology to draw up a report. It made a provisional order withdrawing the applicants' rights to make decisions as to where the children should live or what medical care they should receive, primarily on the ground that they did not have the necessary intellectual capacity. The children were placed in a children's home. The director of the home expressed the opinion that the applicants should no longer have custody of the children. The expert concluded in the report that the applicants were not apt to bring up their children as they did not possess the necessary intellectual capacity. On the basis of that report and after hearing the applicants, the Guardianship Court made an order withdrawing their parental rights over the two girls, who were then placed in separate, unidentified foster homes. The applicants lodged an appeal with the Regional Court against the decision of the Guardianship Court. The Regional Court appointed a second expert in psychology who also lodged a report that was unfavourable to the applicants. The Regional Court dismissed the appeal. The applicants' appeal to the Court of Appeal against that decision was dismissed, as was their appeal to the Federal Constitutional Court. However, a number of expert witnesses instructed privately by an association that promoted children's rights proved favourable to the applicants. Owing to the fact that that their daughters had been placed in unidentified foster homes, the applicants were unable to see them during the first six months of their placement. At that point the Regional Court made an order granting them visiting rights of one hour

monthly. Contrary to the Regional Court's order, a number of people other than the applicants and their children were present during the visits. The applicants obtained permission from the Guardianship Court to accompany their eldest daughter on her return to school at the start of the school year but were refused a two-hour visit at Christmas.
Admissible under Article 8.

CORRESPONDENCE
Control of prisoners' correspondence: *no violation*.

ERDEM - Germany (Nº 38321/97)
*Judgment 5.7.2001 [Section IV]

Facts: On 7 April 1988, Selahattin Erdem, a Turkish national who had had refugee status in France since December 1987, was arrested on the German border on suspicion of being a member of a terrorist organisation (under Article 129a of the Criminal Code) and falsifying documents. He was placed in detention on remand the following day.
He was kept in detention prior to and during the trial of 18 Kurdistan Workers' Party (PKK) officials, including himself, (which lasted from 24 October 1989 until 7 March 1994) for, among other offences, 11 murders and six counts of unlawful deprivation of liberty. During his detention, the applicant's correspondence with his lawyer was monitored.
On 7 March 1994 the Düsseldorf Higher Regional Court ruled that the applicant - whose true name was not Selahattin Erdem, but Duran Kalkan - was one of the founders of the PKK and a former member of the PKK's Executive Committee who had built up PKK units in Lebanon and Syria. He was found guilty of being a member of a terrorist organisation and sentenced to six years' imprisonment.
The applicant complained of the length of his detention (five years and 11 months), relying on Article 5(3) and Article 6(2). He further complained, relying on Article 8, about the interception of his correspondence with his lawyer.
Law: Article 5(3) – The Court noted that, in order to be compatible with the Convention, the very considerable length of the deprivation of liberty suffered by the applicant would have to have had the most convincing justifications. However, it considered that the grounds cited by the German courts in their decisions had not been sufficient to justify holding the applicant in detention pending trial for 5 years and 11 months. The Court held, unanimously, that there had been a violation of Article 5(3). In view of this finding, the Court considered it unnecessary to consider separately the complaint raised under Article 6(2).
Article 8 – Regard being had to the threat presented by terrorism in all its forms, to the safeguards attending the interception of correspondence in the instant case and to the margin of appreciation left to the State, the Court held that the interference complained of was not disproportionate in relation to the legitimate aims pursued. The Court therefore held, unanimously, that there had been no violation of Article 8.
The Court made no award for just satisfaction, as no demand had been submitted.

CORRESPONDENCE
Control of prisoners' correspondence: *violation*.

VALAŠINAS - Lithuania (Nº 44558/98)
*Judgment 24.7.2001 [Section III]
(see Appendix IV).

ARTICLE 9

MANIFEST RELIGION
Refusal of permission to built a cemetery: *inadmissible*.

JOHANNISCHE KIRCHE and PETERS - Germany (N° 41754/98)
Decision 10.7.2001 [Section IV]

The first applicant is a Christian religious community with public-authority status. In July 1991 it sought planning permission to build a chapel and a cemetery on land it owned. The administrative authorities refused the application and the first applicant sought judicial review in the local administrative court. In December 1993 the administrative court dismissed the application regarding the chapel on the ground that the chapel was to be built on protected land on which there were no other buildings and that there was no guarantee that the land was suitable for building purposes. In August 1994 the relevant administrative authority refused the application concerning the cemetery for the same reasons. In December 1994 the administrative court also dismissed the application for judicial review of the decision concerning the cemetery, again on the same grounds. In July 1996 the administrative court of appeal upheld the judgment of December 1994. It noted in particular that since July 1995 the land concerned had been incorporated into a nature reserve and that a cemetery would be incompatible with that environment. Furthermore, the fact that the first applicant was a religious community could not have had any bearing on the refusal of planning permission since the cemetery could have been built on other land. The administrative court of appeal was particularly swayed by the argument that the land might be unsuitable for building purposes. The Federal Administrative Court dismissed an appeal to it holding that it did not raise a question of fundamental importance. It noted that freedom of religion did not extend beyond the values enshrined in the Constitution, including protection of the environment. The provisions relating to town and country planning did not impose any tighter restrictions on religious communities than on anybody else. The fact that a religious community with public-law status was free to practise its religion did not oblige the authorities to grant it an exemption from statutory restrictions for the protection of the environment. The Federal Constitutional Court dismissed the first applicant's constitutional appeal, holding that freedom of religion and freedom to manifest one's religion were not unrestricted and could be weighed against other constitutional principles.
Inadmissible under Article 9: The contested decisions amounted to a restriction on the right to manifest a religion since they concerned funeral rites. There was a legal basis for that interference. In refusing to grant permission for the building of the cemetery, the authorities had relied on provisions relating to town and country planning, environmental protection and the suitability of the site, in particular the fact that there were no other buildings in the vicinity. In fairness to the first applicant, it was noted that neither the administrative authority nor the administrative courts had referred to its status as a religious community and that it had only been before the administrative court of appeal that the possibility of an interference with its right to freedom of worship had been considered. However, the appellate court had stated that the applicant's status did not afford it the right to build a cemetery on land in a nature reserve. The Federal Court had noted that the right to freedom of religion was delimited by the rights of others and constitutional principles, in particular those concerning environmental protection. Accordingly, the decisions taken by the German authorities had not been directed against the applicant in its capacity as a religious community and would have been applied to anyone else seeking planning permission in the area concerned. In the light of those circumstances and having regard to the wide margin of appreciation which contracting States had in connection with town and country planning, the measure in issue constituted a lawful restriction imposed on the first applicant's freedom to manifest its religion that was justified in principle and proportionate to the aim pursued: manifestly ill founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Defamation of politician by referring to his "fascist past": *violation*.

FELDEK - Slovakia (Nº 29032/95)
*Judgment 12.7.2001 [Section II]
(see Appendix XIII).

FREEDOM OF EXPRESSION
Prohibition on book about Basque independence published abroad: *violation*.

ASSOCIATION EKIN - France (Nº 39288/98)
*Judgment 17.7.2001 [Section III]
(see Appendix XIV).

FREEDOM OF EXPRESSSION
Conviction of journalist for defamation of prosecutor: *violation/no violation*.

PERNA - Italy (Nº 48898/99)
*Judgment 25.7.2001 [Section II]
(see Appendix XI).

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of political party of Islamic persuasion, on the ground that it constituted a centre of activities against secularism and thus undermined democracy: *no violation*.

REFAH PARTISI and others - Turkey (N° 41340/98, 41342-44/98)
*Judgment 31.7.2001 [Section III]
(see Appendix XV).

FREEDOM OF ASSOCIATION
Refusal to register association recognising the existence of a Silesian national minority: *admissible*.

GORZELIK and others - Poland (N° 44158/98)
Decision 17.5.2001 [Section IV]

The applicants consider themselves as “Silesians”. Together with a hundred and ninety other persons, they decided to form an association called the “Union of People of Silesian Nationality”. A memorandum of association was adopted. Reference was made in it to the existence of a Silesian nationality and a Silesian national minority. The applicants lodged an application with the Regional Court for registration of the association. The local Governor, to whom the memorandum of association had been communicated, pursuant to the relevant

domestic legislation, submitted comments. He suggested, as a prerequisite to the association's registration, that its name be changed and that the reference to a Silesian national minority be deleted from the memorandum. After several pleadings of the applicants and the Governor, the Regional Court granted the applicants' request for registration of the association. The Governor lodged an appeal with the Court of Appeal, which subsequently quashed the first instance decision and dismissed the applicants' request for registration of their association. The court noted the consequences that the recognition of a Silesian national minority would have, namely the rights for minorities that would ensue from various statutes, and took into account expert opinions according to which, although Silesians constituted an ethnic group, the features of a nation were not fully developed. Therefore, they could not be considered a national minority and registration could not be granted with such a memorandum. The applicants lodged an appeal on points of law with the Supreme Court, which was dismissed on the same grounds.
Admissible under Article 11.

ARTICLE 15

DEROGATION
United Kingdom's derogation in respect of Northern Ireland: *derogation valid*.

MARSHALL - United Kingdom (N° 41571/98)
Decision 10.7.2001 [Section IV]
(see Article 5(3), above).

ARTICLE 34

HINDER EXERCISE OF RIGHT OF PETITION
Interference with prisoner's correspondence: *no violation*

VALAŠINAS - Lithuania (Nº 44558/98)
*Judgment 24.7.2001 [Section III]
(see Appendix IV).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Croatia)
Effectiveness of remedy in respect of length of court proceedings.

HORVAT - Croatia (Nº 51585/99)
*Judgment 26.7.2001 [Section IV]

The case concerns the length of civil proceedings.
Law: Government's preliminary objection (non-exhaustion) – Proceedings under S. 59(4) of the Constitutional Court Act are considered as being instituted only if the Constitutional Court, after a preliminary examination of the complaint, decides to admit it. Thus, although an individual can lodge a complaint directly, the formal institution of proceedings depends on

the Court's discretion. Furthermore, it is necessary to satisfy two conditions: the individual's constitutional rights must have been grossly violated by the absence of a decision within a reasonable time and there must be a risk of serious and irreparable consequences. Such terms are open to wide interpretation and it remains open to what extent the applicant risks irreparable consequences. The Government have produced only one case in which the Constitutional Court gave a decision under Section 59(4) and the absence of further case-law indicates the present uncertainty of this remedy in practical terms. Consequently, a complaint under S. 59(4) cannot be regarded as an effective remedy in the applicant's case. Moreover, the other remedies invoked by the Government, namely a request to the president of the Municipal Court or the Ministry of Justice to speed up the proceedings, represent a hierarchical appeal which is discretionary and in any event can only lead to proceedings involving exclusively the supervisory organ and the officials concerned. In these circumstances, there does not exist a true legal remedy enabling a person to complain of the excessive length of proceedings in Croatia.
Article 6(1) – The Court considered that the length of the proceedings could not be regarded as reasonable.
Conclusion: violation (unanimously).

Article 35(3)

RATIONE TEMPORIS (CONTINUING SITUATION)
Applicant losing title of prince in 1934 and having made unsuccessful attempts to be reinstated since: *communicated*.

BERNADOTTE - Sweden (N° 69688/01)
[Section II]
(see Article 8, above).

ARTICLE 43

REFERRAL
Scope of rehearing by the Grand Chamber.

K. and T. - Finland (Nº 25702/94)
Judgment 12.7.2001 [Grand Chamber]

The case concerns measures taken in relation to child care (see Appendix XII). It is the first case in which judgment has been given by the Grand Chamber following referral of a Chamber judgment (judgment of 27.4.2000 [Section IV]).
With regard to the scope of its examination, the Grand Chamber considered that its examination covered the entire case, notwithstanding the limited nature of the referral by the Finnish Government.

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. 29):

H.B. - Switzerland (Nº 26899/95)
Judgment 5.4.2001 [Section II]

GÜNAL - Turkey (Nº 19282/92)
ALI ÖZTÜRK - Turkey (Nº 19289/92)
HASAN ÖZTÜRK - Turkey (Nº 19290/92)
KAMIL ÖZTÜRK - Turkey (Nº 19291/92)
MEHMET ÖZTÜRK - Turkey (Nº 19292/92)
MUHSIN ÖZTÜRK - Turkey (Nº 19293/92)
MUSTAFA ÖZTÜRK - Turkey (Nº 19294/92)
SABRI ÖZTÜRK - Turkey (Nº 19295/92)
YUNUS ÖZTÜRK - Turkey (Nº 19296/92)
MEHMET SANCAR - Turkey (Nº 19297/92)
ŞÜKRÜ SARI - Turkey (Nº 19298/92)
MUSTAFA SEZER - Turkey (Nº 19299/92)
BURHAN SÜLÜN - Turkey (Nº 19300/92)
MEHMET SAHIN and others - Turkey (Nº 19301/92)
AZIZ ŞEN and others -Turkey (Nº 19302/92)
CELAL ŞEN and KEZIBAN ŞEN - Turkey (Nº 19303/92)
IBRAHIM TAŞDEMIR - Turkey (Nº 19304/92)
MAHIR TAŞDEMIR and others - Turkey (Nº 19305/92)
MEHMET TAŞDEMIR -Turkey (Nº 19306/92)
ZEKERIYA TAŞDEMIR - Turkey (Nº 19307/92)
ZEKERIYA YILMAZ - Turkey (Nº 19308/92)
ZEKIYE YILMAZ - Turkey (Nº 19309/92)
HAMIT YILMAZ - Turkey (Nº 19310/92)
BAYRAM YÜKSEL - Turkey (Nº 19311/92)
ŞAKIRE ZENGIN - Turkey (Nº 19312/92)
Judgments 10.4.2001 [Section I]

STANČIAK - Slovakia (Nº 40345/98)
MESSOCHORITIS - Greece (Nº 41867/98)
MESSOCHORITIS -Greece (N° 41867/98)
LOGOTHETIS -Greece (Nº 46352/99)
Judgments 12.4.2001 [Section II]

MARÔNEK - Slovakia (Nº 32686/96)
Judgment 19.4.2001 [Section II]

AGGIATO - Italy (Nº 35207/97)
DAVINELLI - Italy (Nº 39714/98)
CANCELLIERI - Italy (Nº 39997/98)
F.C. - Italy (Nº 40457/98)
IALONGO - Italy (Nº 40458/98)
IARROBINO and DE NISCO - Italy (Nº 40662/98)
ROTELLINI and BARNABEI - Italy (Nº 40693/98)
DI DONATO and others - Italy (Nº 41513/98)
MAURANO - Italy (Nº 43350/98)
SCHIAPPACASSE - Italy (Nº 43536/98)
MATERA - Italy (Nº 43635/98)
ARGANESE - Italy (Nº 44970/98)
C.P. - Italy (Nº 44976/98)
ICOLARO - Italy (Nº 45260/99)
TOMMASO PALUMBO - Italy (Nº 45264/99)
S.G., S.M. and P.C. - Italy (Nº 45480/99)
MOTTA - Italy (Nº 47681/99)
Judgments 26.4.2001 [Section II]

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Claim by heir for return of work of art confiscated for the purpose of post-war reparations: *no violation*.

PRINCE HANS ADAM II OF LIECHTENSTEIN - Germany (Nº 42527/98)
Judgment 12.7.2001 [Grand Chamber]
(see Appendix VII).

DEPRIVATION OF PROPERTY
Final court decisions quashed following intervention of Prosecutor General, depriving company of its possessions: *admissible*.

A.S.I.T.O. - Moldova (N° 40663/98)
Decision 10.7.2001 [Section I]
(see Article 6(1) [civil], above).

SECURE THE PAYMENT OF PENALTIES
Confiscation of assets acquired through drug trafficking: *no violation*.

PHILLIPS - United Kingdom (Nº 41087/98)
*Judgment 3.7.2001 [Section III]
(see Appendix X).

Other judgments delivered in July 2001

Article 5(3)

KÜRKÜT - Turkey (Nº 24933/94)
YEŞILTEPE - Turkey (Nº 28011/95)
ÖZÇELIK and others - Turkey (Nº 29425/95)
FIDAN, ÇAĞRO and ÖZARSLANER - Turkey (Nº 29883/96, 29885/96 and 29884/96)
MUTLU and YILDIZ -Turkey (Nº 30495/96)
ÇAKMAK - Turkey (Nº 31882/96)
Judgments 10.7.2001 [Section I]

KARATEPE and KIRT - Turkey (Nº 28013/95)
OKUYUCU and others - Turkey (Nº 28014/95, N° 28015/95 and N° 28016/95)
BAĞCI and MURĞ - Turkey (Nº 29862/96)
DEMIR and others - Turkey (Nº 29866/96, Nº 29867/96 and Nº 29872/96)
ÇALOĞLU - Turkey (Nº 32450/96)
Judgments 17.7.2001 [Section I]

These cases concern the alleged failure to bring the applicants promptly before a judge after they were taken into detention – friendly settlement.

Articles 5(3) and/et 6(1)

KREPS - Poland (Nº 34097/96)
*Judgment 26.7.2001 [Section IV]

ZANNOUTI - France (Nº 42211/98)
*Judgment 31.7.2001 [Section III]

These cases concern the length of detention on remand and the length of criminal proceedings – violation.

Article 5(3) and (4) and Article 6(1)

ILIJKOV - Bulgaria (Nº 33977/96)
Judgment 26.7.2001 [Section IV]

The case concerns the length of detention on remand, the adequacy of the scope of review of the lawfulness of the detention and the non-communication of the prosecution's submissions and the length of the criminal proceedings – violation.

Article 5(4)

HIRST - United Kingdom (Nº 40787/98)
*Judgment 24.7.2001 [Section I]

The case concerns the length of time between reviews by the Parole Board of the continuation of a discretionary life sentence.

Article 6(1)

TRICARD - France (Nº 40472/98)
*Judgment 10.7.2001 [Section III]

The case concerns the dismissal of a cassation appeal on the basis of a five-day time limit applied despite the fact that the appellant lives in French Polynesia – violation.

MORTIER - France (Nº 42195/98)
*Judgment 31.7.2001 [Section III]

The case concerns the striking out of a cassation appeal on the ground of the appellant's failure to implement the judgment appealed against – violation.

ROMO - France (Nº 40402/98)
*Judgment 3.7.2001 [Section III]

VERSINI - France (Nº 40096/98)
CHARLES - France (Nº 41145/98)
*Judgments 10.7.2001 [Section III]

JEDAMSKI - Poland (Nº 29691/96)
*Judgment 26.7.2001 [Section IV]

MALVE - France (Nº 46051/99)
*Judgment 31.7.2001 [Section III]

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

POGORZELEC - Poland (Nº 29455/95)
*Judgment 17.7.2001 [Section I]

The case concerns the length of several sets of civil proceedings – violation/no violation.

VAN NUS - Netherlands (Nº 37538/97)
Judgment 26.7.2001 [Section I]

This cases concerns the length of administrative proceedings – friendly settlement.
GIANNANGELI - Italy (Nº 41094/98)
P.G.F. - Italy (N° 45269/99)
*Judgments 5.7.2001 [Section II]

F.R. and others - Italy (Nº 45267/99)
MARTINEZ - Italy (Nº 41893/98)
*Judgments 26.7.2001 [Section II]

These cases concern the length of criminal proceedings – violation.

Article 8

DI GIOVINE - Italy (Nº 39920/98)
*Judgment 26.7.2001 [Section II]

The case concerns control of a prisoner's correspondence – violation.

Article 1 of Protocol No. 1

HALIM AKÇA - Turkey (Nº 19640/92)
MEHMET AKÇAY - Turkey (Nº 19641/92)
AHMET AKKAYA - Turkey (Nº 19642/92)
IBRAHIM AKKAYA - Turkey (Nº 19643/92)
MUSTAFA AKKAYA - Turkey (Nº 19644/92)
HÜSEYIN BALCI - Turkey (Nº 19645/92)
MACIT BALCI - Turkey (Nº 19646/92)
BILGE BALTEKIN - Turkey (Nº 19647/92)
HALIL BAŞAR - Turkey (Nº 19648/92)
TALIP BAŞAR - Turkey (Nº 19649/92)
AHMET BILGIN - Turkey (Nº 19650/92)
MAHMUT BILGIN - Turkey (Nº 19651/92)
MEHMET BILGIN - Turkey (Nº 19652/92)
YUSUF BILGIÇ - Turkey (Nº 19653/92)
FETHIYE DINÇ - Turkey (Nº 19654/92)
ÜNZILE DOKEL - Turkey (Nº 19655/92)
SAADETTIN EGRIKALE - Turkey (Nº 19656/92)
NAŞIDE EROL - Turkey (Nº 19657/92)
RECEP EROL - Turkey (Nº 19658/92)
SEFER EROL - Turkey (Nº 19659/92)
*Judgments 3.7.2001 [Section I]

KÜÇÜK - Turkey (Nº 26398/95)
*Judgments 10.7.2001 [Section I]

M.T. and others - Turkey (Nº 34502/97)
A.T. and others - Turkey (Nº 37040/97)
E.A. and others - Turkey (Nº 38379/97)
*Judgments 17.7.2001 [Section I]

These cases concern delays in payment of supplementary compensation for expropriation – violation.

APPENDIX I

Avşar v. Turkey judgment - extract from press release

The Court held:

- by six votes to one, that there had been a violation of Article 2 (right to life) of the European Convention on Human Rights in that the authorities failed to carry out an adequate and effective investigation into the circumstances of Mehmet Şerif Avşar's death;
- by six votes to one, that there had been a violation of Article 2 of the Convention in respect of the death of Mehmet Şerif Avşar;
- unanimously, that there had been no violation of Article 3 (prohibition of torture or degrading treatment or punishment);
- by six votes to one, that there had been a violation of Article 13 (right to an effective remedy);
- unanimously, that there had been no violation of Article 14 (prohibition of discrimination).

Under Article 41 (just satisfaction) of the Convention, by six votes to one, the Court awarded the applicant: 40,000 pounds sterling (GBP) for pecuniary damage to be held on behalf of Mehmet Şerif Avşar's wife and children; GBP 20,000 for non-pecuniary damage to be held on behalf of Mehmet Şerif Avşar's wife and children and GBP 2,500 for non-pecuniary damage in respect of the applicant himself and GBP 17,320 for costs and expenses. (The judgment is available only in English.)

Principal facts

The applicant, Behçet Avşar, a Turkish national, is the brother of the late Mehmet Şerif Avşar.

The case concerns, principally, the events between 22 April and 7 May 1994, when Mehmet Şerif Avşar who had been taken away by armed men was found killed outside Diyarbakır.

Mehmet Şerif Avşar was abducted by five village guards and Mehmet Mehmetoğlu. The guards had been sent to Diyarbakır by the Hazro gendarmes to take part in the apprehension of four other suspects. A seventh man also appeared on the scene, who acted with authority as a member of the security forces. The seven men brought Mehmet Şerif Avşar back to the gendarmerie at Saraykapı, where their presence would have been known to the gendarmes. After a while, Mehmet Mehmetoğlu, the seventh man and two of the guards took Mehmet Şerif Avşar out of Diyarbakır.

Despite the complaints of the Avşar family, Mehmet Mehmetoğlu and the five village guards were allowed to return to their homes. They were only taken into custody on or about 5 May 1994. Their statements made no reference to any seventh person, minimised their contacts with the gendarmes and the official nature of the visit to Diyarbakır and were stereotyped. No steps were taken to identify, question or locate the seventh person who had been at the gendarmerie with Mehmet Şerif Avşar and the village guards. His identity, in the circumstances, was likely to have been known to at least some of the gendarmes at the station.

The body of Mehmet Şerif Avşar was found on 7 May 1994, outside Diyarbakır. There was no precise dating as to when he died nor any analysis of marks to verify if he had been ill-treated before his death.

An investigation was effectively conducted by the Saraykapı station commander, which ended on 9 May 1994. The public prosecutor took no further investigatory steps concerning the seventh person, relying in the indictment on the accounts of the village guards. On 5 July 1994, the five village guards appeared before the court and retracted their initial statements, supporting the family's account that a seventh person, a security officer, had been involved.

Some four years later, an individual Gültekin Şütçü, an army specialist sergeant, was identified as possibly being that person. He had disappeared abroad.
Five years, ten months after the commencement of the proceedings, one of the guards was convicted of murder and Mehmet Mehmetoğlu and the other four were convicted of abduction. They were sentenced to 20 years and six years and eight month's imprisonment respectively.
An investigation is pending into Gültekin Şütçü's involvement in the incident.
The applicant complained that his brother was arbitrarily killed while in the custody of security officials and that there was a failure by the authorities to protect his life and to carry out an effective investigation into his killing, in violation of Article 2. Relying on Article 3, he also alleged that his brother had been the victim of serious human rights violations on the basis of racial discrimination. He further relied on Articles 6 and 13 concerning the investigation and criminal trial conducted into his brother's death and alleged that his brother and family had been victims of discrimination contrary to Article 14.

Decision of the Court

Article 2

The alleged failure to carry out an adequate investigation into the killing – The Court observed that the mere fact that the authorities were informed of the abduction of Mehmet Şerif Avşar by village guards and others presenting themselves as security officers, following which he was found dead, gave rise to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the incident.
The Court concluded that the investigation by the gendarmes, public prosecutor and before the criminal court did not provide a prompt or adequate investigation of the circumstances surrounding the killing of Mehmet Şerif Avşar and was, therefore, in breach of the State's procedural obligation to protect the right to life. This rendered recourse to civil remedies equally ineffective in the circumstances. The Court therefore held that there had been a violation of Article 2 in this respect.
The killing of Mehmet Şerif Avşar – The Court was satisfied that Mehmet Şerif Avşar might be regarded as having died after having been taken into custody by agents of the State. It did not accept that the crime was committed by persons acting in their private capacity without the knowledge of the authorities and thereby beyond the scope of the State's responsibility.
The Court recalled that there was a lack of accountability as regarded the security forces in south-east Turkey in or about 1993 and further noted that this case additionally highlighted the risks attached to the use of civilian volunteers in a quasi-police function. It had been established in this case that guards were used regularly on a variety of official operations, including the apprehension of suspects. According to the regulations provided by the Government, village guards were hierarchically subordinate to the district gendarme commander. However, it was not apparent what supervision was, or could be exerted over guards who were engaged in duties outside the jurisdiction of the district gendarme commander. Nor, as the village guards were outside the normal structure of discipline and training applicable to gendarmes and police officers, was it apparent what safeguards there were against wilful or unintentional abuses of position carried out by the village guards either on their own initiative or under the instructions of security officers who themselves were acting outside the law.
Although there was a prosecution which resulted in the conviction of the village guards and Mehmet Mehmetoğlu, there was a failure to investigate promptly or effectively the identity of the seventh person, the security official, and thereby to establish the extent of official knowledge of or connivance in the abduction and killing of Mehmet Şerif Avşar. The investigation and court proceedings did not provide sufficient redress for the applicant's complaints concerning the authorities' responsibility for his brother's death and he might still claim to be a victim, on behalf of his brother, of a violation of Article 2.

No justification for the killing of Mehmet Şerif Avşar being provided, the Court concluded that the Turkish Government was liable for his death. There had accordingly been a breach of Article 2 in this respect.

Article 3

The Court found that it was unsubstantiated that the killing of Mehmet Şerif Avşar was racially motivated. It therefore found no breach of Article 3.

Articles 6 and 13

Since the applicant's complaint under Article 6 essentially concerned the delay in the criminal trial and he was not a party in the proceedings, the Court considered it appropriate to deal with the applicant's complaints under Article 13, which was broad enough to encompass all the issues raised by the applicant with regard to the investigation and trial.
Given the fundamental importance of the right to protection of life, Article 13 required, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure.
On the basis of the evidence adduced in the present case, the Court had found that the Government were responsible under Article 2 of the Convention for the death of the applicant's brother. The authorities thus had an obligation to carry out an effective investigation into the circumstances of the death of the applicant's brother.
However, no effective criminal investigation could be considered to have been conducted in accordance with Article 13. The Court found therefore that the applicant had been denied an effective remedy in respect of the death of his brother and thereby access to any other available remedies at his disposal, including a claim for compensation. Consequently, there had been a violation of Article 13.

Article 14

The Court did not consider that there was sufficient evidence to justify any findings that the applicant, his brother Mehmet Şerif Avşar or other members of his family, who were not applicants, had been victims of intimidation based on their ethnic status or political opinions. Accordingly, there had been no breach of Article 14 in this respect

Judge Gölcüklü expressed a dissenting opinion, which is annexed to the judgment.

APPENDIX II

Irfan Bilgin v. Turkey judgment - extract from press release

The Court held unanimously that:
- there had been a violation of Article 2 (right to life) of the European Convention on Human Rights on account of the death of the applicant's brother and of the lack of an adequate and effective investigation into the circumstances of his disappearance;
- there had been a violation of Article 5 (right to liberty and security);
- there had been a violation of Article 13 (right to an effective remedy).

Under Article 41 (just satisfaction) of the Convention, the Court awarded 200,000 French francs (FRF) for non-pecuniary damage (which was to be held by the applicant for his

brother's heirs), FRF 25,000 for pecuniary damage and FRF 45,000 for legal costs and expenses.

Principal facts

The applicant, İrfan Bilgin, a Turkish national, is the brother of Kenan Bilgin, who disappeared on 12 September 1994 while being held in custody.
Kenan Bilgin was detained in the offices of the antiterrorist section of the Ankara Security Headquarters after operations conducted in the locality on 12 September 1994. He remained there until at least 3 October 1994. Eleven witnesses said that they had seen him and heard him cry out for help and moan while they were being held in custody on the premises.
The applicant had written to State Counsel at the Ankara National Security Court requesting information about his brother's disappearance. An investigation had been carried out by the Ankara Public Prosecutor, who had heard evidence from eyewitnesses and instructed the Ankara Security Headquarters to open an inquiry into the applicant's allegations.
The applicant complained that his brother had disappeared while in custody and had probably been killed by the security forces during interrogation. He added that he had not had an effective remedy in respect of the violations of his brother's rights. He relied on Articles 2, 5 and 13 of the Convention

Decision of the Court

Article 2

The Court was satisfied that Kenan Bilgin had to be presumed dead after being taken into custody by the security forces, although they had refused admit that he had been detained. His death therefore engaged the responsibility of the respondent State. Since the authorities had not furnished any explanation as to what had happened after Kenan Bilgin was taken into custody and had not put forward any ground justifying recourse to lethal force by its agents, responsibility for the death was attributable to the respondent Government. There had therefore been a violation of Article 2 on that account.
As to the allegation that the investigation had been inadequate, the Court stated that the police denials that they had held Kenan Bilgin and their firmly-held view that the allegations of the alleged eyewitnesses were intended solely "to mislead public opinion and damage the police in their operations against illegal organisations" had impeded the public prosecutor's investigation. Moreover, the Court was particularly struck by the fact that the public prosecutor had not been given a list of the police officers on duty at the material time and had been unable to take evidence from them or to arrange a meeting with the alleged eyewitnesses, despite the fact that he was an independent civil servant in charge of the inquiry and did not accept the information that had been provided by the police. Furthermore, the Court expressed concern over the public prosecutor's remarks that "he had been unable to visit the cells at Ankara Security Headquarters because, at the material time, the police enjoyed a form of impunity".
The Court found that the authorities had failed to conduct a proper inquiry into the applicant's allegations. In it's view, the relevant authorities had not discharged their fundamental responsibilities in that regard. There had therefore also been a violation of Article 2 on that account.

Article 5

The Court observed that its reasoning and findings set out above with regard to Article 2 left no room for doubt that Kenan Bilgin's detention had infringed Article 5. There was no mention of his place of detention in the custody record or any official trace of his whereabouts or regarding his fate. That of itself had to be seen as a most serious omission as it permitted people who had deprived others of their liberty to conceal their participation in a

crime, to cover their tracks and to escape responsibility for the fate of those concerned. Thus, for detention to be compatible with the formal requirements of Article 5 § 1, for each person detained, a precise record had to be kept of the date, time and place of detention, the grounds for detention and the names of those in charge.
The Court noted that the authorities had not furnished any plausible explanation regarding the whereabouts of the applicant's brother or what had become of him and that no proper inquiry had been conducted, despite the fact that there were some ten witnesses who continued to affirm that Kenan Bilgin had been held in the Security Headquarters offices and that his condition when they had seen him had been critical. Consequently, the Court concluded that Kenan Bilgin had been taking into custody unofficially and that his custody did not satisfy any of the requirements laid down by Article 5. It accordingly found a violation of Article 5.

Article 13

The Court noted that the applicant had indisputably had *prima facie* grounds for alleging that his brother had been taken into custody. He had given the authorities precise information regarding the place and the length of the alleged detention and had also supplied the names of the people who had seen him in custody. Furthermore, since the Court had found that the authorities had failed to discharge their obligation to protect the applicant's brother's life, the applicant was entitled to an effective remedy. Consequently, the authorities had been under a duty to carry out an effective investigation into the disappearance. The Court concluded that the respondent State had failed to perform that obligation. There had therefore been a violation of Article 13.

APPENDIX III / ANNEXE III

Price v. the United Kingdom judgment - extract from press release

The Court held, unanimously, that there had been a violation of Article 3 (prohibition of degrading treatment) of the European Convention on Human Rights.
Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 4,500 Pounds Sterling (GBP) for non-pecuniary damage and GBP 4,000 for legal costs and expenses. (The judgment exists only in English.)

Principal facts

Adele Price, a British national, is four-limb deficient as a result of phocomelia due to Thalidomide. She also suffers from problems with her kidneys.
On 20 January 1995, in the course of civil proceedings in Lincoln County Court for recovery of a judgment debt, she refused to answer questions put to her concerning her financial position and was committed to prison for seven days for contempt of court. The judge did not make any enquiry into where the applicant would be detained before committing her to immediate imprisonment.
Because her case had been heard during the afternoon, it was not possible to take her to prison until the next day and she spent that night in a cell in Lincoln Police Station. This cell, which contained a wooden bed and a mattress, was not specially adapted for a disabled person. The applicant alleged that: she was forced to sleep in her wheelchair, since the bed was hard and would have caused pain in her hips; that the emergency buttons and light switches were out of her reach; and that she was unable to use the toilet since it was higher than her wheelchair and therefore inaccessible.
During her detention in the police cell, the custody record showed that she was complaining of the cold every half hour – a serious problem for the applicant who suffered from recurring

kidney problems and who, because of her disability, could not move around to keep warm. Finally a doctor was called, who noted that she could not use the bed and had to sleep in her wheelchair, that the facilities were not adapted to the needs of a disabled person and that the cell was too cold. No action was taken by the police officers responsible for the applicant's custody to ensure that she was removed to a more suitable place of detention or released. Instead, she had to remain in the cell all night, although the doctor did wrap her in a space blanket and give her some painkillers.

The following day she was taken to New Hall Women's Prison, Wakefield, where she was detained in the prison's Health Care Centre until the afternoon of 23 January 1995. Her cell had a wider door for wheelchair access, hand pulls in the toilet recess and a hydraulic hospital bed.

However, she had problems sleeping (as the bed was too high) and in terms of hygiene. During her first night's detention, the nursing record stated that the duty nurse was unable to lift the applicant alone and thus had difficulty in helping her use the toilet. The applicant submitted that, as a result, she was subjected to extremely humiliating treatment at the hands of male prison officers. The Government denied her account, but nonetheless it seemed clear that male officers were required to assist in lifting the applicant on and off the toilet.

By the time of her release the applicant had to be catheterised because the lack of fluid intake and problems in getting to the toilet had caused her to retain urine. She claimed to have suffered health problems for ten weeks thereafter, but has supplied no medical evidence to support her claim.

The applicant alleged that her committal to prison and her treatment in detention violated Article 3.

Decision of the Court

Article 3

The Court considered it significant that the documentary evidence submitted by the Government, including the contemporaneous custody and medical records, indicated that the police and prison authorities were unable adequately to cope with the applicant's special needs.

The Court observed that there were notes in the applicant's admission records by a doctor and staff nurse expressing concern over the problems that were likely to be encountered during her detention, including reaching the bed and toilet, hygiene and fluid intake, and mobility if the battery of her wheelchair ran down. Such was the concern that the prison governor authorised staff to try and find the applicant a place in an outside hospital. In the event, however, they were unable to transfer her because she was not suffering from any particular medical complaint.

The Court found no evidence of any positive intention to humiliate or debase the applicant. However, it considered that to detain a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment contrary to Article 3.

Judges Bratza, Costa and Greve expressed separate opinions, which are annexed to the judgment.

APPENDIX IV

Valašinas v. Lithuania judgment - extract from press release

The Court held unanimously that there had been a violation of Articles 3 and 8 of the European Convention on Human Rights, and no violation of Article 34 of the Convention. Under Article 41 of the Convention, the Court awarded the applicant 6,000 Lithuanian litai (LTL) for non-pecuniary damage, and granted him 1,693.87 Lithuanian litai for legal costs and expenses.

Principal facts

The applicant, Mr Juozas Valašinas, a Lithuanian national, was born in 1974. He served a sentence of 9 years' imprisonment for the theft, possession and sale of firearms. From an unspecified date in early April 1998 he was detained in Pravieniškės prison (*Pravieniškių 2-oji sustiprintojo režimo pataisos darbų kolonija*). He was released on 14 April 2000 following a Presidential pardon. The present case concerned the conditions of the applicant's detention in Pravieniškės prison and his treatment there.

The applicant alleged, in particular, that the conditions of his detention in Pravieniškės prison and his treatment there amounted to degrading treatment in breach of Article 3 of the Convention. In this regard the applicant complained about the general facilities in the prison. He also complained about a body search on 7 May 1998 following a visit from a relative: The applicant alleged that he had been obliged to strip naked in the presence of a woman prison officer with the intention of humiliating him; he had been then ordered to squat, and his sexual organs and the food he had received from the visitor had been examined by guards who had worn no gloves. In addition, the applicant complained of victimisation by the prison administration by way of disciplinary penalties for his legitimate activities as a defender of prisoners' rights, for which there was no was no adequate review.

The applicant also complained that the control of his correspondence with the Convention organs by the prison authorities amounted to a violation of Articles 8 and 34 of the Convention.

Decision of the Court

Article 3 of the Convention

The Court reiterated its case-law according to which ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The Court stressed that the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.

The Court found that the general conditions of detention in Pravieniškės prison did not breach Article 3 of the Convention.

As regards the body search of the applicant on 7 May 1998, the Court considered that, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. In the Court's opinion the way in which this particular search had been conducted showed a clear lack of respect for the applicant, and in effect diminished his human dignity. The Court concluded that it had constituted degrading treatment in breach of Article 3 of the Convention.

As regards the alleged victimisation of the applicant, the Court found that the applicant had not been victimised for the expression of his views or the exercise of his legitimate rights and freedoms. The Court considered that the disciplinary penalties imposed on the applicant had not been arbitrary, had been subjected to a proper review by the prison administration and the Ombudsman, and had not amounted to treatment contrary to Article 3 of the Convention.

Articles 8 and 34 of the Convention

The Court found that the control of the applicant's correspondence with the Convention organs amounted to an unjustified interference with the right to respect for correspondence under Article 8 of the Convention, given its constant case-law on the subject, but had not significantly interfered with the applicant's right of petition under Article 34.

APPENDIX V

Rutten v. the Netherlands judgment - extract from press release

The Court held:
- by six votes to one that there had been no violation of Article 5 § 1 of the Convention;
- unanimously that there has been a violation of Article 5 § 4 of the Convention;

The Court held unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and, under Article 41 of the Convention, awarded the applicant 7,000 Netherlands Guilders less 1,354.23 Euros for legal costs and expenses.

Principal facts

The case concerns an application brought by a Dutch national, Ronald Rutten, who was born in 1970 and lives in Doetinchem (the Netherlands).
On 13 August 1992, the Arnhem Court of Appeal convicted the applicant of attempted homicide and sentenced him to eight months' imprisonment. The Court also imposed a post-sentence confinement order with compulsory psychiatric treatment, which took effect on 4 September 1992. It was due to expire on 4 September 1994. By decision of 9 September 1994, the Arnhem Regional Court prolonged this post-sentence confinement order by one year until 4 September 1995.
On 19 July 1995, the public prosecutor filed a request with the Arnhem Regional Court to prolong the post-sentence confinement order by one year. By decision of 6 October 1995, the Arnhem Regional Court prolonged the order by one year.
The applicant filed an appeal with the Arnhem Court of Appeal on 11 October 1995. In its decision of 29 January 1996, the court noted that the decision of 6 October 1995 had been given seventeen days after the expiry of the two months' time-limit provided for in Article 509t of the Code of Criminal Procedure. It held that the Regional Court could and should have scheduled a hearing date before the expiry of the time-limit, but that its failure to observe the time-limit entailed neither the inadmissibility of the prosecution's request, nor the incompetence of the Regional Court to examine this request, nor the expiry of the applicant's post-sentence confinement.
The Court of Appeal decided to quash the decision of 6 October 1995 and, after having noted the advice of the psychiatric institution where the applicant was receiving treatment and an expert opinion concerning the applicant's medical condition, the Court of Appeal decided to prolong the applicant's post-sentence confinement by one year.
The applicant complains that his rights guaranteed under Article 5 §§ 1 and 4 (right to liberty and security) of the European Convention on Human Rights have been violated. He claims

that the decision to prolong his post-sentence confinement was not given speedily in a procedure prescribed by law, in that, from 4 September to 6 October 1995, there was no judicial decision authorising his detention.

Decision of the Court

Article 5 of the Convention

The Court considered that the applicant's detention had not become unlawful despite the expiry of the post-sentence confinement order, since the situation arising in the present case had been provided for in Article 509q of the Code of Criminal Procedure which stated that the order remained in force until a final decision on the request for prolongation had been taken. The Court was further of the opinion that the applicant's detention between the expiry of the post-sentence confinement order and the determination by the Arnhem Regional Court of the request for the prolongation thereof could not be regarded as involving an arbitrary deprivation of liberty. There had, therefore, been no violation of Article 5 § 1 of the Convention. However, noting that the request for prolongation of the post-sentence confiment order had been determined by the Arnhem Regional Court more than two months and seventeen days after the date on which the prolongation request had been filed, that the decision of the Regional Court was taken more than one month after the order had expired, and that it then took the Arnhem Court of Appeal more than three months to determine the applicant's subsequent appeal, the Court found that the lawfulness of the applicant's detention had not been decided speedily as required by Article 5 § 4 of the Convention. Accordingly, there had been a violation of this provision.
Judge Maruste expressed a partly dissenting opinion, which is annexed to the judgment.

APPENDIX VI

Ferrazzini v. Italy judgment - extract from press release

In a judgment delivered at Strasbourg on 12 July 2001 in the case of Ferrazzini v. Italy, the European Court of Human Rights held by 11 votes to 6 that Article 6 (right to a fair trial) of the European Convention on Human Rights did not apply to the case before it and by 16 votes to 1 that the complaint under Article 14 (prohibition of discrimination) of the Convention was inadmissible.

Principal facts

The applicant is an Italian citizen who was born in 1947 and lives in Oristano (Italy). The applicant and another person transferred land, property and a sum of money to a limited liability company, A., which the applicant had just formed and of which he owned – directly and indirectly – almost the entire share capital and was the representative. The company, whose object was organising farm holidays for tourists, applied to the tax authorities for a reduction in the applicable rate of certain taxes payable on the above-mentioned transfer of property, in accordance with a statute which it deemed applicable, and paid the sum it considered due.
The present case concerns three sets of proceedings. The first concerned in particular the payment of capital gains tax and the two others the applicable rate of stamp duty, mortgage registry tax and capital transfer tax, and the application of a reduction in the rate.

In the first set of proceedings, the tax authorities served a supplementary tax assessment on the applicant on 31 August 1987 on the ground that the property transferred to the company had been incorrectly valued. They requested payment of an aggregate sum of 43,624,700 Italian lire comprising the tax due and penalties. The applicant applied to the Oristano District Tax Commission for the supplementary tax assessment to be set aside. The case was struck out of the list in 1998.
In the other two sets of proceedings, the tax authorities served two supplementary tax assessments on the company on the ground that it was ineligible for the reduced rate of tax to which it had referred. The tax authorities' note stated that the company would be liable to an administrative penalty of 20% of the amounts requested if payment was not made within sixty days.
The two applications for the above-mentioned supplementary tax assessments to be set aside were still pending on appeal on 27 October 2000.
The applicant complained that the length of the proceedings had exceeded a "reasonable time" contrary to Article 6 § 1 of the European Convention on Human Rights. The applicant also complained that he had been "persecuted by the Italian courts" and relied on Article 14 of the Convention.

Decision of the Court

Article 6 § 1 of the Convention

Pecuniary interests were clearly at stake in tax proceedings, but merely showing that a dispute was "pecuniary" in nature was not in itself sufficient to attract the applicability of Article 6 § 1 under its "civil" head. There might exist "pecuniary" obligations *vis-à-vis* the State or its subordinate authorities which, for the purpose of Article 6 § 1, were to be considered as belonging exclusively to the realm of public law and were accordingly not covered by the notion of "civil rights and obligations". Apart from fines imposed by way of "criminal sanction", this would be the case, in particular, where an obligation which was pecuniary in nature derived from tax legislation or was otherwise part of normal civic duties in a democratic society.
It was incumbent on the Court to review whether, in the light of changed attitudes in society as to the legal protection that fell to be accorded to individuals in their relations with the State, the scope of Article 6 § 1 should not be extended to cover disputes between citizens and public authorities as to the lawfulness under domestic law of the tax authorities' decisions.
Relations between the individual and the State had clearly developed in many spheres during the fifty years which had elapsed since the Convention had been adopted, with State regulation increasingly intervening in private-law relations. This had led the Court to find that procedures classified under national law as being part of "public law" could come within the purview of Article 6 under its "civil" head if the outcome was decisive for private rights and obligations. Moreover, the State's increasing intervention in the individual's day-to-day life, in terms of welfare protection for example, had required the Court to evaluate features of public law and private law before concluding that the asserted right could be classified as "civil".
In the tax field, developments which might have occurred in democratic societies did not, however, affect the fundamental nature of the obligation on individuals or companies to pay tax. In comparison with the position when the Convention had been adopted, those developments had not entailed a further intervention by the State into the "civil" sphere of the individual's life. The Court considered that tax matters still formed part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the tax authority remaining predominant. It considered that tax disputes fell outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produced for the taxpayer.

The principle according to which the autonomous concepts contained in the Convention had to be interpreted in the light of present-day conditions in democratic societies did not give the Court power to interpret Article 6 § 1 as though the adjective "civil" (with the restriction that that adjective necessarily placed on the category of "rights and obligations" to which that Article applied) were not present in the text.
Accordingly, Article 6 § 1 did not apply under its "civil" head to tax proceedings.

Article 14 of the Convention

Since the complaint had not been substantiated, it had to be dismissed as manifestly ill-founded.

Judges P. Lorenzen, C. Rozakis, G. Bonello, V. Strážnická, C. Bîrsan and M. Fischbach expressed a dissenting opinion, which is annexed to the judgment.

APPENDIX VII

Prince Hans Adam II of Liechtenstein v. Germany judgment - extract from press release

The Court held unanimously that there had been:
- no violation of Article 6 § 1 (access to court and fairness of the proceedings) of the European Convention on Human Rights;
- no violation of Article 1 of Protocol No. 1 (protection of property) to the Convention,
- no violation of Article 14 (prohibition of discrimination).

Principal facts

Prince Hans-Adam II of Liechtenstein, monarch of Liechtenstein, was born in 1945 and lives in Vaduz.
A painting - "*Szene an einem römischen Kalkofen*", by Pieter van Laer - owned by the applicant's father, was confiscated by former Czechoslovakia, while it was on Czechoslovak territory, under Decree No. 12 on the "confiscation and accelerated allocation of agricultural property of German and Hungarian persons and of those having committed treason and acted as enemies of the Czech and Slovak people", issued by the President of former Czechoslovakia on 21 June 1945.
When, in 1991, the Municipality of Cologne received the painting on loan from the Czech Republic, the applicant instituted court proceedings against the Municipality in order to gain possession of the painting.
The German civil courts declared his application inadmissible on the ground that they did not have jurisdiction. The inadmissibility decision was made under Chapter 6, Article 3 §§ 1 and 3 of the Convention on the Settlement of Matters arising out of the War and the Occupation, signed in 1952, as amended in 1954, according to which claims or actions against persons having acquired or transferred title to property on the basis of measures carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of specific agreements, are not admissible. The courts considered that the confiscation of the applicant's father's property under the Decree No. 12 constituted a measure within the meaning of Chapter 6, Article 3.
The Federal Constitutional Court refused to entertain the applicant's constitutional complaint on the ground that it offered no prospect of success, considering, among other things, that the exclusion of jurisdiction did not amount to a violation of the right to property as these clauses and the Settlement Convention as a whole served to settle matters dating back to a time before

the entry into force of the German Basic Law. The court also confirmed that Chapter 6, Article 3 §§ 1 and 3, of the Settlement Convention had not been set aside by the Treaty on the Final Settlement with respect to Germany.
The painting was subsequently returned to the Czech Republic.
The applicant alleged, in particular, that he had had no effective access to court concerning his claim for restitution of the painting at issue. He also complained that the German courts' decisions to declare his action inadmissible, and the return of the painting to the Czech Republic, violated his right to property. He relied on Article 6 § 1 and Article 1 of Protocol No. 1, taken alone and together with Article 14.

Decision of the Court

Article 6 § 1

Access to court

In the Court's view, the exclusion of German jurisdiction under Chapter 6, Article 3 of the Settlement Convention was a consequence of the particular status of Germany under public international law after the Second World War. The Court found that it was only as a result of the 1954 Paris Agreements with regard to the Federal Republic of Germany and the Treaty on the Final Settlement with respect to Germany of 1990 that the Federal Republic obtained the authority of a sovereign State over its internal and external affairs for a united Germany. In these unique circumstances, the limitation on access to a German court, as a consequence of the Settlement Convention, had a legitimate objective.
Moreover, in the Court's view, it could not be said that the interpretation of Chapter 6 Article 3 of the Settlement Convention in the applicant's case was inconsistent with previous German case-law or that its application was manifestly erroneous or was such as to reach arbitrary conclusions.
The Court further concluded that the applicant's interest in bringing litigation in the Federal Republic of Germany was not sufficient to outweigh the vital public interests in regaining sovereignty and unifying Germany. Accordingly, there was no breach of the applicant's right of access to a court within the meaning of the Court's case-law.

Fairness of the Federal Constitutional Court proceedings
The Court found that the applicant had the benefit of adversarial proceedings before the Federal Constitutional Court and that he was able to submit the arguments he considered relevant to his case. There was no indication of unfairness in the manner in which the proceedings at issue were conducted.

Article 1 of Protocol No. 1

The Court, considering that it was not competent to examine the circumstances of the expropriation in 1946 or the continuing effects produced by it up to the present date, found that the applicant as his father's heir could not, for the purposes of Article 1 of Protocol No. 1, be deemed to have retained a title to property nor a claim to restitution against the Federal Republic of Germany amounting to a "legitimate expectation" in the sense of the Court's case-law. Consequently, there had been no interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1.

Article 14

The Court found that Article 14 did not apply to the present case, as the facts of which the applicant complained under Article 1 of Protocol No. 1, namely the German court decisions and the return of the painting to the Czech Republic, did not amount to an interference with any of his rights under that provision.

Judge Ress, joined by Judge Zupančič, and Judge Costa expressed concurring opinions, which are annexed to the judgment.

APPENDIX VIII

Pellegrini v. Italy judgment - extract from press release

The Court held unanimously that there had been a violation of Article 6 § 1 of the Convention in that the Italian courts had failed to ensure that the applicant had had a fair hearing in the ecclesiastical proceedings before issuing an authority to enforce a judgment of the Tribunal of the Roman Rota.
Under Article 41 (just satisfaction) of the Convention, the Court unanimously awarded the applicant 10,000,000 Italian lire (ITL) for non-pecuniary damage and ITL 18,253,940 for legal costs and expenses.

Principal facts

The applicant married Mr Gigliozzi in 1962 in a religious ceremony that was valid under the civil law. In 1987 she petitioned for a judicial separation in the Rome Court of First Instance. The proceedings ended with a judgment of 2 October 1990, in which the court of first instance ordered the applicant's former husband to pay her monthly maintenance instalments.
Meanwhile, on 20 November 1987 the applicant was summoned to appear before the Latium Regional Ecclesiastical Court in the Vicariate of Rome "to give evidence in the matrimonial case of Gigliozzi-Pellegrini". She attended the Court on the appointed day and was informed that her husband had petitioned for a decree that the marriage was a nullity on the ground that they were too closely related. On examination by the judge she admitted that she was a close relative of her husband but was unable to say whether she had obtained a special licence at the time of the marriage. On 12 December 1987 the applicant received notice from the registry of the ecclesiastical court informing her that a decree of nullity had been issued in expedited proceedings on 6 November 1987 on the ground that she and her husband were too closely related.
She appealed against the judgment of the ecclesiastical court to the Tribunal of the Roman Rota, her main ground of appeal being breaches of her defence rights and of the adversarial principle in that she had been summoned to appear before the ecclesiastical court without first being informed of the nullity petition or of the grounds on which it had been made. Moreover, she had not been assisted by a lawyer.
In a judgment of 13 April 1988, which was lodged with the registry on 10 May 1988, the Tribunal of the Roman Rota upheld the decree that the marriage was a nullity because the spouses were close relatives. The applicant's request for a complete copy of the judgment was refused and she received only the operative provisions.
In September 1989 the applicant's former husband served a summons on her to appear before the Florence Court of Appeal on an application to obtain an authority to enforce the judgment of the Tribunal of the Roman Rota. The applicant entered an appearance in the proceedings and sought an order quashing that judgment on the ground that her defence rights had been

infringed. She pointed out that she had not received a copy of the nullity petition or had sight of the procedural documents.
On 8 November 1991 the Florence Court of Appeal issued an authority to enforce the judgment. It held that the applicant had been questioned on 1 December 1987 sufficed to guarantee compliance with the adversarial principle and that she had chosen to bring the proceedings before the Tribunal of the Rota of her own free will and had been able to exercise her defence rights before that court "independently of the special aspects of canon-law procedure". The applicant appealed to the Court of Cassation, again on the ground that her defence rights had been infringed in the proceedings before the ecclesiastical courts in that she had not been given detailed information about the nullity petition or of her right to assistance by counsel. She also alleged that the court of appeal appeared to have omitted to examine the case file in the proceedings before the ecclesiastical courts and that it might have provided evidence to support her case. Furthermore, her application to the registry of the ecclesiastical court for a copy of the documents in the nullity-proceedings file, which she wished to lodge with the Court of Cassation, had been turned down.
On 10 March 1995 the Court of Cassation dismissed the appeal, holding that the adversarial principle had been observed in the proceedings before the ecclesiastical courts. It added that there was authority to the effect that while the assistance of a lawyer was not mandatory under canon law, neither was it prohibited; accordingly the applicant could have sought legal assistance. The Court of Cassation did not comment on the failure to produce the case file in the ecclesiastical proceedings.
The applicant complained of a violation of Article 6 of the Convention in that the Italian courts had granted an authority to enforce a decree of nullity of marriage issued by the ecclesiastical courts in proceedings in which her defence rights had been infringed.

Decision of the Court

The Court noted firstly that the decree that of nullity of marriage had been issued by the courts of the Vatican, and had been made enforceable by an authority granted by the Italian courts. As the Vatican had not ratified the Convention and the application was against Italy, the Court's task was not to examine whether the ecclesiastical proceedings satisfied Article 6 of the Convention, but to consider whether the Italian courts had duly verified whether the Article 6 guarantees had been secured in the proceedings concerned before granting the authority to enforce the decree. The Court explained that such a review was necessary when the decision in respect of which an authority to enforce was sought emanated from the courts of a country that did not apply the Convention, especially where a matter of capital importance to the parties was at stake in the application for the authority.
The Court examined the reasons given by the Florence Court of Appeal and the Court of Cassation for dismissing the applicant's complaints about the ecclesiastical proceedings. It noted that the Italian courts did not appear to have attached any importance to the fact that the applicant had been denied an opportunity to see the evidence relied on by her former husband and by the – alleged – witnesses. Inherent in the right to adversarial process was the opportunity which each party to proceedings, whether criminal or civil, had in principle to be given to examine and contest any evidence or observation submitted to the court with a view to influencing its decision. That opportunity could not be denied, as the Government had suggested that it should, on the ground that the applicant had no defence to the petition for a decree of nullity as it was based on an undisputed objectively verifiable fact, the reason being that it was solely for the parties to a dispute to decide whether a response to evidence adduced by the other party or witnesses was called for.
In addition, the Court considered that the applicant should have been afforded an opportunity to seek assistance from a lawyer, if she so wished. The ecclesiastical courts should have presumed that the applicant, who was not represented, was unfamiliar with the case-law regarding legal assistance in canon-law proceedings. As the applicant had been summoned to appear before the ecclesiastical court without knowing the purpose of the proceedings, it had had an obligation to inform her of her right to request a lawyer's assistance before she came

to court to give evidence. In those circumstances, the Court held that the Italian courts had failed to ensure that the applicant had had a fair hearing in the ecclesiastical proceedings before issuing the authority to enforce the judgment of the Tribunal of the Roman Rota. There had therefore been a violation of Article 6 § 1.

APPENDIX IX

Malhous v. Czech Republic judgment - extract from press release

In a judgment delivered at Strasbourg on 12 July 2001, in the case of Malhous v. the Czech Republic (application number 33071/96), the European Court of Human Rights held unanimously that there had been a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.
Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant's nephew 85,000 Czech korunas for legal costs and expenses, less the 4,100 French francs received by way of legal aid from the Council of Europe.

Principal facts

The applicant, Jan Malhous, now deceased, was a Czech national, born in 1920, who lived in Prague. In June 1949, under the Czechoslovak New Land Reform Act No. 46/1948, the former Doksy District National Council had expropriated plots of agricultural land owned by the applicant's father, who never received compensation. In 1957 ownership of some of these plots was assigned to natural persons.
In 1977, the applicant inherited his father's estate.
On 24 June 1991, Act No. 229/1991 (*zákon o půdě* – "the Land Ownership Act") came into force. The Act provided that the 1948 Act was no longer applicable and that under certain conditions property confiscated under that Act without compensation could be returned to its former owners or their heirs if it was still in the possession of the State or of a legal person. However, if such property was in the possession of natural persons, the former owners or their heirs could – subject to certain exceptions – only claim the assignment of other equivalent property or financial compensation.
On the basis of this act Mr Malhous attempted to enter into restitution agreements with two legal persons. However, the Mladá Boleslav Land Office, holding a hearing in the presence of the parties, refused to approve the agreements. Mr Malhous lodged appeals with the Prague Municipal Court which upheld the administrative decisions but, according to section 250(f) of the Code of Civil Procedure, did not hold a public hearing in the case and referred the case back to the Land Office to decide on the restitution of the land in question. On 25 July 1995 the Land Office issued a new decision. On 14 September and 15 October 1995, the applicant lodged a constitutional appeal, which was rejected.
On 1 May 1998, the applicant died. Nevertheless, his lawyer introduced a request under the Land Ownership Act for compensation through the assignment of other plots of land. According to the Czech Government, this request is still pending.
The applicant complained under Article 6 § 1 that he did not enjoy a public hearing before an independent and impartial tribunal in the restitution proceedings.

Decision of the Court

Article 6 § 1

The Court considered that the applicant was in principle entitled to a public hearing as none of the exceptions laid down in the second sentence of Article 6 § 1 applied. The Court noted that the only hearing held in the case took place before the Mladá Boleslav Land Office. However, the Land Office could not be considered as an authority which satisfied the requirements of independence necessary for a tribunal within the meaning of Article 6 § 1 of the Convention. The Court observed that the Land Office was an autonomous department of the District Office charged with carrying out local state administration under the control of the Government. In any event, the hearing before this administrative authority was not public, being open only to the parties and their representatives.

Although the Land Office's decisions were subject to judicial review and the applicant appealed to the Municipal Court and to the Constitutional Court, neither of these tribunals held a public hearing. As far as the proceedings before the Municipal Court were concerned, the Court observed that the Municipal Court examined *ex officio* whether the conditions set out in section 250(f) of the Code of Civil Procedure for dispensing with a hearing were met, concluding that they were. The Court then noted that the Municipal Court's jurisdiction was not strictly limited to matters of law, but also extended to the assessment of whether the facts had been correctly established by the administrative authority. The submissions of the applicant to the Municipal Court in turn indicated that his appeal was also capable of raising factual issues. Without questioning the Municipal Court's conclusion that the facts had been correctly established by the administrative authority, the Court concluded, taking into account also what was at stake for the applicant, that in these circumstances Article 6 § 1 required an oral hearing before a tribunal.

In the subsequent administrative proceedings, the Land Office, which was bound by the judgment of the Municipal Court, did not hold a further hearing with the parties of the case. The Court considered that although the applicant could have requested a judicial review of the Land Office's new decision, it was unrealistic to assume that in such review proceedings, concerning an administrative decision based on the Municipal Court's earlier findings, the court would have granted an oral hearing for the purpose of examining essentially the same questions which it had previously found to fall within the scope of section 250(f). Moreover, the Constitutional Court in its decision, which was adopted in full knowledge of the Land Office's new decision, had not suggested that different considerations might apply as regards a possible judicial review of that latter decision.

The Court further observed that the proceedings before the Constitutional Court had also been conducted without a public hearing. However, these proceedings, limited to the examination of questions of constitutionality, had not involved a direct and full determination of the applicant's civil rights in the restitution proceedings. A public hearing in those proceedings could not, therefore, have remedied the lack of a hearing at the decisive stage of the proceedings where the merits of the applicant's restitution claims were determined. Finally, the Court found that the applicant was not obliged to introduce judicial proceedings under section 8 of the Land Ownership Act, the Court being concerned in the present case only with the proceedings under section 9 of the Act which were actually pursued. The Court found, therefore, that the applicant's right to a public hearing before an independent and impartial tribunal under Article 6 § 1 was breached.

Article 41

The Court held that it could not speculate as to the outcome of the restitution proceedings, had a public hearing had taken place before the national courts. The Court also held that its finding of a violation of Article 6 § 1 constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage which the applicant might have suffered as a result of this violation.

APPENDIX X

Phillips v. United Kingdom judgment - extract from press release

The Court held:
by five votes to two, that Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights was not applicable;
unanimously, that there had been no violation of Article 6 § 1 (right to a fair trial);
and that there had been no violation of Article 1 of Protocol No. 1 (protection of property).

Principal facts

The applicant, Steven Phillips, is a British national, who was convicted on 27 June 1996, at Newport Crown Court, of being involved in the importation in November 1995 of a large quantity of cannabis resin, contrary to section 170(2) of the Customs and Excise Management Act 1979. On 12 July 1996 he was sentenced to nine years' imprisonment. He had previous convictions, but none concerning a drugs-related offence.
An inquiry was then conducted into the applicant's means under Section 2 of the Drug Trafficking Act 1994. At the confiscation hearing before the Crown Court, the judge applied section 4(3) of the 1994 Act, which empowers a court to assume that all property held by a person convicted of a drug-trafficking offence within the preceding six years represented the proceeds of drug trafficking. On this basis, the applicant was assessed to have received, as the proceeds of drug trafficking, 91,400 pounds sterling (GBP) and a confiscation order was made for this amount. If the applicant failed to pay, he was to serve an extra two years' imprisonment, consecutive to the nine-year term.
The applicant was refused leave to appeal against conviction and sentence (including the imposition of the confiscation order).
The applicant complained that the statutory assumption under the 1994 Act violated his right to be presumed innocent, guaranteed under Article 6 § 2. He also complained that the confiscation order was in breach of Article 1 of Protocol No. 1 to the Convention.

Decision of the Court

Article 6 § 2

The Court considered that the confiscation procedure was analogous to the determination by a court of the amount of a fine or the length of a period of imprisonment to impose upon a properly convicted offender, (see also Welch v. the United Kingdom, 9 February 1995). Article 6 § 2 does not apply to sentencing and the Court, therefore, found that the article was not applicable to the confiscation proceedings brought against the applicant.

Article 6 § 1

The Court considered that a person's right in a criminal case to be presumed innocent and to require the prosecution to bear the onus of proving the allegations against him or her formed part of the general notion of a fair hearing under Article 6 § 1.
However, the Court observed that the statutory assumption under Section 4(3) of the 1994 Act was not applied in order to facilitate finding the applicant guilty of an offence, but, instead, to enable the national court to assess the amount at which the confiscation order should properly be fixed. Thus, although the confiscation order calculated by way of the statutory assumption was considerable – GBP 91,400 – and although the applicant risked a further term of two years' imprisonment if he failed to make the payment, his conviction of an additional drug-trafficking offence was not at stake.
Further, the system was not without safeguards. The assessment was carried out by a court with a judicial procedure including a public hearing, advance disclosure of the prosecution case and the opportunity for the applicant to adduce documentary and oral evidence. The court was empowered to make a confiscation order of a smaller amount if satisfied, on the balance of probabilities, that only a lesser sum could be realised. The principal safeguard, however, was that the assumption made by the 1994 Act could have been rebutted if the applicant had shown, again on the balance of probabilities, that he had acquired the property other than through drug trafficking. Furthermore, the judge had a discretion not to apply the assumption if he considered that applying it would give rise to a serious risk of injustice.
In calculating the amount of the confiscation order based on the benefits of drug trafficking, the trial judge had expressed himself to be reliant on the statutory assumption. However, the Court noted that, in respect of every item taken into account, the judge was satisfied, on the basis either of the applicant's admissions or evidence adduced by the prosecution, that the applicant owned the property or had spent the money, and that the obvious inference was that it had come from an illegitimate source. Furthermore, had the applicant's account of his financial dealings been true, it would not have been difficult for him to rebut the statutory assumption. Finally, when calculating the value of the realisable assets available to the applicant, it was significant that the judge took into account only the house and the applicant's one-third share of the family business, specific items which he had found on the evidence still to belong to the applicant.
Overall, therefore, the Court found that the application to the applicant of the relevant provisions of the Drug Trafficking Act 1994 was confined within reasonable limits, given the importance of what was at stake, and that the rights of the defence were fully respected. It followed that the Court did not find that the operation of the statutory assumption deprived the applicant of a fair hearing in the confiscation procedure. In conclusion, there had been no violation of Article 6 § 1.

Article 1 of Protocol No. 1

The Court noted that the figure payable under the confiscation order corresponded to the amount by which the Crown Court judge found the applicant to have benefited from drug trafficking over the preceding six years and was a sum which he was able to realise from the assets in his possession. Against this background, and given the importance of the aim pursued, the Court does not consider that the interference suffered by the applicant with the peaceful enjoyment of his possessions was disproportionate. It followed that there had been no violation of Article 1 of Protocol No. 1.

Judges Bratza and Vajić expressed a joint partly dissenting opinion, which is annexed to the judgment.

APPENDIX XI

Perna v. Italy judgment - extract from press release

The Court held unanimously that there had been no violation of Article 6 §§ 1 and 3 (d) of the Convention. However, it held, likewise unanimously, that there had been a violation of Article 10 of the Convention on account of the applicant's conviction for alleging, by means of a symbolic expression, that a senior Italian judicial officer had sworn an oath of obedience to the former Italian Communist Party.
Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant 9 million Italian lire for costs and expenses and held that the finding of a violation in itself constituted just satisfaction for any non-pecuniary damage the applicant might have suffered.

Principal facts

The applicant, Giancarlo Perna, an Italian national, was born in 1940 and lives in Rome.
On 21 November 1993 the applicant, who is a journalist, published in the Italian daily newspaper *Il Giornale* an article about a judicial officer, Mr G. Caselli, who was at that time the Public Prosecutor in Palermo. The article was entitled "Caselli, the judge with the white tuft" (*Caselli, il ciuffo bianco della giustizia*) and bore the sub-title "Catholic schooling, communist militancy – like his friend Violante..." (*Scuola dai preti*, *militanza communista come l'amico Violante...*).
The article first contained a criticism of Mr Caselli's political militancy, which the applicant had expressed in the following form of words:
"... At university, [Caselli] moved towards the PCI [the Italian Communist Party], the party which exalts the frustrated. When he entered the State Legal Service he swore a threefold oath of obedience – to God, to the Law and to via Botteghe Oscure [formerly the headquarters of the PCI, now those of the PDS – the Democratic Party of the Left]. And [Caselli] became the judge he has remained for the last thirty years – pious, stern and partisan..."
(*... All'università si agganció al Pci, il partito che esalta I frustrati. Quando fu ammesso in magistratura, fece un triplo giuramento di obbedienza. A dio, alla Legge, a Botteghe Oscure. E Giancarlo divenne il giudice che é da trent'anni: pio, severo e partigiano...*).
The article went on to make factual allegations against Mr Caselli, who was accused of taking part in a plan to gain control of the public prosecutors' offices in various Italian cities and of using the criminal-turned-informer (*pentito*) T. Buscetta to charge Mr G. Andreotti, a very well known Italian statesman, with aiding and abetting a mafia-type organisation (*appoggio esterno alla mafia*), in the full knowledge that he would eventually have to discontinue the case for lack of evidence, a fact which, according to the applicant, confirmed that the proceedings had been brought with the sole aim of destroying the political career of Mr Andreotti (who had in the meantime been acquitted at first instance).
On 10 January 1996, following a complaint for defamation lodged by Mr Caselli, the Monza District Court found the applicant and his co-accused (the then manager of *Il Giornale*, Mr I. Montanelli) guilty of aggravated defamation. The applicant appealed and again asked, among other requests, for evidence to be taken from the complainant and a number of journalists and Italian politicians who, like Mr Caselli, had been militant members of the former Communist party, and for certain press articles to be added to the file.
In a judgment of 28 October 1997 the Milan Court of Appeal gave judgment against the applicant, giving separate rulings on the two crucial parts of the offending article. It held in the first place that the sentence concerning the oath of obedience was defamatory because, while it had a symbolic value, it indicated dependence on political instructions, which was inconceivable for persons who, on being admitted to judicial office, had to swear an oath of obedience (not a symbolic one but a real one) to the law and nothing but the law. With regard to the remainder of the article, the Court of Appeal held that the accusations concerning

Mr Caselli's participation in an alleged plan to gain control of the public prosecutors' offices of various cities and his ulterior motives for using the *pentito* Buscetta were very serious and highly defamatory in that they were not backed up by any evidence. It further rejected the applicant's arguments relating to the evidence he had sought to adduce (cross-examination of the complainant, evidence to be taken from certain witnesses and certain articles to be added to the file) on the ground that Mr Caselli's political leanings, the friendship between Caselli and Mr L. Violante and the use of Buscetta, a *pentito* paid by the State, in the proceedings against Mr Andreotti, were undisputed facts and therefore did not have to be proved.
In a judgment of 9 October 1998, deposited with the registry on 3 December 1998, the Court of Cassation upheld the Court of Appeal's decision.
The applicant in substance raised two complaints. In the first place, he complained of an infringement of his right to defend himself, since the Italian courts had refused throughout the proceedings to admit the evidence he had sought to adduce, including cross-examination of the complainant, in breach of Article 6 §§ 1 and 3 (d). He further alleged a violation of Article 10 both on account of the Italian courts' decision on the merits and on account of the restrictions on his defence rights as previously alleged.

Decision of the Court

Alleged violation of Article 6 §§ 1 and 3 (d)

The Court observed that as a general rule it was for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants sought to adduce. Consequently, it was not sufficient for an accused to complain that he was not permitted to examine certain witnesses; he also had to support his request to call witnesses by explaining the importance of doing so and it had to be necessary for the court to take evidence from the witnesses concerned in order to be able to establish the true facts. That principle also applied to the examination of the complainant in a defamation case.
The examination, requested by the applicant, of Mr Vertone and Mr Ferrara, both political comrades of Mr Caselli during the 1970s in Turin, essentially concerned the complainant's political militancy. But throughout the proceedings the Italian courts had consistently held that his militancy had been established, and the same was true of the friendship between Caselli and Violante, Buscetta's co-operation with the judicial authorities and the fact that the latter, as a *pentito*, was paid by the State. On the other hand, the applicant had not named any other witness capable of giving evidence about the crucial facts alleged in his article, namely that Mr Caselli had taken part in a plan to gain control of the public prosecutors' offices in various cities and had used Buscetta to destroy Mr Andreotti's political career. The Court therefore considered that the applicant had not explained how evidence from the witnesses he wished to call could have contributed any new information whatsoever to the proceedings. The same was true of the press articles which the applicant had asked to be added to the file and which also essentially referred to the complainant's political militancy.
As regards examination of Mr Caselli, since the Italian courts had held that his political militancy and his relations with Buscetta, a *pentito* paid by the State, had been established, any evidence he could have given could only have been relevant to the accusations that he had taken part in a plan to gain control of the public prosecutors' offices in various cities and that he had had an ulterior motive in using Buscetta. These, however, were accusations which the complainant had contested in his complaint alleging defamation. Consequently, it was hard to see what evidence capable of helping the courts to establish the truth could have been provided by examination of the complainant, other than a repetition of his rejection of the allegations against him *en bloc*.
It would have been a different matter if the applicant had adduced witness statements or other evidence in support of these contested allegations because the complainant would then have been obliged to reply, not – or not only – to the applicant's allegations as such, but also and above all to the supporting evidence. There had therefore been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

Alleged violation of Article 10 of the Convention

The Court noted that the Court of Appeal, in convicting the applicant, had given separate rulings on each of the two crucial parts of the article complained of. Consequently, it decided to examine separately, in the light of the requirements of Article 10 of the Convention, each of the two branches of the applicant's conviction.

(a) The sentence relating to the "oath of obedience"

The Court observed that a careful distinction had to be made between facts and value-judgments. The existence of facts could be demonstrated, whereas the truth of value-judgments was not susceptible of proof. The Court took the view that the sentence in question was essentially symbolic in content and amounted to the expression of a critical opinion about Mr Caselli's political militancy as a member of the former Communist Party. Moreover, the Court of Appeal itself had accepted that it was a sentence with a symbolic meaning. Admittedly, to repeat the terms used by the Court of Appeal, such an expression indicated dependence on the instructions of a political party. However, this was precisely the tenor of the criticism directed at the complainant.

The criticism directed at the complainant had a factual basis which was not disputed, namely Mr Caselli's political militancy as a member of the Communist Party. While it was true that judicial officers had to be protected against unfounded attacks, especially in view of the fact that they were subject to a duty of discretion that precluded them from replying, the press was nevertheless one of the means by which politicians and public opinion could verify that judges were discharging their heavy responsibilities in a manner that was in conformity with the aim which was the basis of the task entrusted to them. By acting as a militant member of a political party, of whatever tendency, a judicial officer imperilled the image of impartiality and independence that justice had to show at all times. Where a judicial officer was an active political militant, his unconditional protection against attacks in the press was scarcely justified by the need to maintain the public confidence which the judiciary needed in order to be able to function properly, seeing that it was precisely such political militancy which was likely to undermine that confidence. By such conduct, a judicial officer inevitably exposed himself to criticism in the press, which might rightly see the independence and impartiality of the State Legal Service as a major concern of public interest.

As to the terms chosen by the applicant, use of the symbolic image of the "oath of obedience" was admittedly hard-hitting, but the Court observed in that connection that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation. Moreover, while the Court did not have to approve the polemical and even aggressive tone used by journalists, Article 10 protected not only the substance of the ideas and information expressed, but also the form in which they were conveyed. The open and even ostentatious nature of the complainant's political militancy also had to be taken into account.

(b) The factual allegations made against the complainant

The Court considered on the other hand that the applicant's assertions about Mr Caselli's participation in an alleged strategy of gaining control of the public prosecutors' offices in a number of cities and his use of the *pentito* Buscetta in order to prosecute Mr Andreotti quite obviously amounted to the attribution of specific acts to the complainant. They were therefore not covered by the protection of Article 10 unless they had a factual basis, especially considering the seriousness of such accusations. But the article in question did not mention any evidence or cite any source of information capable of corroborating these allegations. Furthermore, during the trial the applicant had not adduced any precise evidence in support of these assertions of fact.

(c) Conclusion

The Court accordingly concluded that while the applicant's conviction appeared to have been founded on relevant and sufficient reasons with regard to the allegations concerning the complainant's participation in a plan to gain control of the public prosecutors' offices of several cities and the real reasons for using the *pentito* Buscetta, given that these were allegations of fact which had not been backed up and could not be founded on the complainant's political militancy alone, it did not appear to have been justified with regard to the sentence concerning the "oath of obedience", which constituted a critical opinion which, though couched in hard-hitting, provocative language, was nevertheless based on a solid factual basis, uncontestably related to a matter of public interest, on account of the concern that a judicial officer's political militancy might prompt, and should therefore have enjoyed the protection of Article 10 with regard to the form of words used also.
In that connection, the Court observed that in view of the fundamental importance of freedom of expression in a democratic society, in reviewing the decisions given by domestic courts by virtue of their power of appreciation it had to ensure that sanctions against the press were strictly proportionate and prompted by assertions which did indeed overstep the limits of acceptable criticism, while safeguarding assertions which might and therefore must enjoy the protection of Article 10. There had accordingly been a violation of Article 10 in so far as the applicant was convicted partly on account of the sentence relating to the "oath of obedience".

Judge Conforti, joined by Judge Levits, expressed a concurring opinion, which is annexed to the judgment.

APPENDIX XII

K. and T. v. Finland judgment - extract from press release

The Court held:
- by 14 votes to 3, that there had been a violation of Article 8 of the Convention in respect of the emergency care order concerning the applicants' child J.;
- by 11 votes to 6 that there had been no violation of Article 8 in respect of the emergency care order concerning the child M.;
- unanimously that there had been no violation of Article 8 in respect of the normal care orders in respect of both J. and M.;
- unanimously that there had been a violation of Article 8 in respect of the a failure to take proper steps to reunite the family;
- unanimously that there had been no violation of Article 8 in respect of current access restrictions; and
- unanimously that there had been no violation of Article 13.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 40,000 Finnish marks each for non-pecuniary damage and 65,190 Finnish marks, less 2,230 French francs and 2,871.54 Euros, for legal costs and expenses.
In its Chamber judgment of 27 April 2000, the Court held, unanimously, that there had been a violation of Article 8 in respect of the decisions to take the children into public care and the refusal to terminate the care. The Chamber further held (unanimously) that there had been no violation of Article 13. The applicants were awarded 40,000 Finnish marks each for non-pecuniary damage and 5,190 Finnish marks, less the amount already paid by the Council of Europe in legal aid, for legal costs and expenses.

Principal facts

The applicants, a mother and her cohabitant T., are Finnish nationals. K. is the mother of four and T. is the father of two of the children.

Prior to the events, the applicant mother had been hospitalised on several occasions, having been diagnosed as suffering from schizophrenia. In May 1993, when she was expecting her third child J., the Social Welfare Board, considering that K. was unable to care for her second child M., placed him in a children's home as a short-term support measure consented to by the applicants. As soon as she was born in June 1993, J. was, by virtue of an emergency order, placed in public care in the children's ward of the hospital, given K.'s unstable mental condition and the family's long-lasting difficulties. In a further emergency order, issued a few days later, M. was likewise placed in public care. K.'s unsupervised access to the children was prohibited and she was again hospitalised on account of her psychosis. The emergency care orders were replaced by normal care orders in July 1993. These were confirmed by the County Administrative Court. The Supreme Administrative Court rejected the applicants' appeals.

In September 1993 the access restriction was prolonged and in 1994 the children were placed in a foster home some 120 kilometres away from the applicants. Social welfare officials allegedly told both the applicants and the foster parents that the children's placement would last for years. The applicants proposed, in vain, that the care arrangements take place in the home of relatives and that the arrangements should, in any case, be aimed at reuniting the family.

In May 1994 both applicants' access to the children was restricted to one monthly and supervised visit to the foster home. In December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Nevertheless, only supervised meetings with the children held once a month on premises chosen by the Social Welfare Board were authorised. The Board confirmed this decision in January 1995 and the applicants' appeal was rejected.

Meanwhile, in May 1994, the applicants had also requested that the care orders be revoked. This request was rejected by the Social Welfare Board in March 1995. In April 1995 K. gave birth to a fourth child, who was not placed in public care. Shortly afterwards K. was taken into compulsory psychiatric care for six weeks, again on account of her schizophrenia.

The care plan was again revised in May 1996 and in April 1997 but the access restriction was maintained. In December 1998 the social authorities considered that the reunification of the family was not in sight. In November 2000 the applicants and the children were nevertheless allowed to meet once a month without supervision. The current access restriction remains valid until the end of 2001.

The applicants complained that their right to respect for their family life, guaranteed under Article 8, had been violated on account of the placement of their children J. and M. in public care and the subsequent care measures. They also complained that they had not been afforded an effective remedy, guaranteed under Article 13.

Decision of the Court

Article 8

The emergency care orders

The Court accepted that when an emergency care order had to be made, it was not always possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor was this desirable, if those having custody of the child were seen as the source of an immediate threat to the child. The Court had however to be satisfied that the Finnish authorities were entitled to consider that in relation to both J. and M. there existed circumstances justifying their removal from the care of the applicants without prior consultation. In particular, it was for Finland to establish that a careful assessment of the

impact of the proposed care measure on the applicants and the children, as well as of the possible alternatives to taking the children into public care, had been carried out before implementing any care measures.
The Court found it reasonable for the authorities to believe that if K. had been forewarned of the authorities' intention to take either M. or the expected child J. away from her, there might have been dangerous consequences both for herself and her children. The authorities' assessment that T. would not on his own have been capable of coping with the mentally-ill K., the expected baby J. and M. was likewise reasonable. Associating only T. in the decision-making process was not a realistic option for the authorities either, given the close relationship between the applicants and the likelihood of their sharing information.
However, the taking of a new-born baby into public care at the moment of its birth was an extremely harsh measure. There needed to have been extraordinarily compelling reasons before a baby could be physically removed from the care of its mother, against her will, immediately after birth, as a consequence of a procedure in which neither she nor her partner had been involved. Such reasons had not been shown to exist. The authorities had known about the forthcoming birth of J. for months in advance and were well aware of K.'s mental problems, so the situation was not an emergency in the sense of being unforeseen. The Finnish Government had not suggested that other possible ways of protecting J. from the risk of physical harm from K. had even been considered. When a measure so drastic as to immediately deprive a mother of her new-born child was contemplated, it was incumbent on the national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and the child, was possible. The reasons relied on by the authorities were relevant but not sufficient to justify the serious intervention in the applicants' family life. Even having regard to the national authorities' margin of appreciation, the Court concluded that the emergency care order in respect of J. and the methods used in implementing that care were disproportionate. While there may have been a "necessity" to take some precautionary measures to protect J., the interference in the applicants' family life could not be regarded as having been "necessary" in a democratic society.
Different considerations came into play as far as M. was concerned. The authorities had good cause to be concerned about K.'s capacity, even with the aid of T., to continue caring for her family in a normal way, following the birth of her third child. M. was showing signs of disturbance and thus a need for special care. The emergency care order in respect of him was not capable of having the same impact on the applicants' family life as that made in respect of J. He had already been physically separated from his family as a result of his voluntary placement in a children's home. The lack of association of T. and K. in the decision-making process was understandable in order not to provoke a crisis in the family before the stressful event of J.'s birth. The national authorities were therefore entitled to consider it necessary to take exceptional action, for a limited period, in the interests of M.

The normal care orders

Keeping in mind that the authorities' primary task was to safeguard the interests of the children, the Court had no reason to doubt that the authorities could consider that the children's placement in public care as from 15 July 1993, and in a foster home as from early 1994, was called for rather than the continuation of open-care measures or the introduction of new measures of that type. Nor could it be said that the normal care orders were implemented in a particularly harsh or exceptional way. Moreover, the applicants were properly involved in the decision-making process leading to the making of the normal care orders and their interests were protected.

The alleged failure to take proper steps to reunite the family

The Court recalled the guiding principle that the public care of a child should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permitted. Any measures implementing such temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible became more pressing the longer the period of care lasted, subject always to its being balanced against the duty to consider the best interests of the child.
The Court noted that some enquiries had been carried out in order to ascertain whether the applicants would be able to bond with J. and M. They did not, however, amount to a serious or sustained effort to facilitate family reunification. The minimum to be expected of the authorities was that they examined the situation anew from time to time to see whether there had been any improvement in the family's situation. The possibilities of reunification would progressively diminish and eventually disappear if the biological parents and their children were not allowed to meet each other at all, or only so rarely that no natural bonding between them was likely to occur. The restrictions and prohibitions imposed on the applicants' access to their children hindered rather than helped a possible family reunification. In the present case, the exceptionally firm negative attitude of the authorities was striking.

The access restrictions and prohibitions

In so far as the complaint concerning the access restrictions was covered by the finding of a breach of Article 8 as a result of the failure to take sufficient steps for the reunification of the applicants' family, it was not necessary for the Court to examine the impugned measures as a possible separate source of violation. Regarding the present situation, including the period after the delivery of the Court's initial judgment, the Grand Chamber arrived at the same conclusion as the Chamber. Having regard to the children's situation during this later period, the authorities' assessment of the necessity of access restrictions did not fall foul of Article 8 § 2.

Article 13

The Grand Chamber saw no reason to depart from the Chamber's finding of a violation.

Article 41

The Grand Chamber upheld the Chamber judgment in so far as it had awarded each applicant FIM 40,000 in just satisfaction for non-pecuniary damage. It also upheld the Chamber's award for costs and expenses (FIM 5,190), but awarded a further FIM 60,000 for the proceedings before the Grand Chamber.

Judge Pellonpää expressed a partly concurring opinion which was joined by Sir Nicolas Bratza; Judge Palm expressed a partly dissenting opinion which was joined by Judge Jörundsson; Judge Ress expressed a partly dissenting opinion which was joined by Judges Rozakis, Fuhrmann, Zupančič, Pantîru and Kovler; and Judge Bonello expressed a partly dissenting opinion. The opinions are annexed to the judgment.

APPENDIX XIII

Feldek v. Slovakia judgment - extract from press release

The Court held:
- by five votes to two, there had been a violation of Article 10 of the Convention;
- unanimously, that no separate issue arose under Article 9;
- unanimously, that there had been no violation of Article 14.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 65,000 Slovakian korunas (SKK) for non-pecuniary damage and SKK 500,000 for legal costs and expenses. (The judgment exists only in English.)

Principal facts

Lubomír Feldek is a Czech national. On 30 July 1992 several Slovakian newspapers published a statement which he had distributed to the Public Information Service, in which he made references to the "fascist past" of Dušan Slobodník, a Government Minister. The statement was published shortly after the appointment of a new Government, following the 1992 parliamentary elections, and after the adoption of the declaration of Slovakia's sovereignty. Mr Slobodník had been appointed Minister for Culture and Education in June 1992.

On 9 September 1992 Mr Slobodník sued the applicant for defamation. On 18 October 1993 Bratislava City Court dismissed the action, but its judgment was reversed by the Supreme Court. On 25 May 1995 a different chamber of the Supreme Court siting as the court of cassation upheld the part of the Supreme Court's decision which declared the statement at issue defamatory and entitled Mr Slobodník to have published in five newspapers of his choice a text asserting that the applicant's statement represented "a gross slander and disparagement of (his) civil honour and life". The remainder of the case was sent back to the city court.

On 15 April 1996 the city court dismissed the claim for non-pecuniary damage and ordered the applicant to pay costs totalling SKK 57,655. The Supreme Court overturned the first instance judgment as to the costs in that it held that neither party was entitled to have the costs reimbursed and that each of the parties pay half of the costs paid in advance, namely 1,750 SKK. Mr Slobodník's appeal on points of law is still pending.

The applicant complained that the Slovakian courts had violated his right to freedom of expression in granting Mr Slobodník's action and that the publication of a text declaring his statement defamatory violated his right to freedom of thought. He also complained that he had been discriminated against on the basis of his political opinion. He relied on Articles 10, 9 and 14.

Decision of the Court

Article 10

The Court found that it was clear and undisputed that there had been an interference with the applicant's right to freedom of expression in that the relevant judicial decisions declared his statement defamatory and ordered him to endure the publication of this conclusion in five newspapers. The interference complained of also had a legal basis, namely Articles 11 and 13 (1) of the Civil Code, and was, therefore, prescribed by law within the meaning of Article 10 § 2. The Court further found that the grounds relied on by the Slovak courts were consistent with the aim of protecting the personal rights of the plaintiff.

Deciding whether the measures were "necessary in a democratic society", the Court noted that the applicant's statement was made and published as part of a political debate on matters of general and public concern relating to the history of Slovakia, which might have repercussions concerning its future democratic development. Moreover, although the statement did not indicate the sources, it was based on facts, which had been published both by Mr Slobodník himself and the press prior to the publication of the applicant's statement.
The Court emphasised that the promotion of free political debate was a very important feature in a democratic society. It attached the highest importance to the freedom of expression in the context of political debate and considered that very strong reasons were required to justify restrictions on political speech.
The Court found that the applicant's statement was a value judgment, the truthfulness of which was not susceptible of proof. It was made in the context of a free debate on an issue of general interest, concerning a public figure, in respect of whom the limits of acceptable criticism were wider than for a private individual. The Court was satisfied that the value judgment made by the applicant was based on information which was already known to the wider public.
The court of cassation did not convincingly establish any pressing social need for putting the protection of the personal rights of a public figure above the applicant's right to freedom of expression and the general interest of promoting this freedom where issues of public interest were concerned. In particular, it did not appear from the domestic courts' decisions that the applicant's statement had affected Mr Slobodník's political career or his professional and private life. The national authorities therefore failed to strike a fair balance between the relevant interests. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 and there had therefore been a violation of Article 10.

Articles 9 and 14

The Court found that no separate issue arose under Article 9.
The Court found no indication that the measure complained of could be attributed to a difference in treatment based on the applicant's political opinion or any other relevant ground. Accordingly, there had been no violation of Article 14.

Judges Fischbach and Lorenzen expressed a dissenting opinion which is annexed to the judgment.

APPENDIX XIV

Association Ekin v. France judgment - extract from press release

The Court held unanimously that:
- there had been a violation of Article 10 of the Convention;
- no separate issue arose under Article 10 taken together with Article 14 of the Convention;
- there had been a violation of Article 6 § 1;
- that it was unnecessary to examine the complaint under Article 13.

Under Article 41 (just satisfaction), the Court awarded the applicant 250,000 French francs (FRF) for pecuniary damage, FRF 50,000 for non-pecuniary damage and FRF 58,500 for legal costs and expenses.

Principal facts

The case concerns an association called Ekin, based in Bayonne (France), which was set up to protect Basque culture and the Basque way of life.
In 1987, the applicants published a book entitled "Euskadi at war" in various languages and in various European countries. It was an account of the historical, cultural, linguistic and socio-political aspects of the Basque conflict.
On 29 April 1988 a ministerial decree was issued under section 14 of the Law of 29 July 1881, as amended by a decree of 6 May 1939, banning the circulation, distribution and sale of the book in France on the ground that it promoted separatism, vindicated recourse to violent action and, accordingly, represented a potential danger for public order.
The applicant lodged an appeal with the ministry, but it was deemed to have been rejected. It then lodged an appeal with the Pau Administrative Court, which held that it had no jurisdiction and referred the case to the *Conseil d'État*. The *Conseil d'État* in turn remitted the case to the Pau Administrative Court, which dismissed the appeal on the ground that the book was of foreign origin and represented a potential danger for public order.
The applicant appealed to the *Conseil d'État*, which quashed the impugned judgment and the ministerial decree on the ground that in the absence of any statutory provision defining the basis on which a ban could be imposed under section 14 of the Law of 29 July 1881 and having regard to the interests which the minister was responsible for protecting, in particular public safety and public order, the content of the book did not justify in law an interference with press freedom as serious as a ban. On the other hand, the *Conseil d'État* held that section 14 of the Law of 1881, as amended, was not contrary to Article 10 of the European Convention on Human Rights taken together with Article 14 of the Convention.
Relying on Article 10 of the Convention, the applicant complained that section 14 of the Law of 1881, as amended, was too unclear for a legal rule and that it did not meet the requirement to be accessible and foreseeable in its effects. Nor was the interference permitted under the rule necessary in a democratic society. Furthermore, the provision gave rise to a distinction in freedom of expression cases on the statutory basis of language or national origin and consequently, was contrary to Article 14 taken together with Article 10. The applicant also relied on Article 6 § 1 (right to a determination of civil within a reasonable time) and Article 13.

Decision of the Court

Article 10 taken alone and together with Article 14

Section 14 of the law of 1881, as amended, was couched in very wide terms and conferred wide-ranging powers on the Minister of the Interior to issue administrative bans on the dissemination of publications of foreign origin or written in a foreign language. Such pre-emptive restrictions were not, *a priori*, incompatible with the Convention. Nevertheless, a legal framework was required that ensured both tight control over the scope of bans and effective judicial review to prevent any abuse of power.
With regard to the scope of the rules applicable to foreign publications, the Court noted that section 14 of the Law of 1881, as amended, established an exception to the general law by giving the Minister of the Interior power to impose a general and absolute ban covering the entire French territory on the circulation, distribution or sale of any document drafted in a foreign language or of any document regarded as being of foreign origin even if drafted in French. The Court noted that the provision did not state the circumstances in which the power could be used. In particular, there was no definition of the concept of "foreign origin" and no indication of the grounds on which a publication deemed to be foreign could be banned. Admittedly, those gaps had been progressively filled by the administrative courts' case law. Nonetheless, as the applicant had said, the application of those rules had, in certain cases, produced results that were at best surprising and in some cases verged on the arbitrary, depending on the language of publication or the place of origin.

As regards the way in which administrative bans were imposed and the extent of judicial review of such bans, the Court noted that the latter took place *ex post facto*. In addition, judicial review was not automatic since it could only take place on application by the publisher to the courts. As to the extent and effectiveness of judicial review, the Court observed that up until the judgment delivered by the *Conseil d'État* in the case before the Court, the administrative courts had only carried out a limited review of decisions taken under section 14 of the Law of 1881, as amended. The *Conseil d'État* had not extended its powers of review to a full review of the grounds for the decision until its judgment of 9 July 1997 in the Ekin case. That being said, the applicant had had to wait more than nine years before obtaining a final judicial decision. Clearly, the length of the proceedings had substantially undermined the effectiveness of the judicial review, whereas the case should have been dealt with expeditiously in view of its subject matter. An aggravating factor, which was not disputed by the Government, was that, under the statutory provision applicable in the case before the Court, stays of execution were granted only if the requesting party was able to show that a ban would cause damage for which it would be difficult to make reparation. That was to say the least a difficult condition to prove. Lastly, Article 8 of the Decree of 28 November 1983 laid down that if the authorities certified that a ban was urgently required, the publisher was not entitled to submit oral or written observations before the decree issuing the ban was adopted, which was what had happened in the case before the Court. In conclusion, the Court held that the judicial-review procedures in place in cases concerning administrative bans on publications provided insufficient guarantees against abuse.

That legislation appeared to be in direct conflict with the actual wording of paragraph 1 of Article 10 of the Convention, which provides that the rights recognised in that Article subsist "regardless of frontiers".

The Government had argued that the existence of legislation specifically governing publications of foreign origin was justified among other things by the fact that it was impossible to institute proceedings against the authors or publishers guilty of prohibited conduct when they were based overseas. The Court did not find that a persuasive argument. Although the exceptional circumstances in 1939 just before the Second World War could justify control over foreign publications being reinforced, the argument that a system that discriminated against publications of that sort should continue to remain in force appeared untenable. The Court noted too that the head office of the applicant association, which was the publisher of the banned work, was in France.

In the case before it, the Court, like the *Conseil d'État*, held that the content of the book did not justify, in particular as regards the issues of public safety and public order, so serious an interference with the applicant's freedom of expression as that constituted by the ban imposed by the Minister of the Interior. Ultimately, the Court considered that the ban did not meet a pressing social need and was not proportionate to the legitimate aim pursued.

In the light of those considerations and its analysis of the impugned legislation, the Court concluded that the interference constituted by section 14 of the Law of 1881, as amended, could not be regarded as "necessary in a democratic society". There had, therefore, been a violation of Article 10.

Having regard to that conclusion, the Court considered it unnecessary to examine the complaint under Article 10 taken together with Article 14 separately.

Article 6 § 1

The Court noted that the proceedings had taken more than nine years before two levels of jurisdiction and that the applicant had not been guilty of dilatory conduct.

The Court reiterated that it was for the Contracting States to organise their legal systems in such a way that their courts could guarantee to everyone the right to a final decision within a reasonable time in the determination of his or her civil rights and obligations. It considered that the total length of the proceedings, more than nine years, could not be considered "reasonable", even when what was at stake in the litigation was of particular importance. Consequently, there had been a violation of Article 6 § 1.

Article 13

The Court did not consider it necessary to examine the complaint raised under Article 13 separately.

Article 41

The Court could not speculate on what the likely sales of the work published by the applicant association would have been. Having said that, it considered that owing to the nature of the restriction and the unreasonable length of the proceedings, the association had sustained actual pecuniary damage which, however, could not be assessed with precision. In those circumstances, the Court awarded the association FRF 250,000 for pecuniary damage.
The Court considered that the association had sustained actual non-pecuniary damage owing to the nature of the restriction and the unreasonable length of the proceedings and awarded it FRF 50,000 under that head. The Court awarded the association a total of FRF 58,500 for costs and expenses.

APPENDIX XV

Refah Partisi and others v. Turkey judgment - extract from press release

The Court held, by four votes to three, that there had been no violation of Article 11 of the Convention and unanimously that no separate issues arose under Articles 9, 10, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

Principal facts

The first applicant, Refah Partisi (the Welfare Party, hereafter the "*RP*") was a political party that had been founded on 19 July 1983. It was represented by its Chairman, Necmettin Erbakan. He is the second applicant and was a Member of Parliament at the material time. The third and fourth applicants, Şevket Kazan and Ahmet Tekdal, are politicians and lawyers and were at the material time Members of Parliament and Vice-Chairmen of the *RP*.
On 21 May 1997 the Principal State Counsel at the Court of Cassation brought proceedings in the Turkish Constitutional Court seeking the dissolution of the *RP*, which he accused of having become "a centre of activities against the principle of secularism". In support of his application, he relied on various writings and declarations made by leaders and members of the *RP* which he said indicated that some of the party's objectives, such as the institution of *Sharia* law and a theocratic regime, were incompatible with the requirements of a democratic society.
Before the Constitutional Court the applicant's representatives argued that the prosecution had relied on mere extracts from the speeches concerned, thereby altering their meaning and without looking at the documents as a whole. They also maintained that the *RP*, which at the material time had been in power for a year as part of a coalition, had consistently observed the principle of secularism and respected all religious beliefs and consequently was not to be confused with political parties that sought the establishment of a totalitarian regime. They added that some of the *RP*'s leaders had only become aware of certain of the remarks impugned in the case after the Principal State Counsel's application for the dissolution of the party was served on them and that they had nonetheless expelled those responsible from the party to avoid the *RP* being seen as a "centre" of illegal activities for the purposes of the law on the regulation of political parties.

On 16 January 1998 the Constitutional Court made an order dissolving the *RP* on the ground that it had become a "centre of activities against the principle of secularism". It also declared that the *RP*'s assets were to be transferred by operation of law to the Treasury. The Constitutional Court further held that the public declarations of the *RP*'s leaders, and in particular Necmettin Erbakan, Şevket Kazan and Ahmet Tekdal, had a direct bearing on the constitutionality of the *RP*'s activities. Consequently, it imposed a further sanction in the form of a ban on their sitting in Parliament or holding certain other forms of political office for a period of five years.
The applicants complained of a violation of Articles 9, 10, 11, 14, 17 and 18 of the Convention, and of Article 1 and 3 of Protocol No. 1.

Decision of the Court

The Court considered that, when campaigning for changes in legislation or to the legal or constitutional structures of the State, political parties continued to enjoy the protection of the provisions of the Convention and of Article 11 in particular provided they complied with two conditions: (1) the means used to those ends had to be lawful and democratic from all standpoints and (2) the proposed changes had to be compatible with fundamental democratic principles. It necessarily followed that political parties whose leaders incited others to use violence and/or supported political aims that were inconsistent with one or more rules of democracy or sought the destruction of democracy and the suppression of the rights and freedoms it recognised could not rely on the Convention to protect them from sanctions imposed as a result.
The Court held that the sanctions imposed on the applicants could reasonably be considered to meet a pressing social need for the protection of democratic society, since, on the pretext of giving a different meaning to the principle of secularism, the leaders of the Refah Partisi had declared their intention to establish a plurality of legal systems based on differences in religious belief, to institute Islamic law (the *Sharia*), a system of law that was in marked contrast to the values embodied in the Convention. They had also left in doubt their position regarding recourse to force in order to come to power and, more particularly, to retain power.
The Court considered that even if States' margin of appreciation was narrow in the area of the dissolution of political parties, since pluralism of ideas and parties was an inherent element of democracy, the State concerned could reasonably prevent the implementation of such a political programme, which was incompatible with Convention norms, before it was given effect through specific acts that might jeopardise civil peace and the country's democratic regime.

Judges Fuhrmann, Loucaides and Bratza expressed a dissenting opinion, which is annexed to the judgment.

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